



# Virginia Register of Regulations

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JUNE 25, 2007

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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 are cumulative for the year. 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. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

*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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## June 2007 through May 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<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 2, 2007 ( <b>Monday</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
24:6	November 7, 2007	November 26, 2007
24:7	November 20, 2007 ( <b>Tuesday</b> )	December 10, 2007
<b>INDEX 1 Volume 24</b>		
		<b>January 2008</b>
24:8	December 5, 2007	December 24, 2007
24:9	December 19, 2007	January 7, 2008
24:10	January 2, 2008	January 21, 2008
24:11	January 16, 2008	February 4, 2008
24:12	January 30, 2008	February 18, 2008
24:13	February 13, 2008	March 3, 2008
24:14	February 27, 2008	March 17, 2008
<b>INDEX 2 Volume 24</b>		
		<b>April 2008</b>
24:15	March 12, 2008	March 31, 2008
24:16	March 26, 2008	April 14, 2008
24:17	April 9, 2008	April 28, 2008
24:18	April 23, 2008	May 12, 2008

\*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 2. Agriculture</b>			
2 VAC 5-195 (Form)	Added	23:15 VA.R. 2512	--
2 VAC 5-330-30	Amended	23:20 VA.R. 3122	7/12/07
2 VAC 5-490-10 through 2 VAC 5-490-90	Amended	23:20 VA.R. 3123-3155	5/23/07
2 VAC 5-490-15	Added	23:20 VA.R. 3130	5/23/07
2 VAC 5-490-25	Added	23:20 VA.R. 3131	5/23/07
2 VAC 5-490-31 through 2 VAC 5-490-39.6	Added	23:20 VA.R. 3132-3140	5/23/07
2 VAC 5-490-73	Added	23:20 VA.R. 3154	5/23/07
2 VAC 5-490-75	Added	23:20 VA.R. 3155	5/23/07
2 VAC 5-490-103	Added	23:20 VA.R. 3155	5/23/07
2 VAC 5-490-105	Added	23:20 VA.R. 3156	5/23/07
2 VAC 5-490-110	Amended	23:20 VA.R. 3156	5/23/07
2 VAC 5-490-120	Amended	23:20 VA.R. 3157	5/23/07
2 VAC 5-490-130	Repealed	23:20 VA.R. 3157	5/23/07
2 VAC 5-490-131 through 2 VAC 5-490-138	Added	23:20 VA.R. 3157-3162	5/23/07
2 VAC 5-490-140	Amended	23:20 VA.R. 3162	5/23/07
2 VAC 5-620-10 through 2 VAC 5-620-100	Added	23:19 VA.R. 2981-2985	7/1/07
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-10-40	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-50	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-60	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-130	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-150	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-230	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-360	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-400	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-480	Amended	23:13 VA.R. 2129	5/19/07
3 VAC 5-40-20	Amended	23:13 VA.R. 2133	5/19/07
3 VAC 5-40-50	Amended	23:13 VA.R. 2134	5/19/07
3 VAC 5-60-20	Amended	23:13 VA.R. 2137	5/19/07
3 VAC 5-60-40	Amended	23:13 VA.R. 2138	5/19/07
3 VAC 5-60-80	Amended	23:13 VA.R. 2138	5/19/07
3 VAC 5-60-100	Added	23:13 VA.R. 2139	5/19/07
3 VAC 5-70-100	Amended	23:13 VA.R. 2142	5/19/07
3 VAC 5-70-150	Amended	23:13 VA.R. 2143	5/19/07
3 VAC 5-70-160	Amended	23:13 VA.R. 2143	5/19/07
3 VAC 5-70-230	Added	23:13 VA.R. 2143	5/19/07
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 20-70-100	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-200-10	Amended	23:11 VA.R. 1659	2/1/07

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-200-20	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-30	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-40	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-200-50	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-270-30 emer	Amended	23:14 VA.R. 2276	3/1/07-3/30/07
4 VAC 20-270-30	Amended	23:17 VA.R. 2737	3/30/07
4 VAC 20-270-40 emer	Amended	23:14 VA.R. 2276	3/1/07-3/30/07
4 VAC 20-270-40	Amended	23:17 VA.R. 2737	3/30/07
4 VAC 20-300-20 emer	Amended	23:14 VA.R. 2277	3/1/07-3/30/07
4 VAC 20-300-20	Amended	23:17 VA.R. 2738	3/30/07
4 VAC 20-310-55	Added	23:15 VA.R. 2481	3/1/07
4 VAC 20-370-10 through 4 VAC 20-370-30	Amended	23:19 VA.R. 2986	5/1/07
4 VAC 20-430-20	Amended	23:17 VA.R. 2738	3/30/07
4 VAC 20-430-45	Added	23:17 VA.R. 2738	3/30/07
4 VAC 20-450-30	Amended	23:17 VA.R. 2739	3/30/07
4 VAC 20-490-42	Amended	23:10 VA.R. 1540	12/21/06
4 VAC 20-490-42	Amended	23:19 VA.R. 2986	5/1/07
4 VAC 20-510-10	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-510-20	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-510-33	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-510-35	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-510-37	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-530-10 emer	Amended	23:12 VA.R. 1959	2/1/07-3/1/07
4 VAC 20-530-20 emer	Amended	23:12 VA.R. 1959	2/1/07-3/1/07
4 VAC 20-530-31 emer	Amended	23:12 VA.R. 1960	2/1/07-3/1/07
4 VAC 20-530-31	Added	23:13 VA.R. 2144	2/1/07-3/1/07
4 VAC 20-530-31	Amended	23:15 VA.R. 2482	3/1/07
4 VAC 20-530-32 emer	Amended	23:12 VA.R. 1960	2/1/07-3/1/07
4 VAC 20-530-32	Added	23:13 VA.R. 2145	2/1/07-3/1/07
4 VAC 20-530-32	Amended	23:15 VA.R. 2482	3/1/07
4 VAC 20-610-30	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-610-60	Amended	23:11 VA.R. 1662	2/1/07
4 VAC 20-620-50	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-620-60	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-620-70	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-670-15	Added	23:17 VA.R. 2739	3/30/07
4 VAC 20-670-30	Amended	23:17 VA.R. 2739	3/30/07
4 VAC 20-720-10 emer	Amended	23:19 VA.R. 2987	5/1/07-5/30/07
4 VAC 20-720-20 emer	Amended	23:19 VA.R. 2987	5/1/07-5/30/07
4 VAC 20-720-40 emer	Amended	23:10 VA.R. 1540	1/1/07-1/30/07
4 VAC 20-720-50 emer	Amended	23:10 VA.R. 1541	1/1/07-1/30/07
4 VAC 20-720-60 emer	Amended	23:19 VA.R. 2988	5/1/07-5/30/07
4 VAC 20-720-70 emer	Amended	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-90 emer	Amended	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-105 emer	Added	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-110 emer	Amended	23:19 VA.R. 2990	5/1/07-5/30/07
4 VAC 20-752-20	Amended	23:19 VA.R. 2990	5/3/07
4 VAC 20-752-30	Amended	23:19 VA.R. 2991	5/3/07
4 VAC 20-890-20	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-35	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-40	Amended	23:19 VA.R. 2991	7/1/07

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-890-45	Added	23:19 VA.R. 2992	7/1/07
4 VAC 20-900-25	Amended	23:19 VA.R. 2992	7/1/07
4 VAC 20-900-35	Amended	23:19 VA.R. 2993	7/1/07
4 VAC 20-950-40 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-40	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-47 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-47	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-47	Amended	23:17 VA.R. 2740	3/30/07
4 VAC 20-950-48.2 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-48.2	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-48	Amended	23:17 VA.R. 2740	3/30/07
4 VAC 20-1090-30	Amended	23:11 VA.R. 1663	2/1/07
4 VAC 20-1110-10 through 4 VAC 20-1110-50	Added	23:19 VA.R. 2994	5/1/07
4 VAC 20-1120-10 through 4 VAC 20-1120-50	Added	23:19 VA.R. 2994-2995	5/1/07
4 VAC 25-20-420	Amended	23:13 VA.R. 2146	4/4/07
4 VAC 25-130 (Forms)	Amended	23:20 VA.R. 3370-3372	--
4 VAC 25-130-700.12	Amended	23:13 VA.R. 2146	4/4/07
4 VAC 25-130-773.21	Amended	23:13 VA.R. 2147	4/4/07
4 VAC 25-130-775.11	Amended	23:13 VA.R. 2147	4/4/07
4 VAC 25-130-775.13	Amended	23:13 VA.R. 2148	4/4/07
4 VAC 25-130-784.20	Amended	23:13 VA.R. 2148	4/4/07
4 VAC 25-130-785.25	Amended	23:16 VA.R. 2592	5/16/07
4 VAC 25-130-800.51	Amended	23:13 VA.R. 2149	4/4/07
4 VAC 25-130-816.105	Amended	23:13 VA.R. 2150	4/4/07
4 VAC 25-130-816.116	Amended	23:16 VA.R. 2592	5/16/07
4 VAC 25-130-817.11	Amended	23:13 VA.R. 2150	4/4/07
4 VAC 25-130-817.64	Amended	23:13 VA.R. 2151	4/4/07
4 VAC 25-130-817.116	Amended	23:16 VA.R. 2594	5/16/07
4 VAC 25-130-817.121	Amended	23:13 VA.R. 2151	4/4/07
4 VAC 25-130-842.15	Amended	23:13 VA.R. 2153	4/4/07
4 VAC 25-130-843.12	Amended	23:13 VA.R. 2153	4/4/07
4 VAC 25-130-843.13	Amended	23:13 VA.R. 2154	4/4/07
4 VAC 25-130-843.15	Amended	23:13 VA.R. 2155	4/4/07
4 VAC 25-130-843.16	Amended	23:13 VA.R. 2156	4/4/07
4 VAC 25-130-845.13	Amended	23:13 VA.R. 2156	4/4/07
4 VAC 25-130-845.15	Amended	23:13 VA.R. 2158	4/4/07
4 VAC 25-130-845.18	Amended	23:13 VA.R. 2158	4/4/07
4 VAC 25-130-845.19	Amended	23:13 VA.R. 2159	4/4/07
4 VAC 25-130-846.14	Amended	23:13 VA.R. 2159	4/4/07
<b>Title 8. Education</b>			
8 VAC 20-350-10 through 8 VAC 20-350-660	Repealed	23:12 VA.R. 1962	5/8/07
8 VAC 20-700-10 through 8 VAC 20-700-50	Added	23:10 VA.R. 1541-1543	2/21/07
8 VAC 20-710-10 through 8 VAC 20-710-30	Added	23:10 VA.R. 1543-1544	2/21/07
<b>Title 9. Environment</b>			
9 VAC 5-50-400	Amended	23:17 VA.R. 2742	6/1/07
9 VAC 5-50-410	Amended	23:17 VA.R. 2742	6/1/07
9 VAC 5-60-60	Amended	23:17 VA.R. 2747	6/1/07
9 VAC 5-60-90	Amended	23:17 VA.R. 2748	6/1/07
9 VAC 5-60-100	Amended	23:17 VA.R. 2748	6/1/07

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-140-1010 through 9 VAC 5-140-1060	Added	23:14 VA.R. 2279-2291	4/18/07
9 VAC 5-140-1061	Added	23:14 VA.R. 2291	*
9 VAC 5-140-1062	Added	23:14 VA.R. 2291	*
9 VAC 5-140-1070 through 9 VAC 5-140-1150	Added	23:14 VA.R. 2292-2295	4/18/07
9 VAC 5-140-1200 through 9 VAC 5-140-1240	Added	23:14 VA.R. 2295-2296	4/18/07
9 VAC 5-140-1400 through 9 VAC 5-140-1430	Added	23:14 VA.R. 2296-2302	4/18/07
9 VAC 5-140-1500 through 9 VAC 5-140-1570	Added	23:14 VA.R. 2302-2306	4/18/07
9 VAC 5-140-1600 through 9 VAC 5-140-1620	Added	23:14 VA.R. 2307	4/18/07
9 VAC 5-140-1700 through 9 VAC 5-140-1750	Added	23:14 VA.R. 2307-2312	4/18/07
9 VAC 5-140-1800 through 9 VAC 5-140-1880	Added	23:14 VA.R. 2312-2317	4/18/07
9 VAC 5-140-2060	Added	23:14 VA.R. 2329	4/18/07
9 VAC 5-140-2061	Added	23:14 VA.R. 2331	*
9 VAC 5-140-2062	Added	23:14 VA.R. 2332	*
9 VAC 5-140-2070	Added	23:14 VA.R. 2333	4/18/07
9 VAC 5-140-2080	Added	23:14 VA.R. 2333	4/18/07
9 VAC 5-140-2100 through 9 VAC 5-140-2150	Added	23:14 VA.R. 2333-2336	4/18/07
9 VAC 5-140-2200 through 9 VAC 5-140-2240	Added	23:14 VA.R. 2336-2337	4/18/07
9 VAC 5-140-2400 through 9 VAC 5-140-2430	Added	23:14 VA.R. 2337-2342	4/18/07
9 VAC 5-140-2500 through 9 VAC 5-140-2570	Added	23:14 VA.R. 2342-2347	4/18/07
9 VAC 5-140-2600 through 9 VAC 5-140-2620	Added	23:14 VA.R. 2347	4/18/07
9 VAC 5-140-2700 through 9 VAC 5-140-2750	Added	23:14 VA.R. 2347-2353	4/18/07
9 VAC 5-140-2800 through 9 VAC 5-140-2880	Added	23:14 VA.R. 2353-2359	4/18/07
9 VAC 5-140-3010 through 9 VAC 5-140-3060	Added	23:14 VA.R. 2359-2368	4/18/07
9 VAC 5-140-3061	Added	23:14 VA.R. 2370	*
9 VAC 5-140-3062	Added	23:14 VA.R. 2371	*
9 VAC 5-140-3070	Added	23:14 VA.R. 2371	4/18/07
9 VAC 5-140-3080	Added	23:14 VA.R. 2371	4/18/07
9 VAC 5-140-3100 through 9 VAC 5-140-3150	Added	23:14 VA.R. 2371-2374	4/18/07
9 VAC 5-140-3200 through 9 VAC 5-140-3240	Added	23:14 VA.R. 2374-2375	4/18/07
9 VAC 5-140-3400 through 9 VAC 5-140-3420	Added	23:14 VA.R. 2375	4/18/07
9 VAC 5-140-3500 through 9 VAC 5-140-3570	Added	23:14 VA.R. 2375-2380	4/18/07
9 VAC 5-140-3600 through 9 VAC 5-140-3620	Added	23:14 VA.R. 2380-2381	4/18/07
9 VAC 5-140-3700 through 9 VAC 5-140-3750	Added	23:14 VA.R. 2381-2386	4/18/07
9 VAC 5-140-3800 through 9 VAC 5-140-3880	Added	23:14 VA.R. 2386-2391	4/18/07
9 VAC 5-140-5010 through 9 VAC 5-140-5750	Added	23:13 VA.R. 2160-2186	4/4/07
9 VAC 5-140-1020	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1061	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1130	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1420	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1700	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1740	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2020	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2030	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2040	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2060	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2740	Erratum	23:16 VA.R. 2673	--

\* Effective Date Suspended 23:19

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-140-3062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-3840	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-5020	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5060	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5100	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5150	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5420	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5510	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5540	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5560	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5600	Erratum	23:16 VA.R. 2672	--
9 VAC 5-151-10 through 9 VAC 5-151-70	Added	23:17 VA.R. 2755-2764	5/31/07
9 VAC 5-240-10 through 9 VAC 5-240-50	Added	23:16 VA.R. 2595-2596	5/16/07
9 VAC 20-110-90	Amended	23:11 VA.R. 1665	3/21/07
9 VAC 20-110-110	Amended	23:11 VA.R. 1665	3/21/07
9 VAC 20-200-10 through 9 VAC 20-200-70	Added	23:11 VA.R. 1666-1667	3/21/07
9 VAC 25-71-20	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-71-50	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-71-70	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-720-50	Amended	23:11 VA.R. 1669	3/21/07
9 VAC 25-720-50	Amended	23:15 VA.R. 2486	5/2/07
9 VAC 25-720-60	Amended	23:12 VA.R. 1966	5/21/07
9 VAC 25-720-80	Amended	23:11 VA.R. 1670	3/21/07
9 VAC 25-720-90	Amended	23:11 VA.R. 1671	3/21/07
9 VAC 25-720-100	Amended	23:11 VA.R. 1671	3/21/07
9 VAC 25-720-130	Amended	23:15 VA.R. 2487	5/2/07
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-40-50	Added	23:18 VA.R. 2882	5/1/07
10 VAC 5-160-40	Amended	23:13 VA.R. 2187	2/10/07
<b>Title 11. Gaming</b>			
11 VAC 10-20-310	Amended	23:18 VA.R. 2883	5/31/07
11 VAC 10-20-330	Amended	23:18 VA.R. 2884	5/31/07
11 VAC 10-20-340	Amended	23:18 VA.R. 2891	5/31/07
11 VAC 10-100-30	Amended	23:18 VA.R. 2892	5/31/07
11 VAC 10-110-30	Amended	23:18 VA.R. 2893	5/31/07
11 VAC 10-110-90	Amended	23:18 VA.R. 2893	5/31/07
11 VAC 10-120-80	Amended	23:18 VA.R. 2894	5/31/07
11 VAC 10-130-10	Amended	23:11 VA.R. 1672	1/10/07
11 VAC 10-130-10	Amended	23:18 VA.R. 2894	4/30/07
11 VAC 10-130-60	Amended	23:11 VA.R. 1673	1/10/07
11 VAC 10-140-12	Added	23:18 VA.R. 2896	5/31/07
11 VAC 10-140-15	Added	23:18 VA.R. 2896	5/31/07
11 VAC 10-140-210	Amended	23:18 VA.R. 2896	5/31/07
11 VAC 10-150-12	Added	23:18 VA.R. 2897	5/31/07
11 VAC 10-150-15	Added	23:18 VA.R. 2897	5/31/07
11 VAC 10-180-10	Amended	23:20 VA.R. 3164	5/18/07
11 VAC 10-180-20	Amended	23:20 VA.R. 3164	5/18/07
11 VAC 10-180-60	Amended	23:20 VA.R. 3166	5/18/07
11 VAC 10-180-80	Amended	23:20 VA.R. 3167	5/18/07
<b>Title 12. Health</b>			
12 VAC 5-70-10 through 12 VAC 5-70-50	Repealed	23:13 VA.R. 2187	4/4/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-71-10 through 12 VAC 5-71-190	Added	23:13 VA.R. 2188-2195	4/4/07
12 VAC 5-90 (Forms)	Erratum	23:15 VA.R. 2507-2509	--
12 VAC 5-90-10	Amended	23:15 VA.R. 2488	5/2/07
12 VAC 5-90-40	Amended	23:15 VA.R. 2493	5/2/07
12 VAC 5-90-80	Amended	23:15 VA.R. 2493	5/2/07
12 VAC 5-90-90	Amended	23:15 VA.R. 2497	5/2/07
12 VAC 5-90-100	Amended	23:15 VA.R. 2500	5/2/07
12 VAC 5-90-103	Added	23:15 VA.R. 2500	5/2/07
12 VAC 5-90-107	Added	23:15 VA.R. 2502	5/2/07
12 VAC 5-90-110	Amended	23:15 VA.R. 2503	5/2/07
12 VAC 5-90-130	Amended	23:15 VA.R. 2504	5/2/07
12 VAC 5-90-225	Amended	23:15 VA.R. 2504	5/2/07
12 VAC 5-90-250 through 12 VAC 5-90-280	Amended	23:15 VA.R. 2505-2506	5/2/07
12 VAC 5-90-330	Amended	23:15 VA.R. 2506	5/2/07
12 VAC 5-90-350	Amended	23:15 VA.R. 2507	5/2/07
12 VAC 5-90-360	Amended	23:15 VA.R. 2507	5/2/07
12 VAC 5-371-10	Amended	23:10 VA.R. 1544	3/1/07
12 VAC 5-371-20	Repealed	23:10 VA.R. 1546	3/1/07
12 VAC 5-371-30	Amended	23:10 VA.R. 1547	3/1/07
12 VAC 5-371-40	Amended	23:10 VA.R. 1547	3/1/07
12 VAC 5-371-50	Repealed	23:10 VA.R. 1548	3/1/07
12 VAC 5-371-60	Amended	23:10 VA.R. 1548	3/1/07
12 VAC 5-371-70 through 12 VAC 5-371-130	Amended	23:10 VA.R. 1548-1551	3/1/07
12 VAC 5-371-150	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-160	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-190	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-200	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-371-400	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-371-410	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-410-10	Amended	23:10 VA.R. 1554	3/1/07
12 VAC 5-410-30	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-70	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-80	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-100	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-110	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-130	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-140	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-150	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-180	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-210	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-220	Amended	23:10 VA.R. 1557	3/1/07
12 VAC 5-410-270	Amended	23:10 VA.R. 1558	3/1/07
12 VAC 5-410-442	Amended	23:10 VA.R. 1558	3/1/07
12 VAC 5-410-445	Amended	23:10 VA.R. 1559	3/1/07
12 VAC 5-410-650	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-720	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-760	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-1150	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-1170	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-410-1350	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-410-1380	Amended	23:10 VA.R. 1561	3/1/07

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-10-140	Amended	23:16 VA.R. 2653	7/1/07
12 VAC 30-10-560	Amended	23:14 VA.R. 2396	9/1/07
12 VAC 30-20-140	Amended	23:14 VA.R. 2397	9/1/07
12 VAC 30-30-20 emer	Amended	23:20 VA.R. 3169	5/30/07-5/29/08
12 VAC 30-30-60	Added	23:11 VA.R. 1673	3/7/07
12 VAC 30-40-10	Amended	23:11 VA.R. 1674	3/7/07
12 VAC 30-40-20	Amended	23:18 VA.R. 2897	7/1/07
12 VAC 30-40-105 emer	Added	23:20 VA.R. 3170	5/30/07-5/29/08
12 VAC 30-40-280 emer	Amended	23:20 VA.R. 3171	5/30/07-5/29/08
12 VAC 30-40-290	Amended	23:14 VA.R. 2398	9/1/07
12 VAC 30-40-290 emer	Amended	23:20 VA.R. 3172	5/30/07-5/29/08
12 VAC 30-50-20	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-35	Added	23:11 VA.R. 1675	3/7/07
12 VAC 30-50-60	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-75	Added	23:11 VA.R. 1676	3/7/07
12 VAC 30-50-320	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-321	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-325	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-328	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-490	Amended	23:20 VA.R. 3175	7/11/07
12 VAC 30-50-530	Amended	23:11 VA.R. 1676	3/7/07
12 VAC 30-70-311	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-321	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-331	Amended	23:20 VA.R. 3225	8/25/07
12 VAC 30-70-341	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-391	Amended	23:19 VA.R. 3004	7/1/07
12 VAC 30-80-30	Amended	23:20 VA.R. 3232	7/11/07
12 VAC 30-80-190	Amended	23:19 VA.R. 3004	7/1/07
12 VAC 30-80-190	Amended	23:20 VA.R. 3225	8/25/07
12 VAC 30-80-190	Amended	23:20 VA.R. 3242	7/11/07
12 VAC 30-90-31	Amended	23:19 VA.R. 3005	7/1/07
12 VAC 30-90-41	Amended	23:20 VA.R. 3226	8/25/07
12 VAC 30-90-271	Amended	23:20 VA.R. 3229	8/25/07
12 VAC 30-90-290	Amended	23:20 VA.R. 3230	8/25/07
12 VAC 30-90-264	Amended	23:14 VA.R. 2400	4/18/07
12 VAC 30-110-950	Amended	23:18 VA.R. 2898	7/1/07
12 VAC 30-120-61	Amended	23:16 VA.R. 2655	7/1/07
12 VAC 30-120-62	Amended	23:16 VA.R. 2657	7/1/07
12 VAC 30-120-64	Amended	23:16 VA.R. 2659	7/1/07
12 VAC 30-120-65	Amended	23:16 VA.R. 2660	7/1/07
12 VAC 30-120-66	Amended	23:16 VA.R. 2660	7/1/07
12 VAC 30-120-68	Amended	23:16 VA.R. 2661	7/1/07
12 VAC 30-120-700 through 12 VAC 30-120-750	Amended	23:20 VA.R. 3177-3192	7/11/07
12 VAC 30-120-752	Amended	23:20 VA.R. 3192	7/11/07
12 VAC 30-120-753	Amended	23:20 VA.R. 3194	7/11/07
12 VAC 30-120-754	Amended	23:20 VA.R. 3195	7/11/07
12 VAC 30-120-756	Amended	23:20 VA.R. 3197	7/11/07
12 VAC 30-120-758	Amended	23:20 VA.R. 3198	7/11/07
12 VAC 30-120-760	Amended	23:20 VA.R. 3198	7/11/07
12 VAC 30-120-762	Amended	23:20 VA.R. 3199	7/11/07
12 VAC 30-120-764	Amended	23:20 VA.R. 3199	7/11/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-120-766	Amended	23:20 VA.R. 3201	7/11/07
12 VAC 30-120-768	Repealed	23:20 VA.R. 3204	7/11/07
12 VAC 30-120-770	Amended	23:20 VA.R. 3206	7/11/07
12 VAC 30-120-772	Amended	23:20 VA.R. 3211	7/11/07
12 VAC 30-120-774	Amended	23:20 VA.R. 3211	7/11/07
12 VAC 30-120-776	Amended	23:20 VA.R. 3213	7/11/07
12 VAC 30-120-780	Repealed	23:20 VA.R. 3215	7/11/07
12 VAC 30-120-790	Repealed	23:20 VA.R. 3216	7/11/07
12 VAC 30-120-1600 through 12 VAC 30-120-1660	Added	23:20 VA.R. 3244-3251	7/11/07
12 VAC 30-130-900	Amended	23:12 VA.R. 1967	3/21/07
12 VAC 30-130-910	Amended	23:12 VA.R. 1968	3/21/07
12 VAC 30-130-930	Amended	23:12 VA.R. 1968	3/21/07
12 VAC 30-141-740	Amended	23:19 VA.R. 3006	7/1/07
12 VAC 35-45-10	Amended	23:10 VA.R. 1562	2/21/07
12 VAC 35-45-25	Added	23:10 VA.R. 1565	2/21/07
12 VAC 35-45-70	Amended	23:10 VA.R. 1564	2/21/07
12 VAC 35-45-80	Amended	23:10 VA.R. 1564	2/21/07
12 VAC 35-45-210	Added	23:10 VA.R. 1564	2/21/07
12 VAC 35-105-20	Amended	23:10 VA.R. 1567	2/21/07
12 VAC 35-105-30	Amended	23:10 VA.R. 1575	2/21/07
12 VAC 35-105-115 emer	Added	23:10 VA.R. 1566	1/3/07-1/2/08
12 VAC 35-105-590	Amended	23:10 VA.R. 1575	2/21/07
12 VAC 35-105-660	Amended	23:10 VA.R. 1576	2/21/07
12 VAC 35-105-925	Added	23:20 VA.R. 3252	7/11/07
<b>Title 13. Housing</b>			
13 VAC 5-111-10 through 13 VAC 5-111-400	Repealed	23:12 VA.R. 1971	3/21/07
13 VAC 5-112-10 through 13 VAC 5-112-560	Added	23:12 VA.R. 1971-1994	3/21/07
<b>Title 14. Insurance</b>			
14 VAC 5-200-20	Repealed	23:17 VA.R. 2766	9/1/07
14 VAC 5-200-30 through 14 VAC 5-200-60	Amended	23:17 VA.R. 2766-2770	9/1/07
14 VAC 5-200-70 through 14 VAC 5-200-90	Amended	23:17 VA.R. 2770-2774	9/1/07
14 VAC 5-200-110	Amended	23:17 VA.R. 2774	9/1/07
14 VAC 5-200-120	Amended	23:17 VA.R. 2777	9/1/07
14 VAC 5-200-153	Amended	23:17 VA.R. 2777	9/1/07
14 VAC 5-200-170	Amended	23:17 VA.R. 2780	9/1/07
14 VAC 5-200-175	Amended	23:17 VA.R. 2781	9/1/07
14 VAC 5-200-181	Added	23:17 VA.R. 2782	9/1/07
14 VAC 5-200-183	Added	23:17 VA.R. 2782	9/1/07
14 VAC 5-200-185	Amended	23:17 VA.R. 2783	9/1/07
14 VAC 5-200-187	Amended	23:17 VA.R. 2785	9/1/07
14 VAC 5-200-200	Amended	23:17 VA.R. 2786	9/1/07
14 VAC 5-200-201	Added	23:17 VA.R. 2788	9/1/07
14 VAC 5-200-205	Added	23:17 VA.R. 2788	9/1/07
14 VAC 5-321-10	Amended	23:10 VA.R. 1577	1/1/07
14 VAC 5-321-20	Amended	23:10 VA.R. 1577	1/1/07
14 VAC 5-321-30	Amended	23:10 VA.R. 1578	1/1/07
14 VAC 5-321-70	Added	23:10 VA.R. 1578	1/1/07
14 VAC 5-322-10 through 14 VAC 5-322-50	Added	23:10 VA.R. 1579-1581	1/1/07
<b>Title 16. Labor and Employment</b>			
16 VAC 25-55-10 and 16 VAC 25-55-20	Added	23:12 VA.R. 1995-1996	3/22/07
16 VAC 25-90-1910.134	Amended	23:12 VA.R. 1997	3/21/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-90-1910.1000	Amended	23:12 VA.R. 1996	3/21/07
16 VAC 25-90-1910.1001	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1017	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1018	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1025	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1027	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1028	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1029	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1043	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1044	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1045	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1047	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1048	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1050	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1052	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-100-1915.5	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.505	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.507	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.1000	Amended	23:12 VA.R. 1996	3/21/07
16 VAC 25-100-1915.1001	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.55	Added	23:12 VA.R. 1996	3/21/07
16 VAC 25-175-1926.60	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.62	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.1002, Appendix A of Subpart W	Amended	23:12 VA.R. 1999	3/21/07
16 VAC 25-175-1926.1101	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.1127	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-190-1928.52	Amended	23:12 VA.R. 1999	3/21/07
16 VAC 25-190-1928.53, Appendix B to Subpart C	Amended	23:12 VA.R. 1999	3/21/07
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-10-10 through 18 VAC 5-10-90	Amended	23:11 VA.R. 1678-1680	4/23/07
18 VAC 15-20 (Forms)	Added	23:15 VA.R. 2514	--
18 VAC 15-30 (Forms)	Amended	23:15 VA.R. 2514	--
18 VAC 30-10-10 through 18 VAC 30-10-80	Amended	23:20 VA.R. 3276-3277	8/25/07
18 VAC 30-10-100	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 30-10-110	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 30-10-120	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 41-60-10 through 18 VAC 41-60-220	Added	23:12 VA.R. 2000-2009	4/1/07
18 VAC 50-30-10 through 18 VAC 50-30-50	Amended	23:12 VA.R. 2020-2025	4/1/07
18 VAC 50-30-60	Repealed	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-70	Amended	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-80	Repealed	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-90 through 18 VAC 50-30-150	Amended	23:12 VA.R. 2026-2028	4/1/07
18 VAC 50-30-180	Repealed	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-185	Added	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-190	Amended	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-200	Amended	23:12 VA.R. 2029	4/1/07
18 VAC 50-30-210 through 18 VAC 50-30-260	Added	23:12 VA.R. 2030-2031	4/1/07
18 VAC 60-10-10 through 18 VAC 60-10-80	Amended	23:20 VA.R. 3283-3284	8/25/07
18 VAC 60-10-100	Amended	23:20 VA.R. 3284	8/25/07
18 VAC 60-10-110	Amended	23:20 VA.R. 3284	8/25/07
18 VAC 60-10-120	Amended	23:20 VA.R. 3284	8/25/07

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 60-20-210	Amended	23:20 VA.R. 3286	8/25/07
18 VAC 60-20-180	Amended	23:15 VA.R. 2510	5/2/07
18 VAC 65-40-10	Amended	23:12 VA.R. 2031	3/21/07
18 VAC 65-40-40	Amended	23:12 VA.R. 2031	3/21/07
18 VAC 65-40-90	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-110	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-130	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-160	Repealed	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-220	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-250	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-300	Repealed	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-320	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 65-40-340	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 75-10-10 through 18 VAC 75-10-80	Amended	23:20 VA.R. 3288-3290	8/25/07
18 VAC 75-10-100	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 75-10-110	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 75-10-120	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 76-30-10 through 18 VAC 76-30-80	Amended	23:20 VA.R. 3292-3294	8/25/07
18 VAC 76-30-100	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 76-30-110	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 76-30-120	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 85-10 through 18 VAC 85-10-70	Amended	23:20 VA.R. 3296-3297	8/25/07
18 VAC 85-10-90	Amended	23:20 VA.R. 3297	8/25/07
18 VAC 85-10-100	Amended	23:20 VA.R. 3297	8/25/07
18 VAC 85-10-110	Amended	23:20 VA.R. 3298	8/25/07
18 VAC 85-20-30	Amended	23:20 VA.R. 3299	8/25/07
18 VAC 85-20-235	Amended	23:11 VA.R. 1692	4/21/07
18 VAC 85-20-290	Amended	23:13 VA.R. 2206	4/4/07
18 VAC 85-101-50	Amended	23:15 VA.R. 2511	5/2/07
18 VAC 85-130-10 through 18 VAC 85-130-170	Added	23:10 VA.R. 1582-1586	2/21/07
18 VAC 90-10-10 through 18 VAC 90-10-80	Amended	23:20 VA.R. 3307-3309	8/25/07
18 VAC 90-10-100	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-10-110	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-10-120	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-20-60	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 90-30-120	Amended	23:14 VA.R. 2404	4/18/07
18 VAC 90-30-230	Amended	23:12 VA.R. 2034	3/21/07
18 VAC 90-40-140	Amended	23:12 VA.R. 2034	3/21/07
18 VAC 90-60-10 through 18 VAC 90-60-120	Added	23:19 VA.R. 3008-3012	7/1/07
18 VAC 90-60-120	Erratum	23:20 VA.R. 3378	--
18 VAC 105-10-10 through 18 VAC 105-10-80	Amended	23:20 VA.R. 3315-3316	8/25/07
18 VAC 105-10-100	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 105-10-110	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 105-10-120	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 110-10-10 through 18 VAC 110-10-80	Amended	23:20 VA.R. 3318-3320	8/25/07
18 VAC 110-10-100	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-10-110	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-10-120	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-20-285	Amended	23:17 VA.R. 2791	5/30/07
18 VAC 112-10-10 through 18 VAC 112-10-80	Amended	23:20 VA.R. 3327-3329	8/25/07
18 VAC 112-10-100	Amended	23:20 VA.R. 3329	8/25/07

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 112-10-110	Amended	23:20 VA.R. 3329	8/25/07
18 VAC 112-10-120	Amended	23:20 VA.R. 3329	8/25/07
18 VAC 115-10-10 through 18 VAC 115-10-80	Amended	23:20 VA.R. 3331-3332	8/25/07
18 VAC 115-10-100	Amended	23:20 VA.R. 3332	8/25/07
18 VAC 115-10-110	Amended	23:20 VA.R. 3333	8/25/07
18 VAC 115-10-120	Amended	23:20 VA.R. 3333	8/25/07
18 VAC 115-20-20	Amended	23:14 VA.R. 2404	4/18/07
18 VAC 115-30-30	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-40-20	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-50-20	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-60-20	Amended	23:14 VA.R. 2406	4/18/07
18 VAC 125-10-10 through 18 VAC 125-10-80	Amended	23:20 VA.R. 3346-3348	8/25/07
18 VAC 125-10-100	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-10-110	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-10-120	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-20-30	Amended	23:12 VA.R. 2035	3/21/07
18 VAC 125-30-20	Amended	23:12 VA.R. 2035	3/21/07
18 VAC 140-10-10 through 18 VAC 140-10-80	Amended	23:20 VA.R. 3350-3351	8/25/07
18 VAC 140-10-100	Amended	23:20 VA.R. 3351	8/25/07
18 VAC 140-10-110	Amended	23:20 VA.R. 3352	8/25/07
18 VAC 140-10-120	Amended	23:20 VA.R. 3352	8/25/07
18 VAC 145-30-40	Amended	23:20 VA.R. 3352	7/12/07
<b>Title 19. Public Safety</b>			
19 VAC 30-20-80	Amended	23:10 VA.R. 1587	3/1/07
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-10	Erratum	23:18 VA.R. 2935	--
21 VAC 5-20	Erratum	23:18 VA.R. 2935	--
21 VAC 5-110	Erratum	23:18 VA.R. 2935	--
<b>Title 22. Social Services</b>			
22 VAC 15-10-40	Amended	23:10 VA.R. 1587	3/1/07
22 VAC 15-10-50	Amended	23:10 VA.R. 1587	3/1/07
22 VAC 15-30-10	Amended	23:20 VA.R. 3353	7/11/07
22 VAC 15-30-310	Amended	23:20 VA.R. 3356	7/11/07
22 VAC 15-30-580	Amended	23:20 VA.R. 3358	7/11/07
22 VAC 40-20-10	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-25-10 through 22 VAC 40-25-70	Amended	23:20 VA.R. 3360-3364	8/1/07
22 VAC 40-25-45	Added	23:20 VA.R. 3363	8/1/07
22 VAC 40-540-10	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-600-10 through 22 VAC 40-600-240	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-601-10 through 22 VAC 40-601-40	Added	23:20 VA.R. 3365-3366	8/1/07
22 VAC 40-740-10	Amended	23:10 VA.R. 1588	3/1/07
22 VAC 40-740-15	Added	23:10 VA.R. 1591	3/1/07
22 VAC 40-740-20	Repealed	23:10 VA.R. 1592	3/1/07
22 VAC 40-740-21	Added	23:10 VA.R. 1592	3/1/07
22 VAC 40-740-30	Repealed	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-31	Added	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-40	Amended	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-50	Amended	23:10 VA.R. 1594	3/1/07
22 VAC 40-740-60	Amended	23:10 VA.R. 1595	3/1/07
22 VAC 40-740-70	Added	23:10 VA.R. 1596	3/1/07
22 VAC 40-740-80	Added	23:10 VA.R. 1596	3/1/07

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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-880-200	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-250	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-270	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-350	Amended	23:20 VA.R. 3368	8/1/07
22 VAC 40-880-620	Amended	23:20 VA.R. 3369	8/1/07
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-155-10 through 24 VAC 30-155-100	Added	23:18 VA.R. 2915-2930	7/1/07
24 VAC 30-320	Repealed	23:16 VA.R. 2665	3/22/07
24 VAC 30-325-10	Added	23:16 VA.R. 2665	3/22/07
24 VAC 30-325-20	Added	23:16 VA.R. 2666	3/22/07
24 VAC 30-330	Repealed	23:16 VA.R. 2665	3/22/07

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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 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled **8 VAC 20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia**. The purpose of the proposed action is to review the requirements for graduation (8 VAC 20-131-50), school and community communications (8 VAC 20-131-270), expectations for school accountability (8 VAC 20-131-280), and recognitions and rewards for school accountability performance (8 VAC 20-131-325). This review will include the role of graduation rates in the accountability measures for school accreditation as well as changes necessitated by actions taken by the 2007 General Assembly, including the following legislation:

1. Chapters 859 and 919 of the 2007 Acts of Assembly require the board to establish the requirements for a technical diploma.
2. Chapter 351 of the 2007 Acts of Assembly requires the board to modify the provisions of the Board of Education's Seal for Excellence in Civics Education to emphasize community service.
3. The Senate Education and Health Committee, while not taking action on HB 3201, related to removing students from classes, requested the Chairman write a letter to the Board of Education asking that the board consider this issue in its review of applicable regulations, and report back to the patron and the committee.

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

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 13, 2007.

**Contact:** Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email [anne.wescott@doe.virginia.gov](mailto:anne.wescott@doe.virginia.gov).

VA.R. Doc. No. R07-228; Filed May 23, 2007, 11:18 a.m.

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Air Pollution Control Board intends to consider promulgating regulations entitled **9 VAC 5-45, Consumer and Commercial Products Regulation**. The purpose of the proposed action is to adopt new and revised standards for the control of volatile organic compound (VOC) emissions from certain consumer and commercial products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the eight-hour ozone standard and to implement contingency measures within former nonattainment areas that have been redesignated as ozone maintenance areas.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 25, 2007.

**Contact:** Gary E. Graham, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email [gegraham@deq.virginia.gov](mailto:gegraham@deq.virginia.gov).

VA.R. Doc. No. R07-264; Filed June 1, 2007, 9:10 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 30-30, Groups Covered and Agencies Responsible for Eligibility Determination**, and amending regulations entitled **12 VAC 30-40, Eligibility Conditions and Requirements**. The purpose of the proposed action is to implement a mandated Medicaid buy-in program per the requirement of the 2006 Appropriation Act. The buy-in

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## Notices of Intended Regulatory Action

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program will help protect the health and welfare of the citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees who desire to be employed to have added income that will not count against their eligibility income limits. This reduces the financial restrictions to which such enrollees may be subject.

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 July 11, 2007.

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

VA.R. Doc. No. R07-219; Filed May 21, 2007, 4:15 p.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled:

**12 VAC 30-50, Amount Duration and Scope of Medical and Remedial Care Services.**

**12 VAC 30-60, Standards Established and Methods Used to Assure High Quality Care.**

**12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care.**

**12 VAC 30-120, Waivered Services.**

The purpose of the proposed action is to include emergency services; evaluation and assessment; outpatient services; intensive outpatient services; targeted case management; day treatment and opioid treatment services. Substance abuse services, with the exception of residential and day treatment services for pregnant and postpartum women are not currently a part of the state plan. The addition of these services will fill a gap in the continuum of care for Medicaid enrollees.

MEDALLION Primary Care Case Management (PCCM) recipients will have substance abuse services covered by Medicaid. These services are not subject to required referrals by the primary care physician. Medallion II recipients who are enrolled in an MCO will have outpatient services (excluding intensive outpatient services) and assessment and evaluation services covered by the MCOs. All other mandates substance services to be covered (emergency services (crisis), intensive outpatient services, day treatment services, opioid treatment services, and substance abuse case management services) will be carved out of the MCO and covered by DMAS.

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 July 25, 2007.

**Contact:** Catherine Hancock, Policy & Research Division, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1680, or email catherine.hancock@dmas.virginia.gov.

VA.R. Doc. No. R07-262; Filed May 30, 2007, 2:51 p.m.

## STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Mental Health, Mental Retardation And Substance Abuse Services Board intends to consider amending regulations entitled **12 VAC 35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services.** The purpose of the proposed action is to update the regulations to be consistent with current statutory mandates and standards of practice.

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

Statutory Authority: §§ 37.2-203 and 37.2-404 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

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

VA.R. Doc. No. R07-260; Filed May 25, 2007, 11:33 a.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Mental Health, Mental Retardation And Substance Abuse Services Board intends to consider amending regulations entitled **12 VAC 35-190, Regulations Establishing Procedures for Voluntarily Admitting Persons Who are Mentally Retarded to State Mental Retardation Facilities.** The purpose of the proposed action is to revise the regulations to clarify, update and respond to changes in practice related to admissions to state mental retardation facilities.

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# Notices of Intended Regulatory Action

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

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

Public comments may be submitted until July 27, 2007.

**Contact:** Dawn Traver, Office of Mental Retardation Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank St., Richmond, VA 23218-1797, telephone (757) 253-4316, FAX (757) 253-5440, or email dawn.traver@co.dmhmrzas.virginia.gov.

VA.R. Doc. No. R07-261; Filed May 25, 2007, 11:33 a.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### DEPARTMENT OF LABOR AND INDUSTRY

#### Apprenticeship Council

##### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Labor and Industry intends to consider amending regulations entitled **16 VAC 20-20, Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia**. The purpose of the proposed action is to add new definitions and makes language changes to clarify the Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.

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

Statutory Authority: § 40.1-6 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 26, 2007.

**Contact:** Beverley G. Donati, Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, or email bev.donati@doli.virginia.gov.

VA.R. Doc. No. R07-259; Filed May 31, 2007, 11:45 a.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF ACCOUNTANCY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Accountancy intends to consider amending regulations entitled **18 VAC 5-21, Board of Accountancy Regulations**. The purpose of the proposed action is to provide clarification to those CPA exam candidates who qualified under the education requirements of the Board of Accountancy to sit for the CPA exam prior to July 1, 2006. The board seeks to set a deadline of December 31, 2008, for these CPA candidates to pass the CPA exam. The goal of the board is to enable these candidates to be able to complete the CPA exam in a timely manner and within an achievable deadline, without creating an undue burden on them.

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

Statutory Authority: §§ 54.1-4402 and 54.1-4410 of the Code of Virginia.

Public comments may be submitted until July 11, 2007.

**Contact:** Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174 or email boa@boa.virginia.gov.

VA.R. Doc. No. R07-211; Filed May 14, 2007, 12:49 p.m.

### BOARD OF MEDICINE

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-50, Regulations Governing the Practice of Physician Assistants**. The purpose of the proposed action is to set out requirements for prescribing opioids for managements of chronic pain.

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

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** William L. Harp, M.D., Executive Director, Department of Health Professions, 6603 W. Broad St., 5th

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# Notices of Intended Regulatory Action

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Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R07-237; Filed May 23, 2007, 10:44 a.m.

## BOARD OF DENTISTRY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to specify requirements for informed consent in the performance of dental treatments.

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

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

Public comments may be submitted until 5 p.m. on July 11, 2007.

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

VA.R. Doc. No. R07-241; Filed May 23, 2007, 10:44 a.m.

## BOARD OF OPTOMETRY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to make technical changes to clarify the continuing education rules and consider requirements for face-to-face or interactive hours.

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

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, or email [elizabeth.carter@dhp.virginia.gov](mailto:elizabeth.carter@dhp.virginia.gov).

VA.R. Doc. No. R07-238; Filed May 23, 2007, 10:44 a.m.

## BOARD OF OPTOMETRY

### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Optometry has WITHDRAWN the Notice of Intended Regulatory Action for **18 VAC 105-20, Regulations Governing the Practice of Optometry**, which was published in 22:23 VA.R. 3202 July 24, 2006.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, or email [elizabeth.carter@dhp.virginia.gov](mailto:elizabeth.carter@dhp.virginia.gov).

VA.R. Doc. No.06-286; Filed June 30, 2007, 8:41 a.m.

## BOARD OF PHYSICAL THERAPY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to consider amending regulations entitled **18 VAC 112-20, Regulations Governing the Practice of Physical Therapy**. The purpose of the proposed action is to clarify and simplify definitions and requirements for trainees and for foreign-trained applicants, specify the additional clinical training or course work required to retake the examination after three failures, add evidence of competency for licensure by endorsement, clarify the responsibilities of physical therapist in the evaluation and discharge of a patient and in the supervision of physical therapist assistants or other personnel, and modify the requirements for renewal or reinstatement of licensure. The board will consider the addition of provisions on standards of professional practice and grounds for unprofessional conduct.

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

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

Public comments may be submitted until 5 p.m. on July 25, 2007.

**Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

VA.R. Doc. No. R07-269; Filed June 5, 2007, 11:25 a.m.

## BOARD OF COUNSELING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled **18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapy**. The purpose of the proposed action is to change the requirements for supervision of residency and licensure by endorsement.

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

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

Public comments may be submitted until 5 p.m. on July 11, 2007.

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

V.A.R. Doc. No. R07-239; Filed May 23, 2007, 10:44 a.m.

## BOARD OF PSYCHOLOGY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled **18 VAC 125-20, Regulations Governing the Practice of Psychology**. The purpose of the proposed action is to respond to a petition for rulemaking for fewer hours of face-to-face continuing education, and to update and clarify its requirements for continuing education.

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

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

Public comments may be submitted until 5 p.m. on July 11, 2007.

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

V.A.R. Doc. No. R06-216; Filed May 23, 2007, 10:44 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled **18 VAC 125-30, Regulations Governing the Certification of Sex Offender Treatment Providers**. The purpose of the proposed action is

to respond to a petition for rulemaking that requested fewer supervised hours in experience required for persons who already hold a license as a clinical psychologist and to require at least six hours of continuing education focused on the treatment of that population for annual renewal.

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

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

Public comments may be submitted until 5 p.m. on July 11, 2007.

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

V.A.R. Doc. No. R07-240; Filed May 23, 2007, 10:44 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC 40-690, Virginia Child Care Provider Scholarship Program**. The purpose of the proposed action is to amend the regulation to employ more efficient business practices and to implement an applicant selection process that will address the immediate need to improve the qualifications of child care providers and to enhance the quality of child care services offered to children and families in the Commonwealth.

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

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

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Zelda Boyd, Program Development Consultant, Department of Social Services, Division of Child Care and Development, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7616, FAX (804) 726-7655, or email [zelda.boyd@dss.virginia.gov](mailto:zelda.boyd@dss.virginia.gov).

V.A.R. Doc. No. R07-214; Filed May 21, 2007, 9:48 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC 40-705, Child Protective Services**. The purpose of the

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# Notices of Intended Regulatory Action

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proposed action is to conduct a comprehensive review of the Child Protective Services regulation. The regulation addresses the key functions in protecting children from abuse and neglect. The State Board of Social Services will recommend amendments to reflect recent changes in the Code of Virginia to the definition of an abused or neglected child and will also propose several amendments of a housekeeping nature and may propose additional amendments based on public comment.

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

Statutory Authority: § 63.2-217 and Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 and of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Nan McKenney, CPS Policy Supervisor, Department of Social Services, 7 N. 8th St., 4th Floor, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7895 or email nan.mckenney@dss.virginia.gov.

VA.R. Doc. No. R07-215; Filed May 21, 2007, 9:47 a.m.

**Retail Sales and Use Tax.** The purpose of the proposed action is to amend the existing regulation (23 VAC 10-210-680, Gifts Purchased in Virginia) to reflect a statutory change enacted by 2005 General Assembly defining "gift transaction" for sales and use tax purposes and allowing the dealer the option of collecting the tax in the state of the recipient or collecting the Virginia tax, provided the dealer is registered in the recipient state and the recipient is someone other than the purchaser. Tax will amend the regulation to reflect the law change and set their policy with respect to this change. The regulation will also provide processes and procedures for dealers to obtain approval from the Tax Commissioner prior to collecting the tax in the state of the recipient.

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 July 11, 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. R07-245; Filed May 23, 2007, 9:58 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 amend the current retail sales and use tax regulation on fabrication to more accurately set forth policy.

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 July 11, 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. R07-243; Filed May 23, 2007, 9:58 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,**

#### 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 amend the current regulation (23 VAC 10-210-730, Hotels, Motels, Tourist Camps, etc.) to reflect the 2004 legislative change that provides that Internet access services furnished with accommodations qualify as a tax-exempt service and not a service in connection with accommodations.

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 July 11, 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. R07-246; Filed May 23, 2007, 9:58 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

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# Notices of Intended Regulatory Action

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action is to amend the existing regulation (23 VAC 10-210-840, Leases and Rentals) to clarify what constitutes "gross proceeds" with respect to leases and rentals and to distinguish leases and rentals from conditional sales.

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 July 11, 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. R07-247; Filed May 23, 2007, 9:58 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 amend the current regulation (23 VAC 10-210-910, Maintenance Contracts and Warranty Plans) to implement 1994 General Assembly action changing the sales and use tax application to parts and labor maintenance contracts.

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 July 11, 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. R07-248; Filed May 23, 2007, 9:58 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 amend the current regulation (23 VAC 10-210-920, Manufacturing and Processing) to clarify numerous manufacturing and processing issues that are the subject of frequent audit appeals and ruling requests.

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 July 11, 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. R07-249; Filed May 23, 2007, 9:58 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 amend the regulation (23 VAC 10-210-1020, Motor Vehicles Refinishers, Painters, and Car Washers) to conform with 2005 law change. Specifically, tax will amend the regulation to reflect the change to the definitions of "retail sale" and "sale at retail."

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 July 11, 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. R07-250; Filed May 23, 2007, 9:58 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 amend the current regulation (23 VAC 10-210-1080, Occasional Sales) to provide clarification regarding the exemption available for "occasional sales."

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 July 11, 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. R07-244; Filed May 23, 2007, 9:58 a.m.

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# Notices of Intended Regulatory Action

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## 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 amend the existing regulation (23 VAC 10-210-2032, Penalties and Interest Audits) to set forth alternative methods for computation of the use tax compliance ratio for determining the application of penalty to audit findings.

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 July 11, 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. R07-252; Filed May 23, 2007, 9:58 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 amend the regulation (23 VAC 10-210-2090, Pollution Control Equipment and Facilities) to reflect a statutory change enacted by the 2005 General Assembly, to set forth the original intent of the retail sales tax exemption as it relates to pollution control equipment.

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 July 11, 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. R07-251; Filed May 23, 2007, 9:58 a.m.



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF MOTOR VEHICLES

#### † Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Commonwealth Transportation Board has WITHDRAWN the Notice of Intended Regulatory Action for **24 VAC 20-81, Hauling Permits**, which was published in 21:21 2783 June 27, 2005.

**Contact:** Ron Thompson, Senior Policy Analyst, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, FAX (804) 367-6631, toll-free 1-800-435-5137 or email ronald.thompson@dmv.virginia.gov.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Motor Vehicles intends to consider promulgating regulations entitled **24 VAC 20-81, Hauling Permits**. The purpose of the proposed action is to establish requirements for the issuance of permits to haul overweight and overdimension vehicles over the highways of Virginia.

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

Statutory Authority: § 46.2-203 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

Public comments may be submitted until July 25, 2007.

**Contact:** Ron Thompson, Senior Policy Analyst, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, FAX (804) 367-6631, toll-free 1-800-435-5137 or email ronald.thompson@dmv.virginia.gov.

VA.R. Doc. No. R07-271; Filed June 5, 2007, 3:29 p.m.

## BOARD OF TOWING AND RECOVERY OPERATORS

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Towing and Recovery Operators intends to consider promulgating regulations entitled **24 VAC 27-30, Regulations Governing the Practice of Towing and Recovery Operators**. The purpose of the proposed action is to create a new regulation to provide for the licensure, practice, and discipline of towing and recovery operators. A public meeting on this action is scheduled on July 16, 2007, at 9 a.m. at the Department of

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## Notices of Intended Regulatory Action

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Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.

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

Statutory Authority: § 46.2-2805 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 25, 2007.

**Contact:** Benjamin Foster, Executive Director, Board for Towing & Recovery Operators, Virginia Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-0226, FAX (804) 367-6631, or email [benjamin.foster@dmv.virginia.gov](mailto:benjamin.foster@dmv.virginia.gov).

VA.R. Doc. No. R07-270; Filed June 5, 2007, 11:17 a.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Towing and Recovery Operators intends to consider promulgating regulations entitled **24 VAC 27-50, Regulations Governing the Provision of Public Safety Towing and Recovery Services**. The purpose of the proposed action is to carry out the mandate of § 46.2-2826 of the Code of Virginia to establish regulations required of Class A and Class B operators to provide public safety towing and recovery services. A public meeting on this action is scheduled on July 16, 2007, at 9 a.m. at the Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.

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

Statutory Authority: § 46.2-2826 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 25, 2007.

**Contact:** Benjamin Foster, Executive Director, Board for Towing & Recovery Operators, Virginia Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-0226, FAX (804) 367-6631, or email [benjamin.foster@dmv.virginia.gov](mailto:benjamin.foster@dmv.virginia.gov).

VA.R. Doc. No. R07-277; Filed June 5, 2007, 11:18 a.m.

## COMMONWEALTH TRANSPORTATION BOARD

### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Commonwealth Transportation Board has WITHDRAWN the Notice of Intended Regulatory Action for **24 VAC 30-92, Subdivision Street Acceptance Requirements**, which was published in 23:16 VA.R. 2591 April 16, 2007. This action is exempt from the Administrative Process Act pursuant to Chapter 382 (SB 1181) of the 2007 Acts of Assembly. Due to a technical error, all electronically submitted comments for this action were

lost, so a new Notice of Intended Regulatory Action (NOIRA) is being filed for this action. Interested parties who responded to the earlier NOIRA are requested to resubmit their comments to <http://www.vdot.virginia.gov/projects/ssar/> by 5 p.m. on June 18, 2007.

**Contact:** Nick Donohue, Special Assistant, Office of the Secretary of Transportation, Patrick Henry Bldg., 1111 E. Broad St., 3rd Floor, Richmond, VA 23219, or P.O. Box 1475, Richmond, VA 23218, telephone (804) 786-8032, FAX (804) 786-6683 or email [nicholas.donohue@drpt.virginia.gov](mailto:nicholas.donohue@drpt.virginia.gov).

VA.R. Doc. No. R07-181; Filed May 18, 2007, 3:35 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 2. AGRICULTURE

### STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Proposed Regulation

Title of Regulation: **2 VAC 5-206. Regulation for Scrapie Eradication (adding 2 VAC 5-206-10 through 2 VAC 5-206-50).**

Statutory Authority: §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Public Hearing Date: August 23, 2007 - 9:30 a.m.

Public comments may be submitted until August 24, 2007.

(See Calendar of Events section for additional information)

Agency Contact: David Cardin, D.V.M. Deputy State Veterinarian, Division of Animal and Food Industry Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 692-0601, FAX (804) 371-2380, or email david.cardin@vdacs.virginia.gov.

Basis: Section 3.1-724 mandates that the Board of Agriculture and Consumer Services and the State Veterinarian cooperate with the livestock sanitary control officials of other states, and with the U.S. Secretary of Agriculture and the United States Department of Agriculture (USDA) in establishing rules and regulations to protect the livestock and poultry of Virginia against contagious and infectious diseases.

Section 3.1-726 authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary for eradicating and preventing the spread of contagious and infectious diseases.

Section 3.1-730 mandates that the Board of Agriculture and Consumer Services or the State Veterinarian give and enforce directions and prescribe rules and regulations to separating, feeding, and caring for diseased or exposed animals or poultry as may be necessary to prevent the animals or poultry affected with disease, or capable of communicating disease, from coming in contact with other animals or poultry not affected.

Under 9 CFR 54.2, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) will execute cooperative agreements and/or memoranda of understanding with the animal health

agencies of any state in order to cooperatively administer the Scrapie Eradication Program. Each agreement must specify the roles of the state and federal government for the eradication program and the state Scrapie Flock Certification Program.

Purpose: Scrapie is a debilitating disease of sheep and goats that is estimated to cost U.S. producers \$20 to \$25 million annually. Infected flocks are less productive, as affected animals usually die during their peak productive years. Recent publicity regarding a possible link between Bovine Spongiform Encephalopathy (Mad Cow Disease) and the feeding of cattle in England with scrapie-infected sheep products has severely affected domestic and international trade in sheep and sheep-derived products. Many renderers have declined to render sheep offal or to pick up dead sheep, significantly increasing disposal costs. In addition, other countries have threatened possible restrictions on importing certain nonsheep ruminant products from the U.S. because of scrapie.

The USDA has made a commitment to the sheep industry to eradicate scrapie in the U.S. by 2010. The federal regulation, which became effective in September 2001, restricts interstate movement of sheep and goats from states that have not initiated intrastate regulatory action concerning scrapie eradication within two years. The goal of the proposed regulation is to eradicate scrapie in Virginia sheep and goats. The regulation will provide the program standards and procedures for Virginia to participate in the Cooperative State-Federal-Industry Scrapie Program.

The agency has determined that the proposed regulation will protect the welfare of Virginia because it will allow the continued interstate movement of sheep and goats and negate economic losses due to this debilitating disease. Additionally, the eradication of scrapie in Virginia would eliminate the basis for the possible restrictions on trade with Virginia.

Substance: The proposed regulation will meet the minimum requirements of the "Scrapie Eradication State-Federal-Industry Uniform Methods and Rules" established by the USDA/Animal Plant Health Inspection Service (APHIS) in August 2002, and revised in October 2003. The proposed regulation will provide guidance for the prevention, monitoring, control, and eradication of scrapie disease from domestic sheep flocks and goat herds in Virginia and for maintenance of state status in the USDA Scrapie Eradication Program. An analysis of Virginia's

compliance was conducted in April 2006 by the USDA. They found Virginia to be fully compliant pending final adoption of the proposed regulation.

**Issues:** The primary advantage to small business sheep and goat owners is that they will maintain the ability to sell their animals in interstate commerce and at markets that deal in interstate commerce. This means more competition for the animals and thus higher prices. Market managers will be able to pool sheep and goats so that they will be attractive to large volume buyers outside of the state of Virginia.

The principle disadvantage to the small business flock owner is maintaining the records, since most sheep and goat flocks in Virginia are identified in some manner. The animals must be identified with a tag unique to the farm of origin and distinct from other animals on that farm, and records must be kept. Livestock markets and slaughter houses will also have to assure that the animals are tagged. From a regulatory point of view, this helps in disease trace backs. Adequate tracking is essential to meet the national goal of tracing any animal back to its farm of origin within 48 hours.

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

**Summary of the Proposed Regulation.** The Department of Agriculture & Consumer Services (VDACS) proposes to promulgate the Regulation for Scrapie Eradication. The adoption of this regulation is necessary to maintain Virginia's status as a scrapie consistent state. Consistent state status allows the free movement of Virginia sheep and goats in interstate commerce.

**Results of Analysis.** The benefits likely exceed the costs for all proposed changes.

**Estimated Economic Impact.** Scrapie is a debilitating disease of sheep and goats. It is a fatal, degenerative disease affecting the central nervous system of sheep and goats. Infected flocks that contain a high percentage of susceptible animals can experience significant production losses.

The United States Department of Agriculture (USDA) has made a commitment to the sheep industry to eliminate outbreaks of scrapie by 2010 and to have the United States officially declared scrapie free by international standards by 2017. The federal regulation, which became effective in September 2001, restricts interstate movement of sheep and goats from states that have not initiated intrastate regulatory action concerning scrapie eradication within two years.<sup>1</sup> In the Federal Register of August 21, 2001, all

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<sup>1</sup> Individual producers who wish to move sheep over state lines from a non-compliant state will be required to enroll in the Scrapie Flock Certification Program and the flock will have to be inspected annually.

states were granted Consistent State Status. States were given two years to comply with all requirements of 9 CFR § 79.6 (Standards for States to qualify as Consistent States). On September 21, 2003, the time expired for States to meet Consistent State Status criteria. All states were sent a checklist for the 9 CFR § 79.6 requirements July 1, 2004, which required a response by July 30, 2004. Follow-up required that states provide documentation to verify that all the requirements of 9 CFR § 79.6 were met by January 1, 2005 or submit a work plan and timeline to address any deficiencies. At the end of fiscal year 2006, <sup>2</sup>47 states had approved programs and are considered "consistent" including Virginia.

VDACS proposes to promulgate the Regulation for Scrapie Eradication so as to maintain Virginia's Consistent State Status. According to VDACS, Virginia has initiated the scrapie eradication program since 2001 and has received federal funding for scrapie eradication every year since 2000. The proposed regulation will meet the minimum requirements of the Scrapie Eradication State-Federal-Industry Uniform Methods and Rules established by USDA /Animal Plant Health Inspection Service (APHIS). The proposed regulation will provide guidance for the prevention, monitoring, control, and eradication of scrapie disease from domestic sheep flocks and goat herds in Virginia and for maintenance of state status in the USDA Scrapie Eradication Program. USDA has reviewed Virginia's compliance and found Virginia to be fully compliant pending final adoption of the proposed regulation.

According to the proposed regulation, any sheep or goat born after January 1, 2002 that are required to be officially identified shall be identified<sup>3</sup> with official USDA identification<sup>4</sup> to the premises of birth, if not the same as the premises of origin, prior to change of ownership or exhibition. Any sheep or goat that is bartered, leased, traded, loaned, sold, exhibited, or otherwise moved from one management to another shall be deemed to have undergone a change of ownership for the purpose of this proposed regulation. The buyer, seller, and any dealer or market operator shall keep a record of all changes of ownership for a minimum of five years. Any goat or sheep undergoing a change of ownership (including exhibition and/or importation into the state) not having an official

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<sup>2</sup> The federal government's fiscal year runs from October 1 to September 30.

<sup>3</sup> Animals required to be officially identified include: 1) all breeding sheep, 2) all sexually intact animals for exhibition, 3) all sheep over 18 months of age, 4) all exposed and high-risk animals including all low-risk exposed animals, genetically susceptible exposed animals, genetically less susceptible exposed animals, and genetically resistant exposed sheep, 5) all suspect and test-positive animals, 6) animals from noncompliant flocks.

<sup>4</sup> Official USDA Identification means identification approved by the USDA/APHIS/Veterinary Services (VS) for the identification of animals, which is so designed as to prevent alteration. This may include tattoo and electronic identification.

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identification shall be quarantined until the requirements of this proposed regulation are met.

The proposed regulations require that no sheep or goat be imported into Virginia that does not originate from a consistent state, unless originating from a complete monitored scrapie flock<sup>5</sup> or enrolled in the USDA Scrapie Flock Certification Program.<sup>6</sup> Any out-of-state sheep or goats that are offered for sale in an approved Virginia livestock market that have not previously been identified must be either identified with an official USDA tag on arrival and prior to commingling with any other sheep or goats or returned to the state of origin. Except as exempted, all sheep and goats imported into Virginia must be accompanied by a Certificate of Veterinary Inspection (CVI). The proposed regulation also provides guidance on the monitoring and investigation of scrapie-infected animals and source flocks/herds.

The adoption of the proposed regulation will allow the continued interstate movement of sheep and goats. Sheep and goat owners, sellers, buyers, dealers, and market operators in Virginia will benefit from continued business involving interstate commerce. The proposed regulations will help to reduce the occurrence of scrapie and eventually eradicate scrapie in Virginia sheep and goats and will negate economic losses due to this debilitating disease.

The major compliance cost imposed by this proposed regulation is the cost of identification devices used for sheep and goats. Official USDA identification may include ear tag, tattoo, and electronic identification. According to VDACS, the cost for a basic ear tag is very low while other methods such as a micro-chip implanted would be more expensive. The average cost of official USDA tags would be up to \$5 per head. Animal owners, sellers, buyers, or market operators will also spend a small amount of time for physically identifying the animals and document movement as well as record-keeping. VDACS will incur a cost of approximately \$30,000 every year associated with administration of the scrapie eradication program.

According to VDACS, Virginia has received federal funding every year since 2000 which has covered all of the above costs for scrapie eradication program. Scrapie Consistent States may apply annually for federal grants submitting a detailed plan on how the money will be used. If Virginia continues to receive the federal grant for scrapie

eradication, there will be no additional costs for animal owners, sellers, buyers, or market operators except for the small amount of time spent on physically identifying the animals and record-keeping. In the case that federal grant is not available, animal owners, sellers, buyers, or market operators will have to pay for the identification device for every animal that is required to be identified, with the average cost of \$5 per head. According to VDACS, as of April 2006, all animals at fairs and those leaving markets are identified with official USDA tags. Approximately 85% of animals entering markets and auctions are tagged. Supposing that about 67,400<sup>7</sup> sheep and goats will enter the livestock markets every year and 15% of them need to be tagged, the total estimated cost will be \$50,550 statewide.<sup>8</sup>

Given that the proposed regulation will allow the continued business in interstate commerce and will reduce the occurrence of scrapie, and given the fact that Virginia has received federal funding every year since 2000, the total benefit of the proposed regulations will likely outweigh the total cost. Therefore, the proposed regulations will likely generate a net economic benefit.

**Businesses and Entities Affected.** The proposed regulation will affect owners of flocks or herds of sheep and goats, buyers, sellers, dealers, or market operators involved in the barter, lease, trade, loan, sale, exhibit, or movement of sheep and goats. According to VDACS, there are approximately 983 sheep and goat flocks which is approximately the number of animal owners. And there are 5 to 6 livestock markets in Virginia.

**Localities Particularly Affected.** The proposed regulation applies to all localities in the Commonwealth.

**Projected Impact on Employment.** Sheep and goat owners, sellers, buyers, dealers, and market operators in Virginia will benefit from continued business involving interstate commerce. The proposed regulations will help to reduce the occurrence of scrapie and eventually eradicate scrapie in Virginia sheep and goats and will negate economic losses due to this debilitating disease. This will likely have a positive impact on the number of people employed by the affected businesses.

If the federal grant for scrapie eradication is not available, animal owners, sellers, buyers, or market operators will have to pay for the identification devices for animals that are required to be identified. This will likely increase their costs and have a small negative impact on the number of people employed by the affected businesses.

**Effects on the Use and Value of Private Property.** The proposed regulation will allow the continued business in

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<sup>5</sup> Flock or herd means all animals maintained on a single premise and all animals under common ownership or supervision on two or more premises with animal interchange between the premises. Changes in ownership of part or all of the flock do not change the identity of the flock or the regulatory requirements applicable to the flock.

<sup>6</sup> Scrapie Flock Certification Program means a program, sponsored by the USDA/APHIS/VS, to reduce scrapie occurrence and spread; identify flocks which have been free of evidence of scrapie over a specified time period; and contribute to the eventual eradication of scrapie.

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<sup>7</sup> Source: VDACS

<sup>8</sup> Calculation: \$5\*67,400\*15%=\$50,550.

interstate commerce and will reduce the occurrence of scrapie, which will benefit sheep and goat owners, sellers, buyers, dealers, and market operators in Virginia and will likely have a positive impact on their asset values. On the other hand, sheep and goat owners, sellers, buyers, dealers, and market operators may have to pay for the identification devices when the federal grant is not available, which will likely have a small negative impact on their asset values.

**Small Businesses: Costs and Other Effects.** Small businesses will benefit from continued business involving interstate commerce as well as possibly reduced economic losses due to occurrence of scrapie. They may have to pay for the identification devices when the federal grant is not available. Generally speaking, small businesses will likely receive net benefit from the proposed regulations. According to VDACS, almost all of the animal owners and markets are small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The adoption of this proposed regulation is necessary to maintain Virginia's status as a scrapie consistent state so as to allow the continued businesses involving interstate commerce. There are no alternatives that could achieve the same result with less adverse impact.

**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 concurs

with the analysis of the Department of Planning and Budget.

Summary:

*The proposed regulation meets the minimum requirements of the "Scrapie Eradication State-Federal-Industry Uniform Methods and Rules" established by the USDA /Animal Plant Health Inspection Service (APHIS) in August 2002, and revised in October 2003. The proposed regulation provides guidance for the prevention, monitoring, control, and eradication of scrapie disease from domestic sheep flocks and goat herds in Virginia and for maintenance of state status in the USDA Scrapie Eradication Program.*

CHAPTER 206.

REGULATION FOR SCRAPIE ERADICATION.

2 VAC 5-206-10. Definitions.

"Accredited veterinarian" means a veterinarian approved by the United States Department of Agriculture in accordance with 9 CFR 160.1 (2002).

"Animal" means any sheep or goat.

"Breeding sheep and goats" means any sexually intact sheep or goat that is not moving directly to slaughter, or through slaughter channels to slaughter.

"Consistent state" means a state listed in 9 CFR 79.1 that the USDA Administrator has determined in compliance with 9 CFR 79.6.

"Diagnosis" means a result of an official test indicating a positive result for scrapie.

"Exposed flock" means any flock in which a scrapie-positive or suspect animal was born or lambed, or any flock into which a scrapie positive or scrapie suspect animal has been introduced.

"Flock or herd" means all animals maintained on a single premises and all animals under common ownership or supervision on two or more premises with animal interchange between the premises. Changes in ownership of part or all of the flock do not change the identity of the flock or the regulatory requirements applicable to the flock.

"Flock plan" means a written flock-management agreement signed by (i) the owner of a flock, (ii) the accredited veterinarian (if one is employed by the owner), (iii) an APHIS representative, and (iv) the State Veterinarian, in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or an exposed animal. As part of a flock plan, the flock owner must provide the

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facilities and personnel needed to carry out the requirements of the flock plan.

"Infected flock" means any flock in which a state or APHIS representative has determined that a scrapie-positive female animal has resided unless an epidemiologic investigation conducted by a State or APHIS representative shows that the animal did not lamb or abort in the flock.

"Low-risk commercial goat" means a low-risk goat from a herd in which animals are moved to slaughter only directly or through slaughter channels or any animal raised only for meat or fiber production and not registered with a sheep or goat registry or used for exhibition.

"Low-risk goat" means a goat that is not a scrapie-positive, suspect, high-risk, or exposed animal; that has not been commingled with sheep; and that is from a state in which (i) scrapie has not been identified in a goat during the previous 10 years; (ii) scrapie has been identified in a goat during the previous 10 years, but the scrapie-positive goat was not born in the state, resided in the state for less than 72 months, and did not kid while in the state; or (iii) scrapie has been identified in a goat during the previous 10 years and the scrapie-positive goat was commingled with sheep but records allowed a complete epidemiologic investigation to be completed and all resulting infected, source, and exposed goat herds had completed flock plans and were in compliance with post-exposure monitoring and management plans.

"Noncompliant flock" means (i) any source or infected flock whose owner declines to enter into a flock plan or postexposure management and monitoring plan (PEMMP) agreement within 60 days of being so designated or whose owner is not in compliance with either agreement; (ii) any exposed flock whose owner fails to make animals available for testing within 60 days of notification or as mutually agreed, or whose owner fails to submit required postmortem samples as directed in the PEMMP; (iii) any flock whose owner has misrepresented, or who employs a person who has misrepresented, the scrapie status of an animal or any other information on a certificate, permit, owner statement, or other official document within the last five years; or (iv) any flock whose owner or manager has moved, or who employs a person who has moved, an animal in violation of 9 CFR Part 79 within the last five years, as determined by the State Veterinarian.

"Official USDA identification" means identification approved by the USDA/APHIS/VS for the identification of animals, which is so designed as to prevent alteration. This may include tattoo and electronic identification.

"Postexposure management and monitoring plan (PEMMP)" means a written agreement signed by the owner of a flock, any accredited veterinarian employed by the owner, and a state or APHIS representative in which

each participant agrees to undertake actions specified in the agreement to reduce the risk of the occurrence of scrapie and to monitor for the occurrence of scrapie in the flock for at least five years after the last high-risk or scrapie-positive animal is removed from the flock or after the last exposure of the flock to a scrapie-positive animal unless the monitoring time is otherwise specified by a state or APHIS representative. As part of a postexposure management and monitoring plan, the flock owner must provide the facilities and personnel needed to carry out the required elements listed in the plan.

"Scrapie" means a nonfebrile, transmissible, insidious, degenerative disease that affects the central nervous system, and is a transmissible spongiform encephalopathy (TSE) found in sheep and goats.

"Scrapie Flock Certification Program" means a program, sponsored by the USDA/APHIS/VS, to reduce scrapie occurrence and spread; identify flocks that have been free of evidence of scrapie over a specified time period; and contribute to the eventual eradication of scrapie.

"Scrapie-positive" means an animal that has been diagnosed by USDA-accepted testing methods by the National Veterinary Services Laboratory, or another laboratory designated by the State Veterinarian, to have the disease scrapie.

"Source flock" means a flock in which a state or APHIS representative has determined that at least one animal was born that was diagnosed as scrapie positive at an age of 72 months or less or in which a scrapie-positive animal has resided throughout its life.

"State Veterinarian" means the Virginia State Veterinarian or his representative employed by the Virginia Department of Agriculture and Consumer Services.

"USDA and USDA/APHIS/VS" means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services.

## **2 VAC 5-206-20 Identification of sheep and goats in commerce.**

Any sheep or goat born after January 1, 2002, shall be identified to the premises of birth, if not the same as the premises of origin, prior to change of ownership or exhibition.

No person shall apply an official USDA tag or premises identification number or brand or official registry tattoo to an animal that did not originate on the premises to which the number has been officially assigned. No person may remove or tamper with any means of identification required to be on sheep or goats.

Any sheep or goat that is bartered, leased, traded, loaned, sold, exhibited, or otherwise moved from one management

to another shall be deemed to have undergone a change of ownership for the purpose of this regulation. The buyer, seller, and any dealer or market operator shall keep a record of all changes of ownership for a minimum of five years. Any sheep or goat that loses its identification, that was applied at its flock/herd of origin for exhibition or change of ownership, shall be identified by the person in control or possession of the animal prior to its commingling with any other animals; and if the flock of origin cannot be determined all possible flocks/herds of origin shall be listed on the record. The buyer, seller, and any dealer or market operator shall be equally responsible for maintaining the required record, which shall be made available on request by representatives of the Virginia Department of Agriculture and Consumer Services.

Any out-of-state sheep or goats that are offered for sale in an approved Virginia livestock market that have not previously been identified must be (i) identified with an official USDA tag on arrival and prior to commingling with any other sheep or goats with all information recorded as required for change of ownership or meet the importation requirements; or (ii) returned to the state of origin.

Animals required to be officially identified include:

1. All breeding sheep.
2. All sexually intact animals for exhibition. This includes (i) sexually intact registered goats and goats used primarily for milk production, (ii) goats that are being moved from one location to another even if there is no change of ownership, and (iii) goats that are being sold for breeding or exhibition. It also includes sexually intact goats that have resided on the same premises as sheep and goats that have been exposed to animals that are affected with scrapie.
3. All sheep over 18 months of age.
4. All exposed and high-risk animals including all low-risk exposed animals, genetically susceptible exposed animals, genetically less susceptible exposed animals, and genetically resistant exposed sheep.
5. All suspect and test-positive animals.
- 6 Animals from noncompliant flocks.

Animals not required to be individually identified include:

1. Slaughter sheep (sheep in slaughter channels) under 18 months (Note: If a sexually intact sheep is sold at an unrestricted sale (any sale that is not a slaughter or feeding for slaughter sale), it must be identified.).
2. Slaughter goats (goats in slaughter channels).
3. Low-risk commercial goats.

4. Castrated goats that have not been exposed to scrapie.
5. Animals shipped directly to an approved slaughter facility.

Registered goat owners that have official tattoos registered with USDA in the Scrapie National Genetic Data Base and carry the registration papers with them to a registered goat sale would not be required to apply tags for exhibition or sale at a registered goat sale.

Any goat or sheep undergoing a change of ownership (including exhibition and/or importation into the state) not having an official identification shall be quarantined until the requirements of this regulation are met.

In order to simplify identification requirements, livestock markets or sale/show managers may require that all animals be identified with official USDA tags.

## **2 VAC 5-206-30. Importation of sheep and goats into Virginia.**

No sheep or goat may be imported into Virginia that does not originate from a consistent state, unless originating from a complete monitored scrapie flock or enrolled in the USDA Scrapie Flock Certification Program (SFCP). All sheep or goats imported into the state of Virginia must be identified by official USDA tag, legible official goat registry tattoo if accompanied by a registration certificate, or other approved device that contains a premises identification issued by the state of origin in combination with a unique animal number. No sheep or goat that is infected with scrapie, and no offspring of sheep or goat infected with scrapie, may be moved into Virginia.

Except as stated below, all sheep and goats imported into Virginia must be accompanied by a Certificate of Veterinary Inspection (CVI).

No CVI is required for animals going directly to slaughter.

Animals entering Virginia from a state contiguous with Virginia without change in ownership or management and as a part of normal operating procedures may do so without a CVI.

The CVI for all sheep or goats imported into Virginia shall contain identification numbers for each animal. Acceptable identification includes official USDA ear tags that include the premises identification and a unique animal identification number, legible official goat registration tattoo if accompanied by a registration certificate or any form of identification approved by APHIS for use in the scrapie eradication program. Electronic identification may also be used.

## **2 VAC 5-206-40. Exhibition of sheep and goats.**

Sheep and goats entering Virginia for exhibition shall meet all requirements for entry into Virginia.

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## **2 VAC 5-206-50. Scrapie management.**

All known cases of scrapie and any sheep or goat known to originate from a scrapie-infected flock or to have had contact with scrapie-infected animals or any sheep or goat showing clinical signs of scrapie not known to be caused by some other disease or injury shall be isolated from all other nonaffected animals and reported to the State Veterinarian within 24 hours of the isolation.

Upon notification of known cases of scrapie and all suspected cases of scrapie, the flock/herd shall be quarantined, investigated, all animals in the flock/herd individually identified, and a risk analysis conducted. A diagnostic plan shall be developed and reviewed by the State Veterinarian utilizing approved live diagnostic tests and submission of appropriate samples to an approved laboratory for scrapie testing upon the death or destruction of any animals in a flock/herd quarantined for scrapie. All flocks/herds shall remain under quarantine until a determination of the status of the flock/herd is made. All flocks/herds under quarantine shall be examined at least yearly, or more frequently as determined by the State Veterinarian, and an inventory of all animals in the flock/herd recorded with all deaths, sales to slaughter, and destruction accounted for. Upon confirmation of the existence of scrapie in a flock/herd, a thorough epidemiological report of all source flocks and herds and contacts with other animals shall be documented and a risk analysis conducted. Subsequently all source flocks or herds and contacts of all confirmed or high risk scrapie flock/herd shall be quarantined, investigated, all animals in flock/herd individually identified, and a risk analysis conducted.

Scrapie-positive or animals suspected of having scrapie shall be moved only with the approval of the State Veterinarian, for transportation to a USDA-approved research facility or for the purpose of destruction.

All known scrapie-infected and source flocks/herds shall be quarantined with movements of animals only (i) to slaughter, (ii) to feedlots under permit and quarantine for later movement to slaughter, (iii) for destruction, or (iv) to a USDA-approved research facility. Animals destroyed as a result of this section will be disposed of in a manner approved by the State Veterinarian.

Infected and source flocks may be released from quarantine after completion of a USDA flock/herd plan or in an USDA approved pilot project flock/herd plan that includes the owners agreement to comply with a five-year postexposure monitoring and management plan. The State Veterinarian may release any suspected case of scrapie from quarantine when other causes of the symptoms are confirmed and scrapie has not been diagnosed.

Any flock/herd under quarantine that has not had a confirmation of scrapie diagnosis within five years that has followed the flock/herd plan shall be released from quarantine. The State Veterinarian may release any flock/herd from quarantine based on epidemiological or diagnostic factors.

VA.R. Doc. No. R03-237; Filed June 6, 2007, 9:16 a.m.

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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 20-380. Pertaining to Grey Trout (Weakfish) (amending 4 VAC 20-380-50 and 4 VAC 20-380-60).**

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

**Effective Date:** October 1, 2007.

**Agency Contact:** Brandy L. Battle, Agency 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 amendments establish (i) a 150-pound commercial by-catch possession limit for grey trout, regardless as to whether a gear-specific fishery is subject to a closed season; and (ii) a six-fish recreational possession limit for grey trout.*

#### **4 VAC 20-380-50. Commercial fishing season.**

A. The closed season on grey trout harvested by pound net shall be May 1 through May 22, and September 13 through March 31 except as provided in subdivision 1 of this subsection.

1. Any pound net fisherman who holds 2 or 3 pound net licenses in accordance with the provisions of 4 VAC 20-600-10 et seq. may forfeit only one of those licenses to be exempt from the closed seasons as established in this subsection. Any pound net fisherman who holds 4, 5, or 6 pound net licenses in accordance with the provisions of 4 VAC 20-600-10 et seq. may forfeit only two of

those licenses to be exempt from the closed seasons as established in this subsection. Any pound net fisherman who holds 7, 8, or 9 pound net licenses in accordance with the provisions of 4 VAC 20-600-10 et seq. may forfeit only three of those licenses to be exempt from the closed seasons as established in this subsection. Forfeiture of any license shall be through March 31, of each fishing season, and shall occur prior to May 1 of each fishing season.

2. Any pound net licensee who forfeits a license pursuant to subdivision 1 of this subsection shall retain his priority rights to such locations for future licensing until April 1 of the following fishing season. Any pound net fisherman who forfeits one or more pound net licenses may reclaim such licenses during the period of March 15 of the current fishing season through April 1 of the following fishing season, but shall not set or fish any pound nets provided for by such licenses prior to April 1.

3. Those pound net licensees who hold multiple gear licenses and satisfy the requirement of subdivision 1 of this subsection may transfer an unused license to a licensee who holds a single pound net license.

B. The closed seasons on grey trout harvested by gill net shall be May 14 through October 20, and December 31 through March 15.

C. The closed seasons on grey trout harvested by haul seine shall be April 1 through April 15; June 11 through August 20; and September 25 through March 31.

D. The closed season on landing grey trout harvested by trawl shall be September 26 through March 31.

E. During any closed season described in subsections A, B, C, and D of this section, the boat or vessel possession limit for grey trout taken as by-catch in other directed fisheries shall be the lesser of ~~900~~ 450 pounds or an amount equal to the number of registered commercial fishermen or seafood landing licensees on board multiplied by ~~300~~ 150 pounds. For any gear type not subject to a closed season, the possession limit shall be the lesser of 450 pounds or an amount equal to the number of registered commercial fishermen or seafood landing licensees on board multiplied by 150 pounds. Only one license per person, either the commercial fisherman's registration license or seafood landing license, shall be used to calculate the boat or vessel possession limit. Further, during any closed season described in subsections A, B, C and D of this section, it shall be unlawful for any person to do any of the following:

1. Possess grey trout less than 12 inches in total length.

2. Possess aboard any vessel or land any quantity of grey trout that is more than the total weight of species other than grey trout on board the vessel.

**4 VAC 20-380-60. Recreational fishing seasons, minimum size limits, and possession limits.**

A. It shall be unlawful for any person fishing with hook and line, rod and reel or hand line to possess more than ~~seven~~ six grey trout and the minimum size limit shall be 12 inches in length.

B. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by ~~the designated possession limits established in subsection A of this section~~ six. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any grey trout taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R07-253; Filed May 23, 2007, 12:26 p.m.

**Final Regulation**

Title of Regulation: **4 VAC 20-720. Pertaining to Restrictions on Oyster Harvest (amending 4 VAC 20-720-10, 4 VAC 20-720-60 through 4 VAC 20-720-110; adding 4 VAC 20-720-105).**

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

Effective Date: May 23, 2007.

Agency Contact: Brandy L. Battle, Agency 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 amendments establish summer harvest hours and other restrictions for public and private oyster grounds in order to protect the public's health.*

**4 VAC 20-720-10. Purpose.**

The purpose of this chapter is to protect and conserve Virginia's oyster resource ~~and~~, promote the preservation of oyster broodstock, which has been depleted by disease, harvesting, and natural disasters, and protect the public health.

**4 VAC 20-720-60. Day and time limit.**

A. It shall be unlawful to take, catch or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any

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person harvesting no more than one bushel per day by hand for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in subdivisions 1, 3 and 4 of 4 VAC 20-720-40, except as described in 4 VAC 20-720-105.

~~C. It shall be unlawful for any person to harvest or attempt to harvest oysters by dredge from private grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, until one hour before sunrise or after 10 a.m. in the months of May through September and these oysters shall be refrigerated within one hour of landing.~~

~~D. C.~~ It shall be unlawful for a boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset.

~~E. D.~~ It shall be unlawful for a boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

#### **4 VAC 20-720-70. Gear restrictions.**

A. It shall be unlawful for any person to harvest oysters in the James River Seed Areas, including the Deep Water Shoal State Replenishment Seed Area the James River Jail Island and Point of Shoals Clean Cull Areas, the Rappahannock River Hand Tong Area, the Corrotoman River Hand Tong Area, except by hand or ordinary tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters from the seaside of the Eastern Shore, except by hand.

C. It shall be unlawful to harvest oysters from the hand scrape areas in the Rappahannock River; James River, Nomini River, Upper Chesapeake Bay, and York River, except by hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Management Area, except by a standard oyster dredge.

~~F. During the months of May through September any vessel used for the harvest of oysters from both public and private grounds shall have shading over the storage area for the oysters, and all oysters in the vessel shall be offloaded every day.~~

#### **4 VAC 20-720-80. Quotas and harvest limits.**

A. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, there shall be an oyster harvest quota of 80,000 bushels of seed oysters. It shall be unlawful for any person to harvest seed oysters from the James River Seed Area after the 80,000 bushel quota has been reached. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, and Clean Cull Areas there shall be an oyster harvest quota of 15,000 bushels of market clean cull oysters. It shall be unlawful for any person to harvest market clean cull oysters from the James River Seed and Clean Cull Areas after the 15,000 bushel quota has been reached.

B. The lawful daily limit of clean cull oysters harvested from the areas as described in subdivision 3 of 4 VAC 20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by 10 bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

C. In the PTSMA in Tangier Sound and in the Pocomoke Sound, where harvesting is allowed by dredge, there shall be a harvest limit of eight bushels per registered commercial fisherman licensee on board the vessel. It shall be unlawful for any registered commercial fisherman licensee to possess more than eight bushels per day. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

D. Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.

#### **4 VAC 20-720-90. Harvest permit required; for the James River Hand Scrape Area; and Thomas Rock Hand Scrape Area; and Seaside of Eastern Shore.**

~~A. It shall be unlawful for any person to harvest, or attempt to harvest, oysters from leased oyster ground, fee simple ground, or aquacultural operations on the Seaside of Eastern Shore without first obtaining a harvest permit from the Marine Resources Commission.~~

~~B. Applicants for the harvest permit shall have paid all rent fees and shall specify the location of the lease or fee simple ground to be harvested and shall verify that the ground is marked properly as specified by 4 VAC 20-290.~~

~~C. Applicants for the permit to harvest from aquacultural operations shall have these operations verified by the Marine Resources Commission and with this aquaculture harvest permit shall be exempt from all other fisheries regulations pertaining to harvesting and handling of wild oyster stocks.~~

~~D. No person shall hold more than four permits at any time.~~

~~E. The aquaculture harvest permit does not eliminate or exempt the aquacultural operation from all applicable Division of Shellfish Sanitation regulations pertaining to the harvest and marketing of shellfish.~~

~~F. A permit is required for the James River Hand Scrape Area and the Thomas Rock Hand Scrape Area. It shall be unlawful for any person to harvest, or attempt to harvest, oysters from the James River Hand Scrape Area and the Thomas Rock Hand Scrape Area without first obtaining a harvest permit from the Marine Resources Commission as required by § 28.2-518 of the Code of Virginia.~~

#### **4 VAC 20-720-105. Public health and warm water harvest restrictions.**

A. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of oysters.

B. From May 1 through September 30, any vessel used for the harvest of oysters for human consumption from either public or private grounds shall have shading over the area that serves as storage for the oysters (except as described in subsection C of this section), and all oysters in the vessel shall be offloaded every day.

C. From May 1 through September 30, any vessel used for the harvest of oysters for human consumption that are placed in an aquaculture container completely covered by a lid or top, shall not be required to have shading over that container.

D. From May 1 through September 30, it shall be unlawful for any person, or person aboard a vessel, to leave the dock or shore prior to one hour before sunrise to harvest or attempt to harvest oysters from public or private grounds.

E. From May 1 through September 30, it shall be unlawful to harvest oysters for human consumption from public or private grounds after 10 a.m., and oysters harvested before 10 a.m. shall be refrigerated by 10 a.m. that same day, except as described below:

1. This shall not apply to the harvest of seed oysters or the customary husbandry processes associated with aquaculture of oysters.

2. Oysters may be harvested after 10 a.m. provided there is a Virginia Department of Health, Division of Shellfish

Sanitation-approved refrigeration system or ice storage area for the oysters on board the harvest vessel that is in use for cooling oysters at all times after 10 a.m.

3. The total time expended on harvesting those oysters does not exceed two hours from start of harvest to refrigeration of those oysters, and there is verifiable documentation, such as a log book or GPS trip log that corresponds to that harvesting event.

#### **4 VAC 20-720-110. Penalty.**

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalty prescribed by law, any person violating ~~the~~ any provisions of this chapter shall return all oysters in possession to the water, shall cease harvesting on that day, and all harvesting apparatus shall be subject to seizure.

C. In addition to the penalty prescribed by § 28.2-802 of the Code of Virginia, any person violating any provisions of 4 VAC 20-720-105 shall destroy all oysters harvested by that person in violation of 4 VAC 20-720-105 in the presence of a marine police officer, and shall be subject to the immediate forfeiture of all oyster licenses and permits until appearing before the Marine Resources Commission.

VA.R. Doc. No. R07-254; Filed May 24, 2007, 9:34 a.m.

### **Emergency Regulation**

Title of Regulation: **4 VAC 20-1120. Pertaining to Tilefish and Grouper (amending 4 VAC 20-1120-20).**

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

Effective Date: May 29, 2007, through June 28, 2007.

Agency Contact: Brandy L. Battle, Agency 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 emergency amendment corrects the scientific name for Coney, Graysby, Yellowmouth grouper and Sand tilefish.*

#### **4 VAC 20-1120-20. Definitions.**

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

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"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.

"Grouper" means any of the following species:

Black grouper, *Mycteroperca bonaci*  
Coney, ~~*Epinephelus fulvus*~~ *Cephalopholis fulva*  
Gag grouper, *Mycteroperca microlepis*  
Goliath grouper, *Epinephelus itajara*  
Graysby, ~~*Epinephelus*~~ *cruentatus* *Cephalopholis cruentata*  
Misty grouper, *Epinephelus mystacinus*  
Nassau grouper, *Epinephelus striatus*  
Red grouper, *Epinephelus morio*  
Red Hind, *Epinephelus guttatus*  
Rock Hind, *Epinephelus adscensionis*  
Scamp, *Mycteroperca phenax*  
Snowy grouper, *Epinephelus niveatus*  
Speckled Hind, *Epinephelus drummondhayi*  
Tiger grouper, *Mycteroperca tigris*  
Warsaw grouper, *Epinephelus nigrilus*  
Wreckfish, *Polyprion americanus*  
Yellowedge grouper, *Epinephelus flavolimbatus*  
Yellowfin grouper, *Mycteroperca venenosa*  
Yellowmouth grouper, ~~*Mycteroperca*~~ *interstitialis* *interstitialis*

"Recreational fishing" or "fishing recreationally" or "recreationally fishing" 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.

"Tilefish" means any of the following species:

Blueline tilefish, *Caulolatilus microps*  
Golden tilefish, *Lopholatilus chamaeleonticeps*  
Sand tilefish, ~~*Lutjanus vivanus*~~ *Malacanthus plumieri*

VA.R. Doc. No. R07-255; Filed May 23, 2007, 12:31 p.m.

## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### BOARD OF FORENSIC SCIENCE

#### Proposed Regulation

**Title of Regulation:** 6 VAC 40-50. Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (adding 6 VAC 40-50-10 through 6 VAC 40-50-80).

**Statutory Authority:** §§ 9.1-1110 and 19.2-188.1 of the Code of Virginia.

**Public Hearing Date:** August 8, 2007 -- 10 a.m.

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

(See Calendar of Events section for additional information)

**Agency Contact:** Michele M. Gowdy, Department Counsel, Board of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email [michele.gowdy@dfs.virginia.gov](mailto:michele.gowdy@dfs.virginia.gov).

**Basis:** During its 2006 Session, the General Assembly amended § 19.2-188.1 of the Code of Virginia to require the Department of Forensic Science to approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 of the Code of Virginia regarding whether or not any plant material, the identity of which is at issue, is marijuana. The amendment to § 19.2-188.1 further specifies that the department shall approve those marijuana field tests deemed accurate and reliable pursuant to regulations adopted in accordance with the Administrative Process Act.

**Purpose:** By amending § 19.2-188.1 of the Code of Virginia to allow law-enforcement officers to testify to the results of marijuana field tests, the General Assembly determined that such an action would assist officers as they strive to protect the health, safety and welfare of Virginia's citizens. The proposed regulations are necessary to fulfill the General Assembly's mandate. These regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department.

**Substance:** This proposed regulatory action is designed to ensure continuity from the emergency regulations in compliance with § 19.2-188.1 to these proposed regulations. Effective July 2006, § 19.2-188.1 B was amended to permit law-enforcement officers to testify at

trial for simple possession of marijuana cases to the results of a field test regarding whether or not any plant material, the identity of which is at issue, is marijuana. In accordance with § 19.2-188.1 B, officers may only testify to the results of kits deemed accurate and reliable by the department pursuant to regulations adopted in accordance with the Administrative Process Act. These regulations establish permanently the process the department will follow for approving kits and describe where law-enforcement agencies can find the list of approved kits. Without these regulations, there would be no permanent approved marijuana field tests for use by law enforcement.

Issues: There are no disadvantages to the public or the Commonwealth. The proposed regulations are necessary to fulfill the General Assembly's mandate. These regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. Pursuant to legislation passed during the 2006 General Assembly session, the Department of Forensic Science (DFS) proposes regulations that set procedures for approving marijuana field tests.

Result of Analysis. The benefits likely exceed the costs for this proposed regulatory change.

Estimated Economic Impact. Prior to promulgation of emergency regulations in June 2006, law-enforcement officers who needed to know if seized plant material was marijuana would have to send that material to an approved lab where it would be tested. During its 2006 session, the General Assembly passed legislation which allows police officers to perform marijuana field tests using tests DFS approved as accurate. This legislation also allows law-enforcement officers to testify about the results of these tests in court, both in preliminary hearings and at trial, so long as the tests used have been deemed accurate by DFS. To facilitate implementation of this legislation, and because they are the authority tasked with approving marijuana field test kits, DFS implemented emergency regulations, and is now proposing permanent regulations, that set out procedures for the approval process.

These regulations require that manufacturers who are seeking approval for their tests submit at least 10 field kits that include all material needed for testing as well as any "instructions, precautions, color charts, flow charts and the like" so that DFS can assess the kit's ease of use and accuracy. Per the proposed regulation, the fee charged by DFS for this assessment is \$50. Manufacturers will also

need to submit specifications for the chemicals and reagents used in the tests. DFS will have up to 90 days to approve or disapprove a manufacturer's test and will be required to provide written notice of their decision. DFS may require manufacturers to seek annual re-approval for tests and any modifications made to tests by manufacturers must also be approved by DFS. Once approved, DFS will, at the request of law-enforcement agencies, dispense field test kits. The number of field test kits dispensed to any given law-enforcement agency will depend on the number of marijuana convictions in that locality in prior years. Law-enforcement agencies will also be able to purchase approved test kits if they want to use more kits than are provided to them.

The proposed regulations, and their authorizing legislation, will prove beneficial for law-enforcement officers, individuals who are in possession of suspect material and for the public at large. Law-enforcement officers will waste less of their time and resources on arrests and evidence processing for plant material that turns out to not be marijuana. Officers will also be able to assure chain of evidence since plant materials will not leave their custody until after testing. Individuals who would have previously been arrested for and/or charged with marijuana possession, only to be proven innocent by delayed lab tests, will benefit from on the spot testing. These individuals will also benefit because a truncated chain of evidence will likely help protect against evidence mishandling which may lead to faulty convictions. The public will likely benefit both financially and because justice will be swifter and likely more accurate. Field testing (at \$0.88 to \$2.00 per test) is much cheaper than lab testing; other thing being equal, taxpayers will likely save money as the use of field tests increases. This effect may be somewhat offset because the ease-of-use for these tests may encourage law-enforcement officers to test more material than they previously would have. If marijuana testing increases, localities and the state may incur extra imprisonment costs for any individuals who are convicted for possession (or other drug related crimes) when they previously would not have been.

Businesses and Entities Affected. These proposed regulations will affect all state and local law-enforcement agencies as well as test manufacturers and the general public. DFS reports that there are in excess of 200 law-enforcement agencies in the Commonwealth and that there are currently three manufacturers who have tests approved. One of these manufacturers is located in McLean, Virginia. The other two manufacturers are located out-of-state.

Localities Particularly Affected. The proposed regulation will affect all local law-enforcement agencies in the Commonwealth. Individuals who live in Fairfax County may enjoy greater employment opportunities if the test manufacturer located there needs to increase the number of

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people it employs in order to meet increased demand for marijuana field test kits.

**Projected Impact on Employment.** Manufacturers of approved test kits, whether located in Virginia or elsewhere, will likely experience an increase in the demand for their product and may, as a consequence, increase the number of people they employ.

**Effects on the Use and Value of Private Property.** Manufacturers of approved test kits, whether located in Virginia or elsewhere, will likely experience an increase in the demand for their product. This increase in demand will lead to increased sales. Assuming the cost of manufacturing these kits does not exceed or equal the revenue generated by their sale, manufacturers will see increased profits.

**Small Businesses: Costs and Other Effects.** Manufacturers who choose to seek DFS approval for their marijuana test kits will be required to pay a \$50 assessment fee.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There is likely no alternative method of accomplishing the aims of these proposed regulations that would further minimize costs.

**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 Department of

Forensic Science concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget.

Summary:

*Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 regarding whether or not any plant material, the identity of which is at issue, is marijuana. These new regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department.*

CHAPTER 50.  
REGULATIONS FOR THE APPROVAL OF  
MARIJUANA FIELD TESTS FOR DETECTION OF  
MARIJUANA PLANT MATERIAL.

PART I.  
DEFINITIONS.

**6 VAC 40-50-10. Definitions.**

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

"Agency" means any federal, state or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or his designee.

"Department" means the Department of Forensic Science.

"List of approved marijuana field tests" means a list of Duquenois-Levine field tests approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with § 19.2-188.1 B of the Code of Virginia.

"Manufacturer" means any entity that makes or assembles marijuana field tests or marijuana field test kits to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting marijuana plant material.

"Manufacturer's instructions and claims" means those testing procedures, requirements, instructions, precautions and proposed conclusions that are published by the manufacturer and supplied with the marijuana field tests or marijuana field test kits.

"Marijuana" means marijuana as defined in § 18.2-247 of the Code of Virginia.

"Marijuana field test" means any Duquenois-Levine test unit used outside of a chemical laboratory environment to detect the presence of marijuana plant material.

"Marijuana field test kit" means a combination of individual marijuana field test units.

## PART II.

### PROCESS FOR APPROVAL OF FIELD TESTS.

#### **6 VAC 40-50-20. Authority for approval.**

Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 of the Code of Virginia regarding whether or not any plant material, the identify of which is at issue, is marijuana.

#### **6 VAC 40-50-30. Request for approval.**

A. Any manufacturer who wishes to have marijuana field tests or marijuana field test kits approved pursuant to this chapter shall submit a written request for approval to the department director at the following address:

Director

Department of Forensic Science

700 North Fifth Street

Richmond, VA 23219.

B. Materials sufficient for at least 10 marijuana field tests shall be supplied by each manufacturer. The materials shall include all instructions, precautions, color charts, flow charts and the like that are provided with the marijuana field test or marijuana field test kit and that describe the use and interpretation of the tests.

C. The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the marijuana field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material safety data sheets for each chemical or reagent shall be sufficient for this purpose.

D. This approval may require up to 90 days from the receipt of the written request and all needed materials from the manufacturer.

E. The department will use marijuana plant material to assess those marijuana field tests submitted for approval. In order to be approved, the marijuana field test must correctly and consistently react in a clearly observable fashion to the naked eye, and perform in accordance with manufacturer's instructions and claims.

#### **6 VAC 40-50-40. Notice of approval.**

The department will notify each manufacturer in writing of the approval or disapproval of each test for which approval was requested. Should any test not be approved, the manufacturer may resubmit their request for approval of that marijuana field test according to the previously outlined procedures at any time.

#### **6 VAC 40-50-50. Maintenance of approved status.**

The department may require that this approval be done as often as annually for routine purposes. If any modifications are made to an approved marijuana field test by the manufacturer, the department shall be notified in writing of the changes. If unreported modifications are discovered by the department, the department may require that all testing and approval be repeated for the particular manufacturers' approved marijuana field tests. The department shall notify the manufacturer in writing of this requirement. Any modified marijuana field test must be approved before it can be used in accordance with § 19.2-188.1 B of the Code of Virginia. These changes shall include, but are not limited to, any chemical, procedural or instructional modifications made to the marijuana field test.

#### **6 VAC 40-50-60. Publication.**

Upon completion of such testing and in concurrence with the approval authority, the department will periodically publish a list of approved marijuana field tests in the General Notices section of the Virginia Register of Regulations. The department will also periodically publish the list on its website. The department may, in addition, provide copies of its approved list to any law-enforcement agency. The department may share any information or data developed from this testing with these agencies.

#### **6 VAC 40-50-70. Liability.**

A. The department assumes no liability as to the safety of these marijuana field tests or marijuana field test kits, any chemicals contained therein or the procedures and instructions by which they are used.

B. The department further assumes no responsibility for any misuse or incorrect interpretation of results.

## PART III.

### FEES.

#### **6 VAC 40-50-80. Fees.**

Manufacturers will be charged a fee of \$50 for each marijuana field test for which individual approval is requested. The department will evaluate the manufacturers' request and notify them in writing of the amount due before testing begins. Manufacturers who wish to withdraw a request for approval shall immediately notify the department in writing. The department's assessment of

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the amount of payment required will be based upon a detailed evaluation of the manufacturer's request and that amount will be final. Approval will not be granted before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R06-284; Filed June 1, 2007, 10:59 a.m.

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Final Regulation

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

**Title of Regulation:** 9 VAC 5-30. Ambient Air Quality Standards (amending 9 VAC 5-30-60 and 9 VAC 5-30-65; adding 9 VAC 5-30-15 and 9 VAC 5-30-66).

**Statutory Authority:** § 10.1-1308 of the Code of Virginia; §§ 108, 109 and 302 of the Clean Air Act; 40 CFR Parts 50, 53 and 58.

**Effective Date:** August 1, 2007.

**Agency Contact:** Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510 or email kgsabastea@deq.virginia.gov.

#### Summary:

*Chapter 30 of the Regulations for the Control and Abatement of Air Pollution contains the specific criteria pollutant standards set out in 40 CFR Part 50. The standard for particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>) was revised to add a new 24-hour standard of 35 µg/m<sup>3</sup>. The current 24-hour standard of 65µg/m<sup>3</sup> is being retained during the transition to the new standard. Transitional language was added to clarify implementation of these standards. The annual PM<sub>2.5</sub> standard of 15 µg/m<sup>3</sup> remains unchanged. Obsolete language referencing the annual PM<sub>10</sub> standard was removed. Finally, certain reference conditions were added.*

#### 9 VAC 5-30-15. Reference conditions.

All measurements of air quality that are expressed as mass per unit volume (e.g., micrograms per cubic meter) other than for the particulate matter (PM<sub>2.5</sub>) standards contained in 9 VAC 5-30-65 and 9 VAC 5-30-66 shall be corrected to a reference temperature of 25°C and a reference pressure of 760 millimeters of mercury (1,013.2 millibars). Measurements of PM<sub>2.5</sub> for purposes of comparison to the standards contained in 9 VAC 5-30-65 and 9 VAC 5-30-66 shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

#### 9 VAC 5-30-60. Particulate matter (PM<sub>10</sub>).

A. 1. The primary and secondary 24-hour ambient air quality standard is 150 micrograms per cubic meter--24-hour average concentration.

2. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with Appendix K of 40 CFR Part 50, is equal to or less than one.

B. 1. ~~The primary and secondary annual ambient air quality standard is 50 micrograms per cubic meter annual arithmetic mean (Reserved).~~

2. ~~The standard is attained when the expected annual arithmetic mean concentration, as determined in accordance with Appendix K of 40 CFR Part 50, is less than or equal to 50 micrograms per cubic meter.~~

C. For the purpose of determining attainment of the primary and secondary standards, particulate matter shall be measured in the ambient air as PM<sub>10</sub> (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by ~~the a~~ reference method ~~described in~~ based on Appendix J of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

#### 9 VAC 5-30-65. Particulate matter (PM<sub>2.5</sub>).

A. The primary and secondary ambient air quality standards for particulate matter (~~PM<sub>2.5</sub>~~) are:

1. 15.0 micrograms per cubic meter -- annual arithmetic mean concentration.

2. 65 micrograms per cubic meter -- 24-hour average concentration.

B. Particulate matter shall be measured in the ambient air as P<sub>2.5</sub> (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by ~~the a~~ reference method ~~described in~~ based on Appendix L of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. The annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 15.0 micrograms per cubic meter.

D. The 24-hour primary and secondary PM<sub>2.5</sub> standards are met when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 65 micrograms per cubic meter.

~~E. The primary and secondary ambient air quality standards for particulate matter (PM<sub>10</sub>) are:~~

- ~~1. 50 micrograms per cubic meter annual arithmetic mean concentration~~
- ~~2. 150 micrograms per cubic meter 24 hour average concentration.~~

~~F. Particulate matter shall be measured in the ambient air as PM<sub>10</sub> (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by the reference method described in Appendix M of 40 CFR Part 50, or other method designated as such, or by equivalent method.~~

~~G. The annual primary and secondary PM<sub>10</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 50 micrograms per cubic meter.~~

~~H. The 24 hour primary and secondary PM<sub>10</sub> standards are met when the 99th percentile 24 hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 150 micrograms per cubic meter.~~

E. The PM<sub>2.5</sub> standards set forth in this section were established by EPA on July 18, 1997 (62 FR 38856) and became effective on September 8, 2004, by adoption by the board. The PM<sub>2.5</sub> standards set forth in this section shall continue to apply only for purposes of the following:

1. Control strategy implementation plan revisions, maintenance plans, and associated emissions budgets relative to the PM<sub>2.5</sub> standards in this section.
2. Designation of nonattainment areas and maintenance areas relative to the PM<sub>2.5</sub> standards in this section.

Nothing in this section shall prevent the redesignation of any nonattainment area to attainment at any time.

**9 VAC 5-30-66. Particulate matter (PM<sub>2.5</sub>).**

A. The primary and secondary ambient air quality standards for particulate matter are:

1. 15.0 micrograms per cubic meter annual arithmetic mean concentration.

2. 35 micrograms per cubic meter, 24-hour average concentration measured in the ambient air as PM<sub>2.5</sub> (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers).

B. Particulate matter shall be measured in the ambient air as PM<sub>2.5</sub> (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by a reference method based on Appendix L of 40 CFR Part 50, or other method designated as such, or an equivalent method.

C. The annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 15.0 micrograms per cubic meter.

D. The 24-hour primary and secondary PM<sub>2.5</sub> standards are met when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 35 micrograms per cubic meter.

E. The PM<sub>2.5</sub> standards set forth in this section were established by EPA on October 17, 2006 (71 FR 61224), and shall become effective in the Commonwealth on August 1, 2007. The PM<sub>2.5</sub> standards set forth in this section shall apply for purposes of the following:

1. Control strategy implementation plan revisions, maintenance plans, and associated emissions budgets relative to the PM<sub>2.5</sub> standards in this section.
2. Designation of nonattainment areas and maintenance areas relative to the PM<sub>2.5</sub> standards in this section.
3. Implementation of the new source review programs set forth in Part II (9 VAC 5-80-50 et seq.) of 9 VAC 5-80 (Permits for Stationary Sources).

Nothing in this section shall prevent the redesignation of any nonattainment area to attainment at any time.

VA.R. Doc. No. R07-265; Filed June 1, 2007, 9:10 a.m.

**Final Regulation**

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

**Titles of Regulations: 9 VAC 5-20. General Provisions (amending 9 VAC 5-20-21).**

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## **9 VAC 5-40. Existing Stationary Sources (adding 9 VAC 5-40-7550 through 9 VAC 5-40-7710).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172 and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

Effective Date: August 1, 2007.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510 or email kgsabastea@deq.virginia.gov.

### Summary:

*The regulation applies to sources subject to federal Best Available Retrofit Technology (BART) requirements. BART is an emission limitation based on the degree of reduction achievable through application of the best system of continuous emission reduction for each pollutant emitted by an existing stationary facility established on a case-by-case basis taking into consideration available technology, costs of compliance, energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence, the remaining useful life of the source, and the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology. A BART-eligible source has the potential to emit 250 tons or more of a visibility-impairing air pollutant (sulfur dioxide, nitrogen oxides, particulate matter, volatile organic compounds, and ammonia), was in place between August 7, 1962, and August 7, 1977, and falls within one or more of 26 source categories. BART is required for any BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in any federal Class I area.*

*In addition to describing applicability, the regulation describes exemptions from control, and defines terms unique to the rule. A standard for regional haze pollutants is established. Criteria and procedures for making BART determinations are described. State standards for visible emissions, fugitive dust/emissions, odor, and toxic pollutants are referenced. Compliance requirements, including testing schedules, are specified. Test methods and procedures for determining compliance are included. Equipment necessary to monitor compliance are to be installed, calibrated, maintained, and operated. Records of monitoring and test results are to be gathered, maintained, and reported at certain intervals. In the event of facility and control equipment maintenance or malfunction, certain procedures must be followed. Finally, references are*

*provided for state requirements for registration and permits.*

## **9 VAC 5-20-21. Documents incorporated by reference.**

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (~~2004~~ 2007) in effect July 1, ~~2004~~ 2007. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.
  - a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.
    - (1) 40 CFR Part 50-National Primary and Secondary Ambient Air Quality Standards.
      - (a) Appendix A--Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

- (b) Appendix B--Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).
- (c) Appendix C--Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).
- (d) Appendix D--Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.
- (e) Appendix E--Reference Method for Determination of Hydrocarbons Corrected for Methane.
- (f) Appendix F--Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).
- (g) Appendix G--Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.
- (h) Appendix H--Interpretation of the National Ambient Air Quality Standards for Ozone.
- (i) Appendix I--Reserved.
- (j) Appendix J--Reference Method for the Determination of Particulate Matter as PM sub10 in the Atmosphere.
- (k) Appendix K--Interpretation of the National Ambient Air Quality Standards for Particulate Matter.
- (2) 40 CFR Part 51--Requirements for Preparation, Adoption, and Submittal of Implementation Plans.
- Appendix M--Recommended Test Methods for State Implementation Plans.
- Appendix S--Emission Offset Interpretive Ruling.
- Appendix W--Guideline on Air Quality Models (Revised).
- Appendix Y - Guidelines for BART Determinations Under the Regional Haze Rule.
- (3) 40 CFR Part 58--Ambient Air Quality Surveillance.
- Appendix B--Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.
- (4) 40 CFR Part 60--Standards of Performance for New Stationary Sources.
- The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9 VAC 5-50-400 et seq.) of Part II of ~~Chapter 50, Rule 5-5, Environmental Protection Agency Standards of Performance for New Stationary Sources~~ 9 VAC 5-50 (New and Modified Sources).
- (5) 40 CFR Part 61--National Emission Standards for Hazardous Air Pollutants.
- The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9 VAC 5-60-60 et seq.) of Part II of ~~Chapter 60, Rule 6-1, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants~~ 9 VAC 5-60 (Hazardous Air Pollutant Sources).
- (6) 40 CFR Part 63--National Emission Standards for Hazardous Air Pollutants for Source Categories.
- The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9 VAC 5-60-90 et seq.) of Part II of ~~Chapter 60, Rule 6-2, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories~~ 9 VAC 5-60 (Hazardous Air Pollutant Sources).
- (7) 40 CFR Part 59, Subpart D-National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A--"Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings."
- (8) 40 CFR Part 64, Compliance Assurance Monitoring.
- (9) 40 CFR Part 72, Permits Regulation.
- (10) 40 CFR Part 73, Sulfur Dioxide Allowance System.
- (11) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.
- (12) 40 CFR Part 75, Continuous Emission Monitoring.
- (13) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program.
- (14) 40 CFR Part 77, Excess Emissions.
- (15) 40 CFR Part 78, Appeal Procedures for Acid Rain Program.
- (16) 40 CFR Part 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

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b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

## 2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

b. Copies of the document identified in subdivision E 2 a (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/chief/ap42/index.html>.

## 3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

## 4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-01, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2001).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) ~~D 3912-95~~ D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) ~~D-4082-02~~ D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

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(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

## 12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Test Method 512, "Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Test Method 310 (including Appendices A and B), "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products" (July 18, 2001).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.

## 13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior

Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.

## 14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

## PART II. EMISSION STANDARDS.

### Article 52.

#### Emission Standards for Stationary Sources Subject to Case-by-Case BART Determinations.

#### **9 VAC 5-40-7550. Applicability and designation of affected facility.**

A. Except as provided in subsection C of this section, the affected facility to which the provisions of this article apply is each BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory federal class I area.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this article are the following:

1. Any BART-eligible source with the potential to emit less than 40 tons per year of SO<sub>2</sub> or NO<sub>x</sub>, or less than 15 tons per year of PM<sub>10</sub>.

2. Any existing stationary facility subject to the requirement under 9 VAC 5-40-7580 to install, operate, and maintain BART for which the board has granted an exemption in accordance with 9 VAC 5-40-7560 or for which the administrator has granted an exemption under 40 CFR 51.303 with which the board concurs.

3. The provisions of this article do not apply to sources subject to Part IV (9 VAC 5-140-3010 et seq.) of 9 VAC 5-140, Regulation for Emissions Trading.

#### **9 VAC 5-40-7560. Exemptions from control.**

A. Any existing stationary facility subject to the requirement to install, operate, and maintain BART may

apply to the board for an exemption from that requirement. An application under this subsection shall include all available documentation relevant to the impact of the source's emissions on visibility in any mandatory federal class I area and a demonstration by the existing stationary facility that it does not or will not, by itself or in combination with other sources, emit any air pollutant that may be reasonably anticipated to cause or contribute to a significant impairment of visibility in any mandatory federal class I area.

B. Any fossil-fuel fired power plant with a total generating capacity of 750 megawatts or more may receive an exemption from BART only if the owner demonstrates to the satisfaction of the board that the power plant is located at such a distance from all mandatory federal class I areas that it does not or will not, by itself or in combination with other sources, emit any air pollutant that may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such mandatory federal class I area.

C. The existing stationary facility shall give prior written notice to all affected federal land managers of any application for exemption under this section. The federal land manager may provide an initial recommendation or comment on the disposition of such application. Such recommendation, where provided, must be part of the exemption application. This recommendation is not to be construed as the concurrence required under subsection D of this section. The board, within 90 days of receipt of an application for exemption from control, will provide notice of receipt of an exemption application and notice of opportunity for public hearing on the application. After notice and opportunity for public hearing, the board may grant or deny the exemption.

D. An exemption granted by the board will be effective only upon concurrence by all affected federal land managers and the administrator with the board's determination.

## **9 VAC 5-40-7570. Definitions.**

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5-10, General Definitions, unless otherwise required by context.

C. Terms defined.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"BART-eligible source" means an existing stationary facility as defined in this subsection.

"Best available retrofit technology" or "BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation shall be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology.

"Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which were not in operation prior to August 7, 1962, and were in existence on August 7, 1977, and have the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

1. Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input,
2. Coal cleaning plants (thermal dryers),
3. Kraft pulp mills,
4. Portland cement plants,
5. Primary zinc smelters,
6. Iron and steel mill plants,
7. Primary aluminum ore reduction plants,
8. Primary copper smelters,
9. Municipal incinerators capable of charging more than 250 tons of refuse per day,
10. Hydrofluoric, sulfuric, and nitric acid plants,
11. Petroleum refineries,
12. Lime plants,
13. Phosphate rock processing plants,
14. Coke oven batteries,
15. Sulfur recovery plants,
16. Carbon black plants (furnace process),
17. Primary lead smelters,
18. Fuel conversion plants,
19. Sintering plants,
20. Secondary metal production facilities,

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- 21. Chemical process plants.
- 22. Fossil-fuel boilers of more than 250 million British thermal units per hour heat input.
- 23. Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels.
- 24. Taconite ore processing facilities.
- 25. Glass fiber processing plants, and
- 26. Charcoal production facilities.

"Federal class I area" means any federal land that is classified or reclassified class I.

"Federal land manager" or "FLM" means the secretary of the department with authority over the federal class I area (or the secretary's designee).

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator under the federal Clean Air Act including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, or 60.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"In existence" means that the owner has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner, to undertake a program of construction of the facility to be completed in a reasonable time.

"In operation" means engaged in activity related to the primary design function of the source.

"Integral vista" means a view perceived from within the mandatory federal class I area of a specific landmark or panorama located outside the boundary of the mandatory federal class I area.

"Mandatory federal class I area" means any area identified in subpart D of 40 CFR Part 81.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted,

stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Reasonably attributable" means attributable by visual observation or any other technique the board deems appropriate.

"Regional haze" means visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources.

"Secondary emissions" means emissions that occur as a result of the construction or operation of an existing stationary facility but do not come from the existing stationary facility. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the existing stationary facility.

"State operating permit" means a permit issued under the Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5-80, Permits for Stationary Sources.

"State operating permit program" means the permit program established by and codified in Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5-80, Permits for Stationary Sources.

"Visibility-impairing pollutants" means sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and particulate matter. PM<sub>10</sub> may be used as an indicator for particulate matter. Volatile organic compounds (VOCs) and ammonia and ammonia compounds may be considered to be visibility-impairing pollutants if the board determines that emissions of these pollutants may have an impact on visibility impairment in an area.

## **9 VAC 5-40-7580. Standard for regional haze pollutants.**

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any visibility-impairing pollutants in excess of emission limitations representing BART, as reflected in any term or condition that may be placed upon a permit for the facility.

B. State operating permits may be issued at the discretion of the board containing such terms and conditions, including schedules for compliance, as may be necessary to implement a BART determination under 9 VAC 5-40-7590 for the emissions of any visibility-impairing pollutant that may be emitted from the affected facility.

C. A permit may be issued under subsection B of this section regardless of any other permits in force provided that it does not contravene any more restrictive provision of any of the other permits.

**9 VAC 5-40-7590. Criteria and procedures for making BART determinations.**

The criteria and procedures for making BART determinations shall be as follows.

1. The determination of BART shall be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART. In this analysis, the board will take into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source, and the degree of improvement in visibility that may reasonably be anticipated to result from the use of such technology.
2. The determination of BART for fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts shall be made pursuant to the guidelines in Appendix Y of 40 CFR Part 51 (see 9 VAC 5-20-21).
3. If the board determines in establishing BART that technological or economic limitations on the applicability of measurement methodology to a particular source would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means that achieve equivalent results.
4. Each source subject to BART shall install and operate BART as expeditiously as practicable, but in no event later than August 1, 2012.
5. Each source subject to BART shall maintain the control equipment required by this article and establish procedures to ensure such equipment is properly operated and maintained.

**9 VAC 5-40-7600. Standard for visible emissions.**

The provisions of Article 1 (9 VAC 5-40-60 et seq.) of this part apply.

**9 VAC 5-40-7610. Standard for fugitive dust/emissions.**

The provisions of Article 1 (9 VAC 5-40-60 et seq.) of this part apply.

**9 VAC 5-40-7620. Standard for odor.**

The provisions of Article 2 (9 VAC 5-40-130 et seq.) of this part apply.

**9 VAC 5-40-7630. Standard for toxic pollutants.**

The provisions of Article 4 (9 VAC 5-60-200 et seq.) of Part II of 9 VAC 5-60, Hazardous Air Pollutant Sources, apply.

**9 VAC 5-40-7640. Compliance.**

The provisions of 9 VAC 5-40-20, Compliance, apply.

**9 VAC 5-40-7650. Compliance schedules.**

A. Owners shall comply with the emission standards in this article as expeditiously as possible but in no event later than August 1, 2012.

B. Owners of affected facilities shall comply with the provisions of subsection A of this section by adhering to the increments of progress contained in a permit issued under 9 VAC 5-30-7580 B.

**9 VAC 5-40-7660. Test methods and procedures.**

The provisions of 9 VAC 5-40-30, Emission testing, apply.

**9 VAC 5-40-7670. Monitoring.**

The provisions of 9 VAC 5-40-40, Monitoring, apply.

**9 VAC 5-40-7680. Notification, records and reporting.**

The provisions of 9 VAC 5-40-50, Notification, records and reporting, apply.

**9 VAC 5-40-7690. Registration.**

The provisions of 9 VAC 5-20-160, Registration, apply.

**9 VAC 5-40-7700. Facility and control equipment maintenance or malfunction.**

The provisions of 9 VAC 5-20-180, Facility and control equipment maintenance or malfunction, apply.

**9 VAC 5-40-7710. Permits.**

A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5-50, New and Modified Sources, and 9 VAC 5-80, Permits for Stationary Sources, apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (re-startup) of a facility.
6. Operation of a facility.

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V.A.R. Doc. No. R07-266; Filed June 1, 2007, 9:13 a.m.

## STATE WATER CONTROL BOARD

### Final Regulation

**Title of Regulation:** 9 VAC 25-210. Virginia Water Protection Permit Program Regulation (amending 9 VAC 25-210-10, 9 VAC 25-210-50, 9 VAC 25-210-60, 9 VAC 25-210-80 through 9 VAC 25-210-115, 9 VAC 25-210-130, 9 VAC 25-210-140, 9 VAC 25-210-170, 9 VAC 25-210-180, 9 VAC 25-210-185, 9 VAC 25-210-220, 9 VAC 25-210-230, 9 VAC 25-210-260; adding 9 VAC 25-210-75, 9 VAC 25-210-116, 9 VAC 25-210-175; repealing 9 VAC 25-210-190, 9 VAC 25-210-200, and 9 VAC 25-210-210).

**Statutory Authority:** §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

**Effective Date:** July 25, 2007.

**Agency Contact:** Scott Kudlas, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4456, or email [swkudlas@deq.virginia.gov](mailto:swkudlas@deq.virginia.gov).

#### Summary:

*The amendments (i) clarify which water withdrawals are excluded from the permit requirement and under what conditions; (ii) institute a new preapplication panel and public information meeting process for surface water projects; (iii) create an Emergency Virginia Water Protection Permit for public water supplies during drought; (iv) include new language regarding permit conditions for withdrawals in the Potomac River consistent with the Potomac Low Flow Allocation Agreement; (v) define what information will be considered in the evaluation of cumulative impacts to instream flow; (vi) clarify what information is submitted by the applicant to demonstrate that an alternatives analysis has been conducted; (vii) create a new variance provision to address temporary relaxation of permit conditions during drought; and (viii) establish a new joint public notice process for surface water projects requiring both a VWPP and a Virginia Marine Resources Permit.*

*Changes made since publication of the proposed regulation are the result of the incorporation of key concepts and language from the WP5 TAC process and the proposed General Permit for Minor Surface Water Withdrawals. These amendments: (i) establish a distinction between major (90 million gallons per month or greater) and minor (less than 90 million gallons per month) surface water withdrawals; (ii) provide for regulatory exclusions for certain surface water withdrawals from VWPP requirements; (iii) create a*

*reporting requirement for some surface water withdrawals excluded from VWPP requirements; (iv) create a streamlined application process for new or expanded minor surface water withdrawals; (v) establish applicable permit standards for new or expanded minor surface water withdrawals, and (vi) clarify the requirements for evaluation of project alternatives for minor surface water withdrawals for public surface water supply withdrawal projects.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

#### PART I.

#### [ GENERAL VWP PERMIT PROGRAM DEFINITIONS, EXCLUSIONS, PROHIBITIONS AND REQUIREMENTS ].

#### **9 VAC 25-210-10. Definitions.**

Unless a different meaning is required by the context, the following terms as used in this chapter, shall have the following meanings:

"Act" or "Clean Water Act" means 33 USC § 1251 et seq. as amended 1987.

"Adjacent" means bordering, contiguous or neighboring; wetlands separated from other surface water by man-made dikes or barriers, natural river berms, sand dunes and the like are adjacent wetlands.

"Affected stream reach" means the portion of a surface water body beginning at the location of a withdrawal and ending at a point where effects of the withdrawal are not reasonably expected to adversely affect beneficial uses.

["Agricultural surface water withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural surface water withdrawals include withdrawals for turf farm operations, but do not include withdrawals for landscaping activities, or turf installment and maintenance associated with landscaping activities. ]

"Applicant" means a person applying for a VWP individual permit or VWP general permit authorization.

~~"Aquatic resources"~~ or "Aquatic environment" ~~mean~~ means surface waters and the habitat they provide, including both plant and animal communities.

"Avoidance" means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.

"Best management practices (BMPs)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices that prevent or reduce the pollution of surface waters.

"Board" means the State Water Control Board.

"Channelization of streams" means alteration of a stream by widening, deepening, straightening, cleaning, or paving.

~~"Code" means the Code of Virginia.~~

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

"Consumptive water use" means the withdrawal of surface waters, without recycle of said waters to their source [ ~~or basin~~ ] of origin.

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Cross-sectional sketch" means a scaled graph or plot that represents the plane made by cutting across an object at right angles to its length. For purposes of this regulation, objects may include, but are not limited to, a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"Director" means the Director of the Department of Environmental Quality (DEQ) or an authorized representative.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

"Draft VWP permit" means a document indicating the board's tentative decision relative to a VWP permit action.

"Draining" means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Drought" means that a Severe Intensity Drought (D2) has been declared by the weekly "U.S. Drought Monitor" for the location in which the withdrawal is located.

"Ecologically preferable" means capable of providing a higher likelihood of replacing existing wetland or stream functions and values, water quality and fish and wildlife resources than alternative proposals.

"Emergency Virginia Water Protection Permit" means a Virginia Water Protection Permit issued pursuant to § 62.1-44.15:5 J of the Code of Virginia authorizing a new or increased surface water withdrawal to address insufficient public drinking water supplies that are caused by a drought and may result in a substantial threat to human health or public safety.

"Enhancement" means activities conducted in existing wetlands or other portions of the aquatic ~~resources~~ environment that increase one or more aquatic functions or values.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose.

"General permit" means a permit authorizing a specified category of activities.

"Geographic area of a delineated wetland" means the area contained within and up to a wetland boundary determined by delineation methods consistent with this chapter.

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15.5 D of the Code of Virginia.

"Impairment" means the damage, loss or degradation of the functions and values of state waters.

"In-lieu fee fund" means a monetary fund operated by a nonprofit organization or governmental agency which receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and which expends the moneys received to provide

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consolidated compensatory mitigation for permitted wetland or stream impacts.

"Intake structure" means any portion of a withdrawal system used to withdraw surface water that is located within the surface water, such as, but not limited to, a pipe, culvert, hose, tube, or screen.

"Isolated wetlands of minimal ecological value" means those wetlands that: (i) do not have a surface water connection to other state waters; (ii) are less than one-tenth of an acre (0.10 acre or 4,356 square feet) in size; (iii) are not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) are not forested; and (vi) do not contain listed federal or state threatened or endangered species.

"Joint Permit Application (JPA)" means an application form that is used to apply for permits from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

"Law" means the State Water Control Law of Virginia.

[ "Major surface water withdrawal" means a surface water withdrawal of 90 million gallons per month (mgm) or greater. ]

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

[ "Minor surface water withdrawal" means a surface water withdrawal of less than 90 million gallons per month (mgm). ]

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement.

"Mitigation banking" means compensating for unavoidable wetland or stream losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank.

"Multi-project mitigation site" means an area of wetland restoration, creation, enhancement and, in appropriate

circumstances, preservation of wetlands or streams or upland buffers adjacent to wetlands or other state waters, that is or has been utilized to meet compensation requirements for more than one project but that is not a mitigation bank.

"Nationwide permit" means a general permit issued by the USACE under 40 CFR Part 241 and, except where suspended by individual USACE Corps [ District Districts ], applicable nationwide.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.1-22.29 of the Code of Virginia and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Normal residential gardening, lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing, planting, fertilizing, mulching, tilling, vegetation removal by hand or by hand tools, placement of decorative stone, fencing and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 of the Code of Virginia, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Out-of-kind mitigation" means compensatory mitigation that does not replace the same type of wetland or surface water as was impacted, but does replace lost wetland or surface water functions, values, or beneficial uses.

"Permanent flooding or impounding" means ~~an~~ a permanent increase in the duration or depth of standing water on a land surface, ~~other than such as from a dam.~~ Permanent increases in duration or depth of standing water that result ~~result~~ from extended-detention basins and enhanced extended-detention basins, when designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3), or when designed in accordance with local standards that, at a minimum, meet the DCR standards, are not considered to be permanent flooding and impounding.

"Permanent impacts" are those impacts to surface waters, including wetlands [ ; ] that cause a permanent alteration of

the physical, chemical, or biological properties of the surface waters or of the functions and values of a wetland.

"Permittee" means the person who holds a VWP individual or general permit.

"Person" means ~~any firm~~ one or more individuals, a corporation, a partnership, an association, or partnership, one or more individuals, a governmental body, a municipal corporation, or any governmental unit or agency of it ~~other~~ legal entity.

"Plan view sketch" means a scaled graph or plot that represents the view of an object as projected onto orthogonal planes. For purposes of this regulation, objects may include, but are not limited to, structures, contours, or boundaries.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Potomac River Low Flow Allocation Agreement" means the agreement among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission, and the Fairfax County Water Authority dated January 11, 1978, consented to by Congress in § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Profile sketch" means a scaled graph or plot that represents the side view of an object. For purposes of this regulation, objects may include, but are not limited to, a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1 - Public and Formal Hearing Procedures (9 VAC 25-230-~~10 et seq.~~).

[ "Public surface water supply withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the production of drinking water, distributed to the general public for the purpose of, but not limited to, domestic use.

"Public water supply emergency" means a substantial threat to public health or safety due to insufficient public drinking water supplies caused by drought. ]

"Regional permit" means a general permit issued by the USACE under 40 CFR Part 241 and applicable within a specified geographic area.

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Riprap" means a layer of [ nonerodible ] material such as stone or chunks of concrete [ ~~on an embankment slope for the purpose of preventing erosion~~ ].

"Schedule of compliance" means a schedule of remedial measures including a sequence of enforceable actions or operations leading to compliance with the Act, the law, and the board regulations, standards and policies.

"Section 401" means § 401 of the Clean Water Act, or 33 USC § 1341, as amended [ in ] 1987.

"Section for Cooperative Water Supply Operations on the Potomac (CO-OP)" means a section of the Interstate Commission on the Potomac River Basin designated by the Water Supply Coordination Agreement as responsible for coordination of water resources during times of low flow in the Potomac River.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type

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resulting in the loss or more than minimal degradation of its existing ecological functions.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Surface water" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.

"Surface water supply project" means a project that withdraws or diverts water from a surface water body for consumptive or nonconsumptive purposes thereby altering the hydrologic regime of the surface water body. Projects that do not alter the hydrologic regime or that alter the hydrologic regime but whose sole purpose is flood control or storm water management are not included in this definition.

[ "Surface water withdrawal" means a removal or diversion of surface water from its natural water course in Virginia or from the Potomac River. ]

"Temporary impacts" means those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical or biological properties of the surface water or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Act (33 USC § 1317(a)), which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"Undesirable [ plant ] species" means any species that invades, naturally colonizes, or otherwise dominates a compensatory mitigation site or mitigation bank and may cause or contribute to the failure of the vegetative success criteria for a particular compensatory mitigation site or mitigation bank.

"USACE" means the United States Army Corps of Engineers.

"VMRC" means the Virginia Marine Resources Commission.

"VWP general permit" means a regulation that constitutes a VWP permit for a category of activities.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:5 of the Code of

Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

"Water quality standards" means water quality standards adopted by the board and approved by the administrator of the EPA under § 303 of the Act as defined at 9 VAC 25-260-5 et seq.

"Water Supply Coordination Agreement" means the agreement among the United States of America, the Fairfax County Water Authority, the Washington Suburban Sanitary Commission, the District of Columbia, and the Interstate Commission on the Potomac River Basin, dated July 22, 1982, which establishes agreement among the suppliers to operate their respective water supply systems in a coordinated manner and which outlines operating rules and procedures for reducing impacts of severe droughts in the Potomac River Basin.

[ ~~"Water supply emergency" means a substantial threat to public health or safety due to insufficient public drinking water supplies caused by drought. ]~~

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Withdrawal system" means any device or combination of devices used to withdraw surface water, such as, but not limited to, a machine, pump, pipe, culvert, hose, tube, screen, or fabricated concrete or metal structure.

## **9 VAC 25-210-50. Prohibitions and requirements for VWP permits.**

A. Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, [ ~~or~~ ] withdraw surface water, [ ~~or~~ ] otherwise alter the physical, chemical or biological properties of surface waters [ ; and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; ] excavate in wetlands [ ; ] or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
2. Filling or dumping;
3. Permanent flooding or impounding; or
4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

B. No VWP permit shall be issued for the following:

1. Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including but not limited to § 10.1-1408.5 of the Code of Virginia;
2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into surface waters.

**9 VAC 25-210-60. Exclusions.**

The following [ activities ] do not require a VWP permit but may require other permits under state and federal law:

1. Discharges of dredged or fill material into state waters, excepting wetlands, which are addressed under a USACE Regional, General or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.
2. Any discharge, other than an activity in a surface water governed by § 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9 VAC 25-31-10 ~~et seq.~~
3. Any activity, other than an activity in a surface water governed by § 62.1-44.15:5 of the Code of Virginia, permitted by a Virginia Pollution Abatement (VPA) permit in accordance with 9 VAC 25-32-10 ~~et seq.~~
4. Septic tanks, when authorized by a state Department of Health permit.
5. Any activity permitted under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act.
6. Normal residential gardening, lawn and landscape maintenance in a wetland.
7. Normal agriculture and silviculture activities in a wetland such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices.
  - a. To fall under this exclusion, the activities specified in subdivision 7 of this section must be part of an established (i.e., ongoing) agriculture or silviculture, operation, and must be in accordance with applicable best management practices set forth in either Forestry Best Management Practices for Water Quality in Virginia Technical Guide ( [ ~~Third Edition, 1997~~ Fourth Edition, July 2002 ] ) or Virginia Agricultural BMP Manual (2000), which facilitate compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

b. Activities which bring a new area into agricultural or silvicultural use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, it does not need a VWP permit, whether or not it is part of an established agriculture or silviculture operation.

c. For the purposes of subdivision 7 of this section, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

- (1) "Cultivating" means physical methods of soil treatment employed within established agriculture and silviculture lands on farm or forest crops to aid and improve their growth, quality, or yield.
- (2) "Harvesting" means physical measures employed directly upon farm, forest, or crops within established agricultural and silviculture lands to bring about their removal from farm or forest land, but does not include the construction of farm or forest roads.
- (3) "Minor drainage" means:
  - (a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling incidental to the planting, cultivating, protecting, or harvesting of crops;
  - (b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;
  - (c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production of rice, or other wetland crop species;
  - (d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are

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formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exclusion; and

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established agriculture or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (e.g. for example, wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to agriculture). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm or forest land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm or forest crops and includes the placement of soil beds for

seeds or seedlings on established farm and forest lands.

8. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation and utility structures. Maintenance does not include modifications that change the character, scope, or size of the original design. In order to qualify for this ~~exemption~~ exclusion, emergency reconstruction must occur within a reasonable period of time after damage occurs.

9. Construction or maintenance of farm or stock ponds or irrigation ditches [~~in a wetland,~~] or the maintenance (but not construction) of drainage ditches [~~in a wetland~~]. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion. The maintenance dredging of existing ditches is included in this exclusion provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch. This exclusion does not apply to the construction of new ditches or to the channelization of streams.

10. Construction of temporary sedimentation basins on a construction site which does not include the placement of fill materials into surface waters or excavation in wetlands. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term "construction site" also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in run-off of sediment is controlled through the use of temporary sedimentation basins.

11. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either Forestry Best Management Practices for Water Quality in Virginia, Technical Guide, [~~Third Edition, 1997~~ Fourth Edition, July 2002 ], or Virginia Agricultural BMP Manual, 2000, to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

a. Permanent roads (for agriculture or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific agriculture, silviculture or mining operations, and local topographic and climatic conditions;

b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;

c. The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a state- or federally- listed threatened or endangered species as defined under the Endangered Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in 4 VAC 15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their entirety and the area restored to its original elevation.

[ B. The following surface water withdrawals are excluded from VWP permit requirements. Activities, other than the surface water withdrawal, which are contained in 9 VAC 25-210-50 and are associated with the construction and operation of the surface water withdrawal, are subject to VWP permit requirements unless excluded by subsection A of this section. Other permits under state and federal law may be required. ]

[ ~~12~~. 1. ] Any surface water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. To qualify for this exclusion, the surface water withdrawal shall be deemed to be in existence on July 1, 1989, if there was an actual withdrawal on or before that date that has not been abandoned.

a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be deemed to be abandoned if the owner of the withdrawal system (i) notifies the DEQ in writing that the withdrawal has been abandoned or (ii) removes or disables the withdrawal system with the intent to permanently cease such withdrawal. Transfer of ownership or operational control of the withdrawal system, a change in use of the water, or temporary cessation of the withdrawal shall not be deemed evidence of abandonment. The notification shall be signed by the owner of record or shall include evidence satisfactory to the DEQ that the signatory is authorized to submit the notice on behalf of the owner of record. Evidence may include, but shall not be limited to, a resolution of the governing body of the owner or corporate minutes.

b. Information to be furnished to the DEQ. Each owner or operator of a permanent withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ the estimated maximum capacity of the intake structure, the location of the existing intake structure and any other information that may be required by the board. Each owner or operator of a temporary withdrawal system engaging in a withdrawal that is subject to this exclusion, where the purpose of the withdrawal is for agriculture, shall provide to the DEQ the maximum annual surface water withdrawal over the last 10 years. The information shall be provided within one year of the date that [ ~~notification of abandonment~~ notice of

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such request ] is received [ by from ] the DEQ and shall be updated when the maximum capacity of the existing intake structure changes. The information provided to the DEQ shall not constitute a limit on the exempted withdrawal. Such information shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

[ ~~13~~. 2. ] Any surface water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

[ 3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989, and July 25, 2007, which is not subject to other exclusions contained in this section. These withdrawals shall be excluded from permit requirements only if they comply with the conditions in this subdivision. Regardless of complying with the conditions of this subdivision, these withdrawals shall require a permit for any increased withdrawal amount.

a. Information to be furnished to the DEQ. Each owner or operator of a withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ with copies of water withdrawal reports required by Water Withdrawal Reporting Regulations (9 VAC 25-200) documenting the largest 12-consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007. In the case of unreported agricultural surface water withdrawals, estimates of withdrawals will be accepted that are based on one of the following:

(1) The area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or

(2) Other methods approved by the board for the largest 12 consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007. The board shall evaluate all estimates of surface water withdrawals based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only

reasonable estimates will be used to document the excluded withdrawal amount.

b. The information noted in subdivision 3 a of this subsection shall be provided within 12 months of July 25, 2007. The information provided to the DEQ shall constitute a limit on the withdrawal that is excluded from permit requirements; any increase in that withdrawal above the limited amount shall require an application for a permit for the withdrawal system. Information regarding excluded withdrawal amounts shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

c. All owners and operators of surface water withdrawals excluded from permit requirements by this section shall annually report withdrawals as required by Water Withdrawal Reporting Regulations (9 VAC 25-200). Failure to file annual reports either reporting actual withdrawals or the fact that withdrawals did not occur may result in the owner or operator being required to file an application and receive a permit prior to resuming any withdrawal.

4. Agricultural surface water withdrawals from nontidal waters that total less than one million gallons in a single month.

5. Surface water withdrawals from nontidal waters for all other purposes that total less than 10,000 gallons per day.

6. Surface water withdrawals from tidal waters for nonconsumptive uses.

7. Agricultural surface water withdrawals from tidal waters that total less than 60 million gallons in a single month.

8. Surface water withdrawals from tidal waters for all other consumptive purposes that total less than two million gallons per day.

9. Surface water withdrawals for firefighting or for the training activities related to firefighting, such as dry hydrants and emergency surface water withdrawals.

10. Surface water withdrawals placed into portable containers by persons owning property on, or holding easements to, riparian lands.

11. Surface water withdrawals for the purposes of hydrostatic pressure testing of water tight containers, pipelines, and vessels.

12. Surface water withdrawals for normal single family home residential gardening, lawn, and landscape maintenance.

13. Surface water withdrawals that are located on a property, such that the withdrawal returns to the stream of origin; not more than half of the instantaneous flow is diverted; not more than 1,000 feet of stream channel separate the withdrawal point from the return point; and both banks of the affected stream segment are located within that property boundary.

14. Surface water withdrawals from quarry pits, such that the withdrawal does not alter the physical, biological, or chemical properties of surface waters connected to the quarry pit.

15. Surface water withdrawals from a privately owned agriculture pond, emergency water storage facility, or other water retention facility, provided that such pond or facility is not placed in the bed of a perennial or intermittent stream or wetland. Surface water withdrawals from such facilities constructed in beds of ephemeral streams are excluded from permit requirements.

C. DEQ may require any owner or operator of a withdrawal system excluded from permit requirements by subdivisions B 3 through 15 of this section to cease withdrawals and file an application and receive a permit prior to resuming any withdrawal when the board's assessment indicates that a withdrawal, whether individually or in combination with other existing or proposed projects:

- (1) Causes or contributes to, or may reasonably be expected to cause or contribute to, a significant impairment of the state waters or fish and wildlife resources;
- (2) Adversely impacts other existing beneficial uses; or
- (3) Will cause or contribute to a violation of water quality standards. ]

## PART II.

### VWP PERMIT APPLICATION AND DEVELOPMENT.

#### **9 VAC 25-210-75. Preapplication procedures for a [ new or expanded ] VWP permit for [ major ] surface water [ ~~supply projects withdrawals~~ ].**

A. Preapplication review panel. At the request of an applicant for a surface water supply [ ~~projects project~~ ], a preapplication review panel shall be convened prior to submission of a VWP application upon request by a potential applicant to the Department of Environmental Quality. The preapplication review panel shall assist potential applicants that are proposing surface water supply projects with the early identification of issues related to the protection of beneficial instream and offstream uses of state waters and the identification of the affected stream

reach. The DEQ shall notify the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, the Virginia Department of Health, the Corps of Engineers, the U.S. Fish and Wildlife Service, the Environmental Protection Agency and any other appropriate local, state, and federal agencies of the preapplication review panel request. These agencies shall participate to the extent [ ~~practical~~ practicable ] in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant and shall provide comments within 60 days of the initial meeting of the preapplication panel.

B. Preapplication public notice. For new or expanded surface water supply projects requiring an individual VWP permit, a potential applicant shall provide information on the project, shall provide an opportunity for public comment on the proposed project, and shall assist in identifying public concerns or issues prior to filing a VWP individual permit application.

1. Except as provided in this subsection, the potential applicant shall provide for publication of notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the surface water supply project is proposed to be located.

2. If requested by any person, the potential applicant shall hold at least one public information meeting. Notice of any public information meeting held pursuant to this subsection shall be provided at least 14 days prior to the public information meeting date and shall be published in the same manner as required in subdivision 1 of this subsection. A potential applicant shall submit the notice to the DEQ for posting on the DEQ website. At a minimum, any notice required by this subsection shall include:

- a. A statement of the potential applicant's intent to apply for a VWP permit for a surface water supply project;
- b. The proposed location of the surface water supply project;
- c. Information on how the public may request a public information meeting or in the alternative, the date, time and location of the public information meeting;
- d. The name, address and telephone number of the potential applicant, or an authorized representative who can answer questions or receive comments on the proposed surface water supply project; and
- e. A statement of how any oral or written public comments will be used.

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3. In accordance with the provisions of 9 VAC 25-780-50 C 11 [ ~~or~~ and ] 9 VAC 25-780-150, a potential applicant shall not be required to publish public notice or provide an opportunity for a public information meeting if a public meeting has been held within two years prior to the submittal of an application for a VWP permit on a local or regional water supply plan, which includes the proposed project.

4. The potential applicant shall maintain a list of persons and their addresses making comment and shall make a good faith effort to notify commenters, at the address provided by the commenter, when the public notice for the draft VWP individual permit is available.

## **9 VAC 25-210-80. Application for a VWP permit.**

A. ~~How to apply~~ Application [ for a VWP Permit ]. Any person who is required to obtain a VWP permit [ , ~~except those persons applying for a VWP permit for a minor surface water withdrawal or an emergency VWP permit, ] shall submit a complete VWP permit application to DEQ through VMRC, consisting of the JPA with the DEQ VWP Addendum, or shall submit a complete registration statement for coverage under a VWP general permit, as applicable the most current Joint Permit Application procedures, as established within each type of Joint Permit Application (JPA). The Virginia Department of Transportation (VDOT) may use its monthly Interagency Coordination Meeting (IACM) process for submitting JPAs or registration statements. There shall be no commencement of any activity subject to the VWP permit program regulation prior to the issuance of a VWP permit or VWP general permit authorization.~~

1. ~~The amount of time allowed by § 62.1-44.15:5 D of the Code of Virginia for DEQ to process a complete VWP permit application for any project, excluding water withdrawal projects, is 15 days for completeness review; 120 days for processing the complete application by issuing a VWP permit, issuing a VWP permit with conditions, denying the VWP permit, or deciding to conduct a public meeting or hearing; 60 days to hold a public meeting or hearing; and 90 days after the public meeting or hearing, if held, to make a final VWP permit decision. The required 15-day timeframe for completeness review for all projects, with the exception of minimum instream flow and water withdrawal projects, will commence upon receipt of the application by the DEQ office having authority over the project (i.e., the regional office in the region in which the project is located, or central office for VDOT projects).~~

2. ~~There shall be no commencement of any activity for which a VWP permit is required prior to the issuance of a VWP permit.~~

B. Informational requirements [ for a VWP Permit Application, except applications for minor surface water withdrawals or emergency VWP permits ].

1. A complete VWP permit application, at a minimum, consists of a ~~JPA completed in its entirety with all appropriate maps, appendices, attachments and addenda included. The JPA must include~~ the following information:

a. ~~Name and~~ mailing address, telephone number, and if applicable, fax number of applicant (~~and property owner, if different~~).

b. ~~If different from applicant, name, mailing address, telephone number, and if applicable, fax number of property owner.~~

~~b. c. If applicable, name and of authorized agent, mailing address of authorized agent (if applicable), telephone number, and if applicable, fax number and electronic mail address.~~

e. ~~d. Name of the impacted waterbody or waterbodies, or receiving waters, as applicable, at the project site.~~

~~d. e. Name of the city or county where the project occurs.~~

e. ~~f. Project purpose, need and description. The purpose and need for the project shall be specified. A complete narrative description of the project shall include: the name of the project; the type of activity to be conducted; any physical alteration to surface waters; and all impacts, permanent and temporary, associated with the project. Wetland impacts should be quantified and identified according to their Cowardin classification or similar terminology. Conversion of one type of wetland to another type of wetland is considered to be a permanent impact. Stream impacts should be quantified and identified based on geomorphological types.~~

f. ~~g. Amount of surface water impacts (wetlands, streams or wetland impacts (by type in acres or square feet), stream impacts (in linear feet) [ , and in square feet for purposes of calculating the permit application fee, when applicable ], and open water) impacts (by type in square feet or acres, or linear feet for streams (if as applicable).~~

~~g. h. Materials assessment. If dredged material from on-site areas or fill material from off-site areas is involved, the applicant must provide evidence or certification that the material is free from toxic contaminants prior to disposal, or that the material, if not free of contaminants, will be placed in an approved disposal area. If applicable, the applicant may be required to conduct grain size and composition~~

analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

~~h.~~ i. Proposed construction schedule. An estimate of the construction timeframe for the project will be used to determine the VWP permit term.

~~i.~~ j. Signed and dated signature page. The application signature page, either on the copy submitted to VMRC or to the DEQ, must have an original signature. Electronic submittals containing the original-signature page, such as that contained in a scanned document file, are acceptable.

~~j.~~ Appendices (from the JPA) that apply to the project.

~~k.~~ The DEQ Addendum, including latitude and longitude (to the nearest second) at the center of the project, United States Geological Survey Hydrologic Unit Code for the project and compensatory mitigation site, DEQ stream classification, stream drainage area, functions and values assessment for wetlands impacts (if applicable), beneficial uses evaluation for instream flow and surface water withdrawal projects (if applicable), wetlands delineation information, state- and federally-listed threatened and endangered species information, mitigation plan (demonstrating avoidance and minimization to the maximum extent practicable, and compensation for unavoidable impacts).

(1) For wetland impacts greater than one acre and for all water withdrawals (1.0 acre or 43,560 square feet), the assessment of functional values of the affected surface waters must include information on existing beneficial uses of the surface waters and information on fish and wildlife resources and habitat at the proposed project location: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats. Functional values may also include: water quality, floodflow desynchronization, nutrient import or export, stormwater retention or detention, recreation, education, [ ~~and~~ ] aesthetics [ , or other beneficial uses ]. These values shall be assessed using an acceptable method appropriate for the type of impacted resource. This information will be used to determine the type of compensatory mitigation required to ensure no net loss of wetland functions.

(a) Functional values may include: water quality, floodflow desynchronization, nutrient import or export, stormwater retention or detention, groundwater recharge or discharge, fish and wildlife habitat, recreation, education, and aesthetics. These values shall be assessed using an

~~acceptable method appropriate for the type of impacted resource. This information will be used to determine the type of compensatory mitigation required to ensure no net loss of wetland functions.~~

~~(b)~~ (2) Evaluation of beneficial uses means for instream flow and surface water withdrawal projects includes both instream and offstream uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.

~~(2)~~ (3) The assessment of potential impacts to federally-listed and state-listed threatened or endangered species shall include correspondence or documentation from federal or state resource agencies addressing potential impacts to listed species.

~~(3)~~ (4) A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) shall be shown on the map as additional state or local requirements may apply if the project is located within an RPA.

~~(4)~~ (5) The plan of mitigation for unavoidable impacts to surface waters must include, in accordance with current federal regulations: measures taken to avoid impacts to the maximum extent practicable, the measures proposed to reduce the impacts to surface waters to the maximum extent practicable, and where impacts could not be avoided, the means by which compensation will be accomplished to achieve no net loss of wetland

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acreage and ~~function~~ functions or stream functions and water quality benefits.

(a) A narrative description must be provided detailing the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable (see 9 VAC 25-210-115-A).

~~(b) The compensatory mitigation plan, unless dependent solely on wetland banking or monetary contribution to an in-lieu fee fund, shall include the goals and objectives of the plan, in terms of replacement of functions and values and expressed in acres of each wetland or stream type. The plan shall also address any inclusion of buffers, any structures and features necessary for the success of the site, and the schedule for compensatory mitigation site construction.~~

~~(c)~~ (b) In order for an application to be deemed complete, at a minimum, a conceptual wetland compensatory mitigation plan must be submitted for unavoidable permanent impacts to wetlands, unless dependent solely on mitigation banking or monetary contribution to an in-lieu fee fund, and shall include at a minimum: the goals and objectives in terms of replacement of wetland or stream acreage and function functions; a detailed location map (for example, a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) and the hydrologic unit code (HUC) at the center of the site; a description of the surrounding land use; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation confirmation and data sheets and maps for existing wetland surface water areas on the proposed site(s); a conceptual grading plan; a conceptual planting scheme, including suggested plant species, and zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing description of existing soils, including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; and a draft design of any water control structures; inclusion of buffer areas; a description of any structures and features necessary for the success of the site; the schedule for compensatory mitigation site construction; and proposed deed restriction language for protecting

the compensation site or sites, including all surface waters and buffer areas within its boundaries, in perpetuity.

(c) In order for an application to be deemed complete, a conceptual stream compensatory mitigation plan must be submitted for unavoidable permanent impacts to streams, unless dependent solely on mitigation banking or monetary contribution to an in-lieu fee fund, and shall include at a minimum: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (for example, a United States Geologic Survey topographic quadrangle map), including the latitude and longitude (to the nearest second) and the hydrologic unit code (HUC) at the center of the site; a description of the surrounding land use; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the proposed restoration measures to be employed, including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; reference stream data, if available; inclusion of buffer areas; schedule for restoration activities; and proposed deed restriction language for protecting the compensation site or sites, including all surface waters and buffer areas within its boundaries, in perpetuity.

(d) Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.

~~[ (d) (e) The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision subdivisions 1 k (4) (5) (b) and (c) of this subsection, as well as:~~

(f) For wetlands, the final compensation plan shall also include a summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands or streams (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed

~~restriction language for protecting proof that the protective instrument for the compensation site or sites in perpetuity, including all surface waters and buffer areas within its boundaries, has been recorded. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary.~~

~~(g) For streams, the final compensation plan shall also include a site access plan; an erosion and sedimentation control plan; an abatement and control plan for undesirable plant species; a monitoring plan, including, a monitoring and reporting schedule, monitoring design and methodologies for success; proposed success criteria; and location of photo monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; proof that the protective instrument for the compensation site or sites, including all surface waters and buffer areas within its boundaries, has been recorded; a plan view sketch depicting the pattern and all compensation measures being employed; a profile sketch; and cross sectional sketches of the proposed compensation stream.~~

~~(h) For purposes of this regulation, undesirable species means any species that invades, naturally colonizes, or otherwise dominates a compensatory mitigation site or mitigation bank and may cause or contribute to the failure of the vegetative success criteria for a particular compensatory mitigation site or mitigation bank.~~

~~(e) Any compensation plan shall include measures for the control of undesirable species. ]~~

~~(e) [ (f) ]~~ Any compensation plan proposing to include contributions to an in-lieu fee fund shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated.

~~(f) [ (g) ]~~ Any compensation plan proposing the purchase or use of mitigation banking credits shall include: (i) the name of the proposed mitigation bank and the HUC in which it is located; (ii) the number of credits proposed to be purchased or used; and (iii) certification from the bank owner of the availability of credits.

~~(g) [ (h) ]~~ Applicants proposing off-site compensatory mitigation, including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund shall first discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants

must provide documentation as to why the proposed off-site compensatory mitigation is ecologically preferable (see 9 VAC 25-210-116 B). The evaluation should include, at a minimum, a comparison of the following criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

~~(h) Any compensation plan involving stream restoration shall submit a plan that includes: goals and objectives in terms of water quality benefits; location map, including the latitude and longitude (to the nearest second) at the center of the site; the proposed stream segment restoration locations, including plan view and cross section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule.~~

~~(i) Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.~~

l. Detailed project location map. The detailed location map (e.g. for example, a United States Geologic Survey topographic quadrangle map) [ ~~of the impact area must include the latitude and longitude for the project, the project boundary, the hydrologic unit code, and the stream classification~~ ] (if applicable) [ clearly identified on the map including the project boundary ]. The map should be of sufficient detail such that the site may be easily located for site inspection.

m. Project plan view and cross-sectional sketches. All plan view sketches and cross-sectional sketches must include, at a minimum, north arrow, scale, existing structures, existing and proposed (if available) contours, limit of surface water areas, ebb and flood or direction of flow, ordinary high water elevation, impact limits, and location and dimension of all structures in impact areas. Profile sketches with the above information shall be required as appropriate to demonstrate minimization of impacts.

n. Application processing fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9 VAC 25-20-40 et seq. The board will continue to process the application, but the fee must be received prior to release of a draft VWP permit.

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2. In addition to requirements of subdivision 1 of this subsection, applications involving a instream flow requirements, [major] surface water [~~withdrawal withdrawals~~] or a Federal Energy Regulatory Commission (FERC) license or re-license shall include:

a. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;

b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;

~~e. Information on how the proposed withdrawal will impact flows in terms of flow reduction;~~

~~d. c.~~ The consumptive use and the average daily return flow of the proposed project and the location of the return flow;

~~e. Information on the proposed use of and need for the surface water and information on how the demand for surface water was determined (e.g., per capita use, population growth rates, new uses, changes to service areas, and if applicable, acreage irrigated and evapotranspiration effects);~~

~~f. d.~~ Information on flow dependent beneficial uses at the proposed project location along the affected stream reach; and

~~g. e.~~ Information on the aquatic life at the proposed project location along the affected stream reach, including species and habitat requirements;

f. Information on how the proposed withdrawal will alter flows along the affected stream reach;

g. Information on the proposed use of and need for the surface water and information on how demand for surface water was determined (for example, per capita use, population growth rates, new uses, changes to service areas, and if applicable; acreage irrigated and evapotranspiration effects). If during the water supply planning process, the need for the withdrawal was established, the applicant may submit said planning process information, provided that the submittal address all requirements of 9 VAC 25-210-115 B. The board shall deem such a submittal as meeting the requirements of this subsection. For public [drinking surface] water supply [withdrawal] projects see also [9 VAC 25-780-115 9 VAC 25-780-100 and 9 VAC 25-780-130 ];

h. For new or expanded surface water supply projects, a summary of the steps taken to seek public input as required by 9 VAC 25-210-75 and an identification of the issues raised during the course of the public information meeting process; and

i. For surface water withdrawals, other than public water supplies, information to demonstrate that alternate sources of water supply are available to support the operation of the facility during times of reduced instream flow.

[ C. Applications for new or expanded minor surface water withdrawals, using the DEQ Application for New or Expanded Minor Surface Water Withdrawals Initiated On or After July 25, 2007, shall include:

1. Name, mailing address, telephone number, and if applicable, fax number and electronic mail address of applicant;

2. If different from applicant, name, mailing address, telephone number, and if applicable, fax number and electronic mail address of property owner;

3. If applicable, name of authorized agent, mailing address, telephone number, and if applicable, fax number and electronic mail address;

4. Name of waterbody or waterbodies, or receiving waters, as applicable;

5. Documentation of all withdrawals associated with the application, including, but not limited to, the amount of the requested surface water withdrawal, a description of the proposed intake structure, and a schedule of the proposed withdrawal that describes any seasonal variations in withdrawal patterns;

6. Locations of all withdrawals associated with the application shown on a detailed location map (for example, a United States Geological Survey 7.5-minute topographic map or similar maps of reasonable detail to show land and water features);

7. Name of the city or county where the project occurs;

8. Signed and dated signature page (electronic submittals containing the original-signature page, such as that contained in a scanned document file are acceptable);

9. Application processing fee in accordance with 9 VAC 25; and

10. Any application for a minor surface water withdrawal for a public surface water supply withdrawal project shall provide an evaluation of project alternatives as required in 9 VAC 25-210-115. ]

[ ~~3. D.~~ ] Applications for an Emergency Virginia Water Protection Permit to address a public water supply emergency [ shall include ]:

[ 1. Applications for an Emergency Virginia Water Protection Permit shall include the information noted below in subdivisions a through o. The JPA may be

used for emergency applications purposes, provided that all of the information below is included: ]

a. Name, mailing address, telephone number, and if applicable, fax number and electronic mail address of applicant;

b. If different from applicant, name, mailing address, telephone number, and if applicable, fax number and electronic mail address of property owner;

c. If applicable, name of authorized agent, mailing address, telephone number, and if applicable, fax number and electronic mail address;

d. Name of waterbody or waterbodies, or receiving waters, as applicable;

e. Name of the city or county where the project occurs;

f. Signed and dated signature page (electronic submittals containing the original-signature page, such as that contained in a scanned document file are acceptable);

g. Application processing fee in accordance with 9 VAC 25-20;

h. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows if available;

i. Information on the aquatic life along the affected stream reach, including species and habitat requirements;

j. Recent and current water use including monthly water use in the previous calendar year and weekly water use in the previous six months prior to the application. The application shall identify the sources of such water and also identify any water purchased from other water suppliers;

k. A description of the severity of the public water supply emergency, including for reservoirs, an estimate of days of remaining supply at current rates of use and replenishment; for wells, current production; for intakes, current streamflow;

l. A description of mandatory water conservation measures taken or imposed by the applicant and the dates when the measures were implemented; for the purposes of obtaining an Emergency Virginia Water Protection Permit, mandatory water conservation measures shall include, but not be limited to, the prohibition of lawn and landscape watering, vehicle washing, the watering of recreation fields, refilling of swimming pools, the washing of paved surfaces;

m. An estimate of water savings realized by implementing mandatory water conservation measures;

n. Documentation that the applicant has exhausted all management actions that would minimize the threat to public welfare, safety and health and will avoid the need to obtain an emergency permit, and that are consistent with existing permit limitations; and

o. Any other information that demonstrates that the condition is a substantial threat to public health or safety.

[ 4- 2. ] Within 14 days after the issuance of an Emergency Virginia Water Protection Permit, the permit holder shall apply for a VWP permit under the other provisions of this regulation.

[ ~~C~~. E. ] Additional information. The board shall require additional information if needed to evaluate compliance with this chapter.

[ ~~D~~. E. ] Incomplete application. Where an application is not accepted as complete by the board within 15 days of receipt, the board shall [ ~~request~~ require the submission of ] additional ~~specific~~ information from the applicant, and may suspend processing of any application until such time as the applicant has supplied ~~missing or deficient~~ the requested information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application [ ; ] or submitted incorrect information in a VWP permit application or in any report to the board, ~~he~~ the applicant shall immediately submit such facts or the correct information. [ ~~Such submission A revised application with new information~~ ] shall be deemed a new application for purpose of reviews, but shall not require additional notice or an additional permit application fee. [ An incomplete permit application may be administratively withdrawn from processing by the board after 180 days from the date that the original permit application was received by the board for failure to provide required information. ]

## **9 VAC 25-210-90. Conditions applicable to all VWP permits.**

A. Duty to comply. The permittee shall comply with all conditions of the VWP permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

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B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

~~D. VWP permit action.~~

~~1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in this chapter.~~

~~2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185.~~

~~3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in subsection A of this section, or for other reasons listed in 9 VAC 25-210-180.~~

~~E. D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board or any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, to conduct the actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.~~

~~1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;~~

~~2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and~~

~~3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.~~

~~F. E. Duty to provide information.~~

~~1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.~~

~~2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.~~

~~G. F. Monitoring and records requirements.~~

~~1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.~~

~~2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.~~

~~3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.~~

~~4. Records of monitoring information shall include as appropriate:~~

~~a. The date, exact place and time of sampling or measurements;~~

~~b. The name of the individuals who performed the sampling or measurements;~~

~~c. The date and time the analyses were performed;~~

~~d. The name of the individuals who performed the analyses;~~

~~e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;~~

~~f. The results of such analyses; and~~

~~g. Chain of custody documentation.~~

## 9 VAC 25-210-100. Signatory requirements.

A. Application. Any application for a VWP permit under this chapter must bear the applicant's signature or the signature of a person acting in the applicant's behalf, with the authority to bind the applicant. Electronic submittals containing the original-signature page, such as that contained in a scanned document file, are acceptable.

B. Reports. All reports required by VWP permits and other information requested by the board shall be signed by:

1. One of the persons described in subsection A of this section; or
2. A duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described in subsection A of this section; and
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
  - c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

C. Certification of application and reports. Any person signing a document under subsection A or B of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

## 9 VAC 25-210-110. Establishing applicable standards, limitations or other VWP permit conditions.

In addition to the conditions established in 9 VAC 25-210-90 and 9 VAC 25-210-100, each VWP permit shall include conditions meeting the following requirements where applicable:

### [ A. Conditions applicable to Surface Water Withdrawals: ]

1. Instream flow conditions. Subject to the provisions of Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia, and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in Chapter 7 (§ 62.1-80 et seq.) of Title 62.1 of the Code of Virginia, instream flow conditions may include but are not limited to conditions that limit the volume and rate at which [ surface ] water may be withdrawn at certain times and conditions that require water conservation and reductions in water use.

a. In the development of conditions that limit the volume and rate at which surface water may be withdrawn, consideration shall be given to the seasonal needs of water users and the seasonal availability of surface water flow.

b. Consideration shall also be given to the affected stream reach and the amount of water that is put to a consumptive use in the process.

c. In the development of instream flow conditions for new withdrawals, the board shall take into consideration the combined effect on the hydrologic regime within an affected stream reach due to consumptive water uses associated with:

(1) All existing permitted withdrawals;

(2) The total amount of withdrawals excluded from VWP permit requirements; and

(3) Any other existing lawful withdrawals.

d. VWP Permits for surface water withdrawals, other than public water supplies, shall identify how alternate sources of water supply will be made available to support the operation of the permitted facility during times when surface water withdrawals will be curtailed due to instream flow requirements or shall provide for modification of the operation of the facility to assure compliance with permit conditions. Such modifications may include, but are not limited to, termination or reduction of activities at the facility that are dependent on the permitted withdrawal, increase capacity to capture and store higher flows or implementation of other potential management options.

2. VWP permits issued for surface water withdrawals from the Potomac River between the Shenandoah River confluence and Little Falls shall contain a condition that requires the permittee to reduce withdrawals when the restriction or emergency stage is declared in the Washington Metropolitan Area under the provisions of the Potomac River Low Flow Allocation Agreement; or when the operating rules outlined by the Drought-

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Related Operations Manual for the Washington Metropolitan Area Water Suppliers, an attachment to the Water Supply Coordination Agreement, are in effect. The department, [ in after ] consultation with the Section for Cooperative Water Supply Operations on the Potomac (CO-OP) shall direct the permittee as to when [ , by what quantity ] and for what duration withdrawals shall be reduced.

[ 3. New or expanded minor surface water withdrawals. The board may issue permits for new or expanded minor surface water withdrawals after July 25, 2007, which are not excluded from the requirements of this chapter by 9 VAC 25-210-60, based on the following criteria:

a. The amount of the surface water withdrawal is limited to the amount of water that can be put to beneficial use.

b. Based on the size and location of the surface water withdrawal, the withdrawal is not likely to have a detrimental impact on existing instream or off-stream uses.

c. Based on an assessment by the board, this withdrawal, whether individually or in combination with other existing or proposed projects, does not cause or contribute to, or may not reasonably be expected to cause or contribute to:

(1) A significant impairment of the state waters or fish and wildlife resources;

(2) Adverse impacts on other existing beneficial uses; or

(3) A violation of water quality standards.

d. In cases where the board's assessment indicates that criteria contained subdivision 3 b or c of this subsection are not met, the board may:

1. Issue a permit with any special conditions necessary to assure these criteria are met, or,

2. Require the applicant to apply for a VWP permit as described in 9 VAC 25-210-80 A and B. Such applications shall be subject to all applicable requirements contained in this regulation. ]

~~2- [ 3. B. ]~~ Water quality standards and state requirements. The VWP permit shall include requirements to comply with all appropriate provisions of state laws and regulations.

~~3- [ 4. C. ]~~ Toxic pollutants.

~~[ a. 1. ]~~ Where the board finds that appropriate limitations may not ensure compliance with the law or state water quality standards the board shall require the permittee to follow a program of biological or chemical

toxics monitoring. The requirement may include a VWP permit reopener to allow the imposition of toxicity reduction or elimination measures determined to be necessary as a result of the board's evaluation of the results of the toxic monitoring and other available information. Based upon this determination, appropriate limitations will be included in the VWP permit to ensure the reduction or elimination of toxic pollutants and allow the board to ensure that the proposed project will comply with water quality standards and other appropriate requirements of the law.

~~[ b. 2. ]~~ Limitations will be included in the VWP permit to control all toxic pollutants which the board determines (based on information reported in a VWP permit application or a notification or on other information) are or may be discharged at a level which would adversely affect the beneficial use of the receiving waters.

~~4. Duration of VWP permits. VWP permits issued under this chapter shall have an effective date and expiration date which will determine the life of the permit. VWP permits shall be effective for a fixed term based upon the projected duration of the project, the length of any required monitoring, or other project operations or VWP permit conditions; however, the term shall not exceed 15 years and will be specified in the conditions of the VWP permit. The term of these VWP permits shall not be extended by modification beyond the maximum duration. Extension of VWP permits for the same activity beyond the maximum duration specified in the original VWP permit will require reapplication and reissuance of a new VWP permit unless the permittee complies with the provisions of 9 VAC 25-210-185.~~

~~[ 5- D. ]~~ Monitoring requirements as conditions of VWP permits may include but are not limited to:

~~[ a. 1. ]~~ Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate) when required as a condition of the VWP permit;

~~[ b. 2. ]~~ Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and composite samples;

~~[ e. 3. ]~~ Applicable reporting requirements based upon the impact of the regulated activity on water quality; and

~~[ d. 4. ]~~ Requirements to report monitoring results with a frequency dependent on the nature and effect of the regulated activity.

[ ~~6. E.~~ ] Best Management Practices (BMPs). The VWP permit may require the use of BMPs to control or abate the discharge of pollutants.

[ ~~7. E.~~ ] Reissued VWP permits. When a VWP permit is renewed or reissued, limitations, standards or conditions must be in conformance with current limitations, standards, or conditions.

[ ~~8. G.~~ ] Reopening VWP permits. Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

**9 VAC 25-210-115. Evaluation of ~~mitigation~~ project alternatives.**

A. When a proposed activity involves a [ major ] surface water withdrawal [ , public surface water supply withdrawal project, ] or alteration of instream flows, the applicant shall first identify the purpose of the proposed project. In identifying the project purpose, the applicant shall provide a narrative describing the water supply issues that form the basis of the proposed project purpose.

B. When a proposed activity involves [ ~~instream flow or a major~~ ] surface water withdrawal, [ , a public surface water supply withdrawal project, or the alteration of instream flows, ] the applicant shall subsequently demonstrate to the satisfaction of the board that the project meets an established local water supply need. In establishing local need, the applicant shall provide the following information:

1. Existing supply sources, yields and demands, including:

- a. Peak day and average daily withdrawal;
- b. The safe yield and lowest daily flow of record;
- c. Types of water uses; and
- d. Existing water conservation measures and drought response plan, including what conditions trigger their implementation.

2. Projected demands over a minimum 30-year planning period, including the following:

- a. Projected demand contained in the local or regional water supply plan developed in accordance with 9 VAC 25-780 or for the project service area, if such area is smaller than the planning area; or

b. Statistical population (growth) trends; and

c. Projected demands by use type; and

d. Projected demand without water conservation measures; and

e. Projected demands with long-term water conservation measures.

~~Avoidance and minimization opportunities~~ C. For all proposed projects, the applicant shall be evaluated as follows: The applicant must demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and applied to the proposed activity, that practicable alternatives, including design alternatives, have been evaluated for the proposed activity, and that the proposed activity, in terms of impacts to water quality and fish and wildlife resources, is the least environmentally damaging practicable alternative.

~~The applicant must also demonstrate to the satisfaction of the board that all~~ 1. Avoidance and minimization includes, but is not limited to, steps have been taken in accordance with the Guideline for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230 (Federal Register, December 24, 1980) to first avoid and then minimize adverse impacts to surface waters to the maximum extent practicable. Measures, such as reducing the size, scope, configuration, or density of the proposed project, that would avoid or result in less adverse impact to surface waters shall be considered to the maximum extent practicable.

~~B. Compensatory mitigation proposals shall be evaluated as follows:~~

~~1. On site, in kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off site or out of kind compensation opportunities that prove to be more ecologically preferable or practicable may be considered. When the applicant can demonstrate satisfactorily that an off site or out of kind compensatory mitigation proposal is practicable and ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.~~

~~2. Compensatory mitigation for unavoidable project impacts may be met through wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund. Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits as appropriate to ensure protection or~~

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~~enhancement of state waters or fish and wildlife resources and their habitat.~~

~~3. Generally, preference shall be given in the following sequence: restoration, creation, mitigation banking, in-lieu fee fund. However, the appropriate compensatory mitigation option for project impacts shall be evaluated on a case-by-case basis, in terms of replacement of wetland or stream acreage and function.~~

2. Any alternatives analysis conducted specifically for public [ ~~drinking~~ surface ] water supply [ withdrawal ] projects [ ] shall include:

a. The range of alternatives to be analyzed by the applicant as follows:

(1) All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9 VAC 25-780;

(2) Alternatives that are practicable or feasible from both a technical and economic standpoint that had not been identified in the local or regional water supply plan developed in accordance with 9 VAC 25-780;

(3) Alternatives that are available to the applicant but not necessarily under the current jurisdiction of the applicant; and

(4) Water conservation measures that could be considered as a means to reduce demand for each alternative considered by the applicant.

b. The applicant shall provide a narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant.

c. The criteria used to evaluate each alternative for the purpose of establishing the least environmentally damaging practicable alternative, which includes but is not limited to:

(1) Demonstration that the proposed alternative meets the project purpose and project demonstrated need as documented pursuant to subsections A and B of this section;

(2) Availability of the alternative to the applicant;

(3) Evaluation of interconnectivity of water supply systems (both existing and proposed);

(4) Evaluation of the cost of the alternative on an equivalent basis;

(5) Evaluation of alternative safe yields;

(6) Presence and potential impact of alternative on state and federally listed threatened and endangered species;

(7) Presence and potential impact of alternative on wetlands and streams (based on maps and aerial photos for all alternatives, field delineation required for preferred alternative);

(8) Evaluation of effects on instream flow; and

(9) Water Quality Considerations, including:

(a) Land use within a watershed where the type of land use may impact the water quality of the source;

(b) The presence of impaired streams and the type of impairment;

(c) The location of point source discharges; and

(d) Potential threats to water quality other than those listed in subdivisions 2 c (9) (a) through (c) of this subsection.

3. Any alternatives [ analysis ] conducted for projects [ that involve a surface water withdrawal or alteration of instream flows, ] other than [ ~~drinking public surface~~ ] water supply [ withdrawal ] projects shall include all applicable items included in subdivision 2 of this subsection.

## **9 VAC 25-210-116. Compensation.**

~~C. A.~~ No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters. Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type of compensation provided shall be applied to permitted impacts to help meet this requirement. Credit may be given for preservation of upland buffers already protected under other ordinances to the extent that additional protection and water quality and fish and wildlife resource benefits are provided.

~~D. Alternatives analysis~~ B. Practicable and ecologically preferable compensation alternatives.

1. An ~~alternatives~~ analysis shall be required to justify that ~~the following alternatives~~ off-site compensatory mitigation (including purchase or use of mitigation bank credits or contribution to an in-lieu fee fund) or out-of-kind compensatory mitigation [ are ecologically preferable and practicable compensatory mitigation options to on-site, or in-kind compensation ]; ~~off-site including purchase or use of mitigation bank credits, or contribution to an in-lieu fee fund; or out-of-kind [ is more ecologically preferable to practicable on-site or in-kind compensation ]~~.

2. An ~~alternatives~~ Such analysis shall include, but is not limited to, the following criteria, which shall be compared between the impacted and replacement sites:

water quality benefits; acreage of impacts; distance from impacts; hydrologic source; ~~hydrologic and regime~~; watershed; functions and values; vegetation type; soils; constructability; timing ~~of compensation versus impact~~; property acquisition; and cost. The ~~alternatives~~ analysis shall compare the ability of each compensatory mitigation option to replace lost wetland acreage and ~~function~~ functions or lost stream functions and water quality benefits.

C. Compensatory mitigation proposals shall be evaluated as follows:

1. On-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable or practicable may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is practicable and ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

2. Compensatory mitigation for unavoidable wetland impacts may be met through the following options:

- a. Wetland creation;
- b. Wetland restoration;
- c. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:5 E of the Code of Virginia;
- d. A contribution to an approved in-lieu fee fund;
- e. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 2 a, b, or c of this subsection, and when consistent with subsection A of this section;
- f. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with [ ~~subsections~~ subsection ] a, b, or c, and when consistent with subsection A of this section;
- g. Preservation of wetlands, when utilized in conjunction with subdivision 2 a, b, or c of this subsection.

3. Compensatory mitigation for unavoidable impacts to streams may be met through the following options, as appropriate to replace functions or water quality benefits. One factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology [ ~~approved by the board~~ acceptable to the DEQ ].

- a. Stream channel restoration or enhancement;

b. Riparian buffer restoration or enhancement;

c. Riparian buffer preservation, when consistent with subsection A of this section;

d. A contribution to an approved in-lieu fee fund;

e. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:5 E of the Code of Virginia.

4. Generally, preference shall be given in the following sequence: restoration, creation, mitigation banking, in-lieu fee fund. However, the appropriate compensatory mitigation option for project impacts shall be evaluated on a case-by-case basis, in terms of replacement of wetland acreage and functions or stream functions and water quality benefits.

~~E.~~ D. In-lieu fee fund approval.

1. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board and must be dedicated to the achievement of no net loss of wetland ~~or stream~~ acreage and ~~function~~ functions or stream functions and water quality benefits through the preservation, restoration and creation of wetlands or streams.

2. The board may approve the use of a fund by:

- a. Approving use of a fund for a specific project when approving a VWP permit; or
- b. Granting approval of a fund at a board meeting.

3. In order for the board to approve the use of a fund, the fund must meet the following criteria:

- a. Demonstration of a no net loss policy in terms of wetland ~~or stream~~ acreage and ~~function~~ functions or stream functions and water quality benefits by adoption of operational goals or objectives for preservation, creation or restoration ~~of wetland or stream acreage and function~~;
- b. Consultation with DEQ on selection of sites for preservation, restoration, or creation;
- c. A commitment to provide annual reports to the board detailing contributions received and acreage and type of wetlands or streams preserved, created or restored in each watershed with those contributions, as well as the mitigation credits contributed for each watershed of project impact;
- d. A mechanism to establish fee amounts that will ensure each contribution will be adequate to compensate for the wetland ~~or stream~~ acreage and ~~function~~ functions or stream functions and water quality benefits lost in the impacted watershed; and

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e. Such terms and conditions as the board deems necessary to ensure a no net loss of wetland ~~or stream~~ acreage and functions or stream functions and water quality benefits from permitted projects providing compensatory mitigation through contributions to the fund.

4. Such approval may be granted for up to five years and may be renewed by the board upon a demonstration that the fund has enhanced wetland ~~or stream~~ acreage or ~~function~~ functions or stream functions and water quality benefits through the preservation, creation or restoration of wetlands or streams. Such demonstration may be made with the reports submitted pursuant to subdivision 3 c of this subsection.

5. The board may approve the use of an in-lieu fund only after publishing a notice of its intent in the Virginia Register of Regulations at least 45 days prior to taking such action and after accepting and considering public comments on its approval of the fund for at least a 30-day period. Where approval is contemplated in accordance with subdivision 2 a of this subsection, compliance with the public notice and comment requirements for approval of the VWP permit shall meet this requirement.

~~F. E.~~ Use of mitigation banks and multi-project mitigation sites. The use of mitigation banks or multi-project mitigation sites for compensating project impacts shall be deemed appropriate if the following criteria are met:

1. The bank or multi-project mitigation site meets the criteria and conditions found in § 62.1-44.15:5 E of the Code of Virginia:

2. The bank or multi-project mitigation site is ecologically preferable to practicable on-site and off-site individual compensatory mitigation options;

3. For mitigation banks only, the banking instrument, if approved after July 1, 1996, has been approved by a process that involved public review and comment in accordance with federal guidelines;

4. The applicant provides verification to DEQ of purchase of the required amount of credits; and

5. For multi-project mitigation sites, the VWP permit shall include conditions sufficient to ensure long term monitoring and maintenance of surface water functions and values.

[ F. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in 9 VAC 25-210-80 B 1 k (5) (b) and (c):

1. For wetlands, the final compensation plan shall also include a summary of the type and acreage of existing

wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands or streams (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the mechanism for protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries. The final wetland compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.

2. For streams, the final compensation plan shall also include a site access plan; an erosion and sedimentation control plan, if appropriate; an abatement and control plan for undesirable plant species; a monitoring plan, including, a monitoring and reporting schedule, monitoring design and methodologies for success; proposed success criteria; and location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; the mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries; a plan view sketch depicting the pattern and all compensation measures being employed; a profile sketch; and cross-sectional sketches of the proposed compensation stream. The final stream compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be

performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval. ]

**9 VAC 25-210-130. VWP general permits.**

A. The board may issue VWP general permits by regulation for certain specified categories of activities as it deems appropriate.

B. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under a VWP general permit [ regulation ]. Cases where an individual VWP permit may be required include the following:

1. Where the activity may be a significant contributor to pollution;
2. Where the applicant or permittee is not in compliance with the conditions of the VWP general permit regulation or authorization;
3. When an applicant or permittee no longer qualifies for coverage under the VWP general permit regulation or authorization; and
4. When a permittee operating under a VWP general permit authorization requests to be excluded from the coverage of the VWP general permit regulation by applying for a VWP individual permit.

C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general permit authorization to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit regulation is issued which applies to a permittee already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit regulation and subsequent coverage under a VWP individual permit.

E. A VWP general permit authorization may be revoked from an individual permittee for any of the reasons set

forth in 9 VAC 25-210-180 subject to appropriate opportunity for a hearing.

F. When all permitted activities requiring notification have been completed, the permittee shall be required to submit a notice of termination unless the permittee has previously submitted a termination by consent request for the same permitted activities and such request has been approved by the board.

G. Activities authorized under a VWP general permit regulation shall be authorized for a fixed term based upon project length and duration. When a general permit regulation is amended or replaced, it shall contain provisions such that coverage authorized under the general permit existing as of the effective date of the amended or replacement VWP general permit regulation may continue under the amended or replacement VWP general permit and that all terms and conditions of the authorization may continue in full force and effect. Notwithstanding any other provision, a request for ~~reissuance~~ continuation of a VWP general permit authorization ~~of coverage under a VWP general permit~~ beyond the expiration date of such authorization in order to complete monitoring requirements shall not be considered a new application for coverage and no application fee will be charged.

H. The board may certify, or certify with conditions, a nationwide or regional permit proposed by the USACE in accordance with § 401 of the federal Clean Water Act as meeting the requirements of this regulation and ~~the requirements for a VWP general permit if~~ provided that the nationwide or regional permit, including any and the certification conditions contained in the certification:

1. ~~Requires~~ Require that wetland or stream impacts be avoided and minimized to the maximum extent practicable;
2. ~~Does not allow~~ Prohibit impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;
3. ~~Requires~~ Require compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and ~~function~~ functions or stream functions and water quality benefits; and
4. ~~Requires~~ Require that compensatory mitigation for unavoidable wetland impacts be provided through wetland or stream creation or restoration, purchase or use of mitigation bank credits in accordance with § 62.1-44.15:5 E of the Code of Virginia, contribution to an in-lieu fee fund approved by the board in accordance with these regulations, or preservation or restoration of upland buffers adjacent to wetlands or other state waters or preservation of wetlands or streams when done in conjunction with creation, restoration or mitigation bank

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~~credits~~; the following options, as appropriate to replace acreage and function:

a. Wetland creation;

b. Wetland restoration;

c. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:5 E of the Code of Virginia;

d. A contribution to an approved in-lieu fee fund;

e. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 4 a, b, or c of this subsection, and when consistent with 9 VAC 25-210-116 A;

f. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 4 a, b, or c of this subsection, and when consistent with 9 VAC 25-210-116 A;

g. Preservation of wetlands, when utilized in conjunction with subdivision 4 a, b, or c of this subsection.

5. Require that compensatory mitigation for unavoidable stream impacts may be met through the following options as appropriate to replace functions or water quality benefits; one factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology approved by the board:

a. Stream channel restoration or enhancement;

b. Riparian buffer restoration or enhancement;

c. Riparian buffer preservation, when consistent with 9 VAC 25-210-116 A;

d. A contribution to an approved in-lieu fee fund;

e. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:5 E of the Code of Virginia.

~~Such~~ I. The certifications allowed by subsection H of this section may be provided only after the board has advertised and accepted public comment on its intent to provide certification for at least 30 days.

~~F. J.~~ Coverage under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with this section shall be deemed coverage under a VWP general permit regulation upon submission of proof of coverage under the nationwide or regional permit and any other information required by the board through the certification process. Notwithstanding the provisions of 9 VAC 25-20-10, no fee shall be required from applicants seeking coverage under this subsection.

**9 VAC 25-210-140. Public notice of VWP permit action applications, permit actions and public comment period periods.**

A. The initial application for surface water supply projects that requires both an individual Virginia Water Protection Permit and a Virginia Marine Resources permit under § 28.2-1205 of the Code of Virginia shall be advertised concurrently by the Department of Environmental Quality and the Virginia Marine Resources Commission. Such advertising shall be paid for by the applicant.

~~B.~~ Every draft VWP permit, with the exception of an Emergency Virginia Water Protection Permit [ ~~or variances from Virginia Water Protection Permit conditions as outlined in 9 VAC 25-210-175~~ ], shall be given public notice paid for by the applicant, by publication once in a newspaper of general circulation in the area affected by the proposed activity. The public notice must be published within 14 days of ~~issuance~~ the applicant's receipt of a draft VWP permit, or the 120-day VWP permit processing timeframe will be suspended until such publication.

~~B. C.~~ The board shall provide a comment period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing on the VWP permit. All written comments submitted during the comment period shall be retained by the board and considered during its final decision on the VWP permit.

~~C. D.~~ The contents of the public notice of an application for a VWP permit application or proposed VWP permit action shall include:

1. Name and mailing address of the applicant;

2. The permit application number;

3. Project location. If the location of the activity differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified;

~~2.~~ 4. Brief description of the business or activity to be conducted at the site of the proposed activity;

~~3.~~ 5. Description of the area affected. Information on the number of acres of wetlands and/or the number of linear feet of streams affected, as well as the name of the receiving waterway and the name of the affected watershed should be included;

6. Description of what the applicant plans to do to compensate for the affected area;

4. 7. A statement of the tentative determination to issue or deny a VWP permit;

5. 8. A brief description of the final determination procedure;

~~6.~~ 9. The address, e-mail address and phone number of a specific person or persons at the state office from whom further information may be obtained; and

~~7.~~ 10. A brief description on how to submit comments and request a public hearing.

~~D.~~ E. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

~~E.~~ F. When a VWP permit is denied, the board will do so in accordance with 9 VAC 25-210-230.

**9 VAC 25-210-170. Public notice of hearing.**

A. Public notice of any public hearing held pursuant to 9 VAC 25-210-160 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the activity is to occur; and

2. Notice of the public hearing shall be sent to all persons and government agencies that received a copy of the notice of VWP permit application and to those persons requesting a public hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 of this section at least 30 days in advance of the public hearing.

C. The content of the public notice of any public hearing held pursuant to 9 VAC 25-210-160 shall include at least the following:

1. Name and mailing address of each person whose application will be considered at the public hearing and a brief description of the person's activities or operations including information on the number of acres of wetlands and/or the number of linear feet of streams affected, [ a description of the nature of the withdrawal and the amount of the withdrawal; ] as well as the name of the receiving waterway and the name of the affected watershed;

2. The precise location of ~~such the proposed~~ activity and the surface waters that will, or may, be affected. ~~The location should be described~~ including, where possible, ~~with~~ reference to route numbers, road intersections, map coordinates or similar information;

3. Description of what the applicant plans to do to compensate for the affected area;

~~3.~~ 4. A brief reference to the public notice issued for the VWP permit application or permit action, including ~~identification~~ the permit application number and date of

issuance, unless the public notice includes the public hearing notice;

~~4.~~ 5. Information regarding the time and location for the public hearing;

~~5.~~ 6. The purpose of the public hearing;

~~6.~~ 7. A concise statement of the relevant water quality, or fish and wildlife resource issues raised by the persons requesting the public hearing;

~~7.~~ 8. Contact person and the mailing address, e-mail address, name of the DEQ regional office and phone number of the DEQ office at which the interested persons may obtain further information or request a copy of the draft VWP permit prepared pursuant to 9 VAC 25-210-120; and

~~8.~~ 9. A brief reference to the rules and procedures to be followed at the public hearing.

D. Public notice of any public hearing held pursuant to 9 VAC 25-210-160 C shall be in accordance with Procedural Rule No. 1 (9 VAC 25-230-10 ~~et seq.~~).

PART IV.

VWP PERMIT VARIANCES; VWP PERMIT MODIFICATION, REVOCATION AND REISSUANCE, TRANSFER, TERMINATION AND DENIAL.

**9 VAC 25-210-175. Variance from VWP permit conditions.**

A. For public water supplies. The board may grant a temporary variance to any condition of a VWP permit for a [ public ] surface water [ supply ] withdrawal that supports a public water supply to address a public water supply emergency during a drought. A permittee requesting such variance must provide all information required in the application for an Emergency Virginia Water Protection Permit identified in [ ~~9 VAC 25-210-80 B-3~~ 9 VAC 25-210-80 D ].

B. For all other water supplies. The board may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal during a drought. A permittee requesting such variance must affirmatively demonstrate:

1. Public health and safety interests are served by the issuance of such variance; and

2. All management actions consistent with existing [ permit permits ] have been exhausted.

C. As a condition of any variance granted, the permittee shall:

1. Modify operations or facilities to comply with existing VWP permit conditions as soon as practicable; or

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2. Provide new information to the board that alternate permit conditions are appropriate and either apply for a new VWP permit or a modification to their existing VWP permit. The board shall review any such application consistent with other sections of this regulation.

D. In addition, the board may require the permittee to take any other appropriate action to minimize adverse impacts to other beneficial uses.

E. Any variances issued by the board shall be of the shortest duration necessary for the permittee to gain compliance with existing permit conditions, apply for a new VWP permit, or request modification of existing permit conditions.

F. Public notice of any variance issued by the board shall be given as required for draft permits in 9 VAC 25-210-140 B, C, and D. Such notice shall be given [ ~~immediately upon~~ concurrently with the ] issuance of any variance and the board may modify such variances based on public comment. Publication costs of all public notices shall be the responsibility of the permittee.

## **9 VAC 25-210-180. Rules for modification, revocation and reissuance, transfer, and termination of VWP permits.**

A. VWP permits shall be modified, revoked and reissued, transferred or terminated only as authorized by this section.

B. A VWP permit may be modified in whole or in part, revoked and reissued, transferred or terminated.

C. VWP permit modifications shall not be used to extend the term of a VWP permit beyond 15 years from the date of original issuance. If the permittee wishes to continue one or more activities regulated by the VWP permit after the expiration date of the VWP permit, regardless of pending changes to the permitted activities, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185.

D. Modification, revocation and reissuance, or termination may be initiated by the board, ~~on~~ upon the request of the permittee, or ~~other~~ upon the request by another person at the board's discretion under applicable laws or the provisions of [ ~~this chapter to reflect the requirements of any changes in the statutes or regulations, as a result of VWP permit noncompliance as indicated in subsection C of this section, or for the reasons listed in subsections G and H of this section~~ subsections D through H of this section ]. A VWP permit may be modified, or revoked and reissued with permittee consent, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity that require the application of

VWP permit conditions that differ from those of the existing VWP permit or are absent from it;

2. When new information becomes available about the operation or activity covered by the VWP permit that was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;

3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;

5. When changes occur that are subject to "reopener clauses" in the VWP permit; or

6. When the board determines that minimum instream flow levels resulting directly from the permittee's withdrawal of surface water are detrimental to the instream beneficial use, existing at the time of permit issuance, and the withdrawal of surface water should be subject to further net limitations or when an area is declared a surface water management area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

E. A VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer, has been revoked and reissued to the new permittee, or has been automatically transferred. [ Any individual VWP permit shall be automatically transferred to a new permittee if:

~~1. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer or has been revoked and reissued to the new permittee.~~

~~2. Automatic transfer. Any individual VWP permit shall be automatically transferred to a new permittee if:~~

~~a. 1. ] The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;~~

~~[ b. 2. ] The notice to the board includes a written agreement between the existing and proposed permittee containing a proposed date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity;~~

~~[ e. 3. ]~~ The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit; and

~~[ d. 4. ]~~ The permit transferor and the permit transferee provide written notice to the board of the actual transfer date.

F. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VWP permit without following the public involvement procedures. For VWP permits, a minor modification may only:

1. Correct typographical errors;
2. Require monitoring and reporting by the permittee at a different frequency than required in the VWP permit, based on new information justifying the change in conditions;
3. Change an interim compliance date in a schedule of compliance to no more than 180 days from the original compliance date and provided it will not interfere with the final compliance date;
4. Allow for a change in ownership or operational control when the board determines that no other change in the VWP permit is necessary, provided that a written agreement containing a specific date for transfer of VWP permit responsibility, coverage and liability from the current to the new permittee has been submitted to the board;
5. Change project plans that do not result in an increase to permitted project impacts [ other than allowable by 9 VAC 25-210-180 F 8; 9 VAC 25-210-180 F 9; and 9 VAC 25-210-180 F 10 ];
6. Occur when facility expansion [ ; ] or production increases and modification will not cause significant change in the discharge of pollutants;
7. Delete VWP permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated;
8. Occur when subsequent to issuance of a VWP individual or general permit authorization, the permittee determines that additional permanent wetland or stream impacts are necessary, provided that [ the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development or within logical termini, ] the unavoidable cumulative increase in the acreage of wetland [ or open water ] impacts is not greater than one-quarter of an acre (0.25 acre or 10,890 square feet) and the unavoidable cumulative increase in stream impacts is less than [ 50 100 ] linear feet, and also

provided that the additional permanent impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts. A modification is not required subsequent to issuance for additional temporary impacts to surface waters, provided DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions;

9. Occur when, subsequent to issuance of a VWP individual or general permit authorization, the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial compensation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions;

10. Occur when, subsequent to issuance of a VWP individual or general permit authorization, substitution of a specified, approved mitigation bank(s) with another specified, approved mitigation bank is necessary.

~~E. G.~~ After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100), a VWP permit can be terminated for cause. Causes Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

H. A VWP permit can be terminated by consent, as initiated by the permittee, when all permitted activities have been completed or if the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination on behalf of the board. The permittee shall submit the following information:

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1. Name, mailing address and telephone number;

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. One of the following certifications:

a. For project completion: "I certify under penalty of law that all activities [ and any requested compensatory mitigation ] authorized by a VWP [ ~~general~~ ] permit have been completed. I understand that by submitting this notice of termination [ that ] I am no longer authorized to perform activities in surface waters in accordance with the VWP [ ~~general~~ ] permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP [ ~~general~~ ] permit [ ~~authorization~~ ]."

b. For project cancellation: "I certify under penalty of law that the activities [ and any required compensatory mitigation ] authorized by this VWP [ ~~general~~ ] permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP [ ~~general~~ ] permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP [ ~~general~~ ] permit [ ~~authorization~~ ], nor does it allow me to resume the permitted activities without reapplication [ ~~ad-reauthorization~~ and issuance of another permit ]."

[ c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement: "I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit. ]

I. If a permittee files a request for VWP permit modification, revocation and reissuance, or termination, or files a notice of planned changes or anticipated

noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board.

## **9 VAC 25-210-185. Duration of VWP permit extension permits; extensions.**

A. Duration of VWP permits. VWP permits issued under this chapter shall have an effective date and expiration date that will determine the life of the permit. VWP permits shall be effective for a fixed term based upon the projected duration of the project, the length of any required monitoring, or other project operations or VWP permit conditions; however, the term shall not exceed 15 years and will be specified in the conditions of the VWP permit. Emergency Virginia Water Protection Permits shall not exceed a duration of one year or shall expire upon the issuance of a regular Virginia Water Protection Permit, whichever comes first.

B. VWP permit extension. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than original and the extended permit terms together exceed a total of 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, ~~are~~ the permittee should be taken to allow for sufficient time for the board to evaluate the extension request and, in the case of denial of the request, to process a full new VWP permit application or an application for a VWP permit modification, if required applicable.

## **9 VAC 25-210-190. Causes for modification. (Repealed.)**

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;

~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;~~

~~5. When changes occur which are subject to "reopener clauses" in the VWP permit; or~~

~~6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.~~

**9 VAC 25-210-200. Transferability of VWP permits. (Repealed.)**

~~A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer or has been revoked and reissued to the new permittee.~~

~~B. Automatic transfer. Any VWP permit shall be automatically transferred to a new permittee if:~~

~~1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;~~

~~2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and~~

~~3. The board does not within the 30 day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.~~

**9 VAC 25-210-210. Minor modification. (Repealed.)**

~~A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VWP permit without following the public involvement procedures.~~

~~B. For VWP permits, a minor modification may only:~~

~~1. Correct typographical errors;~~

~~2. Require monitoring and reporting by the permittee at a different frequency than required in the VWP permit;~~

~~based on new information justifying the change in conditions;~~

~~3. Change an interim compliance date in a schedule of compliance to no more than 180 days from the original compliance date and provided it will not interfere with the final compliance date;~~

~~4. Allow for a change in ownership or operational control when the board determines that no other change in the VWP permit is necessary, provided that a written agreement containing a specific date for transfer of VWP permit responsibility, coverage and liability from the current to the new permittee has been submitted to the board;~~

~~5. Change plans and specifications that do not result in an increase to permitted project impacts;~~

~~6. Occur when facility expansion, production increases and modification will not cause significant change in the discharge of pollutants;~~

~~7. Delete VWP permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated; and~~

~~8. Occur when subsequent to issuance of a VWP individual or general permit, the permittee determines that additional wetland or stream impacts are necessary, provided that the unavoidable cumulative increase in the acreage of wetland impacts is not greater than 1/4 acre and the unavoidable cumulative increase in stream impacts is less than 50 linear feet, and also provided that the additional impacts are fully mitigated at ratios not less than compensatory mitigation ratios for the original impacts.~~

**9 VAC 25-210-220. Waiver of VWP permit.**

A. The board may waive permitting requirements when the board determines that a proposed project impacts an isolated wetland that is of minimal ecological value as defined in 9 VAC 25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

B. The board may waive the requirement for a VWP individual permit when the proposed activity qualifies for a permit issued by the USACE and receives a permit from the VMRC or wetlands boards, pursuant to Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, and the activity does not impact instream flows.

**9 VAC 25-210-230. Denial of the VWP permit or variance request.**

A. The board shall make a decision to tentatively deny the VWP permit or variance request if the requirements of this

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chapter are not met. Basis for denial include, but are not limited to, the following:

1. The project will result in violations of water quality standards or will impair the beneficial uses of state waters.
  2. As a result of project implementation, shellfish waters would be condemned in accordance with 9 VAC 25-260-5 ~~et seq.~~
  3. The project that the applicant proposed fails to adequately avoid and minimize impacts to state waters to the maximum extent practicable.
  4. The proposed compensatory mitigation plan is insufficient or unsatisfactory for the proposed impacts and fails to achieve no net loss of existing [ wetland ] acreage and function [ and no net loss of functions in all surface waters ].
  5. The Department of Game and Inland Fisheries indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity.
  6. The proposed activity is prohibited by 9 VAC 25-210-50.
  7. The effect of project impacts, together with other existing or proposed impacts to wetlands, will cause or contribute to a significant impairment of state waters or fish and wildlife resources.
  8. Failure to submit the required permit fee in accordance with ~~9 VAC 25-40-80 B 1 n~~ 9 VAC 25-210-80 B 1 n [ ~~or~~ ] B 3 g, C 9 or D 1 g .
  9. [ ~~For an application for an Emergency Virginia Water Protection Permit, the~~ The ] board determines that the applicant [ for an Emergency Virginia Water Protection Permit ] has not demonstrated that there is a substantial threat to public health and safety, and that normal Virginia Water Protection Permit procedures, including public comment provisions, should be followed.
- B. The applicant shall be notified by letter of the board's preliminary decision to tentatively deny the VWP permit requested.
- C. Should the applicant withdraw his application, no VWP permit [ or variance ] will be issued.
- D. Should the applicant elect to proceed as originally proposed, the board may deny the application and advise the applicant pursuant to Procedural Rule No. 1 - Public and Formal Hearing Procedures (9 VAC 25-230-40 ~~et seq.~~) of [ ~~the applicant's~~ his ] right to a public hearing to consider the denial.

## **9 VAC 25-210-260. Transition.**

A. All applications received ~~from VDOT on or after August 1, 2001~~ [ ~~(insert date this regulation revision will be effective)~~, or all other applications received on or after ~~October 1, 2001~~ (insert date this regulation revision will be effective July 25, 2007 )], will be processed in accordance with these new procedures.

[ B. VWP individual permits issued prior to July 25, 2007, will remain in full force and effect until such permits expire, are revoked, or are terminated.

C. Modifications and all other types of modification that are received by the board prior to July 25, 2007, will be processed in accordance with the VWP permit regulations in effect at that time. Modifications and all other types of notification to the board that are received on or after July 25, 2007, will be processed in accordance with these new procedures.

~~B. D.~~ ] Section 401 Water Quality Certificates issued prior to December 31, 1989, have the same effect as a VWP permit. Water Quality Certificates issued after this date will remain in effect until reissued as Virginia Water Protection Permits.

### DOCUMENTS INCORPORATED BY REFERENCE

Virginia Stormwater Management Handbook, First Edition, 1999, Volume I, Chapter 3, Department of Conservation and Recreation.

Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report.

Forestry Best Management Practices for Water Quality in Virginia Technical Guide, [ ~~Third Edition, 1997~~ Fourth Edition, 2002 ], Department of Forestry.

Virginia Agricultural Best Management Practices (BMP) Manual, Revised June 2000, Department of Conservation and Recreation.

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

Guideline for Specification of Disposal Sites for Dredged of Fill Material, 40 CFR Part 230 (Federal Register December 24, 1980).

Potomac River Low Flow Allocation Agreement, January 11, 1978, § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.

Water Supply Coordination Agreement, July 22, 1982, an attachment to the Drought-Related Operations Manual for the Washington Metropolitan Area Water Suppliers.

**NOTICE:** The forms used in administering 9 VAC 25-210, Virginia Water Protection Permit Program Regulation, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

~~Department of Environmental Quality Water Division Permit Application Fee Form (eff. 7/04).~~

~~Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 10/04).~~

Joint Permit Application for Projects in Tidewater Virginia (eff. 10/04).

Virginia Department of Transportation, Joint Permit Application (eff. 10/02).

Quarterly Reporting of Impacts Less than One-Tenth Acre (insert reporting period) Statewide (eff. 4/03).

[ DEQ Application for New or Expanded Minor Surface Water Withdrawals Initiated On or After July 25, 2007. ]

VA.R. Doc. No. R05-106; Filed June 1, 2007, 2:10 p.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Proposed Regulation

**Title of Regulation:** 12 VAC 5-90. Regulations for Disease Reporting and Control (adding 12 VAC 5-90-370).

**Statutory Authority:** § 32.1-35.1 (effective July 1, 2008) of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until August 24, 2007.

(See Calendar of Events section for additional information)

**Agency Contact:** Diane Woolard, Ph.D., MPH, Director, Division of Surveillance and Investigation, Department of Health, P.O. Box 2448, Suite 516E, Richmond, VA 23218, telephone (804) 864-8141, FAX (804) 864-8139, or email [diane.woolard@vdh.virginia.gov](mailto:diane.woolard@vdh.virginia.gov).

**Basis:** Section 32.1-35.1 of the Code of Virginia requires acute care hospitals to report infection information to the

Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) and for the State Board of Health to define infections to be reported and the patient populations to be included.

**Purpose:** The proposed regulatory action identifies the process acute care hospitals shall use in reporting healthcare-associated infections to the Centers for Disease Control and Prevention (CDC) and the Virginia Department of Health (VDH). The amendment to the Regulations for Disease Reporting and Control is proposed in response to a mandate of the Code of Virginia. The goals are to provide a means for comparing specific healthcare-associated infection rates and possibly reduce the occurrence of these infections.

**Substance:** A new section will be added to the regulations that addresses the reporting of healthcare-associated infections. The section will specify that all acute care hospitals with adult intensive care units will be required to join CDC's NHSN, report information about central-line associated bloodstream infections to the NHSN, and authorize VDH to have access to the data.

**Issues:** The proposed regulations will allow the health department to view and analyze certain healthcare-associated infection data among hospitals. Hospital infection data will be available to the public upon request, providing greater transparency and accountability with respect to quality of care activities of hospitals and a means by which the public can monitor infection rates in a hospital. Potential issues that need to be addressed include educating the public on what the data can provide and the caveats that should be considered when attempting to compare hospital infection rates and control programs, and adequately training hospital staff to use the NHSN system.

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

**Summary of the Proposed Regulation.** The proposed regulations will require acute care hospitals to report central line-associated blood stream infections in adult intensive care units to the National Healthcare Safety Network system maintained by the federal Centers for Disease Control and Prevention and also allow the Board of Health (the Board) to access reported data which will be released to the public if requested.

**Result of Analysis.** There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

**Estimated Economic Impact.** Section 32.1-35.1 of the Code of Virginia mandates that the acute care hospitals report nosocomial (healthcare-associated) infections to the Centers for Disease Control and Prevention's National Healthcare Safety Network and release their infection data

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to the Board which in turn may release the data to the public if requested. The legislative mandate requires the Board to determine the types of infections to be reported and the patient populations to be included. The Board proposes to require acute care hospitals to report central line-associated blood stream infections in adult intensive care units.

According to Centers for Disease Control and Prevention, National Healthcare Safety Network's National Nosocomial Infection System (NNIS) was developed in the early 1970s to track healthcare-associated infections and has been a voluntary reporting system. The number of hospitals voluntarily reporting to NNIS has grown from 60 at inception to 300 today. The proposed regulations will require Virginia acute care hospitals to report to already existing NNIS.

According to Virginia Department of Health (VDH), of the approximately 80 hospitals that will start reporting, about six have already been voluntarily reporting data to NNIS. Also, VDH indicates that most hospitals already collect data on these types of infections. Because the proposed regulations will require reporting of already existing data to NNIS and because some hospitals have already been reporting voluntarily, the compliance costs of the proposed regulations are expected to be minimal.

The administrative costs of the proposed regulations to VDH are also expected to be minimal. The retrieval of data reported to NNIS and dissemination of the same data to public if requested is expected to take no more than two staff person days every quarter. While the verification of data could be somewhat costly, VDH does not plan to verify the accuracy of data reported due to lack of funding.

Despite the low compliance costs to the hospitals and to VDH, it is not clear whether the proposed regulations will produce net benefits. This is because the benefits that can be expected from the proposed reporting requirements appear to be minimal as well.

In the absence of data verification, it is unclear how the proposed reporting requirements could be effectively enforced. Also, due to litigation concerns, hospitals already have strong incentives to minimize the number of infections occurs at their facilities. Given already existing strong incentives to minimize infections, it is unclear whether reporting would be an effective way to reduce infections at the margin. Furthermore, according to VDH, probably the most important factor affecting the number of infections is whether a hospital has an infection control program in place or not. Because the proposed requirements do not directly encourage establishment of infection control programs where they do not exist or they do not channel additional resources to existing infection control programs, the economic benefits are expected to be small.

In short, the compliance costs appear to be minimal, but so are the likely effectiveness and benefits of the proposed reporting requirements in reducing the healthcare-associated infections. Given the significant uncertainties over the effectiveness of infection reporting in reducing the number of infections, the proposed low-cost regulatory design is probably an optimal way to meet the legislative mandate for promulgating a healthcare-associated infection reporting system in the Commonwealth.

**Businesses and Entities Affected.** The proposed regulations will require approximately 80 acute care hospitals to report healthcare-associated infection data to the Board.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** The proposed regulations are not likely to have any significant effect on employment, but may increase the labor demand by VDH and some hospitals by a very small amount in order to report and retrieve healthcare-associated infection data.

**Effects on the Use and Value of Private Property.** The proposed regulations are not expected to have any significant effect on the use and value of private property. However, if requested VDH will make infection data available to public. Depending on whether the infection data is favorable or not, some hospitals may see a decrease or increase in the demand for the healthcare services they are offering.

**Small Businesses: Costs and Other Effects.** The hospitals that will be affected by the proposed regulations are unlikely to fit the criteria for a small business. If any particular hospital may be considered as small business, the costs and other effects discussed in this report would be the same.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed regulations are unlikely to 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 36 (06). 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 Board of Health concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget.

Summary:

*The proposed amendments identify the process acute care hospitals shall use in reporting healthcare-associated infections to the Centers for Disease Control and Prevention and the Virginia Department of Health. The type of infection and the methods and timing of reporting are defined.*

PART XIII.  
REPORTING OF HEALTHCARE - ASSOCIATED  
INFECTIONS.

**12 VAC 5-90-370. Reporting of healthcare-associated infections.**

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

"Acute care hospital" means a hospital as defined in § 32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.

"Adult" means a person 18 years of age or more.

"Central line-associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with central line infusion device, and meeting the current Centers for Disease Control and Prevention (CDC) surveillance definition for laboratory-confirmed primary bloodstream infection.

"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal

jugular veins, subclavian veins, external iliac veins, and common femoral veins.

"Healthcare-associated infection" (or nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) that (i) occurs in a patient in a healthcare setting (eg., a hospital or outpatient clinic), (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC.

"National Healthcare Safety Network" (NHSN) means a surveillance system created by the CDC for accumulating, exchanging and integrating relevant information on infectious adverse events associated with healthcare delivery.

B. Reportable infections and method and timing of reporting.

1. Acute care hospitals shall collect data on the following healthcare-associated infection in the specified patient population: central line-associated bloodstream infections in adult intensive care units, including the number of central-line days in each population at risk, expressed per 1,000 catheter-days.

2. All acute care hospitals with adult intensive care units shall (i) participate in CDC's National Healthcare and Safety Network by July 1, 2008, (ii) submit data on the above named infection to the NHSN according to CDC protocols and ensure that all data from July 1, 2008, to December 31, 2008, are entered into the NHSN by January 31, 2009, and (iii) enter data quarterly thereafter according to a schedule established by the department.

3. All acute care hospitals reporting the information noted above shall authorize the department to have access to hospital-specific data contained in the NHSN database.

C. Liability protection and data release. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. Infection rate data may be released to the public by the department upon request. Data shall be aggregated to ensure that no individual patient may be identified.

VA.R. Doc. No. R07-116; Filed June 6, 2007, 9:24 a.m.

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## Final Regulation

Titles of Regulations: **12 VAC 5-190. State Plan for the Provision of Children's Specialty Services (repealing 12 VAC 5-190-10 through 12 VAC 5-190-690).**

**12 VAC 5-191. State Plan for the Children with Special Health Care Needs Program (adding 12 VAC 5-191-10 through 12 VAC 5-191-320).**

Statutory Authority: §§ 32.1-12 and 32.1-77 of the Code of Virginia.

Effective Date: July 25, 2007.

Agency Contact: Susan Tlusty, Children with Special Health Care Needs Program, Division of Child and Adolescent Health, Department of Health, 109 Governor Street, 8th Floor, Richmond, VA 23219, telephone (804) 864-7686, FAX (804) 864-7722, or email susan.tlusty@vdh.virginia.gov.

### Summary:

*This regulation governs several programs serving individuals with special health care needs administered by the Department of Health.*

*Due to the need for extensive revisions, this regulatory action is repealing of the current regulation (12 VAC 5-190) State Plan for the Provision of Children's Specialty Services. The current regulation governs a diagnosis-based, direct clinic service model that is no longer operating throughout the Commonwealth due to significant changes in health care coverage among children, federal goals for children with special health care needs, and identified needs of this population and their families.*

*The final regulation, 12 VAC 5-191, State Plan for the Children with Special Health Care Needs Program, identifies current program components, the scope of services provided and eligibility requirements. The regulation establishes the authority to operate a program-specific pool of funds contingent upon available funding, outlines appeals processes and defines relationships and automatic referrals from other state-mandated screening and surveillance programs. The regulation recognizes that the Children with Special Health Care Needs Program is not an entitlement or federal/state/local public benefit program.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

## CHAPTER 191.

### STATE PLAN FOR THE CHILDREN WITH SPECIAL HEALTH CARE NEEDS PROGRAM.

#### **12 VAC 5-191-10. Definitions.**

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

"Appeal" means the client's right to seek relief from an unfavorable decision in obtaining services or assistance included in the plan.

"Applicant" means an individual who applies for the services under this regulation. An application may be filed for or on behalf of a minor or person under a legal disability by a parent, legal guardian, and attorney in fact, or an attorney at law.

"Bleeding disorders" means inherited problems in coagulation caused by missing or poorly functioning proteins in the blood such as hemophilia and von Willebrand Disease.

"Board" means the State Board of Health.

"Care coordination" means a process that links individuals and their families to services and resources in a coordinated effort to maximize their potential and provide them with optimal health care.

"Center" means a unit providing Care Connection for Children services.

"CCC" means Care Connection for Children.

"Children and youth with special health care needs" means individuals who are ages birth to their twenty-first birthday and have, or are at increased risk for, a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.

"Client" means an individual who meets all the eligibility criteria for a program and has been accepted for services.

"Commissioner" means the Commissioner of Health.

"Community-based" means a framework within which a variety of programs work together to meet the many, varied needs of children, youth, and families in communities.

"CSHCN" means children with special health care needs.

"Culturally-competent" means the ability to provide services to clients that honor different cultural beliefs, interpersonal styles, attitudes and behaviors and the use of multicultural staff in the policy development, administration, and provision of those services.

"Department" means the state Department of Health and includes the central office, regional offices, health districts, and local health departments.

"Developmental disorder" means a delay(s) in maturation or deviant maturation of physical, language, sensory, motor, cognitive, social, learning or self-help capabilities to the extent that there is a negative impact on a child's ability to adapt to or cope with the typical environmental demands as expected for chronological age.

"Direct health care services" means medically necessary services for the treatment and monitoring of a condition(s) covered by the program. The services are generally delivered one-on-one between a health care professional and a client in an office, home, clinic, outpatient department, or hospital.

"Director" means the Director, Children with Special Health Care Needs Program.

"Division" means the Division of Child and Adolescent Health.

"Enabling services" means support services that allow or provide for access to and the receipt of benefits from an array of basic health care services.

"Family" means the client and other such household members who together constitute one economic unit. An economic unit is one or more individuals who generally reside together and share income.

"Family-centered care" means an approach to the planning, delivery, and evaluation of health care whose cornerstone is active participation between families and professionals. Family-centered care recognizes that families are the ultimate decision makers for their children, with children gradually taking on more and more of this decision-making themselves.

"Family-to-family support" means the provision of information and peer support among families having experience with family members having special health care needs.

"Guardian" means a court-appointed guardian of the person.

"Information and referral services" means assisting clients and their families to find available services, responding to inquiries from the general public, and disseminating information for accessing specific services.

"MCH" means maternal and child health.

"Medical home" means a concept in which the child has an ongoing source of health care from a primary care physician who works together with the family to ensure that the child has accessible, continuous, comprehensive,

family-centered, coordinated, compassionate, and culturally effective medical care.

"Parent" means a biological or adoptive parent or a stepparent.

"Plan" means the State Plan for the Children with Special Health Care Needs Program prepared pursuant to Title V of the United States Social Security Act, as amended.

"Pool of funds" means funds designated for payment of direct health care services. Access to the pool is not an entitlement and is subject to availability of funds and guidelines that govern its eligibility and coverage of services.

"Population-based services" means preventive interventions and personal health services developed and available for the entire MCH population of the Commonwealth rather than for individuals in a one-on-one situation.

"Program" means the Children with Special Health Care Needs Program.

"Provider" means an individual or agency that provides a service under an agreement between the individual or agency and the Children with Special Health Care Needs Program or its contractors.

"Resident" means an individual who resides within the geographical boundaries of the Commonwealth.

"Services" means those activities provided or arranged by the various programs within the Children with Special Health Care Needs Program.

"Sickle cell disease" means any inherited hemoglobin pattern with a predominance of hemoglobin (S) in absence of, or greater than normal hemoglobin (A); or hemoglobin S with another hemoglobin variant such as C, D, or E or beta thalassemia.

"Sickle Cell Program Manager" means an employee of the Pediatric Comprehensive Sickle Cell Clinic Network who is designated to be responsible for the administration of the statewide Pediatric Comprehensive Sickle Cell Clinic Network.

"Transition services" means assisting the client and his family in the process of making necessary changes from life as a youth with special health care needs to life as an adult with special health care needs. Aspects to be addressed include health and wellness; education, vocation, and employment; mobility, transportation, and recreation; and legal, insurance, disability benefits, and housing.

"Underinsured" means having medically necessary service needs that exceed an individual's health insurance coverage limits.

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"Uninsured" means having no private health insurance or state or federal medical assistance coverage.

## **12 VAC 5-191-20. Guidance documents.**

The commissioner may issue guidance documents that interpret these regulations and provide guidance for their implementation. Such documents shall be reviewed and revised whenever these regulations are reviewed, and may also be amended or revised as needed to meet changing circumstances.

## **12 VAC 5-191-30. Delegation of authority.**

The commissioner hereby delegates the authority to supervise the day-to-day activities required to administer the plan to the Director, Children with Special Health Care Needs Program. The director shall be responsible for the efficient and effective implementation of the plan and shall be accountable to the commissioner or his designee.

## **12 VAC 5-191-40. Scope and content of the Children with Special Health Care Needs Program.**

A. Mission. The Children with Special Health Care Needs Program promotes the optimal health and development of individuals living in the Commonwealth with special health care needs by working in partnership with families, service providers, and communities.

B. Scope. The scope of the Children with Special Health Care Needs Program includes the following:

1. Direct health care services.
2. Enabling services.
3. Population-based services.
4. Assessment of community health status and available resources.
5. Policy development to support and encourage better health.

The Children with Special Health Care Needs Program administers the following networks and services:

1. Care Connection for Children.
2. Child Development Services.
3. Virginia Bleeding Disorders Program.
4. Pediatric Screening and Genetics Services.
  - a. Virginia Newborn Screening System.
  - b. Virginia Congenital Anomalies Reporting and Education System.
5. Virginia Sickle Cell Awareness Program.
6. Pediatric Comprehensive Sickle Cell Clinic Network.

C. Target population. The target population to receive services from the networks and programs within the Children with Special Health Care Needs Program are the following:

1. Residents of the Commonwealth.
2. Individuals between the ages of birth and their twenty-first birthday except that the Virginia Bleeding Disorders Program and the Virginia Sickle Cell Awareness Program serve individuals of all ages.
3. Individuals diagnosed as having, or are at increased risk for having, a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.

Each network and program within the CSHCN Program has its own specific eligibility criteria.

D. Goals. The Title V national performance measures, as required by the federal Government Performance and Results Act (GPRA-Pub. L. 103-62), are used to establish the program goals.

## **12 VAC 5-191-50. Availability of funds; no entitlement.**

Receipt of federal funds and subsequent administration of the State Plan for the Children with Special Health Care Needs are contingent upon annual federal review, approval, and compliance with other applicable federal law and regulations as outlined in USC §§ 701-710, Subchapter V, Chapter 7, Title 42 and CFR, Secretary of Health and Human Services, Chapter I, Title 42, and Subtitle A, Title 45.

Expenditures shall be limited to available funding. These regulations do not create any legally enforceable right or entitlement to payment for medical services on the part of any person or any right or entitlement to participation.

For those program services and assistance requiring financial eligibility, the funds shall be committed on behalf of the eligible client based on the date that the programs, within the CSHCN Program, receive the original signed financial eligibility application.

## **12 VAC 5-191-60. Emergency suspension of services.**

The commissioner may suspend any portion of the plan, including services provided, to ensure the financial integrity of the Children with Special Health Care Needs Program. The commissioner shall report any action taken under the provisions of this section to the Board of Health at its next scheduled meeting.

## **12 VAC 5-191-70. Financial requirements.**

For those program services and assistance requiring financial eligibility, the determination shall be conducted

in accordance with the State Board of Health Regulations Governing Eligibility Standards and Charges for Health Care Services to Individuals, 12 VAC 5-200, and its guidance documents that are currently in effect.

Applicants who are eligible for financial assistance under this plan must demonstrate that they are not eligible for other available state and federal medical assistance programs. An application for such state or federal assistance programs must be completed and a denial of eligibility received in order to qualify for financial assistance under this plan. The Children with Special Health Care Needs Program may limit financial assistance until the appropriate applications for the medical assistance programs have been processed for acceptance or denial.

### **12 VAC 5-191-80. Appeal process.**

A. An applicant for or client in receipt of services or assistance, as defined in this plan, may appeal the following actions:

1. Denial of services or assistance.
2. Termination of services or assistance.
3. Adverse determination regarding financial eligibility.

There are no further rights of appeal except as set forth in this section. Applicants or clients have no right of appeal of a denial of services or assistance because of a lack of funds.

B. The applicant or client has the right to receive a written statement of the reasons for denial and be informed in writing of the appeal process, including time limits.

C. If a client already receiving services or assistance is denied those services or assistance, a written notice of termination including the reason of denial shall be given 30 days in advance of discontinuing services.

D. First level of appeal: An individual or his representative may make a written or oral appeal to the employee designated to be responsible for the administration of the different programs (the Care Connection for Children Program Director, Administrative Director for the Child Development Services, Bleeding Disorders Program Coordinator, or Sickle Cell Program Manager) within 30 days of the denial of service. The respective program director, administrative director, program coordinator, or program manager shall review and make a written decision to the individual or his representative within 15 days from the date of receipt of the appeal.

E. Second level of appeal: If the individual is not satisfied with the decision provided at the first level of appeal, the individual may appeal the decision in writing to the Director of the Children with Special Health Care Needs

Program within 30 days of the denial from the individual program.

F. Upon receipt of the appeal, the director shall review and make written recommendations to the commissioner, or the commissioner's designee, within 15 days. The director shall consider all written information and may confer, as deemed necessary, with the department's adjudication officer in the Office of Family Health Services or other relevant experts.

G. Within 45 days following the date on which an appeal is filed, the commissioner, or commissioner's designee, shall make a final decision.

### **12 VAC 5-191-90. Privacy.**

A. The Children with Special Health Care Needs Program and program subcontractors shall protect the privacy of the client's personal health information and the confidentiality of medical records in accordance with §§ 2.2-3700 through 2.2-3705.1, 2.2-3705.5, 2.2-3800 through 2.2-3809, 32.1-40, 32.1-41, 32.1-64.2, 32.1-67.1, 32.1-69, 32.1-69.2, 32.1-127.1:03, and 32.1-127.1:04 of the Code of Virginia; the federal Health Insurance Portability and Accountability Act of 1996 (42 USC §§ 1320 d et seq. and 45 CFR Part 164); and Title V of the Social Security Act ( 42 USC §§ 701-710, Subchapter V, Chapter 7 and 42 CFR 51a.6).

B. Access to minor's health records and the authority to consent to surgical and medical treatment for certain minors shall be administered in accordance with §§ 20-124.6 and 54.1-2969 of the Code of Virginia, respectively.

C. Surveillance and investigation shall be consistent with §§ [ 32.1-39, ] 32.1-40, 32.1-41 [ ; and ] 32.1-66 [ and 32.1-39 ] of the Code of Virginia.

D. The department's children with special health care needs program and its contractors shall maintain security and confidentiality of databases in accordance with applicable federal and state laws and regulations.

### **12 VAC 5-191-100. Contracts with providers.**

A. The program may choose to administer a pool of funds for payment of direct health care services for the uninsured and underinsured clients subject to availability of funds and guidelines that govern its eligibility and coverage of services.

B. The program and its contractors are payors of last resort for direct health care services. All other payment sources, including Title XVIII (Medicare), Title XIX (Medicaid and its EPSDT Program), Title XXI (SCHIP), military health insurance, private health insurance, any other state and federal medical assistance program, or any entity that contracts to pay medical care costs for persons eligible for medical assistance in the Commonwealth shall be exhausted prior to program payment.

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C. The program and its contractors will not pay any portion of the bill that is not covered by any insurer, state and federal medical assistance program, or any entity that contracts to pay medical care costs for persons eligible for medical assistance in the Commonwealth unless the service is totally nonreimbursable by them.

D. Providers of direct health care services are limited to those providers who:

1. Have credentials, licensure or certification in the clinical specialty to provide the approved services.
2. Accept the Medicaid fee-for-service rate of reimbursement for the specific service based upon the appropriate code set to identify procedures, services, and diagnoses as approved for use by the federal Centers for Medicare and Medicaid Services.
3. Accept the amounts as negotiated by the program, or a contractor on its behalf, as payment in full on behalf of the program, client, and his family or legal guardian.

E. Paraprofessional staff and volunteers may provide services under the direction of a provider who has credentials, licensure, or certification.

## **12 VAC 5-191-110. Special projects.**

A. When approved by the commissioner or his designee, the plan does not preclude establishment of "Demonstration Projects" to test alternate means of service delivery. All such projects shall be relevant to the services for children with special health care needs as provided through the administration of the plan.

B. The plan does not preclude seeking funding from other available funding sources to perform a special project.

## **12 VAC 5-191-120. Federally required assurances and certifications.**

A. The Children with Special Health Care Needs Program is funded by the Title V of the federal Social Security Act, Maternal and Child Health Services Block Grant, which is matched by state funds. The department is required to comply with the following:

1. Civil Rights Assurance (45 CFR Part 80).
2. Assurance concerning the Handicapped (45 CFR Part 84).
3. Assurance concerning Sex Discrimination (45 CFR Part 86).
4. Assurance concerning Age Discrimination (45 CFR Part 90 and 45 CFR Part 91).
5. Human Subjects Certification, when applicable (45 CFR Part 46).

6. Certifications regarding Drug-free Workplace, Debarment and Suspension, Lobbying, Program Fraud Civil Remedies, and Environmental Tobacco Smoke.

7. Regulatory Provisions for Block Grants (45 CFR 96.50 (e)).

B. For funding received from other federal sources, the department is required to comply with the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" as published in 67 FR 52558.

## **12 VAC 5-191-130. Federal stipulations for use and nonuse of funds.**

A. The MCH Services Block Grant has, as its general purpose, the improvement of the health of all mothers and children in the nation consistent with the applicable health status goals and national health objectives established by the Secretary of Health and Human Services. The funds enable each state to:

1. Provide and assure mothers and children (in particular those with low income or with limited availability of health services) access to quality maternal and child health services;
2. Reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children;
3. Provide rehabilitative services for blind and disabled individuals under the age of 16 years receiving benefits under Title XVI (Supplemental Security Income), to the extent medical assistance for such services is not provided under Title XIX (Medicaid); and
4. Provide and promote family-centered, community-based, coordinated care for children with special health care needs and to facilitate the development of community-based systems of service for such children and their families.

B. Federal requirements prohibit MCH Services Block Grant funds from being used for the following purposes:

1. Purchase of major medical equipment.
2. Cash payments to intended recipients of health services.
3. Purchase or improvement of land; the purchase, construction or permanent improvement of any building or other facility (other than minor remodeling).
4. Providing funds for research or training to any entity other than a public or nonprofit private entity.
5. Satisfying any requirement for the expenditure of nonfederal funds as a condition for the receipt of federal funds. Further, federal funds from other block grants

(e.g., preventive health) may be transferred into the MCH Services Block Grant Program by states, but MCH Block Grant funds may not be transferred to any other program.

C. For funding received from other federal sources, the department is required to comply with the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" as published in 67 FR 52558.

### **12 VAC 5-191-140. Parent, legal guardian and client rights and responsibilities.**

The parent, legal guardian, or client rights and responsibilities shall be described in existing program policies and shall be given to the client upon acceptance to the program.

### **12 VAC 5-191-150. Closure of client to the program.**

A. The reasons for closure of a client to the program shall be in accordance with existing department eligibility guidance documents as stated in 12 VAC5-191-70.

B. If, at the time of closure to the program, the client still needs medical care for the condition for which he was in the program and for the service that he has been receiving from the program, the client will be referred to another source. The services may terminate only following notice to the client that such services will be terminated. Medical care services cannot be terminated for clients receiving ongoing care without making a good faith effort to secure alternative care.

### **12 VAC 5-191-160. Transfer of client.**

Transfer of a client geographically among the program's centers or clinics shall be in accordance with existing program policies.

### **12 VAC 5-191-170. Description of the Care Connection for Children network.**

Care Connection for Children is a statewide network of Centers of Excellence for Children with Special Health Care Needs that facilitates access to comprehensive medical and support services that are collaborative, family centered, culturally competent, fiscally responsible, community based, coordinated and outcome oriented to children and youth with special health care needs and their families.

### **12 VAC 5-191-180. Scope and content of the Care Connection for Children network.**

A. Mission. The Care Connection for Children network promotes the optimal health and development of children and youth living in the Commonwealth with special health care needs by working in partnership with families, service providers, and communities.

B. Scope of services. The Care Connection for Children network provides the following enabling services:

1. Assistance in accessing specialty medical services and a medical home.
2. Care coordination.
3. Medical insurance benefits evaluation and coordination that may include services that promote the access to and the understanding of the use of private health insurance and state and federal medical assistance programs.
4. Information and referral.
5. Collaboration with the Virginia Department of Education and its Education in Hospitals Program to provide consultation for families, educators and school administrators.
6. Transition from child to adult-oriented health care system.
7. Family-to-family support.
8. Training and technical assistance for community providers.
9. Promotion of a family-centered, community-based, and culturally-competent service delivery system through advisory councils.

Based on community need, the Care Connection for Children network may provide direct health care services.

C. Criteria to receive services from Care Connection for Children. Children and youth are eligible to receive services from Care Connection for Children if they are:

1. Residents of the Commonwealth.
2. Between the ages of birth and their twenty-first birthday.
3. Diagnosed with a disorder that:
  - a. Has a physical basis;
  - b. Has lasted, or is expected to last, at least 12 months; and
  - c. Produces one of more of the following sequelae:
    - (1) Need for health care and ancillary services over and above the usual for the child's age, or for special ongoing treatments, interventions, or accommodation at home or school;
    - (2) Limitation in function, activities, or social role in comparison with healthy age peers in the general areas of physical, cognitive, emotional, and social growth and development;

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(3) Dependency on one of the following to compensate for, or minimize limitation of, function, activities, or social role: medications, special diet, medical technology, assistive devices or personal assistance.

No financial eligibility criteria are required for clients to receive the enabling services. However, clients who meet the above criteria must also meet the financial requirements for eligibility for access to a pool of funds for payment of their direct health care services.

D. Goals. The Title V national performance measures, as required by the federal Government Performance and Results Act (GPRA-Pub. L. 103-62), are used to establish the program goals. The following goals shall change as needed to be consistent with the Title V national performance measures:

1. Families of children with special health care needs will partner in decision making at all levels and will be satisfied with the services they receive.
2. All children with special health care needs will receive coordinated, ongoing, comprehensive care within a medical home.
3. All families of children with special health care needs will have adequate private or public insurance or both to pay for the services they need.
4. All children will be screened early and continuously for special health care needs.
5. Community-based service systems will be organized so families can use them easily.
6. All youth with special health care needs will receive the services necessary to make transitions to all aspects of adult life, including adult health care, work, and independence.

## **12 VAC 5-191-190. Care Connection for Children Pool of Funds.**

Based on availability of funds, the Children with Special Health Care Needs Program may choose to administer a Care Connection for Children Pool of Funds for payment of direct medical care services for the uninsured and underinsured clients. The commissioner or his designee may issue a guidance document that interprets these regulations and provides guidance for their implementation. The guidance document for the pool of funds shall include the financial requirements for eligibility as stated in 12 VAC 5-191-50, the policies for authorization of services, and the contractual assurances as noted in this regulation. The guidance document will assure that the funds are allocated to the children with the greatest financial need after all health insurance, federal, state, and community financial resources have been

exhausted. At a minimum, the guidance document shall be reviewed at least annually and revised as needed, whenever the regulations are reviewed, and also may be amended or revised as needed to meet changing circumstances.

## **12 VAC 5-191-200. Description of the Child Development Services network.**

The Child Development Services is a statewide network of Child Development Clinics that facilitates the availability and accessibility of comprehensive, interdisciplinary developmental services for children and youth suspected to have or diagnosed with developmental, learning, or behavioral disorders.

## **12 VAC 5-191-210. Score and content of the Child Development Services Program.**

A. Mission. The Child Development Services Program promotes the optimal physical, language, cognitive, social, learning, self-help, behavioral, and emotional development and well-being of children.

B. Scope of services. The child development clinics provide pediatric services in the specialty area of developmental and behavioral pediatrics. This health care field specializes in the diagnosis and treatment of developmental and psychosocial aspects of pediatric health care including developmental disorders and emotional, behavioral, and psychosomatic problems.

Services offered at each clinic location may vary according to the needs of the community, expertise of the professional staff, and the overall goals and objectives for the current program.

The Child Development Services network provides the following direct health care services and enabling services:

1. Interdisciplinary evaluations that may include a pediatric medical examination, nurse evaluation, psychosocial history, psychological assessment, and educational evaluation.
2. Treatment planning that may include the evaluation team developing a written report that integrates their findings, establishes diagnoses, and formulates recommendations for each client.
3. Care coordination.
4. Consultation.
5. Screenings for early identification of persons with developmental disorders.
6. Screening services to assist other agencies in their program implementation as may be described in a contract or memorandum of agreement.
7. Information and referral.

8. Intervention services that may include medical, psychosocial, educational, or interdisciplinary treatment services.

9. Training and technical assistance for community providers.

C. Criteria to receive services from Child Development Services. Children and youth are eligible to receive services from Child Development Services if they are:

1. Residents of the Commonwealth.
2. Between the ages of birth and their twenty-first birthday.
3. Suspected to have or diagnosed with developmental, emotional or behavioral disorder or presence of severe or multiple risk factors for these conditions.

No financial eligibility criteria are required for clients to receive the enabling services. However, clients who meet the above criteria must also meet the financial requirements to receive direct health care services based on a sliding scale charge schedule. The amount of the required charge shall be in accordance with the State Board of Health Regulation Governing Eligibility Standards and Charges for Health Care Services to Individuals, 12 VAC 5-200.

D. Goals. The Title V national performance measures, as required by the federal Government Performance and Results Act (GPRA-Pub. L. 103-62), are used to establish the program goals. The following goals shall change as needed to be consistent with the Title V national performance measures:

1. Children who are at greatest risk for developmental, emotional and behavioral disorders and in need of related services will receive early screening, diagnosis, and assistance in finding and accessing needed services.
2. Other state and local agencies will receive assistance in providing effective coordinated services for persons with special health care needs.

### **12 VAC 5-191-220. Description of the Virginia Bleeding Disorders Program.**

The Virginia Bleeding Disorders Program supports a statewide network of comprehensive care centers to promote coordinated, family-centered, culturally-competent, multidisciplinary system of care for clients of all ages with inherited bleeding disorders and their families.

### **12 VAC 5-191-230. Scope and Content of the Virginia Bleeding Disorders Program.**

A. Mission. Virginia Bleeding Disorders Program improves the availability and accessibility of

comprehensive care for clients with inherited bleeding disorders and their families.

B. Scope of services. In collaboration with a network of comprehensive bleeding disorders clinics in the Commonwealth, services are provided by a multidisciplinary team that focuses on the physical, emotional, social, educational, financial and workplace impact of inherited bleeding disorders. The comprehensive care team collaborates closely with the client's primary care provider within their community.

The Virginia Bleeding Disorders Program provides the following enabling services:

1. Assistance in accessing comprehensive specialty health care services for clients with inherited bleeding disorders and a medical home.
2. Care coordination.
3. Insurance case management that may include a comprehensive resource assessment, consultation, and referral of eligible individuals to third party payers; education and assistance to individuals regarding health care choices relevant to insurance options; procurement of grants for the funding of third party medical coverage; and assistance to eligible individuals in the health insurance application and enrollment process and procurement of the least costly and beneficial medical coverage.
4. Information and referral.
5. Collaboration with the Virginia Department of Education and its Education in Hospitals Program to provide consultation for families, educators, and school administrators.
6. Transition from child to adult oriented health care system.
7. Family-to-family support.
8. Training and technical assistance for community providers.
9. Promotion of quality assurance and policy development through the Hemophilia Advisory Board.

C. Criteria to receive services of Virginia Bleeding Disorders Program. Individuals are eligible to receive services from the Virginia Bleeding Disorder Program if they are:

1. Residents of the Commonwealth.
2. Any age.
3. Diagnosed as having an inherited bleeding disorder.
4. Clients of a comprehensive bleeding disorder clinic.

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No financial eligibility criteria are required for clients to receive the enabling services. However, clients who meet the above criteria must also meet the financial requirements for eligibility for access to a pool of funds for payment of their direct health care services.

D. Goals. The Title V national performance measures, as required by the federal Government Performance and Results Act (GPRA-Pub. L. 103-62), are used to establish the program goals. The following goals shall change as needed to be consistent with the Title V national performance measures:

1. Clients with inherited bleeding disorders will partner in decision making at all levels and will be satisfied with the services they receive.
2. Clients with inherited bleeding disorders will receive coordinated, ongoing, comprehensive specialized care in partnership with their community-based primary care provider.
3. Clients with inherited bleeding disorders will have adequate private or public insurance or both to pay for the services they need.
4. All youth with inherited bleeding disorders will participate in preparing for transition to adult life, including adult health care, work and independence.

## **12 VAC 5-191-240. Bleeding disorders pool of funds.**

Based on availability of funds, the Children with Special Health Care Needs Program may choose to administer a bleeding disorders pool of funds for payment of direct medical care services for the uninsured and underinsured clients. The commissioner or his designee may issue a guidance document that interprets these regulations and provides guidance for their implementation. The guidance document for the pool of funds shall include the financial requirements for eligibility as stated in 12 VAC 5-191-70, the policies for authorization of services, and the contractual assurances as noted in this regulation. The guidance document will assure that the funds are allocated to the children with the greatest financial need after all health insurance, federal, state, and community financial resources have been exhausted. At a minimum, the guidance document shall be reviewed at least annually and revised as needed, whenever the regulations are reviewed, and also may be amended or revised as needed to meet changing circumstances.

## **12 VAC 5-191-250. Pediatric Screening and Genetics Services.**

The Pediatric Screening and Genetics Services unit works to improve the health of children and families by preventing birth defects and developmental disabilities, promoting optimal child development, and promoting

health and wellness among children and adolescents living with disabilities.

Pediatric Screening and Genetics Services include several programs, services, and projects, two of which are the Virginia Newborn Screening System and the Virginia Congenital Anomalies Reporting and Education System.

## **12 VAC 5-191-260. Scope and content of the Virginia Newborn Screening System.**

A. The Virginia Newborn Screening System consists of two components: (i) Virginia Newborn Screening Services and (ii) Virginia Early Hearing Detection and Intervention Program.

B. Virginia Newborn Screening Services.

1. Mission. The Virginia Newborn Screening Services prevents mental retardation, permanent disability, or death through early identification and treatment of infants who are affected by selected inherited disorders.
2. Scope of services. The Virginia Newborn Screening Services provides a coordinated and comprehensive system of services to assure that all infants receive a screening test after birth for selected inherited metabolic, endocrine, and hematological disorders as defined in Regulations Governing the Newborn Screening and Treatment Program, 12 VAC 5-70.

These population-based, direct, and enabling services are provided through:

- a. Biochemical dried bloodspot screening tests.
- b. Follow up of abnormal results.
- c. Diagnosis.
- d. Education to health professionals and families.
- e. Expert consultation on abnormal results, diagnostic testing, and medical and dietary management for health professionals.

Medical and dietary management is provided for the diagnosed cases and includes assistance in accessing specialty medical services and referral to Care Connection for Children.

The screening and management for specified diseases are governed by Regulations Governing the Newborn Screening and Treatment Program, 12 VAC 5-70.

3. Criteria to receive Virginia Newborn Screening Services. All infants born in the Commonwealth are eligible for the screening test for selected inherited disorders.

4. Goal. The Title V national performance measures, as required by the federal Government Performance and Results Act (GPRA-Pub. L. 103-62), are used to

establish the program goals. The following goal shall change as needed to be consistent with the Title V national performance measures:

All infants will receive appropriate newborn bloodspot screening, follow up testing, and referral to services.

### C. Virginia Early Hearing Detection and Intervention Program.

1. Mission. The Virginia Early Hearing Detection and Intervention Program promotes early detection of and intervention for infants with congenital hearing loss to maximize linguistic and communicative competence and literacy development.

2. Scope of services. The Virginia Early Hearing Detection and Intervention Program provides services to assure that all infants receive a hearing screening after birth, that infants needing further testing are referred to appropriate facilities, that families have the information that they need to make decisions for their children, and that infants and young children diagnosed with a hearing loss receive appropriate and timely intervention services. These population-based and enabling services are provided through:

- a. Technical assistance and education to new parents.
- b. Collaboration with physicians and primary care providers.
- c. Technical assistance and education to birthing facilities and those persons performing home births.
- d. Collaboration with audiologists.
- e. Education to health professionals and general public.

Once diagnosed, the infants are referred to early intervention services. The screening and management for hearing loss are governed by the regulation, Virginia Hearing Impairment Identification and Monitoring System, 12 VAC 5-80.

### 3. Criteria to receive services from the Virginia Early Hearing Detection and Intervention Program.

- a. All infants born in the Commonwealth are eligible for the hearing screening.
- b. All infants who are residents of the Commonwealth and their families are eligible for the Virginia Early Hearing Detection and Intervention Program.

4. Goals. The Title V national performance measures, as required by the federal Government Performance and Results Act (GPRA-Pub. L. 103-62), are used to establish the program goals. The following goals shall change as needed to be consistent with the Title V national performance measures:

All infants will receive screening for hearing loss no later than one month of age, achieve identification of congenital hearing loss by three months of age, and enroll in appropriate intervention by six months of age.

### **12 VAC 5-191-270. Description of the Virginia Congenital Anomalies Reporting and Education System.**

The Virginia Congenital Anomalies Reporting and Education System (VaCARES) is a birth registry of children under two years of age diagnosed with congenital anomalies using data from documents such as birth certificates filed with the State Registrar of Vital Records, hospital medical records, and newborn screening system records. It is both a reporting and an education system.

### **12 VAC 5-191-280. Scope and content of the Virginia Congenital Anomalies Reporting and Education System.**

A. Mission. The Virginia Congenital Anomalies Reporting and Education System promotes the evaluation of the possible causes of birth defects, the improvement in the diagnosis and treatment of children with birth defects, and the provision of information to parents and health professionals about the health resources available to aid such children.

B. Scope of services. The Virginia Congenital Anomalies Reporting and Education System provides the following population-based and enabling services:

1. Identification of children having certain birth defects using data from documents such as birth certificates filed with the State Registrar of Vital Records, hospital medical records, and newborn screening system records.
2. Collection of data to evaluate the possible causes of birth defects.
3. Publication of birth defect surveillance data.
4. Technical assistance and education to health professionals and parents.
5. Referral to Care Connection for Children.

This system is governed by § 32.1-69.1 of the Code of Virginia.

C. Criteria to receive services from VaCARES. Children with selected birth defects who are under two years of age and residents of Virginia are eligible for the services.

### D. Goals.

1. Children with birth defects will receive early diagnosis and assistance in finding and accessing health care services.

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2. Birth defect surveillance data will be used in making decisions regarding health services planning and to promote scientific collaboration for the prevention of birth defects.

## **12 VAC 5-191-290. Description of the Virginia Sickle Cell Awareness Program.**

The Virginia Sickle Cell Awareness Program (VASCAP) is a statewide program for the education and screening of individuals for the disease of sickle cell anemia or sickle cell trait and for such other genetically related hemoglobinopathies.

## **12 VAC 5-191-300. Scope and content of the Virginia Sickle Cell Awareness Program.**

A. Mission. The Virginia Sickle Cell Awareness Program promotes awareness and provides access to screening and follow-up education for individuals and families identified with sickle cell disease and other genetically related hemoglobinopathies.

B. Scope of services. The Virginia Sickle Cell Awareness Program provides the following enabling services in collaboration with local health departments:

1. Assistance for those unable to pay in accessing screening that includes screening for the purposes of preconceptual counseling, prenatal diagnosis, and the identification of sickle cell disease and related hemoglobinopathies in the child and adult.

2. Individual, community, and professional consultation about sickle cell disease and related hemoglobinopathies.

3. Post-screening counseling regarding carrier status or treatment.

4. Training and technical assistance for community providers.

5. Collaboration with Virginia Newborn Screening Program to track infants identified with sickle cell disease and related hemoglobinopathies to insure early parent education about the specific hemoglobinopathy, encourage confirmatory testing, and provide information about a network of Pediatric Comprehensive Sickle Cell Clinics located throughout the state.

C. Criteria to receive services from the Virginia Sickle Cell Awareness Program. Individuals are eligible to receive services from the Virginia Sickle Cell Awareness Program if they are:

1. Residents of the Commonwealth.

2. Any age.

No financial eligibility criteria are required for clients to receive enabling services. However, clients being screened

for hemoglobin variants through local health departments who meet the above criteria must also meet the financial requirements based on a sliding scale charge schedule. The amount of the required charge shall be in accordance with the State Board of Health Regulation Governing Eligibility Standards and Charges for Health Care Services to Individuals, 12 VAC 5-200.

D. Goal. Individuals with the disease of sickle cell anemia or sickle cell trait and other genetically related hemoglobinopathies will receive early diagnosis and assistance in finding and accessing health care services.

## **12 VAC 5-191-310. Description of the Pediatric Comprehensive Sickle Cell Clinic Network.**

The Pediatric Comprehensive Sickle Cell Clinic Network is a statewide group of clinics, located in major medical centers, that provide comprehensive medical and support services that are collaborative, family centered, culturally competent, community based and outcome oriented for newborns identified from newborn screening, children, and youth living with sickle cell disease.

## **12 VAC 5-191-320. Scope and content of the Pediatric Comprehensive Sickle Cell Clinic Network.**

A. Mission. The Pediatric Comprehensive Sickle Cell Clinic Network promotes the optimal health and development of children and youth living in the Commonwealth with sickle cell disease by working in partnership with families, service providers, community-based sickle cell programs and the Virginia Sickle Cell Awareness Program.

B. Scope of services. The Pediatric Comprehensive Sickle Cell Clinic Network provides the following direct health care services and enabling services:

1. Multidisciplinary evaluation and treatment from a team of professionals that may include physician, nurse, social worker, and educational consultant.

2. Assistance in tracking newborns identified with sickle cell disease to ensure confirmation of newborn screening results and early access to care.

3. Assistance in accessing comprehensive care and a medical home.

4. Educational genetic counseling and diagnostic family studies to insure the accurate diagnosis of sickle cell disease.

5. Parent and client education across the life span.

6. Collaboration with primary care providers.

7. Information and referral to community-based sickle cell support programs.

8. Collaboration with the Virginia Department of Education and its Education in Hospitals Program to provide consultation for families, educators and school administrators.

9. Transition from child to adult oriented health care system.

10. Family-to-family support.

11. Training and technical assistance for community providers.

12. Collection of surveillance data to insure clients are receiving services consistent with their level of risk.

C. Criteria to receive services from the Pediatric Comprehensive Sickle Cell Clinic Network. Children and youth are eligible to receive services from the Pediatric Comprehensive Sickle Cell Clinic Network if they are:

1. Residents of the Commonwealth.

2. Between the ages of birth and their twenty-first birthday.

3. Diagnosed with sickle cell disease.

No financial eligibility criteria are required for clients to receive the enabling services. However, clients receiving direct health care services who meet the above criteria must also meet the financial requirements based on a sliding scale charge schedule of the major medical center.

D. Goals. The Title V national performance measures, as required by the federal Government Performance and Results Act (GPRA-Pub. L. 103-62), are used to establish the program goals. The following goals shall change as needed to be consistent with the Title V national performance measures:

1. Families of children with sickle cell anemia will partner in decision making at all levels and will be satisfied with the services they receive.

2. All children with sickle cell anemia will receive coordinated, ongoing, comprehensive care within a medical home.

3. All families of children with sickle cell anemia will have adequate private or public insurance or both to pay for the services they need.

4. Community-based service systems will be organized so families can use them easily.

5. All youth with sickle cell anemia will receive the services necessary to make transitions to all aspects of adult life, including adult health care, work, and independence.

VA.R. Doc. No. R05-21; Filed June 6, 2007, 9:25 a.m.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Emergency Regulation**

**Titles of Regulations: 12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (adding 12 VAC 30-50-141, 12 VAC 30-50-151, 12 VAC 30-50-181, 12 VAC 30-50-228 and 12 VAC 30-50-461).**

**12 VAC 30-60. Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60-250 and 12 VAC 30-60-255).**

**12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12 VAC 30-80-32).**

**12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-310 and 12 VAC 30-120-380).**

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

**Effective Dates: July 1, 2007, through June 30, 2008.**

**Agency Contact: Catherine Hancock, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 225-1680, or email catherine.hancock@dmas.virginia.gov.**

**Preamble:**

*The Appropriation Act, Item 302, PPP requires that DMAS amend the State Plan for Medical Assistance to provide coverage of substance abuse treatment services for children and adults effective July 1, 2007. The services will include emergency services; evaluation and assessment; outpatient services, intensive outpatient services, targeted case management; day treatment and opioid treatment services. Substance abuse services, with the exception of residential and day treatment services for pregnant and postpartum women, are not currently a part of the State Plan. The addition of these services will fill a gap in the continuum of care for Medicaid enrollees.*

*MEDALLION Primary Care Case Management (PCCM) recipients will have substance abuse services covered by Medicaid. These services are not subject to required referrals by the primary care physician. Medallion II recipients who are enrolled in a managed care organization (MCO) will have outpatient services (excluding intensive outpatient services) and assessment and evaluation services covered by the MCOs. All other mandated substance abuse services to be covered (emergency services (crisis), Intensive outpatient services, day treatment services, opioid treatment services, and substance abuse case management*

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*services) will be carved-out of the MCO and covered by DMAS.*

## **12 VAC 30-50-141. Outpatient substance abuse treatment services.**

1. Outpatient substance abuse treatment services shall be limited to an initial availability of 26 therapy sessions, without prior authorization during the first treatment year. An additional extension of up to 26 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 therapy sessions each succeeding year when prior authorized by DMAS or its designee. Outpatient substance abuse treatment services are further restricted to no more than three sessions in any given seven-day period. Consistent with §6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary substance abuse services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

2. Outpatient substance abuse services shall be provided by medical doctors or by doctors of osteopathy who have completed three years of post-graduate residency training in psychiatry; or by a physician or doctor of osteopathy who is certified in addiction medicine. The provider must also be qualified by training and experience in all of the following areas of substance abuse/addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities.

3. Psychological and psychiatric services shall be prescribed treatment that is directly and specifically related to an active written plan designed and signature-dated by one of the professionals listed in (2) above.

4. Psychological or psychiatric services shall be considered appropriate when an individual meets the criteria for an Axis I substance-related disorder. Nicotine or caffeine abuse or dependence shall not be covered. The Axis I substance-related disorder shall meet American Society of Addiction Medicine (ASAM) Level of Care Criteria.

5. Psychological or psychiatric services may be provided in an office or a clinic.

## **12 VAC 30-50-151. Substance abuse treatment services provided by other licensed practitioners within the scope of their practice as defined by state law.**

A. Outpatient substance abuse services are limited to an initial availability of 26 sessions, without prior authorization during the first treatment year. An additional extension of up to 26 sessions is available during the first treatment year and must be prior authorized by DMAS or

its designee. The availability is further restricted to no more than 26 sessions each succeeding year when prior authorized by DMAS or its designee. Outpatient substance abuse services are further restricted to no more than three sessions in any given seven-day period. Consistent with §6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary substance abuse services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

B. Outpatient substance abuse services shall be provided by a licensed clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed psychiatric clinical nurse specialist, a psychiatric nurse practitioner, a licensed marriage and family therapist, or a licensed substance abuse treatment practitioner. The provider must also be qualified by training and experience in all of the following areas of substance abuse/addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities.

C. Psychological and psychiatric services shall be prescribed treatment that is directly and specifically related to an active written plan designed and signature-dated by one of the professionals listed in (3)(b).

D. Psychological or psychiatric services shall be considered appropriate when an individual meets criteria for an Axis I substance-related disorder. Nicotine or caffeine abuse or dependence shall not be covered. The Axis I substance-related disorder shall meet American Society of Addiction Medicine (ASAM) Level of Care Criteria.

E. Psychological or psychiatric services may be provided in an office or a clinic.

## **12 VAC 30-50-181. Clinic services: substance abuse treatment services.**

A. Coverage of community mental health clinics for substance abuse treatment services is provided only when performed by a qualified therapist. For purposes of providing this service a qualified therapist shall be:

i. Outpatient substance abuse services can be provided by medical doctors and doctors of osteopathy who have completed three years of post-graduate residency training in psychiatry or by a physician or doctor of osteopathy who is certified in addiction medicine;

ii. A licensed clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed psychiatric clinical nurse specialist, a psychiatric nurse practitioner, a licensed marriage and family therapist, or a

licensed substance abuse treatment practitioner. The provider must also be qualified by training and experience in all of the following areas of substance abuse/addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities.

iii. An individual who holds a master's or doctorate degree, who has completed all coursework necessary for licensure by the respective board, and who has applied for a license but has not yet received such license, and who is currently supervised in furtherance of the application for such license, in accordance with requirements or regulations promulgated by DMAS, by one of the licensed practitioners listed in subdivisions 1 and 2 of this subsection.

B. Substance abuse treatment services provided in clinics shall be prescribed treatment that is directly and specifically related to an active written plan designed and signature-dated by one of the professionals listed in (D)(1) or (2).

**12 VAC 30-50-228. Community substance abuse treatment services.**

A. Services to be covered shall include crisis intervention, day treatment services in non-residential settings, intensive outpatient services, and opioid treatment services. These services shall be rendered to Medicaid recipients consistent with the criteria specified in 12 VAC 30-60-250. Individuals shall not receive any combination of day treatment, opioid treatment, and intensive outpatient services concurrently. To be reimbursed by Medicaid, covered services shall meet the following definitions:

1. Crisis intervention. This service shall provide immediate substance abuse care, available 24 hours a day, seven days per week, to assist recipients who are experiencing acute dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the recipient or others, and to provide treatment in the context of the least restrictive setting.

(a) An assessment must be conducted to assess the crisis situation. The assessment must document the need for the service.

(b) Crisis intervention activities, limited annually to 180 hours, may include short-term counseling designed to stabilize the recipient, providing access to further immediate assessment and follow-up, and linking the recipient with ongoing care to prevent future crises. Crisis intervention services may include office visits, home visits, telephone contacts, and face to face support or monitoring or other client-related activities for the prevention of institutionalization.

(c) Assessment and counseling may be provided by a Qualified Substance Abuse Professional (QSAP) as defined in 12 VAC 30-50-250, or a certified prescriber described in 12 VAC 30-50-226.

(d) Monitoring and face to face support may be provided by a QSAP, a certified prescriber, or a paraprofessional. A paraprofessional, as described in 12 VAC 30-50-226, must be under the supervision of a QSAP and provide services in accordance with a plan of care.

2. Day treatment, intensive outpatient, and opioid treatment services. These services shall include the major psychiatric, psychological and psycho-educational modalities to include: individual, group counseling and family therapy; education about the effects of alcohol and other drugs on the physical, emotional, and social functioning of the individual; relapse prevention; occupational and recreational therapy, or other therapies. To be reimbursed by Medicaid, these covered services shall meet the following definitions:

a. Day treatment services shall be provided in a non-residential setting and shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week to provide a minimum of 20 hours up to a maximum of 30 hours of skilled treatment services per week. This service should be provided to those recipients who do not require the intensive level of care of inpatient or residential services but require more intensive services than outpatient services. The maximum annual limit is 1,300 hours. Day treatment services may not be provided concurrently with intensive outpatient services or opioid treatment services.

b. Intensive outpatient services for recipients are provided in a nonresidential setting and shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to provide a minimum of 4 hours and a maximum of 19 hours of skilled treatment services per week. This service should be provided to those recipients who do not require the intensive level of care of inpatient, residential, or day treatment services, but require more intensive services than outpatient services. The maximum annual limit is 600 hours. Intensive outpatient services may not be provided concurrently with day treatment services or opioid treatment Services.

c. Opioid treatment shall be provided in daily sessions with a maximum of 600 hours per year. Day treatment and intensive outpatient services may not be provided concurrently with opioid treatment. Opioid treatment service covers psychological and psycho-educational services. Medication costs for opioid agonists shall be billed separately. An individual-specific, physician-ordered dose of medication may be administered or dispensed either for detoxification or maintenance treatment.

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d. Staff qualifications for day treatment, intensive outpatient, and opioid treatment services shall be as follows:

i. Individual and group counseling, and family therapy, and occupational and recreational therapy must be provided by at least a QSAP.

ii. A QSAP or a paraprofessional, under the supervision of a QSAP, may provide education about the effects of alcohol and other drugs on the physical, emotional and social functioning of the individual, relapse prevention, occupational and recreational activities. A QSAP must be onsite when a paraprofessional is providing services.

iii. Paraprofessionals must participate in supervision, as described in 12 VAC 30-60-250.

B. Evaluations required. Prior to initiation of day treatment, intensive outpatient, or opioid treatment services, an evaluation shall be conducted by at least a QSAP. The minimum evaluation will consist of a structured objective assessment of the impact of substance use or dependence on the recipient's functioning in the following areas: drug use, alcohol use, legal system involvement, employment and/or school issues, and medical, family-social, and psychiatric issues. If indicated by history or structured assessment, a psychological examination and psychiatric examination shall be included as part of this evaluation. The assessment must be a written report as specified at 12 VAC 30-60-250 and must document the medical necessity for the service.

C. Consistent with § 6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary substance abuse services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening and the above limits have been exceeded.

**12 VAC 30-50-461. Case management services for individuals who have an Axis I substance-related disorder.**

A. The Medicaid eligible recipient shall meet the current DSM diagnostic criteria for an Axis I substance-related disorder. Nicotine or caffeine abuse or dependence shall not be covered.

1. An active client for case management shall mean a recipient for whom there is a plan of care in effect which requires regular direct or recipient-related contacts or communication or activity with the recipient, family, service providers, or significant others, including at least one face-to-face contact with the recipient every 90 days.

2. The maximum service limit for case management services is 52 hours per year. Case management services

are not reimbursable for recipients residing in institutions for mental disease.

B. Services will be provided to the entire State.

C. Definition of services: Substance abuse case management services assist recipients in accessing needed medical, psychiatric, psychological, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided shall include:

1. Assessment and planning services, to include developing an Individual Service Plan (does not include performing assessments for severity of substance abuse or dependence, medical, psychological and psychiatric assessment but does include referral for such assessment);

2. Linking the recipient to services and supports specified in the Individual Service Plan. When available, assessment and evaluation information should be integrated into the Individual Service Plan within two weeks of completion. The Individual Service Plan shall utilize accepted patient placement criteria and shall be fully completed within 30 days of initiation of service;

3. Assisting the recipient directly for the purpose of locating, developing, or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the recipient;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;

6. Making collateral contacts with the recipients' significant others to promote implementation of the service plan and community adjustment;

7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

8. Education regarding the need for services identified in the Individualized Service Plan (ISP).

D. Qualifications of Providers:

1. The provider of substance abuse case management services must meet the following criteria:

a. The enrolled provider must have the administrative and financial management capacity to meet state and federal requirements;

b. The enrolled provider must have the ability to document and maintain individual case records in accordance with state and federal requirements;

c. The enrolled provider must be licensed by DMHMRSAS as a provider of substance abuse case management services.

2. Providers may bill Medicaid for substance abuse case management only when the services are provided by a professional or professionals who meet at least one of the following criteria:

a. Has at least a bachelor's degree in one of the following fields (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and has at least one year of substance abuse related clinical experience providing direct services to persons with a diagnosis of mental illness or substance abuse;

b. Licensure by the Commonwealth as a registered nurse or as a practical nurse with at least one year of clinical experience.

E. The State assures that the provision of case management services will not restrict a recipient's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients shall have free choice of the providers of case management services.

2. Eligible recipients shall have free choice of the providers of other services under the plan.

F. Payment for substance abuse treatment case management services under the Plan does not duplicate payments for other case management made to public agencies or private entities under other Title XIX program authorities for this same purpose.

DOCUMENTS INCORPORATED BY REFERENCE

Diagnostic and Statistical Manual of Mental Disorders—III-R, 4th Edition (DSM-III-R DSM-IV-TR), American Psychiatric Association.

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

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

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2005 ([www.dmas.virginia.gov/downloads/pdfs/dental-office\\_reference\\_manual\\_06-09-05.pdf](http://www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf)).

Addiction Treatment Matching, 2003, Research Foundations of the American Society of Addiction Medicine (ASAM) Criteria.

**12 VAC30-60-250. Utilization review of community substance abuse treatment services.**

A. To be eligible to receive these substance abuse treatment services, Medicaid recipients must meet the Diagnostic Statistical Manual diagnostic criteria for an Axis I Substance Use Disorder, with the exception of nicotine or caffeine abuse or dependence. A diagnosis of nicotine or caffeine abuse or dependence alone shall not be sufficient for approval of these services. American Society of Addiction Medicine (ASAM) criteria shall be used to determine the appropriate level of treatment. Referrals for medical examinations shall be made consistent with the Early Periodic Screening and Diagnosis Screening Schedule.

**B. Provider qualifications.**

1. For Medicaid reimbursed Substance Abuse Day Treatment, Substance Abuse Intensive Outpatient Services, Opioid Treatment Services, a Qualified Substance Abuse Professional (QSAP) is defined as:

a. An individual who has completed Master's level training in psychology, social work, counseling, or rehabilitation; who also either

(i) is certified as a substance abuse counselor by the Virginia Board of Counseling, or

(ii) is a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia, or

(iii) holds any certification from the National Association of Alcoholism and Drug Abuse Counselors, or the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc (IC & RC);

b. An individual licensed by the appropriate board of the Virginia Department of Health Professions as either a professional counselor, clinical social worker, registered nurse, psychiatric clinical nurse specialist, a psychiatric nurse practitioner, marriage and family therapist, clinical psychologist, or physician who be qualified by training and experience in all of the following areas of addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities;

c. An individual who is licensed as a substance abuse treatment practitioner by the Virginia Board of Counseling;

d. An individual who is certified as either a clinical supervisor by the Substance Abuse Certification Alliance of Virginia or as a Master Addiction Counselor by the National Association of Alcoholism and Drug Abuse Counselors or from the International Certification and

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Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc (IC & RC).

e. An individual who has completed Master's level training in psychology, social work, counseling, or rehabilitation and is certified as a Master Addiction Counselor by the National Association of Alcoholism and Drug Abuse Counselors or from the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc (IC & RC).

f. An individual who has completed a bachelor's degree and is certified as a Substance Abuse Counselor by the Board of Counseling;

g. An individual who has completed a bachelor's degree and is certified as an Addictions Counselor by the Substance Abuse Certification Alliance of Virginia;

h. An individual who has completed a bachelor's degree and is certified as a Level II Addiction Counselor by the National Association of Alcoholism and Drug Abuse Counselors or from the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc (IC & RC).

i. If staff providing services meet only the criteria specified in (A)(1)(g) through (A)(1)(i), they must be supervised every two weeks by a professional who meets one of the criteria specified in (A)(1)(a) through (A)(1)(f). Supervision shall include documented face-to-face meetings between the supervisor and the professional providing the services. Documentation shall include review and approval of the plan of care for each recipient to whom services were provided but shall not require that the supervisor be onsite at the time the treatment service is provided.

2. In order to provide substance abuse treatment services a paraprofessional (peer support specialist) must meet the following qualifications:

a. Has an associate's degree in one of the following related fields (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and has at least one year of experience providing direct services to persons with a diagnosis of mental illness or substance abuse;

b. An associate's or higher degree, in an unrelated field and at least three years experience providing direct services to persons with a diagnosis of mental illness, substance abuse, gerontology clients, or special education clients. The experience may include supervised internships, practicums and field experience.

c. A minimum of 90 hours classroom training in behavioral health and 12 weeks of experience under the direct personal supervision of a QSAP providing services to

persons with mental illness or substance abuse and at least one year of clinical experience (including the 12 weeks of supervised experience).

d. College credits (from an accredited college) earned toward a bachelor's degree in a human service field that is equivalent to an associate's degree and one year's clinical experience.

e. Licensure by the Commonwealth as a practical nurse with at least one year of clinical experience.

3. Paraprofessionals must participate in clinical supervision with a QSAP at least twice a month. Supervision shall include documented face-to-face meetings between the supervisor and the professional providing the services. Supervision may occur individually or in a group.

4. All providers of substance abuse treatment services must adhere to the requirements of 42 CFR, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records.

5. Day treatment providers must be licensed by the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services as a provider of day treatment services. Intensive outpatient providers must be licensed by the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services as a provider of outpatient substance abuse services. The enrolled provider of opioid treatment services must be licensed as a provider of Opioid treatment services by the Department of Mental Health, Mental Retardation and Substance Abuse Treatment services.

C. Evaluations/assessments of the recipient shall be required for day treatment, intensive outpatient, and opioid treatment services. A structured interview shall be documented as a written report which provides recommendations substantiated by the findings of the evaluation and shall document the need for the specific service. Evaluations shall be reimbursed as part of day treatment, intensive outpatient, and opioid treatment services. The structured interview must be conducted by a qualified substance abuse professional as defined in (A)(1).

D. Individual Service Plan (ISP) for day treatment, intensive outpatient, and opioid treatment services.

1. An initial ISP must be developed. A comprehensive ISP must be fully developed within 30 calendar days of admission to the service.

2. A comprehensive Individual Service Plan shall be developed with the recipient, in consultation with the individual's family, as appropriate, and must address: (i) a summary or reference to the evaluation; (ii) short term and long term goals and measurable objectives for addressing each identified individually specific need; (iii) services and

supports and frequency of service to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) the role of other agencies if the plan is a shared responsibility and the staff responsible for the coordination and the integration of services, including designated persons of other agencies if the plan is a shared responsibility. The ISP must be reviewed at least every 90-calendar days and must be modified as appropriate.

E. Individuals shall not receive any combination of day treatment, opioid treatment and intensive outpatient services concurrently.

F. Crisis intervention. Admission to crisis intervention services is indicated following a marked reduction in the recipient's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress which is related to the use of alcohol or other drugs. Crisis intervention may be the initial contact with a recipient.

1. The provider of crisis intervention services shall be licensed as a provider of Substance Abuse Outpatient Services by DMHMRSAS. Providers may bill Medicaid for substance abuse crisis intervention only when the services are provided by either a professional or professionals who meet at least one of the criteria listed herein.

2. Only recipient-related activities provided in association with a face-to-face contact shall be reimbursable.

3. An ISP shall not be required for newly admitted recipients to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. Other than the annual service limits, there shall be no restrictions (regarding numbers of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts. An ISP must be developed within 30 days of service initiation.

5. For recipients receiving scheduled, short-term counseling as part of the crisis intervention service, the ISP must reflect the short-term counseling goals.

6. Crisis intervention services may be provided outside of the clinic and billed, provided the provision of out-of-clinic services is clinically or programmatically appropriate for the recipient's needs, and it is included on the ISP. Travel by staff to provide out-of-clinic services shall not be reimbursable. Crisis intervention may involve contacts with the family or significant others.

7. Documentation must include the efforts at resolving the crisis to prevent institutional admissions.

## **12 VAC 30-60-255. Utilization review of case management.**

A. Utilization Review: Community substance abuse treatment services.

1. The Medicaid recipient shall meet the current Diagnostic Statistical Manual criteria for an Axis I substance-related disorder. Nicotine or caffeine abuse or dependence shall not be covered.

2. Reimbursement shall be provided only for "active" case management. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period.

3. Except for a 30-day period following the initiation of this case management service by the recipient, in order to continue receiving case management services, the Medicaid recipient must be receiving another substance abuse treatment service;

4. Billing can be submitted for an active recipient only for months in which direct or client-related contacts, activity or communications occur.

5. There is a maximum annual service limit of 52 hours for case management services.

6. An initial Individual Service Plan (ISP) must be completed and must document the need for active case management before case management services can be billed. A comprehensive ISP shall be fully developed within 30 days of initiation of this service, which requires regular direct or recipient-related contacts or activity or communication with the recipient or families, significant others, service providers, and others including a minimum of one face-to-face client contact every 90 days. The case manager shall review the ISP every 90 days for the purpose of updating it or otherwise modifying it as appropriate for the recipient's changing condition.

7. The ISP shall be updated at least every 90 days or within 7 days of a change in the recipient's treatment.

B. Utilization Review: Substance Abuse Treatment Case management services.

1. Utilization review general requirements. On-site utilization reviews shall be conducted. Reimbursement shall be provided only for "active" case management clients. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a

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minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. The Medicaid eligible individual shall meet the current Diagnostic and Statistical Manual of Mental Disorders criteria for an Axis I Substance Abuse Disorder, with the exception of nicotine or caffeine abuse or dependence. A diagnosis of nicotine or caffeine abuse or dependence alone shall not be sufficient for reimbursement of these services.

3. The maximum annual limit for substance abuse treatment case management shall be 52 hours per year. Case management shall not be billed for persons in institutions for mental disease. Substance abuse treatment case management shall not be billed concurrently with any other type of Medicaid reimbursed case management.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

6. The provider of case management services shall be licensed by DMHMRSAS as a provider of case management services.

## DOCUMENTS INCORPORATED BY REFERENCE

Virginia Medicaid Nursing Home Manual, Department of Medical Assistance Services.

Virginia Medicaid Rehabilitation Manual, Department of Medical Assistance Services.

Virginia Medicaid Hospice Manual, Department of Medical Assistance Services.

Virginia Medicaid School Division Manual, Department of Medical Assistance Services.

Addiction Treatment Matching, 2003, Research Foundations of the American Society of Addiction Medicine (ASAM) Criteria.

Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR), American Psychiatric Association.

## **12 VAC 30-80-32. Reimbursement for substance abuse services.**

1. Outpatient psychotherapy services for assessment and evaluation or treatment of substance abuse furnished by physicians shall be reimbursed using the methodology in 12 VAC 30-80-190. For non-physicians, they shall be reimbursed at the same levels specified in 12 VAC 30-50-140 and 12 VAC 30-50-150.

Rates for other substance abuse services shall be based on the Agency fee schedule for 15 minute units of service. The Medicaid and commercial rates for similar services as well as the cost for providing services shall be considered when establishing the fee schedules so that payments shall be consistent with economy, efficiency and quality of care. For each level of professional necessary to provide services described in 12 VAC 30-50-228 and 12 VAC 30-50-461, separate rates shall be established for licensed professionals, qualified substance abuse professionals (QSAP) and paraprofessionals. The same rates shall be paid to public and private providers.

## **12 VAC 30-120-310. Services exempted from MEDALLION referral requirements.**

A. The following services shall be exempt from the referral requirements of MEDALLION:

1. Obstetrical and gynecological services (pregnancy and pregnancy related);
2. Psychiatric and psychological services, to include but not be limited to mental health, mental retardation services;
3. Family planning services;
4. Routine newborn services;
5. Annual or routine vision examinations (under age 21);
6. Emergency services;
7. EPSDT well-child exams;
8. Immunizations (health departments only);
9. All school health services provided pursuant to the Individuals with Disabilities Education Act (IDEA);
10. Services for the treatment of sexually transmitted diseases;
11. Targeted case management services;
12. Transportation services;
13. Pharmacy services;
14. Substance abuse treatment ~~for pregnant women~~ services; and

15. MR waiver services and MH community rehabilitation services.

B. While reimbursement for these services may not require a referral, an authorization, or a referral and an authorization by the PCP, the PCP must continue to track and document them to ensure continuity of care.

**12 VAC 30-120-380. Medallion II MCO responsibilities.**

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

2. Services that shall be provided outside the MCO network shall include those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12 VAC 30-50-190), school health services (as defined in 12 VAC 30-120-360) and community mental health services (rehabilitative, targeted case management and the following substance abuse treatment services; emergency services (crisis); intensive outpatient services; day treatment services; substance abuse case management services; and opioid treatment services).

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. Except for those services specifically carved out in section A above, EPSDT services shall be covered by the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable

federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12 VAC 30-20-150 and 12 VAC 30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

/s/ Timothy M. Kaine  
Governor  
Date: May 21, 2007

VA.R. Doc. No. R07-256; Filed May 30, 2007, 2:52 p.m.

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## Final Regulation

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12 VAC 30-50. Amount, Duration and Scope of Medical and Remedial Services (amending 12 VAC 30-50-130).

**12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12 VAC 30-80-95).**

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

**Effective Date:** January 1, 2008.

**Agency Contact:** Molly Carpenter, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA, telephone (804) 786-1493, FAX (804) 787-1680 or email molly.carpenter@dmas.virginia.gov.

**Summary:**

*The Department of Medical Assistance Services currently covers hearing aids for children through the Medicaid Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program. The Virginia Administrative Code states that the EPSDT program covers hearing services, but it does not reference hearing aids. This regulatory action expressly references hearing aids for children as a covered service under EPSDT and modifies the method of reimbursement as directed by Item 302 EEE of Chapter 847 of the 2007 Acts of Assembly.*

**12 VAC 30-50-130. Skilled nursing facility services, EPSDT, and family planning.**

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication;

education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

c. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by a licensed mental health professional.

(3) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization is required for Medicaid reimbursement.

(5) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(6) Providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10).

(7) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers.

d. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) Authorization is required for Medicaid reimbursement.

(3) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(4) Providers must be licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10).

(5) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The child must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is

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accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12 VAC 30-50-100, 12 VAC 30-50-105, and 12 VAC 30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12 VAC 30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

## **12 VAC 30-80-95. Fee-for-service: hearing aids (under EPSDT).**

Effective January 1, 2008, payment for hearing aids for individuals younger than 21 years of age shall be the actual cost of the device not to exceed limits set by the single state agency, plus a fixed dispensing and fitting fee not to exceed limits set by the single state agency.

VA.R. Doc. No. R07-263; Filed June 1, 2007, 3:22 p.m.

## **Final Regulation**

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical

Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation: 12 VAC 30-135. Demonstration Waiver Services (amending 12 VAC 30-135-10 through 12 VAC 30-135-40, and 12 VAC 30-135-80).**

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

**Effective Date: November 1, 2007.**

**Agency Contact: Molly Carpenter, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 787-1680 or email molly.carpenter@dmas.virginia.gov.**

## **Summary:**

*Item 302 CCC (1) of the 2007 Acts of Assembly directed the Department of Medical Assistance Services to promulgate regulations to specifically expand eligibility for Medicaid coverage of family planning waiver services to individuals with a family income up to 133% of the federal poverty level. Under the current regulation, these waiver services are limited to women in this income group who have received a pregnancy-related service reimbursed by Medicaid and who are either pregnant or are less than 24 months postpartum.*

## **12 VAC 30-135-10. Definitions.**

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

~~"Eligible family planning waiver recipient" means a woman of child bearing years (9 to 57 years of age) who received a Virginia Medicaid reimbursed pregnancy-related service on or after October 1, 2002, who is less than 24 months postpartum, who has income less than or equal to 133% of the federal poverty level, and who has not otherwise been determined eligible for Virginia Medicaid coverage.~~

"FDA" means the Food and Drug Administration.

"Family planning" means those services necessary to prevent or delay a pregnancy. It shall not include services to promote pregnancy such as infertility treatments. Family planning does not include counseling about, recommendations for or performance of abortions, or hysterectomies or procedures performed for medical reasons such as removal of intrauterine devices due to infections.

"Over-the-counter" means drugs and contraceptives that are available for purchase without requiring a physician's prescription.

~~"Pregnancy related service" means medical services rendered to monitor, manage, and treat issues related to pregnancy, labor, and delivery during the women's gestation.~~

"Third party" means any individual entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under the State Plan for Medical Assistance.

**12 VAC 30-135-20. Administration and eligibility determination.**

A. The Department of Medical Assistance Services shall administer the family planning demonstration waiver services program under the authority of § 1115(a) of the Social Security Act and 42 USC § 1315.

B. Local departments of social services shall be responsible for determining eligibility of and for enrolling eligible ~~women~~ individuals in the family planning waiver. Local departments of social services shall conduct periodic reviews and redeterminations of eligibility at least every 12 months while recipients are enrolled in the family planning waiver.

~~C. Effective October 1, 2003, women enrolled in the Virginia Medicaid program under the medically indigent pregnant woman covered group and who receive a Medicaid reimbursed pregnancy related service on or after October 1, 2003, will be notified during their 60 day postpartum period that the Medicaid benefits they received during their pregnancy will be terminated effective the end of the month in which their 60 day postpartum period expires and, at which time they will be automatically eligible for enrollment in the family planning waiver. The cancellation notice will instruct women who believe they qualify for a Medicaid covered group that does not limit benefits to complete a Medicaid application and to contact their Medical eligibility worker at the local department of social services if they do not desire enrollment in the family planning waiver.~~

~~D. Women enrolled in the Virginia Medicaid program under the medically needy pregnant woman covered group will not be automatically eligible for the family planning waiver. These women will be notified during their 60 day postpartum period that their Medicaid eligibility will end at the end of their 60 day postpartum period and if they wish to be evaluated for further coverage under Medicaid they should contact their Medicaid eligibility worker at the local department of social services.~~

~~E. Women enrolled in the Virginia Medicaid program under the medically indigent pregnant woman covered group who received a Medicaid reimbursed pregnancy-related service between October 1, 2002, to September 30, 2003, will not be eligible for automatic enrollment in the family planning waiver. These women will be notified~~

~~during their 60 day postpartum period that their Medicaid benefits will be terminated effective the end of the month in which their 60 day postpartum period expires. The cancellation notice will include information about possible eligibility for extended family planning coverage under the family planning waiver and instruct women how to apply for the waiver and other Medicaid covered groups.~~

**12 VAC 30-135-30. Eligibility.**

A. To be eligible under the family planning waiver, a ~~woman~~ an individual must have experienced a Medicaid-funded pregnancy related service on or after October 1, 2002, be between the ages of 9-57 and less than 24 months postpartum meet the eligibility conditions and requirements found in 12 VAC 30-40-10, have family income less than or equal to 133% of the federal poverty level, and not be enrolled in another Medicaid covered eligible for enrollment in a Medicaid full benefit coverage group.

~~B. Women enrolled in the waiver, but who subsequently fail to meet the requirements of an eligible family planning waiver recipient (for example, reach the age of 58), will no longer be eligible for the family planning waiver.~~

~~C. Women who do not meet the alien eligibility requirements for full Virginia Medicaid coverage and whose labor and delivery is paid as an emergency medical service under Medicaid shall not be eligible to participate in the family planning waiver.~~

~~D. B.~~ A recipient's enrollment in the family planning waiver shall be terminated if a reported change or annual redetermination results in the woman's categorical eligibility for Virginia Medicaid or ineligibility for the family planning waiver. A 10-day advance notice must be provided prior to cancellation of coverage under the family planning waiver.

**12 VAC 30-135-40. Covered services.**

A. Services provided under the family planning waiver are limited to:

1. Family planning office visits including annual gynecological or physical exams (one per 12 months), sexually transmitted diseases (STD) testing (limited to the initial family planning encounter), Pap tests (limited to one every six months);
2. Laboratory services for family planning and STD testing;
3. Family planning education and counseling;
4. FDA approved contraceptives, including diaphragms, contraceptive injectables, and contraceptive implants;
5. Over-the-counter contraceptives; and

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6. Sterilizations, not to include hysterectomies. A completed sterilization consent form, in accordance with the requirements of 42 CFR Part 441, Subpart F, must be submitted with all claims for payment for this service.

B. Services not covered under the family planning waiver include, but are not limited to:

1. Performance of, counseling for, or recommendations of abortions;
2. Infertility treatments;
3. Procedures performed for medical reasons;
4. Performance of a hysterectomy; and
5. Transportation to a family planning service.

## **12 VAC 30-135-80. Recipients' rights and right to appeal.**

Women Individuals found eligible for and enrolled in the family planning waiver shall have freedom of choice of providers. Women Individuals will be free from coercion or mental pressure and shall be free to choose their preferred methods of family planning. The client appeals process at 12 VAC 30-110 shall be applicable to applicants for and recipients of family planning services under this waiver.

VA.R. Doc. No. R07-242; Filed June 1, 2007, 3:21 p.m.

## **STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD**

### **Proposed Regulation**

Title of Regulation: **12 VAC 35-105. Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver and Residential Brain Injury Services (adding 12 VAC 35-105-115).**

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

Public Hearing Date: N/A -- Public comments may be submitted until August 24, 2007.

(See Calendar of Events section for additional information)

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or email [leslie.anderson@co.dmhmsas.virginia.gov](mailto:leslie.anderson@co.dmhmsas.virginia.gov).

Basis: The State Mental Health, Mental Retardation and Substance Abuse Service Board has the authority to adopt this regulation under § 37.2-203 of the Code of Virginia.

Purpose: These provisions are necessary to ensure the health, safety and welfare of individuals receiving services from group homes or other residential facilities for adults that are licensed by the department. The goal of the amendment is to enable the commissioner to act quickly to suspend a license when the conditions or practices of the provider pose an immediate and substantial threat to individuals receiving services from the provider. The regulation will also provide the basis for the department to act in accordance with legal protocols and ensure protections for the legal rights of all parties that may be affected by an action to suspend a license.

Substance: The provisions allow the Commissioner of Mental Health, Mental Retardation and Substance Abuse services to summarily suspend a license to operate a group home or other residential facility for adults when he believes that the conditions pose an immediate and substantial threat to persons receiving services in the facility. The regulation requires the department to schedule an administrative hearing prior to delivering an order of summary suspension to the licensee. Provisions also guide the decision-making related to the administrative hearing and require notification to the licensee of its appeal rights if a final order of summary suspension is issued.

Issues: These provisions are advantageous to the public because they provide additional protections for the health, safety, and welfare of individuals receiving services in licensed group homes and their families. The regulation permanently implements legislative changes that allow the commissioner to act promptly to suspend the operation of a licensed group home or residential facility when there is evidence of immediate and substantial risk to the residents. Prior to the adoption of this legislation and the emergency regulation, the commissioner had no immediate recourse for dealing with an urgent problem. Provisions include requirements for notification of appropriate state agencies and family members when an order of summary suspension is issued. This should facilitate relocation of facility residents when the operation of a licensed facility is suspended.

The regulation is advantageous to the department because it provides authority to take immediate action to suspend the operation of any residential facility if it becomes necessary to address egregious circumstances.

A major advantage to the Commonwealth is that the department will not have to monitor the operation of a provider that places residents at risk for an extended period while it is involved in a lengthy appeals process.

There are no known disadvantages to this regulation.

Department of Planning and Budget's Economic Impact Analysis:

**Summary of the Proposed Regulation.** Pursuant to Chapter 168 of the 2006 Acts of Assembly, the proposed regulations authorize the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services (Commissioner) to issue a summary order of suspension of the license of a group home or residential facility for adults when the conditions or the practices of the provider pose an immediate and substantial threat to individuals receiving services. The proposed regulations have already been in effect since December 2006 under emergency regulations.

**Result of Analysis.** The benefits likely exceed the costs for all proposed changes.

**Estimated Economic Impact.** Under the previous regulations, the Commissioner did not have the authority to expeditiously remove an immediate and substantial threat to individuals receiving services arising from the conditions or the practices of an adult group home or residential services provider. In the past, a facility could be closed only after a lengthy administrative procedure that normally included informal hearings, formal hearings, a decision, and a possible appeal. According to the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department) the previous administrative procedure could take approximately one year on average during which individuals could have continuously been exposed to an immediate and substantial threat.

With the proposed changes, the Commissioner now has the authority to issue a summary order of suspension of the license of a group home or residential facility for adults when the conditions or the practices of the provider pose an immediate and substantial threat to individuals receiving services.

The main benefit of the proposed regulations is having an additional and effective mean to be able to expeditiously address an existing immediate and substantial threat to health, safety, and welfare of individuals at a licensed facility's care. Also, by arming the Commissioner with authority to issue a summary order of suspension, the proposed regulations are likely to provide additional incentives to providers in preventing circumstances that could lead to an immediate and substantial threat to residents before they occur.

The main costs of the proposed regulations are expected to accrue to the licensed providers whose residents are exposed to an immediate and substantial threat to health, safety, and welfare. If forced to cease its operations as a result of a summary order of suspension, these facilities would lose revenues they were receiving. Given that a significant part of business costs are contractual obligations and will likely to continue to accrue even if the

facility is closed, the licensed businesses will likely suffer financial losses in the absence of inflow of revenues.

Other costs of the proposed changes are administrative costs involved in the issuance of a summary order of suspension by the Department. These could be in terms of additional staff time, additional costs of hearing officers, office supplies etc. However, a significant portion of these costs are expected to be offset by savings from avoiding the monitoring of a troubled facility for a prolonged period of time that would have been necessary without the proposed authority.

**Businesses and Entities Affected.** There are approximately 800 licensed facilities that are subject to the proposed regulations. These facilities have capacity to serve approximately 4,000 residents. However, due to vacancies, they are estimated to be serving approximately 3,200 residents in a given time. Also, the department expects no more than two cases annually which could affect up to 10 residents based on average capacity of a licensed facility.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** The proposed regulations are not expected to have a significant effect on employment. When a facility poses an immediate and substantial threat to individuals receiving services and is ordered to shut down, there would be a reduction in labor demand by that particular facility and a corresponding increase in labor for demand by other facilities where the residents are transferred.

**Effects on the Use and Value of Private Property.** The proposed regulations are not expected to have any significant effect on the use and value of private property unless a facility poses an immediate and substantial threat to individuals receiving services and is ordered to shut down. If a facility is shut down, there would be a negative impact on the asset value of such provider business. However, other facilities where the residents are transferred may experience a positive effect on their asset values.

The effect on the property value of a closed facility depends on its next best alternative use which could be negative or positive.

**Small Businesses: Costs and Other Effects.** All of the 800 providers subject to these regulations are considered to be small businesses. The proposed regulations do not impose any costs on these small businesses as long as they are in compliance with the regulations. However, if these facilities pose an immediate and substantial risk to the health, safety, and welfare of their residents, they could face closure and significant financial losses.

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Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations appear to be cost effective in achieving the intended goal which is to expeditiously address an immediate and substantial risk to health, safety, and welfare of individuals receiving services from a licensed provider.

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 36 (06). 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 concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*This proposed action adds a new section to the existing Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services that establishes a process for issuing an order of summary suspension of a license for group home or other residential services for adults in cases of immediate threat to the health, safety, and welfare of residents. It also includes provisions for scheduling and conducting an administrative hearing, including the appointment of a hearing officer by the Executive Secretary of the Supreme Court. The regulation is*

*currently in effect as an emergency regulation that will expire in December 2007.*

**12 VAC 35-105-115. Summary suspension.**

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the commissioner may issue an order of summary suspension of the license to operate any group home or residential facility for adults when he believes the operation of the home or facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the licensee as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;
2. The procedures for the hearing;
3. The hearing and appeal rights; and
4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended, to the commissioner within five business days of the hearing.

G. The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The commissioner shall issue and serve on the group home or residential facility for adults or its designee by

personal service or by certified mail, return receipt requested either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendation, and (ii) notice that the group home or residential facility may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The licensee may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that any other legal guardians or responsible family members are informed of the pending action.

VA.R. Doc. No. R07-93; Filed June 5, 2007, 3:54 p.m.

## **Final Regulation**

**Title of Regulation:** **12 VAC 35-210. Regulations to Govern Temporary Leave from State Mental Health and State Mental Retardation Facilities (adding 12 VAC 35-210-10 through 12 VAC 35-210-120).**

**Statutory Authority:** §§ 37.2-203 and 37.2-837 of the Code of Virginia.

**Effective Date:** July 25, 2007.

**Agency Contact:** Marion Greenfield, Director, Office of Quality Management, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-4516, FAX (804) 786-8623, or email marion.greenfield@co.dmhmrzas.virginia.gov.

**Summary:**

*The regulation governs the general process and establishes requirements for granting temporary leave to individuals receiving services in state mental health and mental retardation facilities. The regulation requires state facilities to include plans for temporary leave as part of individual treatment planning and gives the state facility director final authority to grant this leave. The regulation also defines the types and duration of leave*

*that may be authorized, requires documentation, and defines a "responsible person" for an individual who is on leave status. Provisions also guide state facilities in managing situations when an individual becomes ill or injured during leave, or fails to return to the state facility as scheduled.*

*Changes made since publication of the proposed regulation include (i) clarifying language, (ii) conforming text for consistency with the Code of Virginia and consistency with other parts of the regulation, and (iii) providing for trial visits that are arranged for individuals who may be preparing for discharge to a facility in the community.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

### CHAPTER 210.

#### REGULATIONS TO GOVERN TEMPORARY LEAVE FROM STATE MENTAL HEALTH AND STATE MENTAL RETARDATION FACILITIES.

#### **12 VAC 35-210-10. Authority and applicability.**

This regulation is adopted pursuant to § 37.2-837 B of the Code of Virginia to establish a process [ to facilitate community integration ] and the conditions for granting a trial or home visit to individuals admitted to [ ~~mental health and mental retardation facilities~~ state hospitals or training centers ] operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

This regulation shall not apply to individuals receiving services in a facility who are committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, Title 19.2 or Title 53.1 of the Code of Virginia.

#### **12 VAC 35-210-20. Definitions.**

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

[ "Authorized representative" or "AR" means a person permitted by law or the State Mental Health, Mental Retardation, and Substance Abuse Services Board's regulations to authorize the disclosure of information; to consent to treatment and services, or participation in human research; and to authorize the disclosure of information on behalf of an individual who lacks the mental capacity to make these decisions. ]

[ "~~Case management community~~ "Community ] services board" [ ~~is a citizen board~~ means the public body ] established pursuant to § 37.2-501 of the Code of Virginia that [ ~~serves the area in which an adult resides or in which~~

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~~a minor's parent, guardian, or legally authorized representative resides. The case management community services board (CSB) is responsible for case management, liaison with the state facility when an individual is admitted to a state hospital or training center, and discharge planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual chooses to reside in a different locality after discharge from the facility, the community services board serving that locality becomes the case management CSB provides mental health, mental retardation, and substance abuse services to individuals within each city or county that established it. For the purpose of these regulations, community services board also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia ]~~

~~"Day pass" means authorized leave from the facility without a staff escort generally occurring during the day and not extending overnight.~~

~~"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

~~"Family visit" means an authorized overnight absence from a state hospital or training center that allows an individual to spend time with family members, [ a legally an ] authorized representative, or other responsible person or persons.~~

~~"Individual" means a person who is receiving services in a state hospital or training center. This term includes the terms "consumer," "patient," "resident," and "client."~~

~~[ "Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that includes but is not limited to an individual's treatment plan, functional plan, habilitation plan, or plan of care that meets the needs and preferences of an individual and describes the measurable goals, objectives, and expected outcomes.~~

~~"Legally authorized representative" or "LAR" means a person permitted by law or regulations to give informed consent to treatment, including medical treatment and participation in human research, and to authorize the disclosure of information on behalf of an individual who lacks the mental capacity to make these decisions. ]~~

~~"Missing person" means an individual who is not physically present when and where he should be and his absence cannot be accounted for or explained.~~

~~"Responsible person" means an individual's parent, guardian, relative, friend, or other person whom the facility director determines is capable of providing the individual with the needed care and supervision, and if the individual has [ a LAR an AR ] for whom the [ LAR AR ] has given~~

~~written consent to supervise the individual during temporary leave from the facility.~~

~~[ "Services plan" means a plan that defines and describes measurable goals, objectives and expected outcomes of services that are designed to meet an individual's specific and unique treatment needs. The term "services plan" may include but is not limited to the terms, "individualized services plan," "treatment plan," "habilitation plan," or "plan of care."~~

~~"Services record" means all clinical and medical documentation that the facility maintains about an individual who receives services. ]~~

~~"State facility" or "facility" means a hospital or training center operated by the department for the care and treatment of individuals with mental illness or mental retardation.~~

~~"Trial visit" means an authorized overnight absence from a state facility without a staff escort for the purpose of assessing an individual's readiness for discharge. Trial visits do not include special hospitalizations, facility-sponsored summer camps, or other facility-sponsored activities that involve staff supervision.~~

## **12 VAC 35-210-30. General requirements for temporary leave.**

~~A. Directors of state facilities shall develop written [ operating ] policies [ and procedures ] for authorizing and implementing the following types of temporary leave from the facility:~~

- ~~1. Day passes for periods that do not extend overnight;~~
- ~~2. Family visits and trial visits for a maximum of 28 consecutive days per episode for individuals in training centers; and~~
- ~~3. Family visits and trial visits for a maximum of 14 consecutive days per episode for individuals in state hospitals.~~

~~B. The justification for all temporary leave shall be documented in the [ individual's services record ISP ]. This documentation shall include:~~

- ~~1. The reason for granting the specific type of leave;~~
- ~~2. The benefit to the individual;~~

~~[ 3. How the individual participated in the decision-making related to temporary leave ; and~~

~~3. 4. ] How the leave addresses a specific objective or objectives in the individual's [ services plan ISP ]; and~~

~~[ 4. 5. ] The signature of the facility director or designee authorizing the temporary leave.~~

~~[ C. Exceptions to time limitations for family visits and trial visits. Facility directors may extend the time limits, established in subdivision A of this subsection, for family visits or trial visits in individual cases when they determine that the circumstances justify an extension. When an extension is granted, the reasons and justification to support the extension shall be documented in the individual's services record. This documentation shall include:~~

- ~~1. The reason for the time extension;~~
- ~~2. The benefit to the individual; and~~
- ~~3. The signature of the facility director or designee authorizing the extension.~~

~~D. C. ] Responsible persons during leave.~~

~~1. Adults and emancipated minors receiving services in state hospitals who are granted a day pass, family visit, or trial visit may be:~~

- ~~a. Placed in the care of a parent, spouse, relative, guardian, [ a facility licensed by the department ] or other responsible person or persons; or~~
- ~~b. Authorized to leave the facility on his own recognizance, when, in the judgment of the [ individual and the ] facility director, this leave is appropriate.~~

~~2. Individuals in training centers and minors receiving services in any state hospital, who are granted a day pass, family visit, or trial visit shall be placed in the care of:~~

- ~~a. The parent, legal guardian, or [ LAR AR ]; or~~
- ~~b. Another relative, friend, or other responsible person or persons, [ or a facility licensed by the department ] with the prior written consent of the [ LAR AR ].~~

~~[ D. The state facility granting a trial or family visit to an individual shall not be liable for his expenses during the period of that visit. Expenses incurred by an individual during a trial visit or family visit shall be the responsibility of the person into whose care the individual is entrusted or the appropriate local department of social services of the county or city of which the individual at the time of his admission to the facility, as appropriate, pursuant to § 37.2-837 B of the Code of Virginia. ]~~

**12 VAC 35-210-40. Day passes.**

Each facility shall have specific policies for day passes that include:

1. Criteria for granting day passes;
2. Designation of staff members who are authorized to issue day passes; and

3. Any forms to be used by the facility regarding the issuance of day passes.

**12 VAC 35-210-50. Trial visits.**

A. The facility and the [ ~~case management~~ ] CSB may arrange trial visits for the purpose of assessing an individual's readiness for discharge from the facility. These trial visits shall be planned during the regularly scheduled review of the [ ~~individual's services plan~~ ISP ] or at other times in collaboration with (i) the individual, (ii) the individual's family or [ ~~LAR AR~~ ] or (iii) any other person or persons requested by the individual. [ ~~Plans~~ When trial visits are used in conjunction with discharge planning, the state facility treatment team shall meet with the individual to discuss his preferences for residential settings and give due consideration to his expressed preferences. If the treatment team cannot reasonably accommodate the individual's preferences, a member of the treatment team shall meet with the individual to discuss the reasons for this determination and the options that are available to him. The treatment team shall document in the individual's record that it has met with the individual to consider his preferences and review the available options. All plans ] for trial visits shall be documented in the [ ~~individual's services record~~ ISP ] and include consideration of the following:

1. The individual's preferences for residential setting; and
2. The individual's needs for support and supervision.

B. In advance of the trial visit, the facility shall work with the individual, [ ~~case management~~ ] CSB, and responsible persons, as appropriate, to develop an emergency contingency plan to ensure appropriate and timely crisis response.

**12 VAC 35-210-60. Family visits.**

A. Family visits may include visits with the individual's immediate or extended family, [ ~~LAR AR~~ ], friends, or other persons arranged by the family or [ ~~LAR AR~~ ].

1. Training centers shall plan family visits in collaboration with the individual, his family or [ ~~LAR AR~~ ], and when appropriate, the [ ~~case management~~ ] CSB;
2. State hospitals shall plan family visits in collaboration with the individual and his family or [ ~~LAR AR~~ ], and when appropriate, the [ ~~case management~~ ] CSB.

B. When planning family visits facilities shall:

1. Develop plans to address potential emergencies or unexpected events;

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2. Consider whether the visit has an impact on the treatment or training schedule and make appropriate accommodations; and

3. Give consideration to the individual's medical, behavioral, and psychiatric status.

## **12 VAC 35-210-70. Required authorizations and documentation.**

The facility shall not release individuals for trial visits or family visits unless the required authorizations have been obtained and documentation is included in the individual's [ ~~services~~ ] record.

## **12 VAC 35-210-80. Illness or injury occurring during a family or trial visit.**

A. When a facility is notified that an individual is injured or ill and requires medical attention while on a trial or family visit, the facility director or designee shall notify the (i) facility medical director, (ii) treatment team leader, (iii) facility human rights advocate, and (iv) [ ~~ease management~~ the ] CSB. The facility director shall also ensure that all events are reported in accordance with department and facility policy and protocol for risk management.

B. The facility director or designee may assist the [ ~~ease management~~ ] CSB or the responsible person to identify an appropriate setting for the evaluation and treatment of the individual. The facility medical director may also consult with the physician and any other medical personnel who are evaluating or treating the individual. However, the individual shall not [ ~~be returned~~ return ] to the facility until he is medically stabilized.

C. Individuals who have been admitted to a state hospital on a voluntary basis and require acute hospital admission for illness or injury while on temporary leave from the state hospital may voluntarily return to the state hospital following discharge from an acute care hospital if they continue to meet the admission criteria.

D. If an individual has been legally committed to a state facility and his length of stay in an acute care hospital exceeds the period of commitment to the state facility, the facility shall:

1. Discharge the individual in collaboration with the [ ~~ease management~~ ] CSB; and

2. Notify the individual or his [ ~~LAR AR~~ ] in writing of the discharge.

[ ~~E. All medical expenses incurred by an individual during a trial visit or family visit are the responsibility of the person into whose care the individual was entrusted or the appropriate local department of social service of the county or city of which the individual was resident at the time of~~

~~his admission to the facility pursuant to § 37.2-837-B of the Code of Virginia.~~

~~F. E. ] If the facility is notified that an individual has died while on temporary leave, the facility director or designee shall:~~

~~1. Notify the appropriate facility staff, including, the medical director, risk manager, treatment team leader, and human rights advocate;~~

~~2. Notify the [ ~~ease management~~ appropriate ] CSB [ ~~, if necessary~~ ];~~

~~3. File the appropriate documentation of the death in accordance with department policies and procedures; and~~

~~4. Notify the state medical examiner in writing of the death.~~

## **12 VAC 35-210-90. Failure to return to training centers.**

A. When an individual fails to return to a training center [ ~~facility~~ ] from any authorized day pass, family visit, or trial visit within two hours of the scheduled deadline, the facility director or designee shall contact the responsible person into whose care the individual was placed to determine the cause of the delay.

B. Upon the request of the responsible person, the facility director may extend the period of a family or trial visit for up to 72 hours beyond the time the individual was scheduled to return when:

1. An emergency or unforeseen circumstances delay the individual's return to the training center; and

2. The individual's [ ~~LAR AR~~ ] agrees to the extension.

Extensions for emergency or unforeseen circumstances shall not be granted in advance of the family visit or trial visit. [ ~~See 12 VAC 35-210-30 C for the conditions and requirements for granting individual exceptions to specified time limitations in advance of family or trial visits.~~ ]

C. If an individual does not return to the training center from a trial visit or family visit within two hours of the established deadline for his return and the [ ~~facility training center~~ ] is unable to contact the responsible person into whose care the individual was placed, the facility director or designee may extend the period of the visit for up to 24 hours if, in his judgment, the extension is justified. During this period the facility shall continue efforts to contact the responsible person.

D. If an individual does not return to the training center and his absence cannot be accounted for or reasonably explained by the responsible person or a family member,

he shall be classified as a missing person, and the facility [ ~~will~~ shall ] follow the department's policies and procedures for management of individuals who are missing.

E. If no emergency or unforeseen circumstances exist that may prevent the individual's return to the facility, and the responsible person does not agree to the return of the individual to the training center as scheduled, the facility director shall contact the [ ~~ease management~~ ] CSB and discharge the individual. Written notification of discharge shall be sent to the individual's [ ~~LAR AR~~ ].

**12 VAC 35-210-120. Failure to return to hospitals.**

A. When an individual fails to return to a state hospital from any authorized day pass, family visit, or trial visit within two hours of the scheduled deadline, the facility director or designee shall contact the responsible person into whose care the individual was placed to determine the cause of the delay.

B. Upon the request of the responsible person, the facility director may extend the period of the visit for up to 72 hours beyond the time the individual was scheduled to return when:

- 1. An emergency or unforeseen circumstances delay the individual's return to the hospital; and
- 2. The individual or his [ ~~LAR AR~~ ] agree to the extension.

Extensions for emergency or unforeseen circumstances shall not be granted in advance of the family visit or trial visit. [ ~~See 12 VAC 35 210 30 C for the conditions and requirements for granting individual exceptions to specified time limitations in advance of family or trial visits.~~ ]

C. If an individual agrees to return to the facility, the facility director or designee may assist the individual to make arrangements for his return in collaboration with the [ ~~ease management~~ ] CSB and the responsible person, when necessary.

D. If an individual is unwilling to return to the facility, the facility director or his designee shall contact the responsible person to determine whether continued hospitalization is appropriate or the individual should be discharged.

- 1. If there is no evidence that the individual meets the criteria for hospitalization then the facility shall discharge the individual in collaboration with the [ ~~ease management~~ ] CSB.
- 2. If the individual has been legally committed to the hospital and the facility director determines that the individual may require further hospitalization [ and he

currently meets commitment criteria,] or that the individual cannot be located, the facility director shall:

- a. Ensure that the commitment order is valid;
- b. Classify the individual as a missing person;
- c. Alert the [ ~~ease management~~ ] CSB pursuant to the department's policies and procedures for managing of individuals who are missing from state facilities;
- d. Issue a warrant for the individual's return [ under § 37.2-834 of the Code of Virginia ]; and
- e. Arrange for a physical examination at the time of the individual's return to the facility.

3. If the individual is on voluntary status or the commitment order is no longer valid the facility director, after consulting with the appropriate clinical staff, shall:

- a. Discharge the individual; and
- b. Alert the [ ~~ease management~~ ] CSB of the individual's status.

F. When it is determined that an individual who has been legally committed to the facility [ ~~and has been on temporary leave~~ ] must be returned to the facility and the individual refuses to return on his own accord, the facility director or his designee shall:

- 1. Issue a warrant for the individual's return [ under § 37.2-834 of the Code of Virginia ] to the hospital; and
- 2. Contact the [ ~~ease management~~ ] CSB upon revocation of the trial visit.

VA.R. Doc. No. R05-30; Filed May 29, 2007, 11:10 a.m.

**TITLE 13. HOUSING**

**VIRGINIA HOUSING DEVELOPMENT AUTHORITY**

**REGISTRAR'S NOTICE:** The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

**Proposed Regulation**

**Title of Regulation:** 13 VAC 10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13 VAC 10-180-10, 13 VAC 10-180-50 and 13 VAC 10-180-60).

**Statutory Authority:** § 36-55.30:3 of the Code of Virginia.

**Public Hearing Date:** July 9, 2007 - 10 a.m.

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Public comments may be submitted until 5 p.m. on July 9, 2007.

**Agency Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, or email judson.mckellar@vhda.com.

**Summary:**

*The proposed amendments (i) increase the minimum construction cost to receive credits from \$7,500 to \$15,000 per unit, (ii) increase the point category for developments located in a revitalization area from 25 to 30 points, (iii) add the Rural Development 538 program interest credit funding as an option to qualify for points in the subsidized funding category, (iv) limit points for subsidized financing if an identity of interest exists between the owner and the applicant, (v) revise the amenity category for high efficiency heat pumps and gas furnaces, (vi) delete the three-point amenity category for an STC rating of 52 or more between floors, (vii) add a five-point amenity category if all units have hot water heaters that meet the EPA's Energy Star qualified program, (viii) add U.S. Green Building Council "LEED" Certification as an additional option to EarthCraft Certification and increase this point category from 15 to 30 points, (ix) add a 25-point category for developers that agree to use a VHDA-certified property Management Company to manage the development, (x) add a 15-point category for units that meet Universal Design standards, (xi) add a five-point category for Architects of Record who have attended an EarthCraft training seminar, (xii) allow a credit adjustment for the credit-per-unit point category calculation for developments receiving a bonus in credits that are located in both a Revitalization Area and also are in either a QCT or DDA, (xiii) allow the executive director to substitute credits when a development is delayed by lawsuit, (xiv) revise the requirements for the 15% Northern Virginia noncompetitive preservation pool, and (xv) make other miscellaneous administrative clarification changes.*

### 13 VAC 10-180-10. Definitions.

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

"Applicant" means an applicant for credits under this chapter and also means the owner of the development to whom the credits are allocated.

"Credits" means the low-income housing tax credits as described in § 42 of the IRC.

"Elderly housing" means any development intended to provide housing for elderly persons as an exemption to the provisions regarding familial status under the United States Fair Housing Act (42 USC § 3601 et seq.).

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices and other official pronouncements promulgated thereunder.

"IRS" means the Internal Revenue Service.

"Low-income housing units" means those units which are defined as "low income units" under § 42 of the IRC.

"Low-income jurisdiction" means any city or county in the Commonwealth with an area median income at or below the Virginia nonmetro area median income established by the U.S. Department of Housing and Urban Development ("HUD").

"Principal" means any person (including any individual, joint venture, partnership, limited liability company, corporation, nonprofit organization, trust, or any other public or private entity) that (i) with respect to the proposed development will own or participate in the ownership of the proposed development or (ii) with respect to an existing multi-family rental project has owned or participated in the ownership of such project, all as more fully described hereinbelow. The person who is the owner of the proposed development or multifamily rental project is considered a principal. In determining whether any other person is a principal, the following guidelines shall govern: (i) in the case of a partnership that is a principal (whether as the owner or otherwise), all general partners are also considered principals, regardless of the percentage interest of the general partner; (ii) in the case of a public or private corporation or organization or governmental entity that is a principal (whether as the owner or otherwise), principals also include the president, vice president, secretary, and treasurer and other officers who are directly responsible to the board of directors or any equivalent governing body, as well as all directors or other members of the governing body and any stockholder having a 25% or more interest; (iii) in the case of a limited liability company that is a principal (whether as the owner or otherwise), all members are also considered principals, regardless of the percentage interest of the member; (iv) in the case of a trust that is a principal (whether as the owner or otherwise), all persons having a 25% or more beneficial ownership interest in the assets of such trust; (v) in the case of any other person that is a principal (whether as the owner or otherwise), all persons having a 25% or more ownership interest in such other person are also considered principals; and (vi) any person that directly or indirectly controls, or has the power to control, a principal shall also be considered a principal.

"Qualified application" means a written request for tax credits which is submitted on a form or forms prescribed or

approved by the executive director together with all documents required by the authority for submission and meets all minimum scoring requirements.

"Qualified low-income buildings" or "qualified low-income development" means the buildings or development which meets the applicable requirements in § 42 of the IRC to qualify for an allocation of credits thereunder.

"Revitalization area" means any area for which the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located certifies as follows: (i) either (a) the area is blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions—dilapidation, obsolescence, overcrowding, inadequate ventilation, light or sanitation, excessive land coverage, deleterious land use, or faulty or inadequate design, quality or condition or (b) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area. The area within a redevelopment project, conservation project, or rehabilitation district established by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia shall be deemed a revitalization area without any such certification. Any such revitalization area must either (i) ~~have established boundaries at least a year old at the time applications are submitted and~~ include discussions from the locality of the type of developments that will be encouraged, the potential sources of funding, and services to be offered in the area; or (ii) be subject to a plan using Hope VI funds from HUD. A comprehensive plan does not qualify as certification of a revitalization area.

### **13 VAC 10-180-50. Application.**

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a

reasonable opportunity to comment on the developments. When scoring the applications, the executive director will award points to those applications that submit the form correctly within the deadlines established by the executive director, award no points to those applications that submit the form incorrectly within the deadlines established by the executive director and subtract points from those applications that fail to submit the form by such deadlines.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application for consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least ~~\$7,500~~ \$15,000 per unit.

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation

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with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), the site control document does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that

such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the director.

If an applicant submits an application for reservation or allocation of credits that contains a material

misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a ten-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

### **13 VAC 10-180-60. Review and selection of applications; reservation of credits.**

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or

characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals

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involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter.

In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$650,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.
  - a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)
  - b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)
2. Housing needs characteristics.
  - a. Submission of the form prescribed by the authority with any required attachments, providing such

information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13 VAC 10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (25 30 points)

d. If the proposed development is located in a qualified census tract as defined in § 42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13 VAC 10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, or the Rural Development for a below-market rate loan or grant or Rural Development's interest credit used to reduce the interest rate on loan financing to the applicable federal rate; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon

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Census Bureau data) with no other tax credit units in such census tract. (25 points)

### 3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

(b) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)

(c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

(d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)

(e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)

(f) If every unit in the development is heated and air conditioned with either (i) heat pump units with both a SEER rating of 14.0 or more and a

HSPF rating of ~~9.0~~ 8.2 or more and a variable speed air handling unit or thru-the-wall heat pump equipment that has an EER rating of ~~12.0~~ 11.0 or more or (ii) air conditioning units with a SEER rating of 14.0 or more and a variable speed air handling unit, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

~~(g) If the development has a minimum STC (sound transmission class) rating of 52 for the floor construction between units. (3 points)~~

~~(h)~~ (g) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

~~(i)~~ (h) If each bathroom contains only low-flow faucets and showerheads as defined by the authority. (3 points)

~~(j)~~ (i) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

(j) If all the water heaters meet the EPA's Energy Star qualified program requirements. (5 points)

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)

(3) The following points are available to proposed developments which rehabilitate or adaptively reuse an existing structure:

(a) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10-year warranty against breakage of the seal. (3 points)

(b) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the

Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 60 points.

c. Any nonelderly development in which the greater of 5 units or 10% of the units (i) provide federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (if special needs includes mobility impairments, the units described above must include roll-in showers and roll-under sinks and ranges). (50 points)

d. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

e. Any nonelderly development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

f. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus lines. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

g. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building

certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such EarthCraft certification. (~~45~~ 30 points)

h. Any development for which the applicant agrees to use an authority-certified property manager to manage the development. (25 points)

i. If units are constructed to meet the authority's universal design standards. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected major violation of health, safety and building codes. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for noncompliance that has not been corrected by the time a Form 8823 is filed by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823, unless the executive director

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determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the extended use period of such development. (minus 25 points)

g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)

h. Evidence that the proposed development's architect has completed the Fair Housing Accessibility First program offered by HUD or an equivalent organization and the certificate is attached with the architect's certification. (5 points)

i. Evidence that the proposed development's architect has attended the authority's Universal Design symposium and the certificate of attendance is attached with the architect's certification. (5 points)

j. Evidence that the proposed development's architect has attended an EarthCraft Virginia multifamily professional training seminar and the certificate of attendance is attached with the architect's certification. (5 points)

## 6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed

development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

## 7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are

further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13 VAC 10-180-70 and give the qualified nonprofit veto power over any refinancing of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application that is assigned a total number of points less than a threshold amount of 300 points (250 points for developments financed with tax-exempt bonds) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the

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extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the

executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such

available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or

will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to

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any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable,

that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will

comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development intended to serve people with disabilities and (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director. Any such reservations made in any calendar year may be up to 3.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly development ~~within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City~~ that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring

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process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, ~~and~~ (iv) participation by the local government in the form of low-interest loan/grant moneys from such locality's affordable housing funds in an amount equal to or greater than 20% of the total development costs, and (v) the application for the development must obtain as many points as the lowest ranked development that could have received a partial reservation of credits from the geographic pool in which the applicant would have been ranked in the most recent competitive scoring round. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year, of which at least 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year will be reserved for developments within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. ~~Applicants and the principals of such applicant applying for credits under this paragraph may not submit an application for credits for the same development under the competitive scoring process in this section.~~

VA.R. Doc. No. R07-272; Filed June 6, 2007, 10:32 a.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Final Regulation

Titles of Regulations: **16 VAC 25-75. General Industry Standard for Telecommunications, General, Approach Distances (adding 16 VAC 25-75-10).**

**16 VAC 25-90. Federal Identical General Industry Standards (29 CFR Part 1910) (repealing 16 VAC 25-90-1910.268 (b) (7)).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: July 26, 2007.

Agency Contact: John Crisanti, Policy Analyst Senior, Department of Labor and Industry, Powers Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email john.crisanti@doli.virginia.gov.

#### Summary:

*This regulatory action provides that telecommunications workers be required to protect themselves from both electrical parts upon which they are currently working and from electric wires adjacent to any area in which they are working by repealing language in the current telecommunications standard from the federal identical regulation (29 CFR 1910.268) and replacing it with a more stringent standard patterned on the requirements in the electric power generation, transmission, and distribution standard (29 CFR 1910.269).*

*The final regulation clarifies that when an employee is wearing insulating gloves and/or sleeves in accordance with 16 VAC 25-90-1910.269(l)(3), those insulating gloves or insulating gloves and sleeves will only be considered insulation of that part of the employee's extremities covered by the gloves and/or sleeves. If other parts of the employee's body or extremities are exposed to energized parts inside the minimum approach distances, additional protective measures outlined in 16 VAC 25-75-1910.268(b)(7)(i) must be provided. The amendment does not affect the minimum approach distances referenced in § 1910.268(b)(7) and contained in Table R-2.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

#### CHAPTER 75. GENERAL INDUSTRY STANDARD FOR TELECOMMUNICATIONS, GENERAL, APPROACH DISTANCES.

#### **16 VAC 25-75-10. General; approach distances.**

A. No employee shall be permitted to approach or take any conductive object [ ~~without an approved insulating handle~~ ] closer to exposed energized parts than shown in subsection B (Table R-2) of this section unless:

1. The employee is insulated or guarded from the energized parts (insulating gloves or insulating gloves and sleeves worn in accordance with 16 VAC 25-90-1910.269(l)(3) are [ only ] considered insulation of [ that

~~part of ] the [ employee only with regard to the energized part upon which work is being performed employee's extremities covered by the insulating gloves or insulating gloves and sleeves ]):~~

~~2. The energized part is insulated or guarded from him and any other conductive object at a different potential; or~~

~~3. The power conductors and equipment are deenergized and grounded.~~

B. Approach distances to exposed energized overhead power lines and parts.

TABLE R-2.

Approach Distances to Exposed Energized Overhead Power Lines and Parts.

<u>Voltage range (phase to phase, RMS)</u>	<u>Approach distance (inches)</u>
<u>300 V and less</u>	<u>(1)</u>
<u>Over 300 V, not over 750V</u>	<u>12</u>
<u>Over 750 V not over 2 kV</u>	<u>18</u>
<u>Over 2 kV, not over 15 kV</u>	<u>24</u>
<u>Over 15 kV, not over 37 kV</u>	<u>36</u>
<u>Over 37 kV, not over 87.5 kV</u>	<u>42</u>
<u>Over 87.5 kV, not over 121 kV</u>	<u>48</u>
<u>Over 121 kV, not over 140kV</u>	<u>54</u>

<sup>(1)</sup> Avoid contact.

**EDITOR'S NOTE:** The Safety and Health Codes Board is repealing subdivision (b)(7) of 16 VAC 25-90-1910.268. The portion of the regulation being repealed is set out; the remainder of the section is not set out.

**16 VAC 25-90-1910.268. Telecommunications.**

\* \* \*

~~(b) General.~~

~~(7) Approach distances to exposed energized overhead power lines and parts. The employer shall ensure that no employee approaches or takes any conductive object closer to any electrically energized overhead power lines and parts than prescribed in Table R-2, unless:~~

~~(i) The employee is insulated or guarded from the energized parts (insulating gloves rated for the voltage involved shall be considered adequate insulation), or~~

~~(ii) The energized parts are insulated or guarded from the employee and any other conductive object at a different potential, or~~

~~(iii) The power conductors and equipment are deenergized and grounded.~~

\* \* \*

VA.R. Doc. No. R05-234; Filed June 4, 2007, 4:09 p.m.



**TITLE. 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

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

**Fast-Track Regulation**

Title of Regulation: **18 VAC 10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18 VAC 10-20-230).**

Statutory Authority: §§ 54.1-201, 54.1-404, and 54.1-411 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until August 24, 2007.

(See Calendar of Events section for additional information)

Effective Date: September 10, 2007.

Agency Contact: Mark N. Courtney, Executive Director, Board of Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, or email apelscidla@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia empowers the regulatory boards to promulgate regulations that are necessary to ensure continued competency, prevent deceptive or misleading practices by practitioners, and effectively administer the regulatory system administered by the regulatory board.

Section 54.1-404 of the Code of Virginia provides the board the authority to promulgate regulations governing its own organization, the professional qualifications of applicants, the requirements necessary for passing examinations in whole or in part, the proper conduct of its examinations, the implementation of exemptions from license requirements, and the proper discharge of its duties.

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Section 54.1-411 of the Code of Virginia requires the board to adopt regulations governing the registration of persons, corporations, partnerships, limited liability companies, sole proprietors and other entities offering or rendering the practice of architecture, engineering, land surveying or offering the title of certified landscape architect or certified interior designer.

Purpose: It was recently discovered that engineering degrees could be purchased online and awarded based on life experience. Such degrees are of dubious value and could potentially allow an individual, who would otherwise not qualify for licensure, to become licensed and thereby endanger the health, safety and welfare of the public. The amendment would clarify that legitimate degrees are required to meet the educational standards of the board's regulations (and consequently prohibit mail-order, life experience degrees) for engineer-in-training and professional engineer applicants.

Substance: The amendment to 18 VAC 10-20-230 would prohibit mail-order, life experience degrees for engineer-in-training and professional engineer applicants.

Issues: The public and the Commonwealth are better protected in that individuals with dubious educational credentials would not be allowed to become licensed without sufficient experience to address shortcomings in their education. There are no anticipated disadvantages to the public or the Commonwealth.

Rationale for Using Fast-Track Process: There will be no adverse impact on the public and no opposition is anticipated. In addition, the board never intended to accept such degrees and, until recently, believed that its regulations would prevent such degrees from satisfying the board's current requirements.

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

The Board of Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (Board) proposes to require that applicants for licensure complete their prerequisite education at an accredited or approved institution or program.

Summary of the Proposed Regulation. The Board of Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (Board) proposes to require that applicants for licensure complete their prerequisite education at an accredited or approved institution or program.

Result of Analysis. There is insufficient information to compare the magnitude of costs versus benefits for this regulatory change. Possible costs and benefits are discussed in the estimated economic impact section below.

Estimated Economic Impact. Current regulation contains multiple paths to licensure that require different combinations of education and experience. Required education can currently be obtained at a program that is approved by the Accreditation Board for Engineering and Technology (ABET) or from a program that does not have ABET approval. Experience requirements for licensure (and engineer in training (EIT) designation) are greater for individuals who complete non-approved education. There are currently no explicit restrictions on what non-approved education is acceptable to the Board.

Current regulation contains two paths to EIT designation using non-approved education. These paths require between two and six years of "progressive, qualifying engineering experience" and successful completion of the Fundamentals of Engineering (FE) exam. Once individuals using these paths attain EIT designation, they would need to get two to four more years of qualifying experience and successfully complete the Principles of Engineering (PE) exam before they are fully licensed as engineers<sup>1</sup>. Additionally, there is a path to licensure using non-approved education which bypasses the need to gain EIT designation. This path requires individuals to have 20 years of qualifying experience and to successfully complete the PE exam before licensure.

The Board recently received an application for examination which, for the first time, used a "life-experience" degree to meet education requirements. This degree came from a non-accredited program that does not require classroom instruction or testing, but instead relies on an individual's assertion of relevant work experience to meet degree requirements. Such programs are likely dubious, but do meet current regulatory requirements. The Department of Professional and Occupational Regulation (DPOR) reports that it was never the intent of the Board to allow individuals using this type of education to be licensed; as a consequence, the Board now proposes to require all non-approved education to be completed at a college or university that is approved or accredited by an accrediting organization that is recognized by the U.S. Department of Education.

This regulatory change will assure that applicants for licensure complete their education at institutions (both brick-and mortar and virtual) that require classroom instruction and testing to insure competency. To the extent that restricting education in this manner ensures that future engineers get the knowledge that is necessary for competency, this regulatory change will benefit the public. This change will only benefit the public, however, if

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<sup>1</sup> In order to sit for the PE exam, applicants on these two paths would have had to have, respectively, six and ten years of qualifying experience. The Department of Professional and Occupational Regulation (DPOR) reports that this experience is cumulative and includes experience already verified before these applicants sat for the FE exam.

necessary knowledge could only be obtained through classroom instruction rather than on-the-job training or independent study. In theory, successful completion of Board exams would assure that applicants have the knowledge necessary for competency. DPOR reports, however, that there are concerns that experience requirements (which require employers to certify that candidates have successfully completed qualifying experience) and Board exams are not sufficient stopgaps against licensure of incompetent individuals. DPOR could not readily obtain experience certification or exam scores for the individual who had used a "life experience" degree to meet education requirements, but also does not report that there have been any complaints concerning this individual's performance.

DPOR reports that "life experience" degrees can be obtained for \$500-\$1,000. Research indicated that tuition for a four year education at an accredited state college or university ranges from \$15,000 (for in-state students) to \$105,000 (for out-of-state students). Four years of tuition at an accredited private college or university can exceed \$140,000. Individuals in the process of obtaining a traditional education also incur other explicit costs for books and supplies as well as the implicit cost of the considerable time spent on educational activities. This regulatory change will impose a (possibly quite large) cost on individuals who might wish to use a cheaper "life experience" degree to meet Board educational requirements, but who will now be barred from doing so. The use of "life experience" degrees has the potential to lower the total cost of obtaining engineering licensure and, consequently, has the potential to encourage more individuals to become engineers. If the supply of engineers increases, the market price of their services would likely decrease. Because of this, the proposed regulation may also impede future cost savings for users of engineering services.

**Businesses and Entities Affected.** This regulatory change will affect all individuals who will apply for licensure as engineers and who have not completed an ABET approved education program. DPOR does not keep a count of how many individuals are newly licensed each year, but does report that the Board currently licenses 24,282 engineers. A year ago the Board had only 23,761 engineer licensees. As DPOR believes that the number of licensees who choose to not renew their license is negligible, the Board appears to have licensed roughly 500 engineers in the last year. DPOR reports that a small fraction of these individuals would have gained licensure using one of the affected paths to licensure.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory change.

**Projected Impact on Employment.** This proposed regulatory change will likely not cause a decrease in the number of individuals currently employed as engineers, but may suppress increases in the pool of available engineers that might have occurred if education was not restricted to accredited or approved institutions. If the available pool of engineers was larger, the market price for their services would likely decrease and the quantity demanded for those services would likely increase.

**Effects on the Use and Value of Private Property.** The proposed effective ban on the use of "life experience" degrees for licensure will most likely not significantly affect the use and value of most engineering-firms, but will impede the potential for a small number of individuals to become licensed engineers at a significantly lower cost than will be available without the "life experience" degree option.

**Small Businesses: Costs and Other Effects.** Small businesses will likely not incur any extra costs on account of this regulatory change. Small businesses that employ engineers would, however, lose the possibility of cost savings that might have arisen if this regulatory change were not to occur and less expensive licensure options increased the available pool of employable engineers.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The Board might be able to assure that they license only competent engineers by beefing up the FE and PE examinations rather than tightening education requirements (if these exams are currently insufficiently robust to insure the competency of test takers no matter how they gained their knowledge of engineering). There are 662 engineering firms that do business in the Commonwealth and qualify as 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

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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: Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget.

Summary:

*The amendment clarifies that legitimate degrees are required to meet the educational standards of the board's regulations and consequently prohibit mail-order, life-experience degrees for engineer-in-training and professional engineer applicants.*

**18 VAC 10-20-230. Education.**

A. Any applicant who has earned a degree from an institution outside the United States shall have the degree authenticated and evaluated by an educational credential evaluation service or by ABET if credit for such education is sought, unless the applicant has also earned an equivalent or higher level engineering degree from a United States institution where the program has been accredited by ABET. The board reserves the right to reject, for good cause, any evaluation submitted by the applicant.

B. Except for those degrees earned from an institution outside the United States and subject to the provisions of subsection A of this section, all nonapproved engineering curriculums, related science curriculums, and nonapproved engineering technology curriculums of four years or more shall be from an accredited college or university that is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.

**NOTICE:** The forms used in administering 18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Architect License Application, 0401LIC (rev. ~~8/5/05~~ 5/16/07).

Verification of Architect Examination and Licensure Form, 0401ELVF (rev. 3/1/02).

Architect Experience Verification Form, 0401 EXP (rev. 3/26/02).

Architect Client Experience Verification Form, 0401CEXP (rev. 3/1/02).

Architect Degree Verification Form, 0401DEG (rev. 3/1/02).

Architect Reference Form, 0401REF (rev. 2/23/05).

Architect License Reinstatement Application, 0401REI (rev. 12/1/04).

Architect License Renewal Form, 0401REN, (eff. 4/11/05)

Professional Engineer License Application, 0402LIC (rev. ~~8/5/05~~ 2/1/07).

Professional Engineer Reference Form, 0402REF (rev. 3/1/02).

Professional Engineer License Reinstatement Application, 0402REI (rev. 12/1/04).

Professional Engineer and Engineer-in-Training Degree Verification Form, 04EDEG (rev. 3/1/02).

Professional Engineer and Engineer-in-Training Experience Verification Form, 04EEXP (rev. 2/19/04).

Engineer Verification of Examination and Licensure Form, 04EELVF (rev. 3/1/02).

Engineer-in-Training Designation Application, 0420DES (rev. ~~12/1/04~~ 2/1/07).

Engineer-in-Training Reference Form, 0420REF (rev. 3/1/02).

Course Requirements for Engineering Technology Program, 0402CREQ (eff. 2/19/03).

Professional Engineer License Renewal Form, 0402REN, (eff. 4/11/05).

Land Surveyor License Application, 0403LIC (rev. ~~6/9/06~~ 2/1/07).

Land Surveyor License Reinstatement Application, 0403REI (rev. 12/1/04).

Land Surveyor B License Application, 0404LIC (rev. ~~12/1/04~~ 2/1/07).

Land Surveyor B License Reinstatement Application, 0404REI (rev. 12/1/04).

Land Surveyor and Land Surveyor-in-Training Degree Verification Form, 04LSDEG (rev. ~~3/1/02~~ 2/1/07).

Land Surveyor Verification of Examination and Licensure Form, 04LSELVF (rev. ~~7/21/03~~ 2/1/07).

Land Surveyor & Land Surveyor-in-Training Experience Verification Form, 04LSEXP (rev. ~~4/23/03~~ 2/1/07).

~~Land~~ Surveyor-In-Training Designation Application, 0430DES (rev. ~~6/9/06~~ 2/1/07).

Land Surveyor License Renewal Form, 04LSREN, (eff. 4/11/05).

Landscape Architect Certificate Application, 0406CERT (rev. ~~8/5/05~~ 2/1/07).

Verification of Landscape Architect Examination and Certification Form, 0406ELVF (rev. 3/1/02).

Landscape Architect Experience Verification Form for Examination and Comity Applicants, 0406EXP (rev. 6/23/05).

Landscape Architect Degree Verification Form, 0406DEG (rev. 3/1/02).

Landscape Architect Certificate Reinstatement Application, 0406REI (rev. 12/1/04).

Landscape Architect Certificate Renewal Form, 0406REN, (eff. 4/11/05).

Interior Design Certificate Application, 0412CERT (rev. ~~8/5/05~~ 2/1/07).

Verification of Interior Designer Examination and Certification Form, 0412ELVF (rev. 3/1/02).

Interior Designer Degree Verification Form, 0412DEG (rev. 3/1/02).

Interior Designer Experience Verification Form, 0412EXP (rev. 8/11/05).

Interior Designer Certificate Reinstatement Application, 0412REI (rev. 3/1/02).

Interior Design Certificate Renewal Form, 0412REN, (eff. 4/11/05).

Professional Corporation Registration Application, 04PCREG (rev. 6/2/06).

Professional Corporation Branch Office Registration Application, 04BRPC (eff. 6/7/06).

Business Entity Registration Application, 04BUSREG, (rev. 6/2/06).

Business Entity Branch Office Registration Application, 04BRBUS (eff. ~~6/7/06~~ rev. 1/3/07).

Professional Limited Liability Company Application Form, 04PLCREG (rev. 6/2/06).

Professional Limited Liability Company Branch Office Registration Application, 04BRPLC (rev. 6/7/06).

VA.R. Doc. No. R07-258; Filed May 30, 2007, 3:39 p.m.

## Final Regulation

**Title of Regulation:** 18 VAC 10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations (amending 18 VAC 10-20-420 [ , 18 VAC 10-20-440 ] and 18 VAC 10-20-450).

**Statutory Authority:** §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.

**Effective Date:** August 1, 2007.

**Agency Contact:** Mark N. Courtney, Executive Director, Board of Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, or email apelscidla@dpor.virginia.gov.

### Summary:

*The amendments change the entry requirements for those landscape architect applicants who possess an LAAB-accredited degree in landscape architecture to require them to obtain three years of acceptable experience before being granted certification. Applicants could still be approved to take and sit for the examination prior to obtaining the required three years of experience; however, certification would not be awarded until such time as the three years of acceptable experience is obtained, documented, submitted, reviewed and approved.*

*A change from the proposed regulation adds a provision in 18 VAC 10-20-440 for those individuals who possess an LAAB accredited degree in landscape architecture and qualified under the prior provisions, but do not pass the examination during the three-year eligibility period, and have to reapply under the new requirements.*

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Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## 18 VAC 10-20-420. Requirements for certification.

The education or experience, or both, and examination requirements for certification as a landscape architect are as follows:

1. An applicant who has graduated from an accredited landscape architecture curriculum approved by the Landscape Architectural Accreditation Board ~~shall be admitted to a CLARB prepared examination or equivalent approved by the board. Upon passing such examination, the applicant shall be certified as a landscape architect, if otherwise qualified; or (LAAB)~~ must meet the following requirements for certification as a landscape architect:

- a. Passed a CLARB-prepared examination; and
- b. Obtained 36 months of experience/training with a minimum of 12 months under the direct control and

personal supervision of a licensed or certified landscape architect and the other 24 months under the direct control and personal supervision of either a licensed or certified landscape architect, architect, professional engineer, or land surveyor, in accordance with the experience credits portion of the Landscape Architect Equivalency Table. An applicant who has graduated from an accredited landscape architecture curriculum approved by the Landscape Architectural Accreditation Board shall be admitted to a CLARB-prepared examination prior to completing the 36-month experience requirement, if the applicant is otherwise qualified.

2. An applicant who has obtained eight years of combined education and experience, evaluated in accordance with the Landscape Architect Equivalency Table, shall be admitted to a CLARB-prepared examination or equivalent approved by the board. Upon passing such examination, the applicant shall be certified as a landscape architect, if otherwise qualified.

LANDSCAPE ARCHITECT EQUIVALENCY TABLE.  
TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE.

DESCRIPTIONS	Education Credits			Experience Credits	
	First 2 Years	Succeeding Years	Max. Credit Allowed	Credit Allowed	Max. Credit Allowed
<u>A-1. Degree from an LAAB-accredited landscape architectural curriculum.</u>	<u>100%</u>	<u>100%</u>	<u>5 years</u>		
<u>A-2. Credits toward a degree in landscape architecture from an accredited school of landscape architecture.</u>	<u>100%</u>	<u>100%</u>	<u>4 years</u>		
<u>A-3. Degree in landscape architecture or credits toward that degree from a nonaccredited school of landscape architecture.</u>	<u>100%</u>	<u>100%</u>	<u>4 years</u>		
<u>A-4. Degree or credits toward that degree in an allied professional discipline, i.e., architecture, civil engineering, environmental science, approved by the board.</u>	<u>75%</u>	<u>100%</u>	<u>3 years</u>		
<u>A-5. Any other bachelor degree or credits toward that degree.</u>	<u>50%</u>	<u>75%</u>	<u>2 years</u>		
<u>A-6. Qualifying experience in landscape architecture under the direct supervision of a landscape architect.</u>				<u>100%</u>	<u>no limit</u>
<u>A-7. Qualifying experience directly related to landscape architecture when under the direct supervision of an architect, professional engineer, or land surveyor.</u>				<u>50%</u>	<u>4 years</u>
<u>EXPLANATION OF REQUIREMENTS</u>					
<u>B-1. Education Credits. Education credits shall be subject to the following conditions:</u>					
<u>B-1.1. Applicants with a degree specified in A-1 through -A-5 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program.</u>					
<u>B-1.2. With a passing grade, 32 semester credit hours or 48 quarter hours is considered to be one year. Fractions greater than one-half year will be counted one-half year and smaller fractions will not be counted.</u>					
<u>B-2. Experience Credits. Experience credits shall be subject to the following conditions:</u>					
<u>B-2.1. Every applicant without an LAAB-accredited degree must earn at least two years of experience credit under category A-6. Every applicant with an LAAB-accredited degree must earn at least one year of experience credit under category A-6.</u>					

**[ 18 VAC 10-20-440. Examination.**

- A. All applicants for original certification in Virginia are required to pass the CLARB-prepared examination.
- B. The Virginia board is a member of the Council of Landscape Architectural Registration Boards (CLARB) and as such is authorized to administer the CLARB examinations.
- C. The CLARB-prepared examination will be offered at least once per year at a time designated by the board.
- D. Grading of the examination shall be in accordance with the national grading procedures established by CLARB. The board shall adopt the scoring procedures recommended by CLARB.
- E. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office, or by the board's designee, at a time designated by the board. Applicants not properly registered will not be allowed into the examination site.
- F. Examinees will be advised only of their passing or failing score and the CLARB minimum passing or failing score.
- Only the board and its staff shall have access to examination papers, scores, and answer sheets.
- G. Upon written request to the board within 30 days of receiving examination results, examinees will be permitted to view the performance problems contained within the

section that they failed. Examination appeals are permitted in accordance with the CLARB score verification process.

H. Should an applicant fail to pass an examination within three years after being approved to sit for an examination, the applicant must reapply and meet all current entry requirements at the time of reapplication. If the applicant has not been taking the examination on a continuous basis during the three-year eligibility period, or fails to reapply within six months after the end of the three-year eligibility period, or both, then the applicant shall meet the entry requirements current at the time of reapplication. ]

**18 VAC 10-20-450. Certification by comity.**

A person holding a current license to engage in the practice of landscape architecture, issued to the applicant by other states, the District of Columbia, or any territory or possession of the United States based on requirements that do not conflict with and are at least as rigorous as these regulations and supporting statutes of this board that were in effect at the time of original licensure, may be licensed without further examination. No person shall be so licensed, however, who has not passed an examination in another jurisdiction that was substantially equivalent to that approved by the board at that time. If the applicant does not meet the requirements for licensure in Virginia that were in effect at the time of original licensure, the applicant shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office or shall hold a CLARB certificate.

**LANDSCAPE ARCHITECT EQUIVALENCY TABLE.  
TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE.**

DESCRIPTIONS	Education Credits			Experience Credits	
	First 2 Years	Succeeding Years	Max. Credit Allowed	Credit Allowed	Max. Credit Allowed
A 1. Credits toward a degree in landscape architecture from an accredited school of landscape architecture.	100%	100%	4 years		
A 2. Degree in landscape architecture or credits toward that degree from a nonaccredited school of landscape architecture.	100%	100%	4 years		
A 3. Degree or credits toward that degree in an allied professional discipline, i.e., architecture, civil engineering, environmental science, approved by the board.	75%	100%	3 years		
A 4. Any other bachelor degree or credits toward that degree.	50%	75%	2 years		
A 5. Qualifying experience in landscape architecture under the direct supervision of a landscape architect.				100%	no limit
A 6. Qualifying experience directly related to landscape architecture when under the direct supervision of an architect, professional engineer, or land surveyor.				50%	4 years
EXPLANATION OF REQUIREMENTS					

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**B 1. Education Credits.** Education credits shall be subject to the following conditions:

B 1.1. Applicants with a degree specified in A 1 through A 4 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program.

B 1.2. With a passing grade, 32 semester credit hours or 48 quarter hours is considered to be one year. Fractions greater than one half year will be counted one half year and smaller fractions will not be counted.

**B 2. Experience Credits.** Experience credits shall be subject to the following conditions:

B 2.1. Every applicant must earn at least two years of experience credit under category A 5.

**NOTICE:** The forms used in administering 18 VAC 10-20 are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Architect License Application, 0401LIC (rev. ~~8/5/05~~ 5/16/07).

Verification of Architect Examination and Licensure Form, 0401ELVF (rev. 3/1/02).

Architect Experience Verification Form, 0401 EXP (rev. 3/26/02).

Architect Client Experience Verification Form, 0401CEXP (rev. 3/1/02).

Architect Degree Verification Form, 0401DEG (rev. 3/1/02).

Architect Reference Form, 0401REF (rev. 2/23/05).

Architect License Reinstatement Application, 0401REI (rev. 12/1/04).

Architect License Renewal Form, 0401REN, (eff. 4/11/05)

Professional Engineer License Application, 0402LIC (rev. ~~8/5/05~~ 2/1/07).

Professional Engineer Reference Form, 0402REF (rev. 3/1/02).

Professional Engineer License Reinstatement Application, 0402REI (rev. 12/1/04).

Professional Engineer and Engineer-in-Training Degree Verification Form, 04EDEG (rev. 3/1/02).

Professional Engineer and Engineer-in-Training Experience Verification Form, 04EEXP (rev. 2/19/04).

Engineer Verification of Examination and Licensure Form, 04EELVF (rev. 3/1/02).

Engineer-in-Training Designation Application, 0420DES (rev. ~~12/1/04~~ 2/1/07).

Engineer-in-Training Reference Form, 0420REF (rev. 3/1/02).

Course Requirements for Engineering Technology Program, 0402CREQ (eff. 2/19/03).

Professional Engineer License Renewal Form, 0402REN, (eff. 4/11/05). Land Surveyor License Application, 0403LIC (rev. ~~6/9/06~~ 2/1/07).

Land Surveyor License Reinstatement Application, 0403REI (rev. 12/1/04).

Land Surveyor B License Application, 0404LIC (rev. ~~12/1/04~~ 2/1/07).

Land Surveyor B License Reinstatement Application, 0404REI (rev. 12/1/04).

Land Surveyor and ~~Land~~ Surveyor-in-Training Degree Verification Form, 04LSDEG (rev. ~~3/1/02~~ 2/1/07).

Land Surveyor Verification of Examination and Licensure Form, 04LSELVF (rev. ~~7/21/03~~ 2/1/07).

Land Surveyor & ~~Land~~ Surveyor-in-Training Experience Verification Form, 04LSEXP (rev. ~~4/23/03~~ 2/1/07).

~~Land~~ Surveyor-In-Training Designation Application, 0430DES (rev. ~~6/9/06~~ 2/1/07).

Land Surveyor License Renewal Form, 04LSREN, (eff. 4/11/05).

Landscape Architect Certificate Application, 0406CERT (rev. ~~8/5/05~~ 2/1/07).

Verification of Landscape Architect Examination and Certification Form, 0406ELVF (rev. 3/1/02).

Landscape Architect Experience Verification Form for Examination and Comity Applicants, 0406EXP (rev. 6/23/05).

Landscape Architect Degree Verification Form, 0406DEG (rev. 3/1/02).

Landscape Architect Certificate Reinstatement Application, 0406REI (rev. 12/1/04).

Landscape Architect Certificate Renewal Form, 0406REN, (eff. 4/11/05).

Interior Design Certificate Application, 0412CERT (rev. 8/5/05 2/1/07).

Verification of Interior Designer Examination and Certification Form, 0412ELVF (rev. 3/1/02).

Interior Designer Degree Verification Form, 0412DEG (rev. 3/1/02).

Interior Designer Experience Verification Form, 0412EXP (rev. 8/11/05).

Interior Designer Certificate Reinstatement Application, 0412REI (rev. 3/1/02).

Interior Design Certificate Renewal Form, 0412REN, (eff. 4/11/05).

Professional Corporation Registration Application, 04PCREG (rev. 6/2/06).

Professional Corporation Branch Office Registration Application, 04BRPC (eff. 6/7/06).

Business Entity Registration Application, 04BUSREG, (rev. 6/2/06).

Business Entity Branch Office Registration Application, 04BRBUS (eff. 6/7/06 rev. 1/3/07).

Professional Limited Liability Company Application Form, 04PLCREG (rev. 6/2/06).

Professional Limited Liability Company Branch Office Registration Application, 04BRPLC (rev. 6/7/06).

VA.R. Doc. No. R04-240; Filed June 5, 2007, 1:38 p.m.

**AUCTIONEERS BOARD**

**Proposed Regulation**

**Title of Regulation:** 18 VAC 25-21. Regulations of the Virginia Auctioneers Board (amending 18 VAC 25-21-20, 18 VAC 25-21-40, 18 VAC 25-21-50, 18 VAC 25-21-60, 18 VAC 25-21-110, 18 VAC 25-21-120, 18 VAC 25-21-150, 18 VAC 25-21-170, and 18 VAC 25-21-180; adding 18 VAC 25-21-95).

**Statutory Authority:** §§ 54.1-201 and 54.1-602 of the Code of Virginia.

**Public Hearing Date:** July 12, 2007 - 10 a.m.  
Public comments may be submitted until August 24, 2007.

(See Calendar of Events section for additional information)

**Agency Contact:** Marian H. Brooks, Board Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, or email auctioneers@dpor.virginia.gov.

**Basis:** Section 54.1-602 of the Code of Virginia provides the board with its broad authority to establish regulations in order to obtain and retain licenses.

**Purpose:** The purpose of the proposal is to perform a general review to amend the existing regulations to achieve comprehensive and effective regulations that will improve clarity and increase compliance by the board's licensees and thereby better protect the citizens of the Commonwealth of Virginia.

**Substance:** The proposed changes clarify the basic qualifications for license by examination and license by reciprocity, modify the examination application procedures, and establish and modify the standards of practice and standards of conduct to identify requirements that affect the administration of, and compliance with, the board's regulations. The proposed changes will improve clarity that will enhance compliance by the board's licensees and thereby better protect the citizens of the Commonwealth of Virginia.

**Issues:** The primary advantage in amending these regulations is to clarify and improve compliance by the board's licensees and thereby better protect the citizens of the Commonwealth of Virginia. In addition, the board will have the authority to discipline those regulators who show themselves to be a danger to the public.

There are no anticipated disadvantages.

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

**Summary of the Proposed Regulation.** The Auctioneers Board (board) proposes to amend its regulations by removing the requirement that applicants for licensure by examination submit their paperwork to the Department of Professional and Occupational Regulation (DPOR) at least 45 days before a scheduled exam; the proposed amendments also specify that applications for licensure by reciprocity or examination may be reviewed by the board's designee. In addition, the board seeks to clarify when and for what purposes escrow account funds may be dispersed.

**Result of Analysis.** The benefits likely exceed the costs for this proposed regulatory change.

**Estimated Economic Impact.** Currently, individuals seeking to take the examination that, when passed, may lead to licensure as an auctioneer must submit their applications to DPOR at least 45 days prior to a scheduled exam. Auctioneer board staff then has 30 days to process those applications. Presently, only auctioneer board staff may process these applications.

The board proposes to drop the 45 day requirement and allow the board's designee to also process applications for licensure and examination. The board's designee is a contractor hired to provide and administer auctioneer examinations. The board believes that this system will allow applications more quickly

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and, so, the board will no longer need 45 days to ensure that applications are received and thoroughly processed before scheduled exams. Individuals seeking licensure by examination will benefit because they will no longer have to meet the board's deadline or wait until the next scheduled exam. Individuals seeking licensure by reciprocity will benefit in that they will be able to start practicing their trade more quickly if, after this change, applications are processed more quickly.

The proposed regulation also includes new language that clarifies rules for escrow accounts. According to DPOR this clarification does not represent a change in practice for auctioneers and, so, is not a substantive change.

**Businesses and Entities Affected.** This proposed regulatory change will affect all of the approximately 1,685 individuals who are regulated by the board. Individuals who will seek licensure as auctioneers at some point in the future will also be affected.

**Localities Particularly Affected.** All localities in the Commonwealth will be affected by the proposed regulation.

**Projected Impact on Employment.** To the extent that changes in examination procedures make it marginally less onerous and time consuming to obtain an auctioneer's license, more individuals may seek licensure as auctioneers. This will increase the supply of available licensed auctioneers in the Commonwealth and may increase the number of individuals employed as auctioneers.

**Effects on the Use and Value of Private Property.** To the extent that changes in examination procedures make it marginally less onerous and time consuming to obtain an auctioneer's license, auctioneers will incur fewer opportunity costs to become licensed.

**Small Businesses: Costs and Other Effects.** The proposed regulation contains no substantive changes that would cause regulated small businesses to incur any additional bookkeeping or other costs.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed regulation contains no substantive changes that would cause regulated small businesses to incur any additional bookkeeping or other costs.

**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 concurs with the analysis of the Department of Planning and Budget.

## Summary:

*The proposed amendments remove the requirement that applicants for licensure by examination submit their paperwork to the Department of Professional and Occupational Regulation at least 45 days before a scheduled exam, specify that applications for licensure by reciprocity or examination may be reviewed by the board's designee, and clarify when and for what purposes escrow account funds may be dispersed.*

## CHAPTER 21. ~~RULES AND~~ REGULATIONS OF THE VIRGINIA AUCTIONEERS BOARD.

### **18 VAC 25-21-20. Licensure.**

All persons or firms as defined in § 54.1-600 of the Code of Virginia who conduct auctions or offer their services to sell at auction in the Commonwealth are required to file a licensure application and pay the specified fee to the board. Applicants for individual licensure shall meet the following requirements:

1. Be at least 18 years of age.
2. Shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or ~~convicted within the past five years of a criminal offense related to auction activity in Virginia or any other jurisdiction~~ been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of

this paragraph. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.

3. Successfully complete a course of study at a school of auctioneering that has obtained course approval from the board, or an equivalent course, and has passed the Virginia Licensed Auctioneer's Examination administered by the Auctioneers Board or its designee.

### **18 VAC 25-21-40. License by reciprocity.**

The board may issue a license to any individual applicant, ~~individual or firm~~ holding a license in any state, territory, or possession of the United States, with whom the board has established an act of reciprocity provided the requirements and standards under which the license was issued are substantially equivalent to those established by the board. At the time of application for licensure, the applicant must be currently licensed in the state in which reciprocity is established with the Commonwealth of Virginia. The board may deny an application if the licensed auctioneer ~~or firm~~ has been found guilty (i) by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneering duties or (ii) by a court of any criminal offense or material misrepresentation in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.

Nonresident applicants shall also file with the board an irrevocable consent that service of process upon the director is valid and binding as the service of process upon the applicant.

### **18 VAC 25-21-50. Application.**

A. All applicants, ~~both individual and firms~~, seeking licensure by reciprocity or examination shall submit a fully executed ~~and notarized~~ application with the appropriate fee or fees attached. Applicants will be notified if their application is incomplete.

Applications for licensure by examination must ~~be received by the Department of Professional and Occupational Regulation 45 days prior to a scheduled examination in order to be eligible to sit for that examination~~ comply with the requirements of the board's designee as to the deadline for submission of the application to the board's designee.

B. If a corporation, the application shall include ~~certified true~~ copies of the certificate of incorporation issued by the Virginia State Corporation Commission, articles of incorporation, bylaws and charter, ~~and, if~~ . If a foreign corporation, a certificate of authority to conduct business

issued by the Virginia State Corporation Commission shall be required in lieu of the certification of incorporation.

C. All applications will be reviewed by the Auctioneers Board staff, or the board's designee, to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation or the board's designee. However, failure to review an application within 30 days of receipt shall not imply or result in the automatic approval of the application. No applicant will be approved for licensure unless all requirements of this part of this chapter are met.

### **18 VAC 25-21-60. Examination.**

The examination shall test the applicant's knowledge of the following:

1. The auction business including fundamentals of auctioneering, elementary principles of real estate, preparation of contracts, advertising, final settlement statements, arithmetic and percentages, and ethics.

2. The Virginia statutes entitled Auctioneers' Licensure Act, ~~§§ 54.1-600 through 54.1-606~~ Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia; bulk transfers, §§ 8.6A-101 through 8.6A-110 and 8.2-328 of the Code of Virginia; sales tax laws, Title 58.1 of the Code of Virginia; and the ~~rules and~~ regulations of the board.

### **18 VAC 25-21-95. Board discretion.**

The board may deny initial licensure, renewal or reinstatement of a license for any reason it may discipline a licensee.

### **18 VAC 25-21-110. Contracts.**

When an auctioneer or auction firm agrees to conduct an auction, a contract shall be drawn setting forth the particulars of the terms and conditions under which the auctioneer or auction firm received the real or personal property for auction and particulars for the disbursement of the proceeds. Each contract for auction shall include the following:

1. a. A detailed list of the real or personal property received for sale with adequate descriptions of the property so that the personal property can be readily identified. If a list cannot be made at the time of signing of the contract, then a list must be made a part of the contract (and attached) prior to auction of the real or personal property for that day; or

b. If the auctioneer or auction firm enters into a contract to sell items on a consignment basis where the total value of all the items to be sold at any one action does not exceed \$500, and the owner of the items agrees to waive this requirement in writing on a document separate from, but made a part of, the contract, then the requirement contained in subdivision 1 a of this section is not applicable.

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2. The name, address, telephone number, and license number of the Virginia auctioneer or auction firm.
3. The name, address and telephone number of the owner.
4. The date, time and place of the auction or auctions at which the real or personal property is scheduled to be auctioned. The date by which the property is to be returned if it is not sold.
5. The fee or percentage of gross sales the auctioneer or auction firm will charge the owner and what services are included in the fee, such as preparation, travel, labor, advertising and any other auction related expenses.
6. By what date the owner is to be paid and who is responsible for disbursing the funds.
7. A statement that the clerk sheets, or other evidence to properly account for all items sold, shall be given or made available for inspection by the owner on a daily basis.
8. The following statement above the owner's signature line: "I have read and accepted the terms of this contract."
9. A legible executed copy of the contract shall be given to the owner at the time of execution.

## **18 VAC 25-21-120. Conduct at auctions.**

~~A. No auctioneer or auction firm shall attempt to escalate bidding through false bids, or through collusion with another (shills). The auctioneer or auction firm shall not bid on the owner's behalf nor knowingly accept a bid made by the owner or made on the owner's behalf unless notice has been given that liberty for such bidding has been reserved. The auctioneer or auction firm shall not bid on his own behalf nor knowingly accept a bid made on his behalf unless notice has been given that such bidding will be permitted.~~

~~B. If a licensed Virginia auctioneer or auction firm contracts with a nonlicensed (in Virginia) auctioneer, corporation or firm to conduct auctions in Virginia, the Virginia auctioneer, corporation or firm shall be considered the principal and shall assume full responsibility for the auction and auctioneers subcontracted.~~

## **18 VAC 25-21-150. Escrow funds.**

- A. Proceeds of a personal property auction not disbursed to the owner on auction day shall be deposited in an auction escrow account by the auctioneer/auction firm no later than the next banking day following the date of auction or sale of the goods, whichever occurs first.
- B. Auctioneers/auction firms shall use federally insured depositories in the Commonwealth of Virginia.
- C. Proceeds due from the sale of goods other than real property shall be disbursed to the owner no later than 30 days after the date of each auction.

D. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

E. If the owners' goods are not sold in a single auction, proceeds due shall be disbursed to the owner within 30 days after each auction for goods other than real property, or in accordance with the agreement of sale for the sale of real property. Notice must be given to the owner of tentative date of auction, or date of return to the owner, of the remaining goods.

F. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Contingency accounts established to guarantee checks accepted on the owner's behalf shall not be considered commingling of funds. Moneys due to the auctioneer or auction firm shall not be withdrawn from the auction escrow account until final settlement is made with the owner.

G. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the licensee.

H. Funds to be deposited in the escrow account may include moneys that shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the licensee by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money that may ultimately belong to the licensee does not constitute "commingling of funds" provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account that belong to the licensee.

I. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

J. A licensee shall not disburse or cause to be disbursed moneys from an escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

## **18 VAC 25-21-170. Change of address.**

A. An auctioneer's or auction firm's license shall not be transferable and shall bear the same name and physical address as the business. Upon dissolution or change in the form of the business entity of an auction firm, the auction firm license shall become void.

B. Written notice shall be given within 30 days to the board by each individual or firm licensee of any change of physical business address or location, whereupon the board shall issue

an amended license without fee for the unexpired portion of the biennial period.

C. A post office box is not an acceptable physical business address.

**18 VAC 25-21-180. Discipline.**

A. The board has the power to fine any individual or firm licensee, or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained or renewed through fraud or misrepresentation;
2. The licensed auctioneer or firm has been ~~found guilty by a court of any criminal offense or material misrepresentation in the course of performing auctioneer duties convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia.~~ A certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;
3. The licensed auctioneer or firm has been found by any regulatory board ~~or~~ agency, or jurisdiction where licensed to have had a license or registration suspended, revoked or surrendered in connection with a disciplinary action, who has been the subject of discipline in another jurisdiction or to have violated any applicable regulations or laws in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;
4. The licensed auctioneer or firm has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of auctioneering duties;
5. The license auctioneer or firm violated or induced another person to violate any provisions of Chapters 1, 2, 3, or 6 of Title 54.1 of the Code of Virginia, or any provision of this chapter; or
6. ~~The licensee, auction firm, or firm owner refuses or fails, upon request or demand, to produce to the board or any of its agents any document, book, or copy thereof in licensee's or owner's possession concerning the performance of auctioneering duties. The licensee shall, upon request or demand, produce to the board, or any of its agents, within 10 days any plan, document, book, record or copy thereof in his~~

possession concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the board.

7. A professional who has direct knowledge that any individual, including himself, or firm may be violating any of these provisions, or the provisions of Chapters 1 (§§ 54.1-100 et seq.) through 3 (§§ 54.1-300 et seq.) or 6 (§§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia, shall immediately inform the secretary of the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

B. The board, in its discretion, may refuse to grant or renew a license of any person for any of the reasons specified in subsection A of this section.

VA.R. Doc. No. R06-87; Filed June 5, 2007, 1:34 p.m.

**Final Regulation**

**Title of Regulation:** 18 VAC 25-21. Regulations of the Virginia Auctioneers Board (amending 18 VAC 25-21-80, 18 VAC 25-21-90, 18 VAC 25-21-180; adding 18 VAC 25-21-230 through 18 VAC 25-21-280).

**Statutory Authority:** §§ 54.1-201, 54.1-602 and 54.1-603.1 of the Code of Virginia.

**Effective Date:** August 1, 2007.

**Agency Contact:** Marian H. Brooks, Board Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, or email auctioneers@dpor.virginia.gov.

**Summary:**

*The amendments implement a mandatory continuing education program for the renewal and reinstatement of auctioneer licenses as required by Chapter 956 of the 2004 Acts of Assembly.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

CHAPTER 21.

~~RULES AND~~ REGULATIONS OF THE VIRGINIA AUCTIONEERS BOARD.

**18 VAC 25-21-80. Notice of renewal.**

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the amount due and procedures for renewal. Failure to receive this notice shall not relieve the individual or firm licensee of the obligation to renew.

Licenses issued under this chapter shall be issued for a two-year period. Each license holder, corporation or firm shall be required to renew the license by submitting the proper fee

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made payable to the Treasurer of Virginia, with verification of current surety bond coverage as detailed in 18 VAC 25-21-30 ~~of this chapter~~. In addition, individual license holders applying for renewal are required to certify that they comply with the continuing education requirements as contained in this chapter.

## **18 VAC 25-21-90. Failure to renew.**

A. Any individual or firm licensee who fails to renew a license within 30 days after the license expires, shall be required to pay a late renewal fee.

B. Any individual or firm licensee, including individuals initially licensed pursuant to § 54.1-603 A of the Code of Virginia, who fails to renew his license within six calendar months after the expiration date of the license shall be required to apply for reinstatement of the license. The applicant shall submit to the Department of Professional and Occupational Regulation a reinstatement application and fee and comply with the following paragraph.

If the license has expired for six months or more, but less than two years, the applicant shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, individual license holders applying for reinstatement are required to provide evidence of compliance with the continuing education requirements as contained in this chapter. A license that is reinstated shall be deemed as having been continuous without interruption. Nothing in these regulations shall divest the board of its authority to discipline a license holder for a violation of the law or regulation during the period of time for which the regulant was licensed.

C. If the license has expired for two years or more, the applicant shall be required to submit a new application and meet current entry requirements that are in effect as of the date the application is received by the board office. The applicant shall be required to submit the examination fee and sit for and pass the Virginia Licensed Auctioneer's Examination or comply with the provisions contained in 18 VAC 25-21-40. Any auctioneering activity conducted between the time the previous license expired and the effective date of the new license shall be considered unlicensed activity.

D. The date the complete renewal application, including fees and all required documentation, is received by the Department of Professional and Occupational Regulation or its agent will determine whether a license will be renewed without penalty or will be subject to reinstatement requirements.

E. Auctioneer individual and firm licenses issued under this regulation shall expire 24 months from the last day of the month in which the license was issued ~~as indicated on the~~

~~license~~. The expiration date of the license will be included on the license.

## **18 VAC 25-21-180. Discipline.**

A. The board has the power to fine any individual or firm licensee, or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained ~~or~~, renewed or reinstated through fraud or misrepresentation;

2. The licensed auctioneer or firm has been found guilty by a court of any criminal offense or material misrepresentation in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;

3. The licensed auctioneer or firm has been found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;

4. The licensed auctioneer or firm has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of auctioneering duties;

5. The license auctioneer or firm violated or induced another person to violate any provisions of Chapters 1, 2, 3, or 6 of Title 54.1 of the Code of Virginia, or any provision of this chapter; ~~or~~

6. The licensee, auction firm, or firm owner refuses or fails, upon request or demand, to produce to the board or any of its agents any document, book, or copy thereof in licensee's or owner's possession concerning the performance of auctioneering duties: ; or

7. The licensee fails to comply, or misrepresents any information pertaining to his compliance, with any of the continuing education requirements as contained in this chapter.

B. The board, in its discretion, may refuse to grant ~~or~~, renew or reinstate a license ~~of any person~~ for any of the reasons specified in subsection A of this section.

PART VII.  
CONTINUING EDUCATION REQUIREMENTS.

**18 VAC 25-21-230. Application and criteria for course approval.**

A. Course providers seeking approval of their continuing education course shall file an application with the board office. All continuing education course providers shall obtain approval from the board office prior to offering to provide, or providing, a course that is advertised or represented as being eligible to comply with the continuing education provisions of this chapter. Retroactive approval of continuing education courses shall not be permitted.

Continuing education courses shall be approved provided the following criteria are met:

1. Course subjects must be related to the current practice of auctioneering and have defined learning objectives.
2. At the end of the course each attendee must be assessed to verify that they have achieved the defined learning objectives.
3. The course curriculum must be consistent with the defined learning objectives.
4. The method of instruction must be consistent with the defined learning objectives of the course.
5. Course instructors must be competent in the subject being taught, either by education or experience, and in instructional techniques.
6. Fifty contact minutes shall equal one continuing education credit hour. No credit shall be awarded for partial continuing education credit hours or partial completion of the course. In addition, attendees who fail to demonstrate successful completion of the defined learning objectives of the course shall not be awarded credit for the course. For courses in which individual segments are less than 50 minutes, the sum of the segments shall be totaled for computation of continuing education credit hours.
7. The course provider certifies that the laws, regulations, and industry practices that will be taught or utilized in the course are up to date and that any subsequent changes in laws, regulations, or industry practices will be incorporated into the course curriculum as they occur.
8. The course provider certifies that they will comply with provisions of this chapter in administering and providing the approved course.

B. Pursuant to § 54.1-603.1 A of the Code of Virginia, continuing education courses completed by an auctioneer pursuant to a requirement of the Certified Auctioneer's Institute or participation in the educational programs sponsored by the National Auctioneer's Association or Virginia Auctioneer's Association are approved.

**18 VAC 25-21-240. Administration of courses.**

A. Approved course providers shall comply with the requirements of this chapter when providing approved courses. Failure of a course provider to comply with the board's requirements contained in 18 VAC 25-21-230 or any other provision of this chapter at any time after receiving approval from the board may result in the board withdrawing its approval for a course or a specific offering or offerings of the course.

B. Course approval is not transferable from the course provider to whom it was originally issued.

C. The approved course providers shall award a certificate of completion to those attendees who successfully complete the course that includes the sponsor identification number of the course provider issued by the board office, name of the course, number of continuing education credit hours awarded, and the date of the course. Course providers shall only award continuing education credit hours in the amount as approved.

D. Attendance must be verified and documented at the beginning and end of the course and monitored during the course. No credit may be awarded to attendees who arrived late, left early, or missed a portion of the course or failed to accomplish the learning objectives of the course. Further, such individuals shall not be awarded a certificate of completion by the course provider.

E. At the end of each course, the course provider shall solicit feedback from the attendees to assess the effectiveness of the course, course content, course curriculum, instructor, and method of instruction. The course provider shall monitor the feedback from the attendees and make adjustments as warranted.

F. All records related to an approved course must be maintained for four years from the date of the course and such records shall be provided to the board or its duly authorized agents upon request. Records that must be maintained include, but are not limited to, time, date and location of the course; course materials; course curriculum; instructor; instructor qualifications; learning objectives; assessment of attendees for verification of achievement of the learning objectives; end of course feedback from attendees; attendance rosters; and records of those attendees who successfully completed the course and those who did not and reasons why attendees noted as not successfully completing the course did not successfully complete the course.

**18 VAC 25-21-250. Continuing education requirements for renewal or reinstatement.**

A. Individuals whose licenses expire, or apply to reinstate, after [ ~~DATE~~ 6 months after the effective date of these regulations February 1, 2008.] shall be required to comply with the continuing education provisions of this chapter.

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B. Individuals are required to complete at least six continuing education credit hours of board-approved continuing education courses for any license renewal or reinstatement.

C. 1. Each individual applying for renewal shall certify that he has met the continuing education requirements of this chapter. Only continuing education courses completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license.

2. Individuals shall maintain records of completion of continuing education credit hours for two years from the date of expiration of the license for which the continuing education credit hours are being used to renew the license. Individuals shall provide such records to the board or its duly authorized agents upon request.

3. Continuing education credit hours utilized to satisfy the continuing education requirements to renew a license shall be valid only for that renewal and shall not be accepted for any subsequent renewal cycles or reinstatement.

D. 1. Each individual applying for reinstatement shall provide, as part of his reinstatement application, evidence of compliance with the continuing education requirements of this chapter. The completion date of continuing education courses submitted in support of a reinstatement application shall not be more than two years old as of the date a complete reinstatement application is received by the board.

2. Continuing education credit hours utilized to satisfy the continuing education requirements in order to reinstate a license shall be valid only for that reinstatement and shall not be accepted for any subsequent renewal cycles or reinstatement.

E. Notwithstanding the provisions of subsection C of this section, continuing education hours earned during a licensing renewal cycle to satisfy the continuing education requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for any subsequent renewal cycles or reinstatement.

## **18 VAC 25-21-260. Exemptions and waivers.**

Pursuant to § 54.1-603.1 B of the Code of Virginia, the board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship. However, such exemptions, waivers, or reductions shall not relieve the individual of his obligation to comply with any other requirements of this chapter, including but not limited to the provisions of 18 VAC 25-21-80 or 18 VAC 25-21-90.

## **18 VAC 25-21-270. Amendments and changes.**

Any change in the information provided by a course provider to the board as required by 18 VAC 25-21-230 A, or 18 VAC 25-21-280 or change in ability to comply with the requirements of

18 VAC 25-21-240 shall be reported to the board in writing within 10 days of such an occurrence. In instances of noncompliance with the provisions of this chapter, the approval of the course is automatically suspended until such time as the course provider corrects the deficiency and notifies the board in writing that such deficiency has been corrected.

## **18 VAC 25-21-280. Periodic requalification for continued course approval.**

At times established by the board, the board may require that course providers that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that they continue to comply with the requirements of 18 VAC 25-21-230 A and 18 VAC 25-21-240. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.

**NOTICE:** The forms used in administering 18 VAC 25-21, Regulations of the Virginia Auctioneers Board, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

### **FORMS**

License By Examination Application, 29EXLIC (rev. 11/06).

Auctioneer Surety Bond Form, 29IBOND (rev. 1/04).

Firm License Application, 29FIRM (rev. 11/06).

Auction Firm Surety Bond Form, 29FBOND (rev. 1/04).

Application Supplement (States with Approved Reciprocal Agreements and Virginia Approved Auctioneering Schools), 29ST&SCL (rev. 7/06).

Application for Training Course Approval, 29CRS (rev. 1/04).

License By Reciprocity Application, 29REC (eff. 11/06).

License Reinstatement Application, 29FEI (eff. [4/06 8/07]).

Application for Continuing Education Training Course Approval, 29CEC (eff. 8/06).

Examination Site Conduct Agreement (eff. 10/04).

VA.R. Doc. No. R04-278; Filed June 5, 2007, 1:36 p.m.

**BOARD FOR BRANCH PILOTS****Fast-Track Regulation**

**Title of Regulation:** 18 VAC 45-20. Board for Branch Pilots Regulations (amending 18 VAC 45-20-40).

**Statutory Authority:** § 54.1-902 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until August 24, 2007.

(See Calendar of Events section for additional information)

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

**Agency Contact:** Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, or email branchpilots@dpor.virginia.gov.

**Basis:** Subsection A of § 54.1-902 of the Code of Virginia authorizes the board to promulgate regulations for a regulatory system. While the board is mandated to establish regulations, the content of the regulations is up to the discretion of the board.

**Purpose:** The amendment would revise subdivisions 4, 13, and 14 of 18 VAC 45-20-40 to be consistent with the wording in subdivision 11, and the wording in § 54.1-902 of the Code of Virginia, as follows – "public health, safety or welfare."

**Rationale for Using Fast-Track Process:** There will be no adverse impact on the public and no opposition is anticipated.

**Substance:** The amendment would revise subdivisions 4, 13, and 14 of 18 VAC 45-20-40 to be consistent with the wording in subdivision 11, and the wording in § 54.1-902 of the Code of Virginia, as follows – "public health, safety or welfare."

**Issues:** The public and the Commonwealth are better protected in that the wording in the board's regulations will be consistent and better track the wording in § 54.1-902 of the Code of Virginia. There are no anticipated disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board for Branch Pilots (board) proposes some minor wording changes to these regulations that will have no impact in practice.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Section 40 of these regulations consists of a list of 17 causes for which the board may "deny initial licensure, deny an extension of license, or deny renewal as well to discipline existing licensees." Four of the described causes include either the phrase "... the public

health, safety, or welfare" or the very similar phrase "... the public health, safety, and welfare." The board proposes to have the phrase consistently be "... the public health, safety, or welfare" in all cases. Consistent language may eliminate the small chance that someone may interpret the slightly different language to represent different intent in law. Otherwise, this proposed change in regulatory language is very unlikely to have any impact in practice.

**Businesses and Entities Affected.** No one will be significantly affected by the proposed amendments. These regulations apply to the 46 licensed branch pilots in Virginia.

**Localities Particularly Affected.** Branch pilots work within localities along navigable waterways, particularly the James and Potomac Rivers.

**Projected Impact on Employment.** The proposed amendments will not affect employment.

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

**Small Businesses: Costs and Other Effects.** The proposed amendments will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments 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.

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## Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:

Board for Branch Pilots concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget.

### Summary:

*The amendments conform the wording "public health, safety and welfare" in subdivisions 4, 13 and 14 of 18 VAC 45-20-40 for consistency with wording in subdivision 11 of 18 VAC 45-20-40 and § 54.1-902 of the Code of Virginia, which reads "public health, safety or welfare."*

### **18 VAC 45-20-40. Grounds for denial of licensure, denial of renewal, or discipline.**

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude or any alcohol- or drug-related offense there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction;
2. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude;
3. Failing to report to the board in writing any reports of the National Transportation Safety Board involving the licensee, or the results of any disciplinary action taken by the United States Coast Guard against the licensee within 30 days of that report or action;
4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the public's health, safety, ~~and~~ or welfare;
5. Negligence or misconduct in the performance of duties;
6. Violating or cooperating with others in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of the Title 54.1 of the Code of Virginia or any regulation of the board;
7. Failing to, as soon as possible under the circumstances, report to the pilot officers his finishing time and other required information relating to the particulars of the ship;
8. Failing to file immediately with the president or vice president of the board with a copy to the board

administrator a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the president or vice president of the board with a copy to the board administrator an account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties. This report shall be received no later than seven days after such an incident;

9. Failing to report to the board any physical or mental condition which may affect his ability to perform the duties of a pilot. Such reports shall be provided within 30 days of the onset of the condition;

10. Refusing to comply with the board's requirement for a chemical test. Such test is required immediately and no later than 12 hours after involvement in a collision, grounding, or other incident resulting in personal injury, death, environmental hazard, or property damage in excess of \$100,000. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

11. Refusing to comply with any board requirement for chemical tests in any instance in which the board has cause to believe a test is necessary to protect the public health, safety, or welfare. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

12. Failing to send proof of any test required by subdivision 10 or 11 of this section to the president or vice president of the board with a copy to the board administrator within 48 hours of the administration of the test;

13. A positive finding as a result of, or on, any substance abuse or chemical test as a result of which the board believes there is a threat to the public health, safety ~~and~~ , or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

14. Evidence of impaired performance in any instance in which the board believes there is a threat to the public health, safety ~~and~~ , or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

15. Performing or attempting to perform any of the duties of his office or job while under the influence of illegal drugs;

16. Performing or attempting to perform any of the duties of his office or job while under the influence of alcohol or any medication (controlled substance or otherwise) to the extent that he was unfit for the performance of the duties of his office or job; and

17. Failing to comply with any of the provisions of 18 VAC 45-20-50.

VA.R. Doc. No. R07-257; Filed May 30, 2007, 3:41 p.m.

## CEMETERY BOARD

### Final Regulation

**Title of Regulation:** 18 VAC 47-20. Cemetery Board Rules and Regulations (amending 18 VAC 47-20-10; adding 18 VAC 47-20-35, [ 18 VAC 47-20-210, ] 18 VAC 47-20-250, 18 VAC 47-20-260, 18 VAC 47-20-270; repealing 18 VAC 47-20-240).

**Statutory Authority:** §§ 54.1-201 and 54.1-2313 of the Code of Virginia.

**Effective Date:** August 1, 2007.

**Agency Contact:** Christine Martine, Executive Director, Cemetery Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, or email cemetery@dpor.virginia.gov.

#### Summary:

*To conform the regulations with Chapters 192 and 247 of the 2004 Acts of Assembly, the amendments establish qualifications and standards of conduct for compliance agents employed by cemetery companies and add a section on protection of perpetual care and preneed trust funds.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

#### 18 VAC 47-20-10. Definitions.

The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-2310 of the Code of Virginia or shall have the following meanings, unless the context clearly indicates otherwise:

"Administration" means the cost to administer and maintain records required by Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board, including a percentage of compensation of employees, payment of insurance premiums, reasonable payments for employees' pension and other benefit plans, and costs of maintaining cemetery company and sales personnel compliance with the board's licensure and registration requirements.

"Approved training program" means a training program that has been approved by the board to provide training for individuals to act as a compliance agent or compliance agent designee.

"Change in ownership" means a change in 50% or more of the stockholders or partnership interest, or both, of a cemetery company.

"Compliance agent designee" means an individual who shall be designated by the cemetery company to assure the compliance of the cemetery company with the provisions of Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia and this chapter when the compliance agent is not available to supervise the activities of any of its affiliated cemeteries.

"Experience" means supervisory experience with a cemetery company as defined in § 54.1-2310 of the Code of Virginia.

"Licensee" means any person licensed by the board as a cemetery company.

"Moral turpitude" means, but is not limited to, lying, cheating or stealing.

"Outer burial container" means any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults or grave boxes and grave liners.

"Perpetual care" means continuing care, maintenance, administration and embellishment of the cemetery.

"Preneed trust fund" means those moneys held in accordance with § 54.1-2325 of the Code of Virginia.

"Principal" means the following individuals:

1. The sole proprietor of a sole proprietorship.
2. The partners of a general partnership.
3. The managing partners of a limited partnership.
4. The officers of a corporation as registered with the State Corporation Commission.
5. The managers of a limited liability company.
6. The officers or directors of an association.

"Registrant" means any natural person registered with the board as sales personnel.

"Sales personnel" means any natural person employed by or affiliated as an independent contractor with a licensed cemetery company who deals with the public in the sale or offering for sale of any property or services enumerated in the definition of "cemetery company" contained in § 54.1-2310 of the Code of Virginia.

"Services" means any act or activity by the cemetery company in relation to arranging, supervising, interring or disposing of the remains or commemorating the memory of deceased human beings.

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## **18 VAC 47-20-35. Qualifications for compliance agents and designees.**

A. Every applicant for compliance agent or designee shall have the following qualifications:

1. Be at least 18 years old;
2. Have two years experience in the cemetery business and have successfully completed a board approved training course; and
3. Be a full time employee of the cemetery company or is a principal.

B. The applicant shall disclose any current or previous licenses/registrations from Virginia or in any other jurisdictions, and any disciplinary actions taken against those licenses/registrations. This includes, but is not limited to, any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies. The board, at its discretion, may deny approval of the compliance agent or designee based upon disciplinary actions by any jurisdiction.

C. The applicant shall disclose any conviction or finding of guilt, regardless of adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of conviction, finding or case decision shall be considered prima facie evidence of a conviction or finding of guilt. The board, at its discretion, may deny approval of the compliance agent or designee in accordance with § 54.1-204 of the Code of Virginia.

D. The applicant shall certify that he understands and will comply with all the laws of Virginia related to cemetery company licensure under the provisions of Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

## **[ 18 VAC 47-20-210. Preneed trust fund and bonding requirements.**

A. Each licensed cemetery company shall establish a preneed trust fund and make deposits in accordance with § 54.1-2315 of the Code of Virginia.

B. If the trustee for the preneed trust fund is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the board and shall deposit a fidelity bond with the board in accordance with § 54.1-2326 of the Code of Virginia.

C. Deposits into the fund shall be made in accordance with § 54.1-2325 of the Code of Virginia.

~~E.~~ D. All funds shall be handled in accordance with §§ 54.1-2329 through 54.1-2331 of the Code of Virginia.

~~D.~~ E. Each licensed cemetery company shall submit a written financial report regarding preneed trust accounts to the board as prescribed by § 54.1-2333 of the Code of Virginia.

~~E.~~ F. Transfer of funds to another trustee shall be done in accordance with § 54.1-2337 of the Code of Virginia. ]

## **18 VAC 47-20-240. Execution of contracts for licensees whose licenses have been suspended or revoked. (Repealed.)**

~~In the event a license has been suspended or revoked and the licensee is a party to a preneed burial contract which must be executed at need, the board may file a petition for appointment of a receiver with any court of record having equity jurisdiction over the licensee. The petition shall be necessary to ensure execution of the contract including the appointment of a receiver. If a receiver is appointed, the licensee, as determined by the court, shall pay his expenses and a reasonable fee.~~

## **18 VAC 47-20-250. Compliance agent or designee conduct.**

Each cemetery company and cemetery affiliated with a cemetery company shall be supervised by a compliance agent or designee. The compliance agent or designee shall exercise reasonable and adequate supervision of the provision of services by employees of the cemetery company. Factors to be considered in determining whether the supervision is reasonable and adequate include, but are not limited to, the following:

1. The availability of the compliance agent or designee to all cemetery company employees and to the public to answer questions within a reasonable time pertaining to the operation of the cemetery company.
2. The availability of training and written procedures and policies that provide, without limitation, clear guidance in the following areas:
  - a. Required deposits for the perpetual care trust fund;
  - b. Required deposits for the preneed trust fund;
  - c. Proper handling of preneed burial contracts;
  - d. Proper handling of deposits to the perpetual care trust fund;
  - e. Proper handling of deposits to the preneed trust fund;
  - f. Interment records;
  - g. Itemized statement of goods and services provided;
  - h. General price list;
  - i. Advertising;
  - j. Solicitation;

k. Proper care, maintenance, administration and embellishment of the cemetery;

l. Such other matters as necessary to assure the competence of licensees and registrants to comply with this chapter and Chapter 23.1 (§ 54.1-2310 et seq.) of Title 54.1 of the Code of Virginia.

**18 VAC 47-20-260. Protection of perpetual care and preneed trust funds.**

In the event that preneed or perpetual care funds are held in trust and the board or any of its agents have reason to believe that (i) the licensee or any agent of the licensee has diverted or misused any funds held in trust; (ii) the licensee is not able to adequately protect the interest of the person involved; (iii) the licensee's conduct or the operation of the cemetery company threatens the interests of the public; or (iv) the licensee has had its license suspended, revoked or surrendered, the board may initiate legal proceedings in accordance with § 54.1-2313.1 of the Code of Virginia.

**18 VAC 47-20-270. Standards of approval of training course.**

All training courses shall be approved by the board. The training course shall be at least eight hours and include appropriate testing procedures to demonstrate an understanding of the topics. The training program shall include, but is not limited, to the following topics:

1. Cemetery Board statute and regulations;
2. Perpetual care trust fund requirements;
3. Preneed trust fund requirements;
4. Preneed burial contracts;
5. Interment records;
6. General price list;
7. Itemized statement of goods and services provided;
8. Advertising;
9. Solicitation;
10. Funeral rule; and
11. Proper care, maintenance, administration and embellishment of the cemetery.

**NOTICE:** The forms used in administering 18 VAC 47-20, Cemetery Board Rules and Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

**FORMS**

Compliance Agent/Director/Officer Change Form, ~~CCADOCHG (eff. 7/1/00)~~ 49ADOCHG (eff. 7/05).

Cemetery Addition Form, 49CADD (eff. 1/06).

Cemetery Company License Application, 49LIC (eff. 1/06).

New Trustee/Transfer of Funds Notification Form, ~~CCNEWTR (eff. 7/1/00)~~ 49NEWTR (eff. 7/05).

Perpetual Care Trust Fund Financial Report Instructions, ~~CCPCTINS (eff. 7/1/00)~~ 49PCTINS (eff. 7/03).

Perpetual Care Fidelity Bond Form, ~~CCPCFBND (eff. 7/1/00)~~ 49PCFBND (eff. 7/05).

Perpetual Care Trust Fund Financial Report, ~~CCPCTFR (eff. 7/1/00)~~ 49PCTFR (eff. 7/05).

Perpetual Care Trust Fund Financial Report-Schedule A (Statement of Receipts and Expenses), ~~CCPCTFRA (eff. 7/1/00)~~ 49PCTFRA (eff. 7/05).

Perpetual Care Trust Fund Financial Report-Schedule B (Statement of Required Deposits), ~~CCPCTFRB (eff. 7/1/00)~~ 49PCTFRB (eff. 7/05).

Perpetual Care Trust Fund Financial Report-Schedule C (Statement of Expenses Incurred for the General Care, Maintenance, Embellishment and Administration of Cemeteries), ~~CCPCTFRC (eff. 7/1/00)~~ 49PCTFRC (eff. 7/05).

Perpetual Care Trust Fund Financial Report-Schedule D (Statement of Investment Securities), ~~CCPCTFRD (eff. 7/1/00)~~ 49PCTFRD (eff. 7/05).

Perpetual Care Trust Fund Financial Report-Schedule E (Cemeteries Covered by Trust Fund), ~~CCPCTFRE (eff. 7/1/00)~~ 49PCTFRE (eff. 7/05).

Preneed Trust Fund Financial Report Instructions, ~~CCPTINS (eff. 7/1/00)~~ 49PTINS (eff. 7/03).

Preneed Fidelity Bond Form, ~~CCPFBNB (eff. 7/1/00)~~ 49PFBNB (eff. 7/05).

Preneed Trust Fund Financial Report, ~~CCPTFR (eff. 7/1/00)~~ 49PTFR (eff. 7/05).

Preneed Trust Fund Financial Report-Schedule A (Statement of Receipts and Expenses), ~~CCPTFRA (eff. 7/1/00)~~ 49PTFRA (eff. 7/05).

Preneed Trust Fund Financial Report-Schedule B (Statement of Financial Deposits), ~~CCPTFRB (eff. 7/1/00)~~ 49PTFRB (eff. 7/05).

Preneed Trust Fund Financial Report-Schedule C (Statement of Investment Securities), ~~CCPTFRC (eff. 7/1/00)~~ 49PTFRC (eff. 7/05).

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Cemetery Company Renewal/Reinstatement Application, 49RENREI (eff. 1/06).

Sales Personnel Registration Form, 49SLSREG (eff. 1/06).

Perpetual Care Trust Fund Trustee ~~Affidavit~~ Verification, ~~CCTRAPP~~ (eff. 7/1/00) 49TRVER (eff. 7/05).

Trustee Approval Application, ~~CCTRAPP~~ (eff. 7/1/00) 49TRAPP (eff. 7/05).

Preneed Burial Contract, ~~CCPCTRCT~~ (eff. 7/1/00) 49PCTRCT (eff. 7/03).

Compliance Agent Designee Application, 49CADAPP (eff. 2/05).

VA.R. Doc. No. R05-276; Filed June 4, 2007, 12:39 p.m.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

### Proposed Regulation

**Title of Regulation: 18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18 VAC 65-20-10, 18 VAC 65-20-15, 18 VAC 65-20-60, 18 VAC 65-20-120, 18 VAC 65-20-130, 18 VAC 65-20-153, 18 VAC 65-20-170, 18 VAC 65-20-240, 18 VAC 65-20-350, 18 VAC 65-20-420, 18 VAC 65-20-440, 18 VAC 65-20-500, 18 VAC 65-20-510, 18 VAC 65-20-590, 18 VAC 65-20-700; adding 18 VAC 65-20-171).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

**Public Hearing Date:** June 28, 2007 -- 8:30 a.m.

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

(See Calendar of Events section for additional information)

**Agency Contact:** Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9943, or email elizabeth.young@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations, levy fees, administer a registration and renewal program, and discipline regulated professionals.

In addition, § 54.1-2803 of the Code of Virginia authorizes the board to establish standards of service and practice for the funeral service profession in the Commonwealth.

**Purpose:** The board reviewed each regulation in open meetings with the participation of representatives of funeral associations and received input about what needed to be

changed. The goal of the proposal was to address questions that have arisen from licensees or inspectors and issues relating to compliance with regulations. Where possible, the board has tried to make the regulation more flexible and less prescriptive, but has made rules more prescriptive where it was necessary to assist with the licensee with an understanding of his responsibilities relating to the regulations. Compliance with federal and state regulations by funeral service establishments and licensees is essential to protect the public health and safety relating to the financial arrangements and to the preparation and disposition of human remains. Clarity in the regulations will assist the regulants in compliance.

**Substance:** The board has amended existing regulations to accomplish the following:

1. The board has changed the term "establishment manager" to "manager of record" for consistency with other health professions that oversee facilities and has specified more accurately the responsibility of the manager.
2. The board has provided an exception to those cases that may not be delegated to a subordinate to allow a committee of the board (the special conference committee) to authorize delegation of any case, and has added to the listing of cases that may not be delegated to include a case involving a felony conviction of an applicant for licensure or registration as a resident trainee.
3. Amendments eliminate a requirement to notify the board of a change in the place of employment but require any change in the ownership, manager of record or name of a funeral establishment or facility to be made within 14 days rather than the current requirement of 30 days.
4. The renewal dates for all licensees are changed to March 31 of each calendar year for consistency with the renewal schedule for funeral service licenses, funeral director licenses and embalmer licenses.
5. The board has eliminated the specific embalming report and specified four items that such a report must contain.
6. Itemized statements and other reports will be required to be maintained for three years rather than the current requirement of one year.

**Issues:** The primary advantage to the consumers of funeral services could be an increase in the accountability and responsibility of the manager of record for the condition and maintenance of a funeral establishment and for compliance with federal and state rules relating to public health and safety. By clarifying a number of regulations, the regulated entities may better understand their responsibilities and may be more likely to be in compliance. There are no disadvantages to the public. There is also some advantage to the public to require that all forms and records be maintained for a period of three years. Should there be questions relating

to the services provided by a funeral establishment, consumers and/or the establishment may be better protected by the availability of records and forms.

There are no advantages or disadvantages to the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Funeral Directors and Embalmers (board) proposes to: 1) change the title "establishment manager" to "manager of record," 2) more clearly delineate the responsibilities of the manager of record, 3) allow itself the discretion to delegate any category of informal fact-finding proceedings to an agency subordinate, 4) add "felony conviction by an applicant" to the list of categories by which agency staff must check with the board on a case-by-case basis for authority to conduct informal fact-finding proceedings, 5) reduce the time within which establishments must report changes in ownership or manager of record from 30 days to 14 days, 6), change the expiration date for funeral establishment licenses, crematory registrations, and surface transportation and removal service registrations from January 31 to March 31 and the expiration date for courtesy cards from December 31 to March 31, 7) change the deadline for submitting an application package for funeral service licensure to 30 days prior to the examination date rather than 45 days, 8) reduce the amount of information required to be recorded for each embalming procedure conducted, 9) increase the length of time that records must be retained from one year to three years, and 10) add other clarifying language.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The current regulations require that "every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall have a separate establishment manager who is employed full time by the establishment for at least 40 hours a week." The board proposes to change the title "establishment manager" to "manager of record" and to delineate more specifically that the manager of record is accountable for the operation of the establishment to include but not be limited to the maintenance of the facility, retention of required records, and reporting of changes in relevant information to the board. This more specific language helps enable the board to more easily hold those individuals responsible for non-compliance in an establishment for which they are the manager of record.

The current regulations permit the board to delegate informal fact-finding proceedings to Department of Health Professions (department) staff upon determination that probable cause exists that a practitioner may be subject to a disciplinary action, except for cases that involve any of the following: 1) intentional or negligent conduct that causes or is likely to

cause injury, 2) conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public, 3) impairment with an inability to practice with skill and safety, 4) inappropriate handling of dead human bodies, 5) sexual misconduct, 6) misappropriation of funds, or 7) aiding or abetting unauthorized practice. The board proposes to permit itself to delegate informal fact-finding proceedings to department staff for any category of case, but also proposes to retain the above list of categories for the following purpose; department staff will only be required to check with the board on a case-by-case basis for authority to conduct informal fact-finding proceedings that involve any of the categories on the list. This proposed change allows the board the benefit of more flexibility and is unlikely to produce any costs for the Commonwealth. Thus, it will likely produce a net benefit.

The board also proposes to add "felony conviction by an applicant" to the list of categories by which agency staff must check with the board on a case-by-case basis for authority to conduct informal fact-finding proceedings. This may produce a small delay in the start of informal fact-finding proceedings that involve "felony conviction by an applicant," but the delays will likely usually be small and the board believes the costs of its non-involvement are potentially significant for this category.

Under the current regulations funeral establishments must report changes in ownership or manager of record (establishment manager) within 30 days of the change. The board proposes to reduce the time to 14 days. Given the existence of modern communication technology such as email, it is not difficult for firms to quickly report one sentence of information. Thus the cost of this proposed amendment is minimal. The change brings some potential for public benefit in that the department and board may be able to more quickly ascertain potential risks for the public.

Also under the current regulations, the expiration date for funeral service licenses, funeral director license, and embalmer licenses is March 31; while the expiration dates for funeral service establishment licenses, crematory registrations, and surface transportation and removal service registrations is January 31; and the expiration date for courtesy cards for out-of-state practitioners is December 31. The board proposes to make all expiration dates March 31. This proposed amendment will be beneficial in that it will reduce confusion for affected entities, reduce department staff time in alleviating that confusion, and will allow staff to focus renewal activity into one specific time.

The board proposes to amend the deadline for submitting an application package for funeral service licensure to 30 days prior to the examination date rather than 45 days. This will be beneficial for applicants who will be able to take the exam sooner and potentially start working sooner.

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Additionally, the board proposes to reduce the amount of information required to be recorded for each embalming procedure conducted. This will moderately reduce the amount of time spent in producing such records. Given that the board and department believe that the reduced information is sufficient, the proposal will clearly create a net benefit.

Finally, the board wishes to increase the length of time that records must be retained from one year to three years. According to the department funeral establishments are inspected approximately once every three years; and investigations of unprofessional conduct may not be initiated and completed within one year of an event for which the record must be reviewed. Thus, there are clear benefits in terms of assuring that funeral establishments are meeting requirements for extending the required record retention time. The costs of retaining the amount of data required by the board are small, particularly if the data is kept electronically. Thus this proposal will likely produce a net benefit.

**Businesses and Entities Affected.** The proposed regulations affect Virginia licensed funeral establishments, their owners and employees, and their clients. According to the department there are currently 507 licensed funeral establishments; of that number approximately 350 would be considered small businesses. The rest are establishments that are owned by large, national or international corporations. There are 1,434 licensed funeral service providers, 6 embalmers, and 112 funeral directors who are employees of those establishments.

**Localities Particularly Affected.** The proposed regulatory amendments do not disproportionately affect specific localities.

**Projected Impact on Employment.** The proposed amendments are unlikely to significantly affect the amount of employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** None of the proposed amendments are likely to have large effects on the use and value of private property. As stated earlier, the proposal to amend the deadline for submitting an application package for funeral service licensure to 30 days prior to the examination date rather than 45 days will be beneficial for applicants who will be able to take the exam sooner and potentially start working sooner. Thus these individuals may start earning salaries earlier, and firms may become fully staffed earlier.

The proposed reduction in the amount of information required to be recorded for each embalming procedure will moderately reduce the amount of time spent by funeral establishment staff in producing such records. The positive value of this moderate reduction in required labored time will most likely exceed the very small increase in costs associated with the proposed requirement for establishments to retain records for

three years rather than one. Thus in net the proposed amendments will likely moderately reduce costs for most affected firms.

**Small Businesses: Costs and Other Effects.** The proposed reduction in the amount of information required to be recorded for each embalming procedure will moderately reduce the amount of time spent by small funeral establishment staff in producing such records. The positive value of this moderate reduction in required labored time will most likely exceed the very small increase in costs associated with the proposed requirement for small establishments to retain records for three years rather than one. Thus in net the proposed amendments will likely moderately reduce costs for most affected small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments do not produce a net adverse impact for 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 Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 65-20 related to its periodic review recommendations.

### Summary:

*The proposed amendments specify the terminology and responsibilities for an establishment manager of record,*

*revise the renewal schedule for establishments for consistency with other licenses, clarify the licensee's responsibility for compliance with continuing education, increase the requirement for retention of records from one year to three years, and streamline the requirement for a detailed embalming report.*

### **18 VAC 65-20-10. Definitions.**

Words and terms used in this chapter shall have the definitions ascribed in § 54.1-2800 of the Code of Virginia or in 16 CFR Part 453, Funeral Industry Practices, of the Federal Trade Commission, which is incorporated by reference in this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Branch" or "chapel" means a funeral service establishment that is affiliated with a licensed main establishment and that conforms with the requirements of § 54.1-2811 of the Code of Virginia.

"Courtesy card" means the card issued by the board which grants limited and restricted funeral service privileges in the Commonwealth to out-of-state funeral service licensees, funeral directors, and embalmers.

"Cremation urn" means a wood, metal, stone, plastic, or composition container or a container of other material, which is designed for encasing cremated ashes.

"Cremation vault" or "cremation outer burial container" means any container that is designed for encasement of an inner container or urn containing cremated ashes. Also known as a cremation box.

~~"Establishment manager" means a funeral service licensee or licensed funeral director designated as the manager of record who is responsible for the direct supervision and management of a funeral service establishment or branch facility.~~

"FTC" means the Federal Trade Commission.

"Manager of record" means a funeral service licensee or licensed funeral director who is responsible for the direct supervision and management of a funeral service establishment or branch facility.

### **18 VAC 65-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

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

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except with the concurrence of a committee of the board, are those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury;
2. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public;
3. Impairment with an inability to practice with skill and safety;
4. Inappropriate handling of dead human bodies;
5. Sexual misconduct;
6. Misappropriation of funds; ~~or~~
7. Aiding or abetting unauthorized practice; or
8. Felony conviction by an applicant.

### C. Criteria for an agency subordinate.

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

### **18 VAC 65-20-60. Accuracy of information.**

A. All changes of mailing address, or name, place of employment, or change in establishment ownership, manager, or name of a licensee or registrant shall be furnished to the board within 30 days after the change occurs.

B. Any change in ownership or manager of record for an establishment shall be reported to the board within 14 days of the change.

~~B. C.~~ All notices required by law and by this chapter to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address on file with the board and shall not relieve the licensee, funeral service intern, establishment, or firm of obligation to comply.

### **18 VAC 65-20-120. Expiration dates.**

A. A funeral service establishment license, crematory registration, or surface transportation and removal service registration shall expire on ~~January~~ March 31 of each calendar year.

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B. The funeral service license, funeral director license, or embalmer license shall expire on March 31 of each calendar year.

C. Courtesy cards expire on ~~December~~ March 31 of each calendar year.

## **18 VAC 65-20-130. Renewal of license; registration.**

A. A person, establishment, crematory, courtesy card holder or surface transportation and removal service that desires to renew its license or registration for the next year shall, not later than the expiration date as provided in 18 VAC 65-20-120, submit the renewal application and applicable fee.

1. In order to renew an active funeral service, director or embalmer license, a licensee shall be required to comply with continuing competency requirements set forth in 18 VAC 65-20-151.

2. The board shall not renew a license for any licensee who fails to attest to compliance with continuing competency requirements on the renewal form.

B. A person who or entity that desires to renew an expired license for up to one year following expiration shall comply with requirements of subsection A of this section and also submit the applicable fee for late renewal.

C. A person who or entity which fails to renew a license, registration, or courtesy card by the expiration dates prescribed in 18 VAC 65-20-120 shall be deemed to have an invalid license, registration, or courtesy card and continued practice may subject the licensee to disciplinary action by the board.

## **18 VAC 65-20-153. Documenting compliance with continuing education requirements.**

A. All licensees with active status are required to maintain original documentation for a period of two years after renewal.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation within 14 days as follows:

1. Official transcripts showing credit hours earned from an accredited institution; or
2. Certificates of completion from approved providers.

D. Compliance with continuing education requirements, including the subject and purpose of the courses as prescribed in 18 VAC 65-20-151 B, the maintenance of records and the relevance of the courses to the category of licensure is the responsibility of the licensee. The board may request additional information if such compliance is not clear from the transcripts or certificates.

E. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

## **18 VAC 65-20-170. Requirements for an establishment license.**

A. No person shall maintain, manage, or operate a funeral service establishment in the Commonwealth, unless such establishment holds a license issued by the board. The name of the funeral service licensee or licensed funeral director designated by the ownership to be manager of the establishment shall be included on the license.

B. Except as provided in § 54.1-2810 of the Code of Virginia, every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall have a separate establishment manager who is employed full time by the establishment for at least 40 hours a week of record who has responsibility for the establishment as prescribed in 18 VAC 65-20-171. The owner of the establishment shall not abridge the authority of the manager of record relating to compliance with the laws governing the practice of funeral services and regulations of the board.

C. At least 45 days prior to opening an establishment, an owner or licensed manager seeking an establishment license shall submit simultaneously a completed application, any additional documentation as may be required by the board to determine eligibility, and the applicable fee. An incomplete package will be returned to the licensee. A license shall not be issued until an inspection of the establishment has been completed and approved.

D. Within 30 days following a change of ownership, the owner or licensed manager shall notify the board, request a reinspection of the establishment, submit an application for a new establishment license with documentation that identifies the new owner, and pay the licensure and reinspection fees as required by 18 VAC 65-20-70. Reinspection of the establishment may occur on a schedule determined by the board, but shall occur no later than one year from the date of the change.

E. The application for licensure of a branch or chapel shall specify the name of the main establishment.

## **18 VAC 65-20-171. Responsibilities of the manager of record.**

A. The manager of record shall be employed full time by the establishment for at least 40 hours a week.

B. The manager shall be fully accountable for the operation of the establishment as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

1. Maintenance of the facility within standards established in this chapter;

2. Retention of reports and documents as prescribed by the board in 18 VAC 65-20-700 during the period in which he serves as manager of record; and

3. Reporting to the board of any changes in information as required by 18 VAC 65-20-60.

**18 VAC 65-20-240. Requirements for funeral service licensure by examination.**

A. Application requirements.

1. With the exception of school transcripts and national examination board scores, all parts of an application package, including the required fee and any additional documentation as may be required to determine eligibility, shall be submitted simultaneously.

2. An individual applying for the state examination shall submit the application package ~~within six months and~~ not less than ~~45~~ 30 days prior to an examination date. The board may, for good cause shown by the applicant, waive the time for the filing of any application.

B. National examination requirements. Prior to applying for licensure by examination, every applicant shall pass the National Board Examination of the Conference of Funeral Service Examining Boards of the United States, Inc., administered in accredited schools of embalming or mortuary science.

C. State examination requirements. All applicants shall pass the Virginia State Board Examination.

**18 VAC 65-20-350. Requirements for licensure by ~~reciprocity or~~ endorsement.**

A. Licenses for the practice of funeral service or its equivalent issued by other states, territories, or the District of Columbia may be recognized by the board and the holder of such license or licenses may be granted a license to practice funeral service within the Commonwealth, ~~as follows:~~

~~1. Reciprocity. Licenses may be granted by reciprocity provided that the same privileges are granted by the other jurisdiction to Virginia funeral service licensees by the establishment of substantially similar licensure requirements and reciprocity agreements between the two jurisdictions; or~~

~~2. Endorsement.~~ Licenses may be granted to applicants by the board on a case-by-case basis if the applicant holds a valid license for the practice of funeral service or its equivalent in another state, territory, or the District of Columbia and possesses credentials which are substantially similar to or more stringent than required by the Commonwealth for initial licensure at the time the applicant was initially licensed.

B. An applicant for licensure by ~~reciprocity or~~ endorsement shall pass the Virginia State Board Examination.

**18 VAC 65-20-420. Misrepresentation.**

A person employed or operating a surface transportation and removal service shall not in any manner misrepresent himself to the public as being an official of any local jurisdiction, the Commonwealth, federal, or any other governmental body unless granted such authority. This shall include the name and title of the company or service, uniforms, equipment, vehicles, and any other instruments used or proffered by the services or its agents. ~~The board shall be the sole determinant of the appropriateness of the pertinent qualities of the service and staff in enforcing this regulation.~~

**18 VAC 65-20-440. Courtesy cards.**

A. An out-of-state person applying for a courtesy card pursuant to § 54.1-2801 B of the Code of Virginia shall hold a valid license for funeral service, funeral directing, or embalming in another state, territory, or the District of Columbia.

B. An applicant for a courtesy card shall submit:

1. A completed application and prescribed fee; and
2. Verification of a current funeral service license in good standing from the applicant's licensing authority.

C. The holder of a Virginia courtesy card shall only engage in the practice for which he is currently licensed in another jurisdiction.

**18 VAC 65-20-500. Disciplinary action.**

In accordance with the provisions of § 54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.
2. Unfair competition.
  - a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.
  - b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.
3. False advertising.
  - a. No licensee or registrant shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public which contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

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b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of § 54.1-2806 of the Code of Virginia:

- (1) Advertising containing inaccurate statements; and
- (2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those which shall constitute an untrue, deceptive, and misleading representation or statement of fact:

- (1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and
- (2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling of dead human bodies. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for a funeral service intern or failure to provide reports to the board as required by the Code of Virginia and 18 VAC 65-40-320.

9. Failure to comply with applicable federal and state laws and regulations, including requirements for continuing education.

## **18 VAC 65-20-510. Embalming report.**

Every funeral establishment shall record and maintain a separate, identifiable report ~~on a form as prescribed in Appendix IV of this chapter~~ for each embalming procedure conducted, which shall at a minimum include the following information:

1. The name of the deceased and the date of death;
2. The date and location of the embalming;

3. The name and signature of the embalmer and the Virginia license number of the embalmer; and

4. If the embalming was performed by a funeral service intern, the name and signature of the supervisor.

## **18 VAC 65-20-590. Disposal of waste materials.**

Disposal of all waste materials shall be in conformity with local, state, and federal law and regulations to avoid contagion and the possible spread of disease. Upon inspection, the establishment shall provide evidence of compliance, such as a copy of a contract with a medical waste disposal company.

## **18 VAC 65-20-700. Retention of documents.**

A. The following retention schedule shall apply to retention of embalming reports, price lists, and itemized statements:

1. Price lists shall be retained for ~~one year~~ three years after the date on which they are no longer effective;
2. Itemized statements shall be retained for ~~one year~~ three years from the date on which the arrangements were made; and
3. Embalming reports shall be retained at the location of the embalming for ~~one year~~ three years after the date of the embalming.

B. The manager of record shall be responsible for retention and maintenance of all required documents.

~~4. C.~~ Documents shall be maintained on the premises of the funeral establishment and made available for inspection; and

~~5. D.~~ In instances where the funeral establishment is sold, documents shall be transferred to the new owner, unless the existing firm is relocating to a new facility.

VA.R. Doc. No. R06-91; Filed June 5, 2007, 11:29 a.m.

## **BOARD OF HEALTH PROFESSIONS**

### **Fast-Track Regulation**

Title of Regulation: **18 VAC 75-20. Regulations Governing Practitioner Self-Referral (amending 18 VAC 75-20-60, 18 VAC 75-20-70; adding 18 VAC 75-20-120, 18 VAC 75-20-130 and 18 VAC 75-20-140).**

Statutory Authority: §§ 54.1-2400 and 54.1-2412 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on August 24, 2007.

(See Calendar of Events section for additional information)

Effective Date: September 10, 2007.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 West Broad

Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-9943, or email [elizabeth.carter@dhp.virginia.gov](mailto:elizabeth.carter@dhp.virginia.gov).

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

The specific statutory mandate for regulations necessary for administration of the Practitioner Self-Referral Act are in § 54.1-2412 of the Code of Virginia.

Section 2.2-4019 of the Administrative Process Act authorizes delegation of informal fact-finding to a subordinate.

**Purpose:** The intent of the proposed action is to amend the regulations governing practitioner self-referral to allow the board to delegate an informal conference to consider the issuance of an advisory opinion or exception from provisions of the law.

The Practitioner Self-Referral Act (Chapter 24.1 (§ 54.1-2410 et seq.) of Title 54.1 of the Code of Virginia) sets out certain exceptions to the prohibition against self-referral and authorizes the Board of Health Professions to grant other exceptions to entities or practitioners who meet statutory criteria for an exception. The board is also authorized to administer the chapter by issuing advisory opinions on the applicability of the law to a proposed referral arrangement between or among practitioners.

An entity seeking an advisory opinion or an exception must file an application and submit a fee, along with sufficient documentation to support the position that the business relationship proposed does not constitute a violation of the Act. Since the issues involved in rendering a decision are typically financial and business in nature, rather than practice or professional in nature, the Self-Referral Committee of the board (acting as an informal conference committee) generally depends on the review of the documents by and opinions of legal and/or financial experts to render its decision following an informal fact-finding proceeding.

In the Administrative Process Act, § 2.2-4019 sets out the rights of parties to the case in informal fact-finding and includes the authority of the agency to have the case heard by its subordinates or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case. Any recommendation from the subordinate would have to be ratified by the Board of Health Professions, so the authority to make decisions relative to the applicability of the Self-Referral Act would remain with the board in order to ensure that consumers of health care services are being appropriately referred without jeopardizing their health and safety.

**Rationale for Using Fast-Track Process:** The fast-track process is being used to promulgate the amendments because this is strongly recommended by the Self-Referral Committee of the board, and there is agreement among citizen and professional members with the changes proposed. The action is not controversial and is expected to facilitate decisions on applications for advisory opinions or exceptions.

**Substance:** A new section of regulation is added to set out the criteria and process for delegation of conferences on advisory opinions and requests for exceptions to the practitioner self-referral prohibition, including authorization to delegate, criteria for delegation, and the qualifications of individuals who may be designated as agency subordinates. Any recommendation by the subordinate must be ratified or may be reversed by the board in rendering its decision on an application.

**Issues:** There are no disadvantages to the public of these amendments. For those entities seeking an advisory opinion or an exception to the Act, the process should be less cumbersome and a decision may be more timely.

There are no advantages or disadvantages to the agency or the Commonwealth. There would be an advantage to the members of the Board of Health Professions who would not be required to give up a day of practice to attend an informal conference on an application relating to the Practitioner Self-Referral Committee.

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

**Summary of the Proposed Regulation.** The Board of Health Professions (Board) proposes to amend the Regulations Governing Practitioner Self-Referral so that an agency subordinate can evaluate applications for an advisory opinion. The Board also proposes to amend the language of these regulations to clarify that all application approvals or disapprovals are currently, and must continue to be, ratified by the Board.

**Result of Analysis.** The benefits likely exceed the costs for this proposed regulatory change.

**Estimated Economic Impact.** Section 54.1-2411 of the Code of Virginia, requires that, with certain exceptions, a health care "practitioner shall not refer a patient for health services to an entity outside the practitioner's office or group practice if the practitioner or any of the practitioner's immediate family members is an investor in such entity." This section also allows the Board to issue advisory opinions and establishes the rules under which the Board may grant exceptions to the prohibition against self-referral. Current regulations allow the Board's self-referral committee (acting as an informal conference committee) to consider applications for exception to § 54.1-2411 and to issue advisory opinions about whether practitioners are in compliance with § 54.1-2411. Once the self-referral committee reaches a decision

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about whether an exception is appropriate, that decision has to be ratified by the Board.

The Department of Health Professions (DHP) reports that “the issues involved in rendering a decision (on an application for exception) are typically financial and business in nature.” The self-referral committee currently depends on legal and financial experts to advise them on these issues before they render decisions. The Board proposes to increase the efficiency of this decision-making process by allowing an agency subordinate with subject matter expertise to consider applications for exception and to make recommendations on them. Those recommendations would then need to be ratified by the Board (just as committee decisions are now ratified).

This change will likely benefit both the Board and practitioners whose applications are being considered. The Board will benefit because less Board staff time will have to be spent soliciting appropriate expert opinions on applications. Practitioners whose applications are approved benefit from being able to self-refer sooner. Practitioners will benefit from a more expedited process even when their applications are denied, because this expedited process will allow them to direct the time and resources that they may have been holding in reserve toward other ventures.

**Businesses and Entities Affected.** Any health care practitioner who submits an application for exception to the rules against self-referral will be affected by the proposed regulations. DHP reports that the Board typically receives only one or two such applications annually.

**Localities Particularly Affected.** No locality will be particularly affected by the proposed regulations.

**Projected Impact on Employment.** Since the Board will be utilizing the services of subject-matter experts who will act as agency subordinates, the proposed regulations will likely increase opportunities for contract employment with the Board.

**Effects on the Use and Value of Private Property.** To the extent that the proposed regulations allow health care practitioners to be granted exceptions more quickly, the value of their practices may increase by the profits that were formerly forestalled during the longer decision-making process.

**Small Businesses: Costs and Other Effects.** Affected small businesses will not incur any extra costs on account of the proposed regulations.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Affected small businesses will not incur any extra costs on account of the proposed regulations.

**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 Board of Health Professions concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18 VAC 75-20, Regulations Governing Practitioner Self-Referral.

Summary:

*The amendments set out criteria for delegation of an informal conference to an agency subordinate. The criteria for delegation would be those applications for an advisory opinion or an exception to the Practitioner Self-Referral Act that are deemed by the executive director and the chairman of the board to be appropriate for a conference with a subordinate who is qualified by his training and experience in the organizational structure of the entity providing the health care service. The board would delegate the choice of the subordinate to the executive director.*

*In addition, amendments are made to accurately reflect the process currently followed by a committee of the board that hears an application for an advisory opinion or an exception. The committee does not issue the opinion or grant the exception until its recommendation is presented to the board for ratification.*

**18 VAC 75-20-60. Application for advisory opinions.**

A. Any practitioner or entity may request an advisory opinion on the applicability of the Act upon completion of an application and payment of a fee.

B. Requests shall be made on an application form prescribed by the board. The request shall contain the following information:

1. The name of the practitioner or entity;
2. Identification of the practitioner or entity and description of the health care services being provided or proposed;
3. The type and amount of existing or proposed investment interest in the entity;
4. A description of the nature of the investment interest and copies of any existing or proposed documents between the practitioner and the entity including but not limited to leases, contracts, organizational documents, etc.; and
5. Certification and notarized signature of the practitioner or principal of the entity requesting the advisory opinion that the information and supporting documentation contained therein is true and correct.

C. The application shall be reviewed for completeness, and the board may request such other additional information or documentation it deems necessary from the practitioner or entity.

D. Upon a determination that a request for an advisory opinion is complete and that it has sufficient information, the ~~committee board~~ shall notify the practitioner or entity that it will consider its request.

E. At the conclusion of ~~the meeting or an informal~~ conference, the committee shall issue an advisory opinion to the practitioner or entity, which shall be presented for ratification by the board.

**18 VAC 75-20-70. Application for exception.**

A. A practitioner or entity may request an exception to the prohibitions of the Act upon completion of an application and payment of a fee.

B. Requests shall be made on an application form prescribed by the board. The application shall contain the following information:

1. The name and identifying information of the practitioner or entity;
2. The information and documentation regarding community need and alternative financing as required by § 54.1-2411 B of the Code of Virginia;
3. Certification and notarized signature of the practitioner or principal of the entity requesting the exception that the information contained in the application and supporting documentation is true and correct.

C. The application shall be reviewed for completeness, and the board may request additional information and documentation from the applicant.

D. Upon a determination that an application is complete and that it has sufficient information, the ~~committee board~~ shall notify the applicant that it will consider the request.

E. At the conclusion of ~~the meeting or an informal~~ conference, the committee shall issue a decision regarding the request for an exception to the applicant, which shall be presented for ratification by the board.

F. Exceptions to the Act shall be valid for a period of no more than five years.

G. Subject to verification by the board, an exception shall be renewed upon payment of a renewal fee and the receipt of certification from the practitioner or entity that the conditions under which the original exception was granted continue to warrant the exception.

PART IV.

DELEGATION TO AN AGENCY SUBORDINATE.

**18 VAC 75-20-120. Decision to delegate.**

In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal conference to an agency subordinate to consider an application for an advisory opinion or an exception to the provisions of the Act.

**18 VAC 75-20-130. Criteria for delegation.**

Applications that may be delegated shall be those approved by the chairman and executive director of the board.

**18 VAC 75-20-140. Criteria for an agency subordinate.**

A. An agency subordinate authorized by the board to conduct an informal conference may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in the organizational structure of entities providing the health care services identified in the application.

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

VA.R. Doc. No. R07-267; Filed June 5, 2007, 11:31 a.m.

**BOARD OF NURSING**

**Final Regulation**

**Title of Regulation: 18 VAC 90-25. Regulations Governing Certified Nurse Aides (amending 18 VAC 90-25-15 through 18 VAC 90-25-80 and 18 VAC 90-25-100 through 18 VAC 90-25-130; adding 18 VAC 90-25-71, 18 VAC 90-25-72 and 18 VAC 90-25-81).**

**Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.**

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Effective Date: July 25, 2007.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, or email jay.douglas@dhp.virginia.gov.

Summary:

*The amendments (i) require nursing aide programs to report any change of physical location to the board, (ii) specify that the licenses required of program coordinators and instructors be current and unrestricted, (iii) reduce from 24 to 16 the number of core curriculum hours that must be completed before a student can have direct client contact, (iv) provide that giving false information to staff or board members in the course of an investigation or proceeding may lead to disciplinary action, and (v) specify that a nursing aide certificate holder can only petition the board once to remove a finding of neglect.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**18 VAC 90-25-15. Identification; accuracy of records.**

A. Any person regulated by this chapter who provides direct patient care shall, while on duty, wear identification that is clearly visible and indicates the person's first and last name and the appropriate title issued to such person by the board under which he is practicing in that setting.

B. A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence.

C. Each certificate holder shall maintain a record of his current mailing address with the board, and any change of address shall be submitted in writing to the board within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address on file with the board.

**18 VAC 90-25-20. Establishing and maintaining a nurse aide education program.**

A. Establishing a nurse aide education program.

1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.

2. The application shall provide evidence of the ability of the institution to comply with subsection B of this section.

3. The committee shall, in accordance with § 2.2-4019 of the Code of Virginia, receive and review the application

and shall make a recommendation to the board to grant or deny approval.

4. If the committee's recommendation is to deny approval, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.

B. Maintaining an approved nurse aide education program. To maintain approval, the nurse aide education program shall:

1. Demonstrate evidence of compliance with the following essential elements:

a. Curriculum content and length as set forth in subsection A of 18 VAC 90-25-40 and subsection C of 18 VAC 90-25-50.

b. Maintenance of qualified instructional personnel as set forth in 18 VAC 90-25-30.

c. Classroom facilities that meet requirements set forth in subsection D of 18 VAC 90-25-50.

d. Maintenance of records as set forth in subsection A of 18 VAC 90-25-50.

e. Skills training experience in a nursing facility that has not been subject to penalty or penalties as provided in 42 CFR 483.151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation Programs and Paid Feeding Assistants, ~~effective April 1, 1992~~ revised October 1, 2005) in the past two years. The foregoing shall not apply to a nursing facility that has received a waiver from the state survey agency in accordance with federal law.

f. Agreement that board representatives may make unannounced visits to the program.

g. Financial support and resources sufficient to meet requirements of this chapter as evidenced by a copy of the current annual budget or a signed statement from the administration specifically detailing its financial support and resources.

h. Completion and submission of biennial on-site review reports and program evaluation reports as requested by the board.

2. Impose no fee for any portion of the program on any nurse aide who, on the date on which the nurse aide begins the program, is either employed or has an offer of employment from a nursing facility.

3. Provide documentation that each student applying to or enrolled in such program has been given a copy of applicable Virginia law regarding criminal history records checks for employment in certain health care facilities, and a list of crimes that pose a barrier to such employment.

4. Report all substantive changes in subdivision 1 of this subsection within 10 days of the change to the board to include, but not be limited to, a change in the program coordinator, primary instructor, program ownership, physical location of the program or licensure status.

5. Provide each student with a copy of his certificate of completion.

## **18 VAC 90-25-30. Requirements for instructional personnel.**

### **A. Program coordinator.**

1. Each program shall have a program coordinator who must be a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege.

2. The program coordinator in a nursing facility based program may be the director of nursing services. The director of nursing may assume the administrative responsibility and accountability for the nurse aide education program but shall not engage in the actual classroom and clinical teaching.

3. The primary instructor may be the program coordinator in any nurse aide education program.

### **B. Primary instructor.**

1. Each program shall have a primary instructor who must be a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege.

2. Qualifications. The primary instructor, who does the majority of the actual teaching of the students shall:

a. Hold a current, unrestricted Virginia license as a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege; and

b. Have two years of experience as a registered nurse within the previous five years and at least one year of experience in the provision of long-term care facility services. Such experience may include, but not be limited to, employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care or other long-term care setting. Experience should include varied responsibilities, such as direct resident care, supervision and education.

3. Responsibilities. The primary instructor is responsible for the teaching and evaluation of students and, in addition, shall:

a. Participate in the planning of each learning experience;

b. Ensure that course objectives are accomplished;

c. Ensure that the provisions of subsection F of this section are maintained;

d. Maintain records as required by subsection A of 18 VAC 90-25-50;

e. Perform other activities necessary to comply with subsection B of 18 VAC 90-25-20; and

f. Ensure that students do not perform services for which they have not received instruction and been found proficient by the instructor.

### **C. Other instructional personnel.**

1. Instructional personnel who assist the primary instructor in providing classroom or clinical supervision shall be registered nurses or licensed practical nurses.

a. A registered nurse shall:

(1) Hold a current, unrestricted Virginia license as a registered nurse; and

(2) Have had at least one year of direct patient care experience as a registered nurse.

b. A licensed practical nurse shall:

(1) Hold a current, unrestricted Virginia license as a practical nurse;

(2) Hold a high school diploma or equivalent;

(3) Have been graduated from a state-approved practical nursing program; and

(4) Have had at least two years of direct patient care experience as a licensed practical nurse.

2. Responsibilities. Other instructional personnel shall provide instruction under the supervision of the primary instructor.

D. Prior to being assigned to teach the nurse aide education program, all instructional personnel shall demonstrate competence to teach adults by one of the following:

1. Satisfactory completion of a course in teaching adults that includes (i) basic principles of adult learning; (ii) teaching methods and tools for adult learners; and (iii) evaluation strategies and measurement tools for assessing the learning outcomes; or

2. Have experience in teaching adults or high school students.

E. To meet planned program objectives, the program may, under the direct, on-site supervision of the primary instructor, use other persons who have expertise in specific topics and have had at least one year of experience in their field.

F. When students are giving direct care to clients in clinical areas, instructional personnel must be on site solely to supervise the students. The ratio of students to each instructor shall not exceed 10 students to one instructor.

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## 18 VAC 90-25-40. Requirements for the curriculum.

A. Curriculum content. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

1. Initial core curriculum. Prior to the direct contact ~~of a student~~ with a nursing facility client, a student shall have completed a total of at least 24 hours of instruction. Sixteen of those hours shall be in the following five areas ~~must be presented~~:

- a. Communication and interpersonal skills.
  - b. Infection control.
  - c. Safety and emergency procedures, including dealing with obstructed airways and fall prevention.
  - d. Promoting client independence.
  - e. Respecting clients' rights.
2. Basic skills.
- a. Recognizing changes in body functioning and the importance of reporting such changes to a supervisor.
  - b. Measuring and recording routine vital signs.
  - c. Measuring and recording height and weight.
  - d. Caring for the clients' environment.
  - e. Measuring and recording fluid and food intake and output.
  - f. Performing basic emergency measures.
  - g. Caring for a client when death is imminent.
3. Personal care skills.
- a. Bathing and oral hygiene.
  - b. Grooming.
  - c. Dressing.
  - d. Toileting.
  - e. Assisting with eating and hydration, including proper feeding techniques.
  - f. Caring for skin, to include prevention of pressure ulcers.
  - g. Transfer, positioning and turning.
4. Individual client's needs, including mental health and social service needs.
- a. Modifying the aide's behavior in response to the behavior of clients.
  - b. Identifying developmental tasks associated with the aging process.

c. Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

d. Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, and by providing and reinforcing other behavior consistent with the client's dignity.

e. Utilizing the client's family or concerned others as a source of emotional support.

f. Responding appropriately to the client's behavior; including, but not limited to, aggressive behavior and language.

g. Providing appropriate clinical care to the aged and disabled.

h. Providing culturally sensitive care.

5. Care of the cognitively or sensory (visual and auditory) impaired client.

a. Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

b. Communicating with cognitively or sensory impaired clients.

c. Demonstrating an understanding of and responding appropriately to the behavior of cognitively or sensory impaired clients.

d. Using methods to reduce the effects of cognitive impairment.

6. Skills for basic restorative services.

a. Using assistive devices in transferring, ambulation, eating and dressing.

b. Maintaining range of motion.

c. Turning and positioning, both in bed and chair.

d. Bowel and bladder training.

e. Caring for and using prosthetic and orthotic devices.

f. Teaching the client in self-care according to the client's abilities as directed by a supervisor.

7. Clients' rights.

a. Providing privacy and maintaining confidentiality.

b. Promoting the client's right to make personal choices to accommodate individual needs.

c. Giving assistance in resolving grievances and disputes.

d. Providing assistance necessary to participate in client and family groups and other activities.

e. Maintaining care and security of the client's personal possessions.

f. Promoting the client's rights to be free from abuse, mistreatment and neglect and the need to report any instances of such treatment to appropriate staff.

g. Avoiding the need for restraints in accordance with current professional standards.

8. Legal and regulatory aspects of practice as a certified nurse aide, including, but not limited to, consequences of abuse, neglect, misappropriation of client property and unprofessional conduct.

9. Occupational health and safety measures.

10. Appropriate management of conflict.

**B. Unit objectives.**

1. Objectives for each unit of instruction shall be stated in behavioral terms that are measurable.

2. Objectives shall be reviewed with the students at the beginning of each unit.

**C. Curriculum changes.** Changes in curriculum shall be approved by the board prior to implementation and shall be submitted at the time of the on-site visit or with the report submitted by the program coordinator in the intervening year.

**18 VAC 90-25-50. Other program requirements.**

**A. Records.**

1. Each nurse aide education program shall develop and maintain an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the program shall provide each nurse aide ~~must receive~~ with a copy of this record and a certificate of completion from the program.

2. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

**B. Student identification.** The nurse aide students shall wear identification that clearly distinguishes them as a "nurse aide student."

**C. Length of program.**

1. The program shall be at least 120 clock hours in length.

2. The program shall provide for at least 24 hours of instruction prior to direct contact of a student with a nursing facility client.

3. Skills training in clinical settings shall be at least 40 hours of providing direct client care. Five of the clinical hours may be in a setting other than a nursing home. Hours

of observation shall not be included in the required 40 hours of skills training.

4. Employment orientation to facilities used in the education program must not be included in the 120 hours allotted for the program.

**D. Classroom facilities.** The nurse aide education program shall provide facilities that meet federal and state requirements including:

1. Comfortable temperatures.

2. Clean and safe conditions.

3. Adequate lighting.

4. Adequate space to accommodate all students.

5. Instructional technology and equipment needed for simulating client care.

**18 VAC 90-25-60. Requirements for continued approval; interruption or closing of a program.**

**A. Program review.**

1. Each nurse aide education program shall be reviewed annually either by a visit on site by an agent of the board or by a written program evaluation. Each program shall be reviewed by an on-site visit at least every two years following initial review or whenever deemed necessary by the board to ensure continued compliance.

2. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an on-site review is not conducted.

**B. Decision on continued approval.** The committee, in accordance with § 2.2-4019 of the Code of Virginia, shall receive and review the report of the on-site visit or program evaluation report and shall make recommendations to the board to grant continued approval, place a program on conditional approval or deny continued approval.

a. Granting continued approval. A nurse aide education program shall continue to be approved provided the requirements set forth in subsection B of 18 VAC 90-25-20 are maintained.

b. Placing a program on conditional approval. If the committee determines that a nurse aide education program has not filed its program evaluation report or is not maintaining the requirements of subsection B of 18 VAC 90-25-20, the committee may recommend to the board that the program be placed on conditional approval and the program provider shall be given a reasonable period of time to correct the identified deficiencies ~~or the matter shall be referred to the board or a panel of the board for a hearing.~~

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(1) The committee shall receive and review reports of progress toward correcting identified deficiencies and, when a final report is received at the end of the specified time showing corrections of deficiencies, make a recommendation to the board ~~for to~~ grant ~~of~~ continued approval.

(2) If the program provider fails to correct the identified deficiencies within the time specified by the committee or the board, the board or a panel thereof may withdraw approval following a hearing in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.

(3) The program provider may request a formal hearing before the board or a panel thereof pursuant to § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.

c. Denying continued approval. ~~If the committee determines that a nurse aide education program is not maintaining the requirements of subsection B of 18 VAC 90-25-20, it may recommend that continued approval be denied and refer the matter to the board or a panel of the board for a hearing in accordance with § 2.2-4020 of the Code of Virginia.~~

## ~~B.~~ C. Interruption of program.

1. When a program provider does not hold classes for a period not to exceed one year, the provider may request that the program be placed on inactive status and shall not be subject to compliance with subsection B of 18 VAC 90-25-20 for the specified time.

2. Unless the program provider notifies the board that it intends to admit students, the program will be considered closed at the end of the one-year period and be subject to the requirements of subsection ~~E~~ D of this section.

3. If the program provider does not hold classes for two consecutive years, the program shall be considered closed and shall be subject to the requirements of subsection ~~E~~ D of this section.

~~C.~~ D. Closing of a nurse aide education program. When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.
2. Submit to the board a list of all graduates with the date of graduation of each.

## **18 VAC 90-25-70. Initial certification for the nurse aide registry.**

A. The executive director of the board shall issue a certificate as a certified nurse aide to each applicant who qualifies for such a certificate under §§ 54.1-3024, 54.1-3025, 54.1-3026

and 54.1-3028 of the Code of Virginia and provisions of this chapter.

## B. Nurse aide competency evaluation.

1. The board may contract with a test service for the development and administration of a competency evaluation.

2. All individuals completing a nurse aide education program in Virginia shall successfully complete the competency evaluation required by the board prior to ~~making application for certification~~ being certified and to using the title Certified Nurse Aide.

3. The board shall determine the minimum passing standard on the competency evaluation.

C. Initial certification shall be for two years.

## **18 VAC 90-25-71. Certification by examination.**

~~1.~~ To be placed on the registry and certified by examination, the nurse aide must:

~~a.~~ 1. (i) Satisfactorily complete a nurse aide education program approved by the board; (ii) be enrolled in a nursing education program preparing for registered nurse or practical nurse licensure, and have satisfactorily completed at least one clinical nursing course that includes at least 40 hours of clinical experience involving direct client care; or (iii) have completed a nursing education program preparing for registered nurse licensure or practical nurse licensure;

~~b.~~ 2. Pass the competency evaluation required by the board; and

~~c.~~ 3. Submit the required application and testing fee as prescribed by the board.

## **18 VAC 90-25-72. Certification by endorsement.**

~~2.~~ To be placed on the registry and be certified by endorsement, the nurse aide ~~must~~ shall:

~~a.~~ 1. Be a graduate of a state-approved nurse aide education program that meets the requirements for clinical training and competency set forth in 42 CFR 483.152;

~~b.~~ 2. Have satisfactorily completed a competency evaluation program;

~~c.~~ 3. Be currently registered in another state, with no finding of abuse, neglect or misappropriation of property;

~~d.~~ 4. Submit the required application; and

~~e.~~ 5. Submit the required verification form to the credentialing agency in each state in which the applicant has been registered, certified or licensed.

~~3. Initial certification shall be for two years.~~

**18 VAC 90-25-80. Renewal or reinstatement of certification.**

**A. Renewal of certification.**

1. No less than 30 days prior to the expiration date of the current certification, a notice for renewal shall be mailed by the board to the last known address of each currently registered certified nurse aide.
2. The certified nurse aide shall submit a completed application with the required fee of \$50 and verification of performance of nursing-related activities for compensation within the two years immediately preceding the expiration date.
3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.
4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat and pass the nurse aide competency evaluation prior to applying for recertification.
5. The board shall also charge a fee of \$35 for a returned check.

**B. Reinstatement of certification.**

1. An individual whose certification has lapsed for more than 90 days shall ~~file~~ submit the required application and renewal fee and provide:
  - a. Verification of performance of nursing-related activities for compensation in the two years prior to the expiration date of the certificate and within the preceding two years; or
  - b. ~~When nursing activities have not been performed during the preceding two years, evidence~~ Evidence of having repeated and passed the nurse aide competency evaluation.
2. An individual who has previously had a finding of abuse, neglect or misappropriation of property is not eligible for reinstatement of his certification, except as provided in [ ~~subsection C of this section~~ 18 VAC 90-25-81 ].

**18 VAC 90-25-81. Removal of a finding of neglect.**

~~C.~~ A. If a finding of neglect was made against a certificate holder based on a single occurrence, an individual may petition for removal of the finding of neglect provided:

1. A period of at least one year has passed since the finding was made; and
2. The individual seeking reinstatement demonstrates sufficient evidence that employment and personal history do not reflect a pattern of abusive behavior or neglect.

B. A certificate holder can petition the board only once for removal of a finding of neglect.

**18 VAC 90-25-100. Disciplinary provisions for nurse aides.**

The board has the authority to deny, revoke or suspend a certificate issued, or to otherwise discipline a certificate holder upon proof that he has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit in order to procure or maintain a certificate shall mean, but shall not be limited to:
  - a. Filing false credentials;
  - b. Falsely representing facts on an application for initial certification, reinstatement or renewal of a certificate; or
  - c. Giving or receiving assistance in taking the competency evaluation.
2. Unprofessional conduct shall mean, but shall not be limited to:
  - a. Performing acts beyond those authorized for practice as a nurse aide or an advanced certified nurse aide as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, and beyond those authorized by the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) or by provisions for delegation of nursing tasks in Part X (§18 VAC 90-20-420 et seq.) of §18 VAC 90-20.
  - b. Assuming duties and responsibilities within the practice of a nurse aide or an advanced certified nurse aide without adequate training or when competency has not been maintained;
  - c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
  - d. Falsifying or otherwise altering client or employer records, including falsely representing facts on a job application or other employment-related documents;
  - e. Abusing, neglecting or abandoning clients;
  - f. Having been denied a license or certificate or having had a license or certificate issued by the board revoked or suspended;
  - g. Giving to or accepting from a client property or money for any reason other than fee for service or a nominal token of appreciation;
  - h. Obtaining money or property of a client by fraud, misrepresentation or duress;
  - i. Entering into a relationship with a client that constitutes a professional boundary violation in which

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the nurse aide uses his professional position to take advantage of ~~a client's~~ the vulnerability of a client or his family, to include but not limited to actions that result in personal gain at the expense of the client, an inappropriate personal involvement or sexual conduct with a client; ~~or~~

j. Violating state laws relating to the privacy of client information, including but not limited to § 32.1-127.1:03 of the Code of Virginia; ~~or~~

k. Providing false information to staff or board members during the course of an investigation or proceeding.

3. For the purposes of interpreting provisions of § 54.1-3007 (7) of the Code of Virginia, a restriction on nurse aide certification shall be interpreted as having a finding of abuse, neglect or misappropriation of patient property made in another state or being placed on the abuse registry in another state.

## **18 VAC 90-25-110. Requirements for initial certification as an advanced certified nurse aide.**

A. In order to be certified as and use the title of "Advanced Certified Nurse Aide," an applicant shall meet the following qualifications:

1. Hold current certification as a certified nurse aide in Virginia;
2. Have been certified for at least three years as a certified nurse aide;
3. Have never had a finding of abuse, neglect or misappropriation of patient property entered on ~~the Nurse Aide Registry~~ a nurse aide registry in any jurisdiction and have not had any disciplinary actions taken by the board within the five years preceding application for advanced certification;
4. Have a recommendation for advanced certification from a licensed nurse who has supervised the applicant in providing direct patient care for at least six months within the past year; and
5. Have successfully completed a minimum of 120 hours of advanced training in an approved program that includes a competency evaluation acceptable to the board.

B. An application for certification shall be accompanied by an application fee of \$25.

## **18 VAC 90-25-120. Renewal and reinstatement of certification as an advanced certified nurse aide.**

A. Current certification as a nurse aide in Virginia must be maintained in order to hold certification as an advanced certified nurse aide.

~~A.~~ B. Renewal. If an individual is not eligible to renew as a certified nurse aide, certification as an advanced certified

nurse aide may not be renewed. An advanced certification shall be renewed concurrently with the biennial renewal of the basic certification as a nurse aide in Virginia by:

1. Submitting a completed renewal form and renewal fee of \$20; and
2. Attesting to ~~completing~~ completion of at least three contact hours per year of continuing education and training in any of the competency areas identified in the advanced certification training program. ~~Completion of the continuing education and training required by an advanced certified nurse aide shall be verified by the employer on the renewal form.~~ The board may grant an extension or waiver of the continuing education requirement based on good cause shown by the certified nurse aide.

~~B.~~ C. Late renewal. An advanced certified nurse aide may renew certification for 90 days following the expiration date by meeting the requirements of subsection A of this section.

~~C.~~ D. Reinstatement. If an advanced certification has not been renewed for 90 days following the expiration date, it shall only be reinstated if the applicant for reinstatement:

1. Holds current certification as a nurse aide in Virginia;
2. Submits a completed reinstatement application on a form provided by the board;
3. Pays the reinstatement fee of \$30; and
4. Provides evidence that he has completed all required hours of continuing education and training.

## **18 VAC 90-25-130. Requirements for an approved advanced certification education program.**

A. The advanced certification education program shall be approved by the Virginia Board of Nursing. An approved advanced certification education program shall also be an approved nurse aide education program as set forth in 18 VAC 90-25-20.

B. An advanced certification education program shall consist of a minimum of 120 hours including a minimum of 40 hours of clinical skills instruction in direct client care with on-site supervision by instructional personnel. When nurse aides are engaged in direct client care in the course of advanced certification training, the ratio shall not exceed 10 students to one instructor.

C. The instructional personnel in an approved advanced certification education program shall meet the requirements as set forth in 18 VAC 90-25-30.

D. The curricula of an approved advanced certification education program shall, at a minimum, meet the requirements of 18 VAC 90-25-140.

E. Each advanced certification program shall develop an individual record of major skills taught and the date of

performance by the student. At the completion of the program, the program shall provide each nurse aide ~~must receive~~ with a copy of this record and a certificate of completion.

F. An advanced certification education program shall develop and submit to the board a competency evaluation based on the curriculum content required in 18 VAC 90-25-140. Such an evaluation shall include both a written test on the curriculum and an assessment of manual skills. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained for a minimum of three years.

G. Program review shall be in accordance with requirements of 18 VAC 90-25-60 and shall be conducted concurrently with the on-site review of the basic nurse aide education program. Loss of board approval for the basic nurse aide education program shall automatically result in the loss of approval for the advanced certification education program.

H. When an advanced certification education program closes, the provider shall notify the board of the date of closing and submit a list of all graduates with their date of graduation.

**NOTICE:** The forms used in administering 18 VAC 90-25, Regulations Governing Certified Nurse Aides, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

**FORMS**

Instructions for Application for Nurse Aide Certification by Endorsement (rev. ~~12/02~~ 1/06).

Application for Nurse Aide Certification by Endorsement (rev. ~~12/02~~ 8/06).

Nurse Aide Certification Verification Form (rev. 12/02).

Instructions for Applicant for Advanced Certified Nurse Aide Registration (eff. ~~2/03~~ 8/06).

Application for Certification as Advanced Certified Nurse Aide (eff. ~~2/03~~ rev. 8/06).

Instructions for Application for Reinstatement of Nurse Aide Certification (rev. ~~12/02~~ 8/06).

Application for Reinstatement of Nurse Aide Certification (rev. ~~12/02~~ 8/06).

Instructions for Application for Reinstatement of Advanced Nurse Aide Certification (eff. 2/03).

Application for Reinstatement of Advanced Nurse Aide Certification (eff. 2/03).

Application to Establish Nurse Aide Education Program (rev. 12/02).

Application to Establish an Advanced Certification Nurse Aide Education Program (eff. 12/02).

Nurse Aide Education Program Evaluation Report (rev. 11/02).

Nurse Aide Education Program-On-site Review Report (rev. 11/02).

Advanced Certification Nurse Aide Education Program-On-site Review Report (eff. 12/02).

Evaluation of On-Site Visitor (rev. 12/02).

Request for Statistical Information (rev. 12/02).

Renewal Notice (eff. 4/05).

Renewal Notice and Application, 1401, Certified Nurse Aide (rev. 12/02).

Renewal Notice and Application, Advanced Certified Nurse Aide (eff. 12/02).

VA.R. Doc. No. R06-306; Filed June 5, 2007, 11:25 a.m.

**BOARD OF COUNSELING**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Counseling will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** **18 VAC 115-20. Regulations Governing the Practice of Professional Counseling (amending 18 VAC 115-20-130).**

**18 VAC 115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18 VAC 115-50-110).**

**18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18 VAC 115-60-130).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

**Effective Date:** July 25, 2007.

**Agency Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9133, FAX (804) 662-9943, or email evelyn.brown@dhp.virginia.gov.

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# Regulations

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## Summary:

*The amendments require practitioners to advise their clients of their right to report, rather than requiring the practitioner to report information of which he may become aware indicating another mental health professional may have engaged in unprofessional conduct.*

### **18 VAC 115-20-130. Standards of practice.**

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of counseling.

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training, and experience accurately to clients;
3. Stay abreast of new counseling information, concepts, applications and practices that are necessary to providing appropriate, effective professional services;
4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;
5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;
6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;
7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;
8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;
9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality;

and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

- a. At minimum, records of a minor child shall be maintained for five years after attaining the age of

majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Counselors shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Counselors who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Counselors shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which ~~he~~ the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of

the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

## **18 VAC 115-50-110. Standards of practice.**

A. The protection of the public's health, safety and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of marriage and family therapy.

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training, and experience accurately to clients;

3. Stay abreast of new marriage and family therapy information, concepts, applications and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform client of the risks and benefits of any such treatment. Ensure that the welfare of the client is not compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary.

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Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release client records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Marriage and family therapists shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Marriage and family therapists who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a marriage and family therapist does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Marriage and family therapists shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which ~~he~~ the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical,

fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

## **18 VAC 115-60-130. Standards of practice.**

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of substance abuse treatment.

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;
2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training and experience accurately to clients;
3. Stay abreast of new substance abuse treatment information, concepts, application and practices that are necessary to providing appropriate, effective professional services;
4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;
5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;
6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;
7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;
8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;
9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the

implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the substance abuse treatment relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client; and

5. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from

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clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Licensed substance abuse treatment practitioners shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Licensed substance abuse treatment practitioners who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a licensed substance abuse treatment practitioner does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Licensed substance abuse treatment practitioners shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which ~~he~~ the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of

the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

VA.R. Doc. No. R07-268; Filed June 5, 2007, 11:28 a.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Final Regulation

Title of Regulation: **18 VAC 120-30. Regulations Governing Polygraph Examiners (amending 18 VAC 120-30-100).**

Statutory Authority: §§ 54.1-201 and 54.1-1802 of the Code of Virginia.

Effective Date: August 1, 2007.

Agency Contact: Eric Olson, Executive Director, Polygraph Examiners Advisory Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, or email polygraph@dpor.virginia.gov.

Summary:

*The amendments increase fees for licensed polygraph examiners and polygraph examiner interns, add a certificate of licensure fee, and eliminate the dishonored check fee.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

### **18 VAC 120-30-100. Fees.**

A. All application fees for licenses and registrations are nonrefundable and shall not be prorated. The date of receipt by the department is the date which will be used to determine whether or not the fee is on time.

B. Application and examination fees must be submitted with the application for licensure. All other fees are discussed in greater detail in later sections of this chapter.

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

D. The following fees listed in the table apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for Examiner's License by Reciprocity	<del>\$45</del> <u>\$95</u>	With application
Application for Intern Registration	<del>\$20</del> <u>\$75</u>	With application

Dishonored Check	\$25	Upon notification by financial institution
Application for Examiner's License by Examination	\$75 <del>\$200</del>	With application
Reexamination	\$75 <del>\$200</del>	With approval letter
Renewal	\$15 <del>\$55</del>	Up to one calendar month after the expiration date on license
Reinstatement	\$50 <del>\$75</del>	One to six calendar months after the expiration date on license
Duplicate Wall Certificate	\$25	With written request
Certificate of Licensure	\$25	With written request

**NOTICE:** The forms used in administering 18 VAC 120-30, Regulations Governing Polygraph Examiners, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Board of Nursing, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

~~Internship Completion & License Exam Application/Internship Completion~~ Form, 16EXINT (eff. ~~11/99~~ rev. 9/06).

License/Intern Registration Application, 16LIC (eff. ~~11/99~~ rev. 9/06).

Polygraph School Curriculum Approval Application, ~~POLYSCHL~~ 16SCHL (~~12/97~~ rev. 11/02).

Supervisor Endorsement Form, ~~POLYSEND~~ 16SEND (~~12/97~~ rev. 11/02).

VA.R. Doc. No. R06-177; Filed May 24, 2007, 1:42 p.m.

Final Regulation

**Title of Regulation:** 18 VAC 120-30. Regulations Governing Polygraph Examiners (amending 18 VAC 120-30-10, 18 VAC 120-30-30, 18 VAC 120-30-40, 18 VAC 120-30-50, [ ~~18 VAC 120-30-90,~~ ] 18 VAC 120-30-100, 18 VAC 120-30-130, 18 VAC 120-30-150, 18 VAC 120-30-160, 18 VAC 120-30-180, 18 VAC 120-30-190, 18 VAC 120-30-200, 18 VAC 120-30-220, 18 VAC 120-30-230, 18 VAC 120-30-240, 18 VAC 120-30-250, 18 VAC 120-30-270, 18 VAC 120-30-280; adding 18 VAC 120-30-55, 18 VAC 120-30-290, 18 VAC 120-30-300 and 18 VAC 120-30-310 [ ; ~~repealing 18 VAC 120-30-90~~ ]).

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

**Effective Date:** August 1, 2007.

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

Summary:

*The amendments (i) facilitate online submission of applications, (ii) provide that applicants for licensure will no longer be required to submit signed affidavits certifying that they have read and understand the sections of Virginia law and the administrative code that deal with polygraph examiner licensure, (iii) provide that applicants for licensure will submit a record of current Central Criminal Records Exchange with their application rather than submit fingerprint cards, and (iv) provide that attorneys who are licensed in any state of jurisdiction of the United States will be allowed to provide instruction on the "Legal Aspects of Polygraph Examination" at polygraph examiner schools.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

18 VAC 120-30-10. Definitions.

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

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

"Advisory board" or "board" means the Polygraph Examiner's Advisory Board.

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

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

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~~"Polygraph" means any mechanical or electronic instrument or device used to test or question individuals for the purpose of determining truthfulness.~~

"Polygraph examination" means the entire period of contact between a licensee and an examiner.

~~"Polygraph examiner" or "examiner" means any person who uses any device or instrument to test or question individuals for the purpose of determining truthfulness.~~

~~"Polygraph examiner intern" means any person engaged in the study of polygraphy and the administration of polygraph examinations under the personal supervision and control of a polygraph examiner.~~

"Polygraph test" means the part of the polygraph examination during which the examinee is connected to a polygraph instrument which is continuously recording the examinee's reactions to questions.

"Reciprocity" means any individual holding a current license in another jurisdiction may obtain a Virginia polygraph examiners license provided the requirements and standards under which the license was issued are substantially equivalent to those established in this chapter and the individual meets all other board requirements for licensure in Virginia.

"Reinstatement" means having a license restored to effectiveness after the expiration date on the license has passed. When a licensee fails to renew his license within one calendar month after its expiration date, the licensee is required to apply for reinstatement of the license. Six months after the expiration date on the license, reinstatement is no longer possible and the applicant must reapply and requalify for licensure.

"Relevant question" means a question asked of an examinee during a polygraph test which concerns an issue identified to the examinee during the pretest and which is to be reported by the licensee to any other person.

"Renewal" means continuing the effectiveness of a license for another period of time.

## 18 VAC 120-30-30. Advisory board.

A. The Polygraph Examiners Advisory Board, consisting of eight members appointed by the director, shall exercise the authority delegated by the director consistent with § 2.2-2100 A of the Code of Virginia and advise the department on any matters relating to the practice of polygraphy and the licensure of polygraph examiners in the Commonwealth of Virginia.

B. The advisory board shall be composed of three Virginia licensed polygraph examiners employed by law enforcement agencies of the Commonwealth, or any of its political subdivisions; three Virginia licensed polygraph examiners employed in private industry; and two citizen members as

defined in §§ 54.1-107 and 54.1-200 of the Code of Virginia. All members must be residents of the Commonwealth of Virginia.

C. Each member shall serve a four-year term. No member shall serve more than two consecutive four-year terms.

## 18 VAC 120-30-40. Basic qualifications for licensure and registration.

A. Every applicant to the board for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years old.

~~2. The applicant has met the experience requirements by having a high school diploma or its equivalent and a minimum of five years experience as an investigator, detective, or in a field acceptable to the department which demonstrates the ability to practice polygraphy.~~

~~a. The applicant will be credited two years of the five years of experience required in subdivision 2 of this subsection if he has an associate degree from an accredited college or university.~~

~~b. The applicant will be credited all five years of experience required in subdivision 2 of this subsection if he has a bachelor's degree from an accredited college or university.~~

~~3. The applicant has met the education requirements by either completing the required training in detection or deception at a polygraph school approved by the department, or by submitting evidence of satisfactory completion of substantially equivalent training if the polygraph school at which the applicant received the training in the detection or deception is not approved by the department.~~

~~4. The applicant has completed six months as a registered intern examiner under the personal and direct on premise supervision of an examiner qualified under 18 VAC 120 30 60 who shall supervise each and every polygraph examination administered by the intern. The internship need not be accomplished in Virginia. However, any internship conducted outside of Virginia must comply fully with this regulation. An intern shall not be eligible to sit for the license examination until the intern's supervisor has submitted to the department a written statement that the internship has been satisfactorily completed. The department may waive the internship for any person who practiced polygraphy in the federal jurisdiction.~~

~~5. 2.~~ The applicant is in good standing as a licensed polygraph examiner in every jurisdiction where licensed. The applicant must disclose if he has had a license as a polygraph examiner which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction

prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a polygraph examiner and whether he has been previously licensed in Virginia as a polygraph examiner.

~~6.~~ 3. The applicant is fit and suited to engage in the profession of polygraphy. The applicant must disclose if he has been convicted in any jurisdiction of a felony or misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in the evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

~~7.~~ 4. The applicant has disclosed his physical address. A post office box is not acceptable.

~~8.~~ 5. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as a service agent for all actions filed in any court in this Commonwealth.

~~9.~~ 6. The applicant has signed, as part of the application, ~~an affidavit~~ a statement certifying ~~the~~ that he has read and understands the Virginia polygraph examiner's license law and ~~the regulations of the board.~~

~~10.~~ 7. The applicant has submitted ~~two fingerprint cards with his application on forms provided by the department for a criminal background history~~ an application, provided by the department, which shall include criminal history record information from the Central Criminal Records Exchange, with a report date within 30 days of the date the application is received by the department.

B. The department may (i) make further inquiries and investigations with respect to the qualifications of the applicant, (ii) require a personal interview with the applicant, (iii) or both. ~~Failure of an applicant to comply with a written request from the advisory board or director for additional information within 30 days of receiving such notice, except in such instances where the advisory board or director has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.~~

C. The applicant shall pass all parts of the polygraph examiners licensing examination approved by the department at a single administration in order to be eligible for a polygraph examiners license.

**18 VAC 120-30-50. Registration of polygraph examiner interns.**

A. A polygraph examiner intern registration shall be issued to applicants who fulfill the requirements of ~~subdivisions A 2 and A 3 of 18 VAC 120-30-40;~~ and the following:

1. The applicant has met the experience requirements by having a high school diploma or its equivalent and a minimum of five years experience as an investigator or detective, or in a field acceptable to the department that demonstrates the ability to practice polygraphy.

a. The applicant will be credited two years of the five years of experience required in subdivision 1 of this subsection if he has an associate degree from an accredited college or university.

b. The applicant will be credited all five years of experience required in subdivision 1 of this subsection if he has a bachelor's degree from an accredited college or university.

2. The applicant has met the education requirements by either completing the required training in detection of deception at a polygraph school approved by the department, or by submitting evidence of satisfactory completion of substantially equivalent training if the polygraph school at which the applicant received the training in the detection of deception is not approved by the department.

B. An intern registration shall be valid for 12 months from the date of issue as indicated on the registration.

C. Each intern shall be supervised by a licensed polygraph examiner who meets the qualifications in 18 VAC 120-30-60.

D. A polygraph intern may apply for an extension of a polygraph intern registration after the expiration of the initial intern registration for no more than one year by submitting the fee referenced in 18 VAC 120-30-100. Additional extensions will be allowed if the individual repeats the education requirements set forth in subdivision A ~~3 2~~ of ~~18 VAC 120-30-40~~ 18 VAC 120-30-50.

**18 VAC 120-30-55. Qualifications for licensure by examination.**

A. A polygraph examiner license shall be issued to applicants who fulfill the requirements of 18 VAC 120-30-40, 18 VAC 120-30-50, and subsections B and C of this section:

B. The applicant shall have completed six months as a registered intern examiner under the personal and direct on-premise supervision of an examiner qualified under 18 VAC 120-30-60 who shall supervise each and every polygraph examination administered by the intern. The internship need not be accomplished in Virginia. However, any internship conducted outside of Virginia must comply fully with this regulation. An intern shall not be eligible to sit for the license

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examination until the intern's supervisor has submitted to the department a written statement that the internship has been satisfactorily completed. The department may waive the internship for any person who practiced polygraphy in [ the a ] federal jurisdiction [ or the United States Military ].

C. Upon submission of the completed application and fee, the applicant will be considered for the examination required by 18 VAC 120-30-110. Upon passing such examination, the applicant shall be granted his polygraph examiners license provided the applicant is otherwise qualified.

**18 VAC 120-30-90. [ ~~Waiver of internship requirement (Repealed).~~ ]**

[ ~~Any federal employee or military personnel who have administered polygraph examinations as one of their duties in their respective jobs, and who have received training from the federal government or United States military, may obtain a Virginia polygraph examiner's license without fulfilling the internship requirement by successfully passing the board's department's written examination.~~ ]

**18 VAC 120-30-100. Fees.**

A. All application fees for licenses and registrations are nonrefundable and shall not be prorated. The date of receipt by the department is the date ~~which~~ that will be used to determine whether or not the fee is on time.

B. Application and examination fees must be submitted with the application for licensure. All other fees are discussed in greater detail in later sections of this chapter.

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

D. The following fees listed in the table apply:

		expiration date on license
Reinstatement	\$50	One to six calendar months after the expiration date on license
Duplicate Wall Certificate	\$25	With written request

**18 VAC 120-30-130. Procedures for renewal.**

The department will mail a renewal application form to the licensee at the last known ~~home~~ address of department record. Failure to receive this notice shall not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return to the department all required forms and the appropriate fee as referenced in 18 VAC 120-30-100.

**18 VAC 120-30-150. Department discretion to deny renewal.**

The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (~~§ 9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia).

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

**18 VAC 120-30-160. Qualifications for renewal.**

Applicants for renewal of a license shall continue to meet the standards for entry as set forth in subdivisions A § 2 through A § 5 of 18 VAC 120-30-40.

**18 VAC 120-30-180. Department discretion to deny reinstatement.**

The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee.

~~The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~

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

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for Examiner's License	\$45	With application
<u>Application for Examiner's License by Reciprocity</u>	<u>\$45</u>	<u>With application</u>
Application for Intern Registration	\$20	With application
<del>Dishonored Check</del>	<del>\$25</del>	<del>Upon notification by financial institution</del>
Examination	\$75	With application
Reexamination	\$75	With approval letter
Renewal	\$15	Up to one calendar month after the

**18 VAC 120-30-190. Status of a license during the period before reinstatement.**

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date one year from the previous expiration date of the license.

B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the department during this entire period. Nothing in this chapter shall divest the department of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

**18 VAC 120-30-200. Polygraph examination procedures.**

A. Each licensed polygraph examiner and registered polygraph examiner intern must post, in a conspicuous place for the examinee, his license or registration, or a legible copy of his license or registration to practice in Virginia.

B. The examiner shall provide the examinee with a written explanation of the provisions of 18 VAC 120-30-200, 18 VAC 120-30-210 and 18 VAC 120-30-220 at the beginning of each polygraph examination.

C. The examinee may request a [~~tape~~] recording of the polygraph examination being administered. Each examiner shall maintain [~~tape~~] recording equipment and [~~tapes recording media~~] adequate for such recording. The examiner shall safeguard all examination recordings with the records he is required to keep by pursuant to 18 VAC 120-30-230. All recordings shall be made available to the department, the examinee or the examinee's attorney upon request. The examiner may charge the examinee a fee not to exceed \$25 only if the examinee requests and receives a copy of an examination tape recording.

D. The examinee shall be entitled to a copy of all portions of any written report pertaining to his examination which is prepared by the examiner and provided to any person or organization. The examinee shall make his request in writing to the examiner. The examiner shall comply within 10 business days of providing the written report to any person or organization or receiving the examinee's written request, whichever occurs later. The examiner may collect not more than \$1.00 per page from the examinee for any copy provided.

E. The provisions of subsections B, C, and D of this section shall not be applicable to any examination conducted by or on behalf of the Commonwealth or any of its political subdivisions when the examination is for the purpose of preventing or detecting crime or the enforcement of penal laws. However, examiners administering examinations as described in this section shall comply with subsection B of

this section through a verbal explanation of the provisions of 18 VAC 120-30-210 and 18 VAC 120-30-220.

**18 VAC 120-30-220. Examination standards of practice.**

~~A. To protect the rights of each examinee,~~ The examiner shall comply with the following standards of practice ~~by advising and shall disclose to each examinee in the manner prescribed of each of the following standards of practice~~ the provisions of this subsection and shall not proceed to examine or continue the examination if it is or becomes apparent to the examiner that the examinee does not understand any ~~one~~ of these ~~standards~~ disclosures:

1. All questions to be asked during the polygraph test(s) shall be reduced to writing and read to the examinee.
2. The examinee or the examiner may terminate the examination at any time.
3. If the examination is within the scope of § 40.1-51.4:3 of the Code of Virginia, the examiner shall explain the provisions of that statute to the examinee.
4. No questions shall be asked concerning any examinee's lawful religious affiliations, lawful political affiliations, or lawful labor activities. This provision shall not apply to any such affiliation which is inconsistent with the oath of office for public law-enforcement officers.
5. The examinee shall be provided the full name of the examiner and the name, address, and telephone number of the department.

~~B. 6. [ The examiner shall not ask questions during any~~ During no ] part of a preemployment polygraph examination [ ~~shall the examiner ask questions~~ ] concerning an examinee's sexual preferences or sexual activities [ ~~except as~~ ] in accordance with § 40.1-51.4:3 or 54.1-1806 of the Code of Virginia.

~~C. B.~~ An examiner shall not perform more than 12 polygraph examinations in any 24-hour period.

~~D. C.~~ An examiner shall not ask more than 16 questions per chart on a single polygraph test. Nothing in this subsection shall prohibit an examiner from conducting more than one polygraph test during a polygraph examination.

~~E. D.~~ An examiner shall allow on every polygraph test a minimum time interval of 10 seconds between the examinee's answer to a question and the start of the next question.

~~F. E.~~ An examiner shall record at a minimum the following information on each polygraph test chart produced:

1. The name of the examinee;
2. The date of the examination;
3. The time that each test begins;
4. The examiner's initials;

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5. Any adjustment made to component sensitivity;
6. The point at which each question begins and each answer is given;
7. Each question number; and
8. Each answer given by the examinee.

~~G. F.~~ An examiner shall render only three evaluations of polygraph tests:

1. Deception indicated;
2. No deception indicated; or
3. Inconclusive.

An examiner may include in his report any information revealed by the examinee during the polygraph examination.

Nothing in this section shall prohibit an examiner from explaining the meaning of the above evaluations.

~~H. G.~~ An examiner shall not render a verbal or written report based upon polygraph test chart analysis without having conducted at least two polygraph tests. Each relevant question shall have been asked at least once on each of at least two polygraph tests.

~~I. H.~~ An examiner may make a hiring or retention recommendation for the examiner's full-time employer provided the hiring or retention decision is not based solely on the results of the polygraph examination.

## **18 VAC 120-30-230. Records.**

The licensed polygraph examiner or registered polygraph examiner intern shall maintain the following for at least one year from the date of each polygraph examination:

1. Polygraphic charts;
2. Questions asked during the examination;
3. A copy of the results and the conclusions drawn;
4. A copy of any written report provided in connection with the examination; and
5. Tape recordings of examinations made in compliance with subsection C of 18 VAC 120-30-200.

## **18 VAC 120-30-240. Grounds for fines, denial, suspension or revocation of licenses or denial or withdrawal of school approval.**

The department may fine, deny, suspend, or revoke any license or registration, or deny or withdraw school approval upon a finding that the applicant, licensee, registrant, or school:

1. Has presented false or fraudulent information when applying for any license or registration, renewal of license or registration, or approval;

2. Has violated, aided, or abetted others to violate Chapters 1 through 3 of Title 54.1 or §§ 54.1-1800 through ~~54.1-1805~~ 54.1-1806 of the Code of Virginia, or of any other statute applicable to the practice of the profession herein regulated, or of any provisions of this chapter;

3. Has been convicted of any misdemeanor directly related to the occupation or any felony. Any pleas of nolo contendere shall be considered a conviction for the purposes of this section. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where the conviction occurred shall be forwarded to the board within 10 days of entry and shall be admissible as prima facie evidence of such conviction;

4. Has made any misrepresentation or false promise or caused to be published any advertisement that is false, deceptive, or misleading;

5. Has allowed one's license or registration to be used by anyone else;

6. Has failed, within a reasonable period of time, to provide any records or other information requested or demanded by the department; ~~or~~

7. Has displayed professional incompetence or negligence in the performance of polygraphy; or

8. Has violated any provision of 18 VAC 120-30-220.

## **18 VAC 120-30-250. Maintenance of license.**

A. Notice in writing shall be given to the department in the event of any change of ~~business or individual~~ name or address. Such notice shall be mailed to the department within 30 days of the change of the name or location. The department shall not be responsible for the licensee's or registrant's failure to receive notices, communications and correspondence caused by the licensee's or registrant's failure to promptly notify the department in writing of any change of name or address.

B. All licensees or registrants shall operate under the name in which the license or registration was issued.

## **18 VAC 120-30-270. Minimum requirements for school curriculum.**

A. There must be one type of accepted polygraph instrument per three students in the course.

B. To receive approval, the institution must offer a minimum of 240 hours of instruction, unless the school has obtained approval from the department for less than the minimum hours of course instruction. The following subject areas must be included in the school's curriculum ~~must include~~:

1. Polygraph theory;
2. Examination techniques and question formulation;

3. Polygraph interrogation;
4. Case observation;
5. Polygraph case practice;
6. Chart interpretation;
7. Legal aspects of polygraph examination;
8. Physiological aspects of polygraphy;
9. Psychological aspects of polygraphy;
10. Instrumentation;
11. History of polygraph; and
12. Reviews and examinations.

C. Out-of-state schools seeking approval of their curriculum which has been approved by their state must have the appropriate regulatory agency of their state certify such approval to the department.

**18 VAC 120-30-280. Instructor minimum requirements.**

A. Any person teaching the subjects required by this regulation shall meet the following minimum requirements for the subjects to be taught:

1. Legal Aspects of Polygraph Examination. The instructor must be ~~a member of the Virginia State Bar~~ licensed as an attorney in a state or jurisdiction of the United States.
2. Polygraph Interrogation. The instructor must have five years experience in the field of interrogation.
3. Physiological Aspects of Polygraphy. The instructor must have a degree in a health related science with coursework in physiology from an accredited institution of higher learning.
4. Psychological Aspects of Polygraphy. The instructor must have a degree in psychology from an accredited institution of higher learning.
5. All other courses ~~may~~ shall be taught by individuals having at least five years of experience as a polygraph examiner.

B. The department may make exception to the above qualifications when an instructor is otherwise qualified by education or experience and provides such evidence in writing to the department.

~~C. Schools may be required to submit evidence of compliance with this section on a quarterly basis and shall allow observations of their compliance by the department's designated representatives.~~

**18 VAC 120-30-290. Amendments and changes.**

Any change in the information provided by the school to the department as required by 18 VAC 120-30-260, 18 VAC 120-

30-270 or 18 VAC 120-30-280 shall be reported to the department in writing within 30 days of such an occurrence.

**18 VAC 120-30-300. Periodic requalification for continued course approval.**

At times established by the department, the department may require that schools that have previously obtained course approval, provide the department with evidence, in a form set forth by the department, that they continue to comply with the requirements of 18 VAC 120-30-260, 18 VAC 120-30-270 and 18 VAC 120-30-280. Failure to continue to comply with the department's requirements or respond to such a request may result in the department withdrawing its approval.

**18 VAC 120-30-310. Grounds for withdrawing approval from a school.**

The department may withdraw approval from a school upon a finding that:

1. An instructor of the approved school fails to teach the curriculum as provided for in 18 VAC 120-30-270.
2. The owner, employee, or instructor of the approved school permits or allows a person to teach in the school who does not meet the requirements of 18 VAC 120-30-280.
3. The owner, employee, or teacher is guilty of any dishonest conduct, including but not limited to fraud or deceit, in the teaching of polygraphy or violates any of the provisions of 18 VAC 120-30-240.

**NOTICE:** The forms used in administering 18 VAC 120-30, Regulations Governing Polygraph Examiners, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Licensing, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

**FORMS**

~~License Exam Application/Internship Completion and License Exam Form, 16EXINT (eff. 11/99 rev. [ 11/02 8/07).~~

~~License/Intern Registration Application, 16LIC (eff. 11/99 rev. [ 12/03 8/07).~~

~~Polygraph School Curriculum Approval Application, [ POLYSCHL 16SCHL ] (12/97 rev. 11/02 ).~~

~~Supervisor Endorsement Form, [ POLYSEND 16SEND ] (12/97 rev. 11/02).~~

VA.R. Doc. No. R05-100; Filed May 24, 2007, 1:44 p.m.

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# Regulations

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## REAL ESTATE BOARD

### Proposed Regulation

**Title of Regulation:** 18 VAC 135-20. Virginia Real Estate Board Licensing Regulations (amending 18 VAC 135-20-10, 18 VAC 135-20-30, 18 VAC 135-20-60, 18 VAC 135-20-100, 18 VAC 135-20-105, 18 VAC 135-20-160, 18 VAC 135-20-170, 18 VAC 135-20-180, 18 VAC 135-20-190, 18 VAC 135-20-210, 18 VAC 135-20-220, 18 VAC 135-20-300, 18 VAC 135-20-360, 18 VAC 135-20-370, 18 VAC 135-20-390; adding 18 VAC 135-20-345).

**Statutory Authority:** §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

**Public Hearing Date:** August 1, 2007 -- 10 a.m.

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

(See Calendar of Events section for additional information)

**Agency Contact:** Christine Martine, Executive Director, Real Estate Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, or email reboard@dpor.virginia.gov.

**Basis:** Section 54.1-2105 of the Code of Virginia states that the Real Estate Board "may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations."

**Purpose:** The goal of amending the regulations is to make clarifying changes, to incorporate new education requirements as a result of statutory changes, to ensure consistency with state law and to make other changes that may result from the periodic review of the regulations. The amendments are needed to ensure that the regulations conform to the most current statutes and standards of practice in the industry that are necessary to protect the health, safety and welfare of the citizens.

**Substance:** The proposed amendments (i) add definitions such as "actively participates in the brokerage business" for clarity; (ii) clarify qualification sections, for example, remove redundant language in the criminal conviction section and clarify time frame for misdemeanor convictions; (iii) amend continuing education requirements to ensure consistency with statutory changes; (iv) clarify qualifications for renewal of reciprocal license to ensure that all licensees who obtain a license by reciprocity take the state portion of the exam; (v) amend supervision of business to ensure that the supervision is adequate; (vi) clarify names and what name changes need to be reported to the board; (vii) clarify language regarding maintenance and management of escrow accounts; (viii) amend disclosure of brokerage relationships to be consistent with statute; (ix) clarify provisions regarding misrepresentation and omission; and (x) amend provisions

regarding schools and courses to ensure consistency with changes to the statute.

**Issues:** The primary advantage to the public is ensuring that the regulants have the necessary education to get an initial license and to renew their license. The proposed changes also provide clarification and guidance to the regulants so that they can give better service to both the public and other licensees. The proposed regulations address the changing work environment and are needed to keep up with industry standards.

The primary advantage to the agency will be that the agency can better protect the health, welfare and safety of the citizens of the Commonwealth by having regulations that reflect current industry standards and comply with statutory amendments.

No disadvantages to the public or to the Commonwealth have been identified.

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

Summary of the Proposed Regulation. The Real Estate Board (board) proposes to amend its regulations to bring them into compliance with Chapter 998 of the 2003 Acts of the Assembly and Chapter 61 of the 2006 Acts of the Assembly. Chapter 998 requires that:

- Real estate salespeople complete at least 30 hours of continuing education within two years of initial licensure (before they renew their licenses for the first time) and
- Brokers complete at least 16 hours of continuing education before biannual license renewal. Real estate salespeople must meet this same continuing education requirement for every renewal cycle but their first. At least eight of these hours must cover education on ethics, standards of behavior, fair housing, changes in law that affect real estate brokerage or real estate contracts.

Chapter 61 mandates that successful applicants for licensure have at least a high school diploma or its equivalent.

In addition to these changes that are driven by new legislation, the board proposes several other substantive amendments to its regulations. The board proposes to:

- Require that salesmen licensed by reciprocity take the state portion of the real estate salesperson's exam before biennial license renewal even if they have upgraded to a broker's license in the interim.
- Require principal brokers to report all instances where they reasonably believe that escrow accounts are being improperly maintained.
- Require licensees who are selling a property in which they (or a friend, family member or associate) have an

ownership interest, disclose that interest as soon as any substantive discussions about that property are held.

- Allow the board to suspend, revoke or fail to renew all licenses held by an individual at once.
- Require that licensees who provide pre-licensure training take a “Train the Trainer” course. The board also proposes to specify that the experience required of these licensees must be consecutive and “immediately prior to application” for approval as an instructor.
- Reduce the number of years of experience that non-licensee subject area pre-licensure instructors must have in their area of expertise from five years to three and
- Reword language in the fees section of this regulation so that (non-revoked) licenses will always be valid for two calendar years.

**Result of Analysis.** There is insufficient data to weigh the magnitude of costs versus benefits for these proposed regulations. Costs and benefits are discussed below.

**Estimated Economic Impact.** Current regulation does not include any requirement that individuals graduate high school or earn their GED before they apply for licensure but does require successful completion of courses required by Code of Virginia 54.1-2105. Current regulation requires all licensees to complete eight hours of continuing education before their biennial license renewal. Pursuant to Chapter 61 of the 2006 Acts of the Assembly, the board must now require that all initial licensees have a high school diploma or equivalent education. Additionally, pursuant to Chapter 998 of the 2003 Acts of the Assembly, the board will require real estate salespeople to complete 30 hours of continuing education before they renew their licenses for the first time and will require that these individuals complete 16 hours of continuing education each renewal cycle thereafter. Real estate brokers will have to complete 16 hours of continuing education during all biennial renewal cycles.

Both the requirement that successful applicants for licensure have a high school diploma (or its equivalent) and the additional hours of continuing education that are now mandated by the legislature are attempts to improve the quality of services offered by real estate salespeople and real estate brokers. To the extent that increased education leads to salespeople and brokers making fewer mistakes that cost their clients money, the public may benefit from these more stringent requirements.

The costs that will be incurred on account of these legislative changes will vary. The Department of Professional and Occupational Regulation (DPOR) reports that, since the restrictions in Chapter 61 took effect in July 2006, one individual who would have otherwise been eligible has been denied licensure because they had not obtained a high school diploma or its equivalent. This requirement is unlikely to

adversely affect a large number of individuals. There will be larger and more widely felt costs associated with additional hours of mandatory continuing education.

The board currently licenses approximately 57,200 real estate salespeople. Of these, 10,268 have been licensed since January 2004 and will need to complete 22 more hours of continuing education than they would have under old requirements. DPOR estimates that the per-hour cost of continuing education is approximately \$100. This means that newly licensed salespeople will have to spend approximately \$2,200 more on continuing education fees in their first two years of licensure than they previously would have. The total cost of these additional hours of education for individuals who are now licensed will be approximately \$22,589,600 in fees plus the costs incurred for traveling (when necessary) to attend training as well as the value of their time spent in training.

Salespeople who have already been through a renewal cycle (45,979 licensees) and all brokers (12,892 licensees) will need to complete 8 more hours of continuing education than under old requirements. The total cost of this training of the next two years will be approximately \$47,096,800 in fees plus the costs incurred for traveling (when necessary) to attend training as well as the value of their time spent in training. Assuming a fairly constant population of licensees and a constant stream of new licensees, the biennial cost incurred because of increased required continuing education will likely be approximately \$70 million in fees alone. DPOR reports that licensure in these fields correlates with the state of the economy. That is, during expansionary periods the board receives more applications for initial licensure and for license renewal. During contractionary periods the board receives fewer applications for new licensure and more individuals will choose to allow their license to lapse.

Current regulation requires that licensees who are licensed by reciprocity take the state specific portion of the exam for their particular license before they can renew their licenses. Real estate brokers who are licensed by reciprocity have to take the state portion of the real estate broker’s exam before they can renew their broker’s license and salespeople have to take the state portion of the real estate salesperson’s exam before they can renew their salesperson’s license. This means these individuals are tested within two years on their knowledge of state-specific real estate knowledge. However, individuals who are licensed as salespeople by reciprocity and upgrade to a broker’s license before their renewal date have not had to take a state specific exam until they renew their broker’s license. This can be as long as four years after they were initially licensed by the Commonwealth.

The board proposes to close this loophole by requiring that salespeople who are licensed by reciprocity take the state portion of the salesperson’s exam within two years of initial licensure whether or not these individuals have upgraded their

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license in the interim. This regulatory change will help insure that all licensees are treated equally and that licensees have an understanding of state specific real estate laws and issues. The small number of individuals who follow this licensure track will incur costs that include the \$60.50 exam fee and the value of their time spent taking the required exam.

Current regulation requires that principal brokers report to the board when they reasonably believe that an escrow account does not contain sufficient funds to cover all relevant accounts. Principal brokers are not currently required to report other types of improper maintenance of escrow funds. Regulation also currently requires, apparently contrary to legislative requirements, that licensees report any ownership interest they have, or somebody close to them has, in a property they are selling or leasing only in written offers for lease or purchase. Relevant legislation requires that such ownership interest be disclosed "upon having substantive discussions about specific real property."

The board proposes to require brokers to report all instances where they have knowledge of improper maintenance of escrow funds. The board also proposes to amend ownership disclosure requirements to conform to the Code of Virginia. Both of these changes will benefit the public by allowing the board information to better police escrow accounts, in the first instance, and by allowing the public more access to information when deciding whether to lease or purchase a property, in the second instance. These two changes will likely cost little or nothing to implement. Principal brokers will incur miniscule time costs if they report improper maintenance of escrow funds more often than they have previously. Licensees who have to report ownership interest in properties they sell earlier than they would have previously will likely incur no costs since only the timing of their reporting will change.

Currently, the board may revoke a license for set causes but the revocation is license rather than individual specific. This means, when a regulant who holds multiple licenses has acted in a manner inconsistent with licensure requirements, the board must bring multiple disciplinary actions against that individual. The board proposes to amend its regulations so that all licenses held by a regulant can be revoked simultaneously. This will keep regulants who have proved to be dishonest, or otherwise unfit to be licensed, from practicing under other licenses during the time it takes to go through the disciplinary process multiple times. The public will likely benefit from this change as it will remove unfit regulants from the market more quickly.

Current regulation requires that licensed brokers who want to gain certification to teach pre-licensure classes have either a Baccalaureate degree and two years of discipline-free active real estate experience or five years of discipline-free active real estate experience. Non-licensee pre-licensure subject area instructors are currently required to have five years of

experience in their field of expertise (which must also be the topic of their subject area teaching).

The board proposes to require that licensed brokers' years of experience be consecutive and immediately prior to application for instructor status. The board also proposes to reduce the required number of years of experience for non-licensee subject matter instructors from five to three. Changing experience requirements for licensee instructors are more restrictive and will likely slightly limit the number of brokers who qualify as instructors. Individuals who choose to not work as brokers for a time, for example, would have to work either two or five years upon resuming their former careers before they would be eligible as instructors. Changing experience requirements for non-licensees will be less restrictive and will likely mean more of these individuals would be eligible instructors. DPOR reports that there are 396 instructors in the Commonwealth who are eligible to conduct pre-licensure classes. DPOR does not keep information, however, that would indicate how many of these instructors are licensees and how many are not.

Currently licenses issued by this board expire biennially on June 30. This means that some licensees have to renew their licenses in less than two years. The board proposes to amend this section so that licenses will expire "every two years on the last day of the month in which they are issued." Licensees will benefit from having licenses which are valid for a full two years.

**Businesses and Entities Affected.** These proposed regulations will affect all real estate firms, real estate brokers and real estate salespeople who are currently licensed by the board as well as all individuals who might seek to enter these professions in the future. The board currently licenses approximately 79,000 such entities.

**Localities Particularly Affected.** No locality will be particularly affected by these proposed regulations.

**Projected Impact on Employment.** Taken together, the cost of additional required hours of continuing education and the requirement that applicants have a high school diploma (or its equivalent) will likely decrease the number of individuals who work as real estate salespeople and real estate brokers. These requirements, and their costs, are a function of legislative change. Slightly less restrictive experience requirements for non-licensee pre-licensure instructors will likely increase the pool of available real estate instructors; this affect may be somewhat, or completely, offset by more burdensome requirements for licensee pre-licensure instructors (licensees' years of experience must be consecutive and immediate).

**Effects on the Use and Value of Private Property.** To the extent that small real estate firms absorb the costs of added training for owners or employees, costs for these firms will likely increase. If these firms are not able to raise their fees to

offset increased costs, profits, and the value of these firms, may fall slightly.

**Small Businesses: Costs and Other Effects.** To the extent that small real estate firms absorb the costs of added training for owners or employees, costs for these firms will likely increase. The board licenses 8,100 real estate firms; approximately three quarters of these firms qualify as small businesses. The biennial cost incurred because of increased required continuing education will likely be approximately \$70 million in fees alone. See Estimated Economic Impact above for detailed information.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Within the confines of legislative requirements for this licensure program, there is likely no alternate method that the board could have employed to minimize adverse impacts.

**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 concurs with the Department of Planning and Budget's economic impact analysis of the proposed amendments to the Real Estate Board Regulations.

**Summary:**

*The proposed amendments bring the regulations into compliance with Chapter 998 of the 2003 Acts of Assembly and Chapter 61 of the 2006 Acts of Assembly. Chapter 998 requires that real estate salespeople complete at least 30*

*hours of continuing education within two years of initial licensure (before they renew their licenses for the first time) and that brokers complete at least 16 hours of continuing education before biannual license renewal. Chapter 61 mandates that successful applicants for licensure have at least a high school diploma or its equivalent.*

*In addition, the proposed amendments (i) require that salesmen licensed by reciprocity take the state portion of the real estate salesperson's exam before biennial license renewal even if they have upgraded to a broker's license in the interim; (ii) require principal brokers to report all instances where they reasonably believe that escrow accounts are being improperly maintained; (iii) require licensees who are selling a property in which they (or a friend, family member or associate) have an ownership interest, disclose that interest as soon as any substantive discussions about that property are held; (iv) allow the board to suspend, revoke or fail to renew all licenses held by an individual at once; (v) require that licensees who provide prelicensure training take a "Train the Trainer" course, specify that the experience required of these licensees must be consecutive and "immediately prior to application" for approval as an instructor; (vi) reduce the number of years of experience that nonlicensee subject area prelicensure instructors must have in their area of expertise from five years to three years; and (vii) reword language in the fees section so that nonrevoked licenses will be valid for two calendar years.*

**18 VAC 135-20-10. Definitions.**

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Active" means any broker or salesperson who is under the supervision of a principal or supervising broker of a firm or sole proprietor and who is performing those activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Actively engaged" means active licensure with a licensed real estate firm or sole proprietorship in performing those activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia for an average of at least 40 hours per week. This requirement may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.

"Actively engaged in the brokerage business" means anyone who holds an active real estate license."

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Client" means a person who has entered into a brokerage relationship with a licensee as defined by § 54.1-2130 of the Code of Virginia.

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"Firm" means any sole proprietorship (nonbroker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker owner), which is required by 18 VAC 135-20-20 B to obtain a separate brokerage firm license. The firm's licensed name may be any assumed or fictitious name properly filed with the board.

"Inactive status" refers to any broker or salesperson who is not under the supervision of a principal broker or supervising broker, who is not active with a firm or sole proprietorship and who is not performing any of the activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means real estate brokers and salespersons as defined in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

"Principal broker" means the individual broker who shall be designated by each firm to assure compliance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board which may affect the firm or any licensee active with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees.

"Principal to a transaction" means a party to a real estate transaction including without limitation a seller or buyer, landlord or tenant, optionor or optionee, licensor or licensee. For the purposes of this chapter, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.

"Sole proprietor" means any individual, not a corporation, who is trading under the individual's name, or under an assumed or fictitious name pursuant to the provisions of Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia.

"Supervising broker" means (i) the individual broker who shall be designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices or (ii) the broker, who may be the principal broker, designated by the principal broker to supervise a designated agent as stated in § 54.1-2130 of the Code of Virginia.

## 18 VAC 135-20-30. Qualifications for licensure.

Every applicant to the Real Estate Board for an individual salesperson's or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.

2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure.

3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

~~4. The applicant shall not have been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information:~~

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and

b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

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

~~6.~~ 6. The applicant shall have a high school diploma or its equivalent.

~~6- 7.~~ 7. The applicant, within 12 months prior to making complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board.

~~7- 8.~~ 8. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established with regard to conduct at the examination may be grounds for denial of application.

~~8- 9.~~ 9. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board ~~in accordance with § 54.1-204 of the Code of Virginia.~~

**18 VAC 135-20-60. Qualifications for licensure by reciprocity.**

An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license by meeting the following requirements:

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

2. The applicant shall have a high school diploma or its equivalent.

~~2- 3.~~ 3. The applicant shall have received the salesperson's or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.

~~3- 4.~~ 4. The applicant shall sign a statement verifying that he has read and understands the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

~~4- 5.~~ 5. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established by the board with regard to conduct at the examination may be grounds for denial of application.

~~5- 6.~~ 6. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

~~6- 7.~~ 7. At the time of application for a salesperson's license, the applicant must have been actively engaged as defined by 18 VAC 135-20-10 for 12 of the preceding 36 months or

have met educational requirements that are substantially equivalent to those required in Virginia. At the time of application for a broker's license, the applicant must have been actively engaged as defined by 18 VAC 135-20-10 for 36 of the preceding 48 months. These requirements may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.

~~7- 8.~~ 8. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

~~8. The applicant shall not have been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.~~

9. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and

b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

~~9- 10.~~ 10. Applicants for licensure who do not meet the requirements set forth in subdivisions ~~5 6~~ and ~~8 9~~ of this subsection may be approved for licensure following consideration by the board ~~in accordance with § 54.1-204 of the Code of Virginia.~~

**18 VAC 135-20-100. Qualification for renewal; continuing education requirements.**

As a condition of renewal, and pursuant to § 54.1-2105 of the Code of Virginia, all active brokers and salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of ~~eight~~ 16 classroom, correspondence, or other distance

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learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of postlicense education regardless of whether his license is active or inactive. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18 VAC 135-20-70, Activation of license).

1. Providers shall be those as defined in 18 VAC 135-20-350.

2. ~~Four~~ Eight of the ~~eight~~ 16 required hours shall include two hours of training in fair housing laws, and a minimum of one hour each in state real estate laws and regulations, and ethics and standards of conduct, agency and contracts. If the licensee submits a notarized affidavit to the board which certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:

- a. Property rights;
- b. Contracts;
- c. Deeds;
- d. Mortgages and deeds of trust;
- e. Types of mortgages;
- f. Leases;
- g. Liens;
- h. Real property and title insurance;
- i. Investment;
- j. Taxes in real estate;
- k. Real estate financing;
- l. Brokerage and agency contract responsibilities;
- m. Real property management;
- n. Search, examination and registration of title;
- o. Title closing;
- p. Appraisal of real property;
- q. Planning subdivision developments and condominiums;
- r. Regulatory statutes;
- s. Housing legislation;

- t. Fair housing;
- u. Real Estate Board regulations;
- v. Land use;
- w. Business law;
- x. Real estate economics;
- y. Real estate investments;
- z. Federal real estate law;
- aa. Commercial real estate;
- bb. Americans With Disabilities Act;
- cc. Environmental issues impacting real estate;
- dd. Building codes and design;
- ee. Local laws and zoning;
- ff. Escrow requirements;
- gg. Ethics and standards of conduct; and
- hh. Common interest ownership.

3. Licensees holding licenses in other jurisdictions must complete ~~four~~ eight hours which shall include fair housing laws, state real estate laws and regulations ~~and~~ ethics and standards of conduct, agency and contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection.

4. The board may approve additional subjects at its discretion and in accordance with § 54.1-2105 of the Code of Virginia.

5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18 VAC 135-20-350.

6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide course documentation of completion certification as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.

7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.

## **18 VAC 135-20-105. Additional qualifications for renewal of a reciprocal license.**

In addition to the requirements set forth in 18 VAC 135-20-100, all licensees, including those licensees who upgrade to broker prior to renewal, who obtained their license by reciprocity in accordance with 18 VAC 135-20-60 must pass a written examination provided by the board or a testing

service acting on behalf of the board covering Virginia real estate license law and regulations of the Real Estate Board.

## **18 VAC 135-20-160. Place of business.**

A. Within the meaning and intent of § 54.1-2110 of the Code of Virginia, a place of business shall be an office where:

1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate broker as defined in § 54.1-2100 of the Code of Virginia; and
2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.

B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence and is accessible by the public.

C. Every principal broker shall have readily available to the public in the main place of business the firm license, the principal broker license and the license of every salesperson and broker active with the firm. The branch office license and a roster of every salesperson or broker assigned to the branch office shall be ~~available to the public~~ posted in a conspicuous place in each branch office.

D. Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions of this subsection. The supervising broker does not relinquish overall responsibility for the supervision of the acts of all licensees assigned to the branch office. Factors to be considered in determining whether the supervision is reasonable and adequate include, but are not limited to, the following:

1. The availability of the supervising broker to all licensees under the supervision of the broker to review and ~~discuss contract provisions;~~ approve all documents including but not limited to leases, contracts affecting the firm's clients, brokerage agreement—provisions agreements and advertising;
2. The availability of training and written procedures and policies which provide, without limitation, clear guidance in the following areas:
  - a. Proper handling of escrow deposits;
  - b. Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;
  - c. Advertising;

d. Negotiating and drafting of contracts, leases and brokerage agreements;

e. Use of unlicensed individuals;

f. Agency relationships;

g. Distribution of information on new or changed statutory or regulatory requirements;

h. Disclosure of matters relating to the condition of the property.

i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

3. The availability of the supervising broker in a timely manner to supervise the management of the brokerage services;

4. The supervising broker ensures the brokerage services are carried out competently and in accordance with the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;

5. The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office;

6. If a supervising broker is located more than 50 miles from the branch office and there are licensees who regularly conduct business assigned to the branch office, the supervising broker must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with the requirements in this subsection; and

7. The supervising broker must maintain the records required in this subsection for three years. The records must be furnished to the board's agent upon request.

## **18 VAC 135-20-170. Maintenance of licenses.**

A. Name and address.

1. Salespersons and individual brokers shall at all times keep the board informed of their current name and home address. Changes of name and address must be reported to the board in writing within 30 calendar days of such change. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address. A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use. The professional name shall include the licensee's first or last name and shall not include any titles.

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2. Salespersons and brokers shall be issued a license only to the place of business of the sole proprietorship or firm with which the salesperson or broker is active.

3. Principal brokers must at all times keep the board informed of their current firm and branch office name and addresses and changes of name and address must be reported to the board in writing within 30 calendar days of such change. A physical address is required. A post office box will not be accepted.

### B. Discharge or termination of active status.

1. When any salesperson or broker is discharged or in any way terminates his active status with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to return the license by certified mail to the board so that it is received within 10 calendar days of the date of termination or status change. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

2. When any principal broker is discharged or in any way terminates his active status with a firm, it shall be the duty of the firm to notify the board and return the license by certified mail to the board within three business days of termination or status change. The firm shall indicate on the license the date of termination, and shall sign the license before returning it. See § 54.1-2109 of the Code of Virginia for termination relating to the death or disability of the principal broker.

### **18 VAC 135-20-180. Maintenance and management of escrow accounts.**

#### A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository in Virginia into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s)

shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

#### B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the parties to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated (nonconsummation), the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to the principal to the transaction not to receive the deposit by either (i) hand delivery receipted for by the addressee, or (ii) by certified mail return receipt requested, with a copy to the other party, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. If the notice is sent within 90 days of the date of nonconsummation, the broker may send the notice by receiptable email or facsimile if such email address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the

broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

c. Lease transactions: rents or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all rents and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction, and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the

landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;

3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by subdivision A 1 of this section;

4. Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and

5. ~~Failure~~ Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee has caused noncompliance with ~~subdivision 4 of this subsection~~ this section.

### 18 VAC 135-20-190. Advertising by licensees.

A. Definitions. The following definitions apply unless a different meaning is plainly required by the context:

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

"Disclosure" in the context of online advertising means (i) advertising that contains the firm's licensed name, the city and state in which the firm's main office is located and the

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jurisdiction in which the firm holds a license or (ii) advertising that contains the licensee name, the name of the firm with which the licensee is active, the city and state in which the licensee's office is located and the jurisdiction in which the licensee holds a license. "Disclosure" in the context of other advertising means (a) advertising by the firm that contains the firm's licensed name and the firm's address or (b) advertising by an affiliated licensee that contains the licensee's name, the name of the firm with which the licensee is active and the firm's address.

"Institutional advertising" means advertising in which no real property is identified.

"Viewable page" means a page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

B. All advertising must be under the direct supervision of the principal broker or supervising broker ~~and~~, in the name of the firm and comply with the disclosure required by § 54.1-2138.1 of the Code of Virginia. The firm's licensed name must be clearly and legibly displayed on all advertising.

C. Online advertising.

1. Any online advertising undertaken for the purpose of any licensed activity is subject to the provisions of this chapter.

2. All online advertising that can be viewed or experienced as a separate unit (i.e., e-mail messages and web pages) must contain disclosure as follows:

a. The web. If a firm or licensee owns a webpage or controls its content, the viewable page must include disclosure or a link to disclosure.

b. Email, newsgroups, discussion lists, bulletin boards. All such formats shall include disclosure at the beginning or end of each message. The provisions of this subsection do not apply to correspondence in the ordinary course of business.

c. Instant messages. Disclosure is not necessary in this format if the firm or licensee provided the disclosures via another format prior to providing, or offering to provide, licensed services.

d. Chat/Internet-based dialogue. Disclosure is required prior to providing, or offering to provide, licensable services during the chat session, or in text visible on the same webpage that contains the chat session if the licensee controls the website hosting the chat session.

e. Voice Over Net (VON). Disclosure is required prior to advertising or the disclosure text must be visible on the same webpage that contains the VON session.

f. Banner ads. A link to disclosure is required unless the banner ad contains the disclosure.

3. All online listings advertised must be kept current and consistent as follows:

a. Online listing information must be consistent with the property description and actual status of the listing. The licensee shall update in a timely manner material changes to the listing status authorized by the seller or property description when the licensee controls the online site.

b. The licensee shall make timely written requests for updates reflecting material changes to the listing status or property descriptions when a third party online listing service controls the website displaying the listing information.

c. All listing information shall indicate in a readily visible manner the date that the listing information shown was last updated.

D. The following activities shall be prohibited:

1. Implying that property listed by a licensee's firm and advertised by the firm or licensee is for sale, exchange, rent or lease by the owner or by an unlicensed person;

2. Failing to include a notice in all advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised and is not using the services of a licensed real estate entity;

3. Failing to include the firm's licensed name on any sign displayed outside each place of business;

4. Failing to obtain the written consent of the seller, landlord, optionor or licensor prior to advertising a specific identifiable property; and

5. Failing to identify the type of services offered when advertising by general description a property not listed by the party making the advertisement.

**18 VAC 135-20-210. Disclosure of interest.**

~~A.~~ If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire or is selling or leasing real property through purchase, sale or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner, purchaser or lessee in writing in the offer to purchase, the application, the offer to lease or lease. This disclosure shall be made to the purchaser, seller or lessee upon having substantive discussions about specific real property.

~~B.~~ ~~A licensee selling or leasing property in which he has any ownership interest must disclose that he is a real estate licensee and he has an interest in the property to any purchaser or lessee in the written offer to purchase, the application, the offer to lease, or the lease, whichever occurs first.~~

**18 VAC 135-20-220. Disclosure of brokerage relationships.**

**A. Purchase transactions.**

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the person whom the licensee represents in a brokerage relationship, as that term is defined in § 54.1-2130 of the Code of Virginia.

2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of § 54.1-2138 A of the Code of Virginia shall be deemed in compliance with this disclosure requirement.

3. A licensee acting as a dual or designated representative shall obtain the written consent of all clients to the transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of § 54.1-2139 of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.

4. Any disclosure required by this subsection may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box or as otherwise provided by § 54.1-2138 of the Code of Virginia.

**B. Lease transactions.**

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure shall be made in writing not later than the signing of the lease.

2. This disclosure requirement shall not apply to lessors or lessees in single or multi-family residential units for lease terms of less than ~~three~~ two months.

**18 VAC 135-20-300. Misrepresentation/omission.**

Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee did in fact have at least that quantity for sale or rent;

2. Failure by a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee;

3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;

4. Failure by a licensee acting as a standard agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;

5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law;

6. Failing to include the complete terms and conditions of the real estate transaction ~~in~~ , including but not limited to any lease, property management agreement or offer to purchase;

7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;

8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:

a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;

b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;

c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8 a of this section

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without the prior written consent of the principals to the transaction;

9. Knowingly making any material misrepresentation or making a material misrepresentation ~~reasonably relied upon by a third party to that party's detriment~~; and

10. Making a false promise through agents, salespersons, advertising, or other means.

## **18 VAC 135-20-345. Effect of disciplinary action on concurrent licenses.**

The board shall suspend, revoke or deny renewal of existing concurrent broker licenses when the board suspends, revokes or denies renewal of another broker's license held by the same individual.

## **18 VAC 135-20-360. Proprietary school standards, instructor qualifications and course requirements.**

A. Every applicant to the Real Estate Board for a proprietary school certificate shall meet the standards provided in § 54.1-2105 of the Code of Virginia.

B. Every applicant to the Real Estate Board for approval as an instructor for prelicense education shall have completed a "train the trainer" course or its equivalent and shall have one of the following qualifications:

1. Baccalaureate degree, a Virginia real estate broker's license, and two consecutive years of discipline-free active real estate experience ~~within the past five years~~ immediately prior to application;

2. Five consecutive years of discipline-free active experience acquired in the real estate field ~~in the past seven years~~ immediately prior to application and an active Virginia broker's license; or

3. Expertise in a specific field of real estate ~~who will teach only in the area of their expertise. For example, a licensed real estate appraiser, with at least five~~ three years of active ~~appraisal~~ experience in Virginia, ~~may be approved to teach Real Estate Appraisals that field.~~ Such applicants will teach only in the area of their expertise and will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference which will verify the applicant's expertise.

C. Every applicant to the Real Estate Board for approval as an instructor for continuing education and postlicense education shall have expertise in a specific field of real estate with at least three years of active experience and will teach only in the area of their expertise. Such applicants will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference that will verify the applicant's expertise.

~~C.~~ D. Prelicense courses must be acceptable to the board and are required to have a monitored, final written examination.

Those schools which propose to offer prelicensing courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the course(s) and supply the following information:

1. Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in 18 VAC 135-20-400. All requests to offer broker courses must include a course syllabus acceptable to the board;

2. Name of the course's text and any research materials used for study assignments;

3. Description of any research assignments;

4. Copies of test or quizzes;

5. Information explaining how the "Principles" course will require 60 hours of study, or how each broker related course will require 45 hours of study, in compliance with § 54.1-2105 of the Code of Virginia; and

6. Information about recordkeeping for the type of course delivery.

~~D.~~ E. Providers of continuing education courses shall submit all subjects to the board for approval prior to initially offering the course. Correspondence and other distance learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course. The board shall approve courses and the number of hours approved for each course based on the relevance of the subject to the performance of the duties set forth in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

F. Approval of prelicense, continuing education and postlicense education courses shall expire on December 31 five years from the year in which the approval was issued, as indicated on the approval document.

~~E.~~ G. All schools must establish and maintain a record for each student. The record shall include: the student's name and address, the course name and clock hours attended, the course syllabus or outline, the name or names of the instructor, the date of successful completion, and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Schools must maintain all student and class records for a minimum of five years.

~~F.~~ H. All schools must provide each student with a certificate of course completion or other ~~document~~ documentation that the student may use as proof of course completion. ~~The certificate or other document~~ Such documentation shall contain the hours of credit completed.

## 18 VAC 135-20-370. Fees.

A. The application fee for an original certificate for a proprietary school shall be \$190.

B. The renewal fee for proprietary school certificates expiring ~~biennially on June 30 every two years from the last day of the month in which they were issued~~ shall be \$90.

C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of \$135 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant. If the renewal requirements are not completed within 30 days of the expiration date noted on the proprietary school approval, the proprietary school shall no longer offer board-approved courses.

D. The application for an original prelicense education instructor certificate shall be \$190.

E. The renewal fee for ~~an~~ a prelicense instructor certificate expiring ~~biennially on June 30 every two years from the last day of the month in which it was issued~~ shall be \$75.

F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of \$110 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval.

## 18 VAC 135-20-390. Withdrawal of approval.

The board may withdraw approval of any school, course or instructor for the following reasons:

1. The school, instructors, courses, or subjects no longer meet the standards established by the board.
2. The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations.
3. The school or instructor distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.

4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.

5. Officials, instructors or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

**NOTICE:** The forms used in administering 18 VAC 135-20, Virginia Real Estate Board Licensing Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

### FORMS

Activate/Transfer Application, 02AT (~~4/02~~ 4/07).

Add-on Business Entity License Application, 02ADDBUS (~~4/02~~ 4/07).

Broker Education Requirements for Non-Reciprocal Examinees, 02BEDREQ (rev. ~~8/02~~ 6/07).

Branch Office License Application, 02BRANCH (rev. ~~8/02~~ 4/07).

Business Entity License Application, 02BUSENT (rev. ~~4/02~~ 4/07).

Business Entity License Transfer Application, 02BUSTR (rev. ~~4/02~~ 4/07).

Certificate of Ownership/Individual Trading Under an Assumed or Fictitious Name Application, 02CRTOWN (~~4/02~~ 7/03).

Certification Request, 02CRTREQ (~~4/02~~ 4/07).

Concurrent Broker Application, 02CONCUR (~~4/02~~ 4/07).

Consent To Suits and Service of Process Form, 02CTS (rev. ~~8/02~~ 7/03).

Experience Verification Form, 02EXP (rev. ~~4/02~~ 4/07).

Firm License Application, 02FIRM (rev. ~~4/03~~ 4/07).

Firm Name/Address Change Form, 02FNACHG (rev. ~~4/02~~ 4/07).

Firm Principal Broker/Officer Change Form, 02PBOCHG (rev. ~~4/02~~ 4/07).

Principal Broker and Sole Proprietor By Exam & Upgrade License Application, 02PBSPLIC (rev. ~~8/02~~ 4/07).

Reciprocity Applicant Instructions, 02RECINS (rev. ~~4/02~~ 5/07).

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Salesperson and Associate Broker License By Reciprocity & Upgrade Application, 02SABLIC 02SABPKG (rev. 8/02 4/07).

Supervising Broker for Branch Office/Change Form, 02SBCHG (rev. 4/02 4/07).

Virginia Salesperson Upgrading to Associate Broker License by Exam Application, 02UABLIC (4/07).

Post License Education and Continuing Education Course Approval Application, 02CRS (8/05).

Pre-licensing Education Instructor Application, 02INSTR (10/04).

Principal Broker and Sole Proprietor License by Reciprocity Application, 02PBPKG (5/07).

Proprietary School Certification Application, 02SCHL (9/04).

Salesperson License by Exam Application, 02SALIC (4/07).

Place License Inactive Form, 02INA (4/07).

VA.R. Doc. No. R06-222; Filed June 4, 2007, 12:41 p.m.

## Proposed Regulation

**Title of Regulation: 18 VAC 135-60. Common Interest Community Management Information Fund Regulations (amending 18 VAC 135-60-60).**

**Statutory Authority:** § 55-530 of the Code of Virginia.

**Public Hearing Date:** August 1, 2007 -- 10 a.m.

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

(See Calendar of Events section for additional information)

**Agency Contact:** Thomas K. Perry, Property Registration Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475, or email [proreg@dpor.virginia.gov](mailto:proreg@dpor.virginia.gov).

**Basis:** The Common Interest Community Management Information Fund is created in § 55-529 of the Code of Virginia "to be used in the discretion of the Real Estate Board to promote the improvement and more efficient operation of common interest communities through research and education." The board's authority to promulgate regulations is established in § 55-530 of the Code of Virginia, which states that "the Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act to accomplish the purpose of this chapter."

**Purpose:** HJR 686 (2005) requested the Virginia Real Estate Board to conduct a study to review the adequacy of, training of, and disclosure of financial information to consumers by financially compensated professional managers of

condominium associations, property owners' associations and other similar common interest communities. As a result of this study, the board concluded that further education was needed to make associations and those who are directing them better aware of their duties and responsibilities to their communities and would help to alleviate potential problems and misunderstandings with financially compensated professional association managers. The board acknowledged that because of high volume of turnover in associations and board membership, training should be an ongoing process.

The board further concluded that the Common Interest Community Management Information Fund Regulations should be revised to create an annual filing fee schedule structured proportional to the size of the association. An association of five lots/units should not be paying the same fee as an association containing 5,000 lots/units. Currently, the annual filing fee for all associations is \$25 regardless of size. This increase in funding would be used to either hire additional staff to assist the Community Association Liaison or to engage a third-party firm to provide the much needed training/education for associations.

**Substance:** The current filing fee is \$25 annually for all associations regardless of size. The proposed seven-tier fee structure would increase revenue to provide funding for additional training and education for common interest communities and those who run these communities. Since the larger registration fees are for the larger communities, there is relatively no impact on the individual unit/lot owner.

Since more administrative input is required by board staff when processing initial applications, an application fee has been created that is slightly higher than the annual renewal fee.

In an effort for board staff to maintain current information on a community's point of contact and officers, language has been added to have registration certificate expiration dates coincide with the community's annual meeting to elect officers. This will ensure that communities can be contacted for informational and educational purposes.

**Issues:** The primary advantage to the public, who are unit owners/lot owners, would be to alleviate potential problems and misunderstandings with financially compensated professional association managers as well as conflicts between association boards and their membership. Informing association membership of how an association should operate and of their responsibilities and opportunities as unit owners/lot owners will encourage participation by members in community meetings and will foster volunteers to serve on boards and committees. This process must be ongoing because of the high volume of turnover in associations and their board membership.

The primary advantage to the agency will be that an increase in fees will generate the necessary funding for the board to

provide more training to associations and those who are directing them in an effort to educate them regarding their duties and responsibilities to their communities as required by the Property Owners' Association Act and the Condominium Act.

This regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Real Estate Board proposes to increase fees that common interest communities (property owners' associations, real estate cooperative associations and condominium associations) pay into the Common Interest Community Management Fund. The board proposes, at the same time, to institute a seven-tier graduated fee structure so that common interest communities with greater numbers of lots will pay higher fees.

Result of Analysis. There is insufficient data to weigh the magnitude of costs versus benefits for this proposed regulation. Costs and benefits are discussed below.

Estimated Economic Impact. In the Code of Virginia, the Property Owners' Association Act, the Real Estate Cooperative Act and the Condominium Act contain identical requirements that the respective governed common interest community (CIC) associations submit an annual report to the Real Estate Board (board). At the same time, these associations are required to register and pay a fee to the state treasurer which is credited to the Common Interest Community Management Information Fund; this fund is used to pay a community association liaison and to "promote the improvement and more efficient operation of common interest communities through research and education."

Currently, the board charges all registrants \$25 per year. Fees collected from registrants have, in part, funded the salaries of the community liaison as well as support staff. Fees have also been used, in part, to produce educational pamphlets that detail financial disclosure/home resale laws, fund websites that gather web resources for CIC homeowners/home buyers and produce written guidelines that detail:

- The statutory rights and responsibilities of CIC associations' Boards of Directors,
- Avenues of conflict resolution,
- The statutory rights and responsibilities of home owners, and
- Rules for financial reporting.

Although all CIC associations are statutorily required to file annual reports with the board and pay a registration fee, the community association liaison reports that a relatively small percentage (15-25%) of these associations have actually registered. As illustration of this compliance challenge, fewer

than 4,000 CIC associations are registered with, and submit required annual reports to the board even though there are an estimated<sup>1</sup> 24,000 CIC associations within the Commonwealth. The liaison reports that low compliance rates are an artifact of education; many CIC associations are unaware of their statutory duties. Registration compliance is particularly an issue with CICs which were built before there was a statutory reporting and registration requirement; there is likely also a (smaller scale) problem getting newly formed CIC associations registered. Localities do not keep records of new CIC building permits. Localities would likely not even know whether buildings for which permits are issued are destined to be part of a community that will have a statutory registration requirement.

In order to fund more education for current registrants and to attempt to identify and educate CIC associations that are not registered but should be, the board proposes to create a new, tiered, fee schedule (see table). Proposed fees will be slightly higher (in each tier) the first time a CIC association registers than when that association renews their registration.

Number of Lots	Initial Application Fee	Annual Renewal Fee
1-50	\$45	\$30
51-100	\$65	\$50
101-200	\$100	\$80
201-500	\$135	\$115
501-1000	\$145	\$130
1001-5000	\$165	\$150
>5000	\$180	\$170

The board proposes a graduated fee structure because larger associations use proportionally more fund resources. Larger associations will, for instance, obtain and distribute more pamphlets than will smaller associations. Although this proposed fee schedule imposes fees that will be as much as seven times greater than current fees, per lot fees for all but the smallest of CIC communities are extremely small (per lot fees in the second fee tier would not exceed \$1.28; per lot fees in the seventh tier would be less than one cent per year). The cost per lot in the lowest tier will depend on how close to the upper bounds of the tier is the number of lots. The greater the number of lots, the smaller the cost per lot will be. The number of currently registered CIC associations that fall into each fee tier is:

Number of Lots	Number of Registered
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<sup>1</sup> Common Interest Community Management information Fund monies were used to fund research by Old Dominion University (ODU) which sought to identify common interest community issues.

# Regulations

	Entities
1-50	1557
51-100	875
101-200	750
201-500	465
501-1000	115
1001-5000	80
>5000	7

The board also has 120 CIC associations registered for which they have no lot number information. Homeowners may benefit from these fee increases if the education efforts that they fund lead to more efficient management practices on the part of CIC Boards of Directors and professional managers or if funded activities can bring more CIC association into compliance with the Code of Virginia.

**Businesses and Entities Affected.** Homeowners that live in common interest communities and CIC associations will be affected by this proposed regulation. Currently, around 4000 CIC associations are registered with the board.

**Localities Particularly Affected.** All localities in the Commonwealth will be affected by this proposed regulation.

**Projected Impact on Employment.** Proposed fee increases may, in part be used to fund extra staff to support the educational efforts of the community association liaison.

**Effects on the Use and Value of Private Property.** Proposed fee increases will be, in most cases, extremely minimal for each home owner and are unlikely to affect the use and value of homeowners' property in any appreciable way.

**Small Businesses: Costs and Other Effects.** This proposed regulation will not affect any small businesses in the Commonwealth.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.**

This proposed regulation will not affect any small businesses in the Commonwealth.

**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 concurs with the Department of Planning and Budget's economic impact analysis of the proposed amendments to the Real Estate Board Common Interest Community Management Information Fund Regulations.

Summary:

*The proposed amendments increase fees that common interest communities (property owners' associations, real estate cooperative associations and condominium associations) pay into the Common Interest Community Management Fund and institute a seven-tier graduated fee structure so that common interest communities with greater numbers of lots will proportionately pay higher fees.*

**18 VAC 135-60-60. Filing Registration fee.**

~~The filing fee for each annual report shall be \$25.~~

The following fee schedule is based upon the size of each residential common interest community. The application fee is different than the annual renewal fee. All fees are nonrefundable.

<u>Number of Lots/Units</u>	<u>Application Fee</u>	<u>Renewal Fee</u>
<u>1 - 50</u>	<u>\$45</u>	<u>\$30</u>
<u>51 - 100</u>	<u>\$65</u>	<u>\$50</u>
<u>101 - 200</u>	<u>\$100</u>	<u>\$80</u>
<u>201 - 500</u>	<u>\$135</u>	<u>\$115</u>
<u>501 - 1000</u>	<u>\$145</u>	<u>\$130</u>
<u>1001 - 5000</u>	<u>\$165</u>	<u>\$150</u>
<u>5001+</u>	<u>\$180</u>	<u>\$170</u>

Registration certificates are renewable the month following the association's annual meeting.

NOTICE: The forms used in administering 18 VAC 135-60, Common Interest Community Management Information Fund Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

~~Real Estate Board Community Association Annual Report~~  
~~Registration Application, POAANRPT (4/29/02)~~  
~~ASSOCANRPT (4/06).~~

CIC Annual Renewal report, CICANRENRP (12/06).

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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION

### Bureau of Insurance

Administrative Letter 2007-06

To: All Insurers and Other Interested Parties

Re: Legislation Enacted by the 2007 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2007 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2007, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at <http://legis.state.va.us/>. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2007 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

### AGENT REGULATION

Chapter 449 (House Bill 1957)

The bill contains amendments to § 38.2-1839 in the Insurance Agents chapter with regard to insurance consultants and at what point the insurance consultant must enter into a written contract with his client in order to act as a consultant. As the result of the bill, a licensed insurance consultant who does not sell, solicit or negotiate insurance as part of his services must enter into a written contract with a client prior to providing any service as a consultant. A licensed insurance consultant who sells, solicits or negotiates insurance as part of his services must enter into a written contract with a client prior to the client purchasing insurance.

Chapter 621 (House Bill 1953)

The bill amends §§ 6.1-5, 54.1-2820, and 54.1-2822 of the Code of Virginia dealing with funeral services to permit incorporated associations authorized to sell burial association group life insurance certificates to serve as trustees of trusts established to fund preneed funeral contracts. The bill also clarifies the method of calculation by which adjustments to

the face value of a life insurance or annuity contract shall be made when used to fund a preneed contract.

Chapter 703 (House Bill 3016)

The bill repeals Section B of § 38.2-1825 that directs the automatic termination of an insurance agent's license if the agent has failed to have at least one active appointment to represent an insurer for a period of 183 days from the date the agent's license was issued.

Chapter 898 (Senate Bill 745)

The bill amends § 6.1-2.21 (Virginia Consumer Real Estate Settlement Protection Act) to prohibit any person convicted of a felony from acting as a settlement agent unless the person's civil rights have been restored by the Governor or the person has been granted a writ of actual innocence. A person who has been convicted of a felony involving fraud, deceit or misrepresentation is also prohibited from working for settlement agents in an administrative or clerical capacity involving the receipt or disbursement of funds from real estate settlements in Virginia and settlement agents may not employ such persons.

### PROPERTY AND CASUALTY BILLS

Chapter 496 (House Bill 2518)

The bill amends § 46.2-316 of the Motor Vehicle Code to require persons who have been convicted of certain offenses, such as a DUI, to file proof of financial responsibility with double the minimum limits of liability required by § 46.2-472. Consequently, an insurance company filing proof of financial responsibility on behalf of such persons will have to show that the person is insured under a motor vehicle liability insurance policy with limits of at least 50/100/40.

NOTE: Since neither § 46.2-472 nor § 38.2-2206 were amended, policyholders who are subject to this new requirement are not required to carry uninsured motorists limits equal to double the minimum limits of liability, and such policyholders may reject the higher UM limits.

This law is applicable to policies issued or renewed on or after January 1, 2008. Any insurance company that does not have limits of at least 50/100/40 on file with the Bureau must make the appropriate filing prior to the application of the new law.

Chapter 762 (House Bill 3055)

The bill amends § 38.2-111 in the General Provisions chapter to add language to the definition of miscellaneous property and casualty insurance. The bill will allow inclusion of provisions obligating the insurer to pay medical, hospital, surgical, funeral expenses, and death and dismemberment benefits, arising out of the death, dismemberment, sickness, or injury if caused by or incidentally caused by a cause of loss insured under a policy of miscellaneous casualty insurance.

Language has also been added to the definition of burglary and theft in § 38.2-113 to state that any policy of burglary and theft insurance may include provisions obligating the insurer to pay medical, hospital, surgical, funeral expenses, and death and dismemberment benefits, arising out of the death, dismemberment, sickness, or injury if caused by or incidentally caused by a cause of loss insured under a policy insuring burglary or theft.

#### LIFE AND HEALTH BILLS

##### Chapter 186 (House Bill 2001)

The bill amends § 38.2-301 in the Provisions Relating to Insurance Policies chapter, to clarify provisions relating to insurable interest and when a trustee has an insurable interest in a life insurance policy. In the case of a trustee, the lawful and substantial economic interest required in subdivision 2 of § 38.2-301 shall be deemed to exist whether the life insurance policy is owned by a trustee before, on or after July 1, 2005. A second enactment clause exempts certain policies or contracts from the provisions of the bill in limited cases involving life insurance policies issued on the lives of donors to specific charitable organizations. Refer to the statute for details.

##### Chapter 346 (House Bill 3137)

The bill amends and reenacts § 38.2-5902 in the Adverse Utilization Review Decisions chapter relating to expedited appeals of final adverse decisions regarding health care coverage. The bill requires that for a patient whose condition would be terminal without the treatment being appealed, the Commissioner of Insurance or his designee shall issue a final ruling affirming, modifying, or reversing the final adverse decision no later than one business day following the receipt of the recommendation. Failure by the utilization review entity to comply with the written ruling of the Commissioner or his designee within three days of an expedited ruling shall also be deemed a knowing and willful violation of the section.

##### Chapter 428 (House Bill 1622)

The bill amends § 38.2-3525 in the Accident and Sickness Insurance Policies chapter to provide that if a policy provides coverage to a dependent child under the age of 25 who is enrolled as a full-time student, and the child is unable to continue school as a full-time student because of a medical condition, coverage must continue for the child (i) for not more than 12 months from the time the child ceases to be a full-time student; or (ii) until the child turns 25; whichever comes first. The child's treating physician must certify that the child's absence is medically necessary. The child's status as a full-time student is to be determined by the criteria of the institution where the child is enrolled.

#### FINANCIAL REGULATION BILLS

##### Chapter 157 (Senate Bill 1113)

The bill amends §§ 38.2-4811 and 38.2-4812 in the Surplus Lines Insurance Law chapter and § 38.2-800 in the Service of Process chapter. Amendments clarify that an alien insurer cannot be approved as a surplus lines carrier unless it maintains at least \$2.5 million in an irrevocable trust fund, in addition to meeting applicable capital and surplus requirements. Amendments also specify that an unlicensed insurer approved by the Commission to issue surplus lines coverage shall provide to the Commission a current annual statement certified by the insurer by March 1 unless the insurer's state of domicile or entry establishes a later date, but such later date shall not be later than August 31. Amendments also clarify the service of process requirements for surplus lines carriers.

##### Chapter 360 (Senate Bill 1317)

The bill amends §§ 38.2-5501 and 38.2-5503 in the Risk-Based Capital Act chapter to add and correct language regarding the Negative Trend Test and the Trend Test Calculation in accordance with the RBC Instructions for Life and Health insurers. The bill includes a new provision adding the Trend Test Calculation for property and casualty insurers as a "Company Action Level Event," and corrects a subsection reference in the "Adjusted RBC Report" definition.

##### Chapter 482 (House Bill 2351)

The bill amends § 38.2-1704 in the Virginia Life, Accident and Sickness Insurance Guaranty Association chapter to add to the contractual obligations for which the Guaranty Association may become liable, which is a maximum of \$250,000 in the present value of annuity benefits for IRAs, Section 457 Plans, defined contribution plans, or Keogh Plans. The bill also increases the maximum aggregate amount for which the Guaranty Association may become liable with respect to any one individual from \$300,000 to \$350,000.

##### Chapter 488 (House Bill 2394)

The bill amends §§ 38.2-1306.1 and 38.2-1320.5 from the Reports, Reserves and Examinations chapter and § 38.2-4319. The amendments to these confidentiality provisions require that financial analysis files and working papers of Bureau of Insurance staff, which may include proprietary information concerning insurance companies or health maintenance organizations and their transactions, be afforded the same confidential treatment that the Code of Virginia provides for financial examination documents.

##### Chapter 579 (Senate Bill 1303)

The bill adds Article 2.1 to the Licensing and Organizing of Insurers chapter and amends § 38.2-4319 to make the provisions applicable to health maintenance organizations (HMO). The bill provides for the conversion of a Virginia-domiciled HMO to a Virginia-domiciled insurer licensed to

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## General Notices/Errata

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write accident and sickness insurance. The bill establishes a procedure by which a Virginia domiciled health maintenance organization may convert, without reincorporating, to an accident and sickness insurer.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### **Technical Advisory Committee Meeting for the Total Maximum Daily Load (TMDL) Study to Restore Water Quality in the Tidal Potomac River**

Announcement of the sixth Technical Advisory Committee Meeting for the total maximum daily load (TMDL) study to restore water quality in the tidal Potomac River, including selected tributaries to the tidal Potomac River in Maryland, Washington, D.C. and Virginia, which are impaired by the pollutant polychlorinated biphenyl (PCB).

Purpose of notice: The Virginia Department of Environmental Quality, Washington D.C. Department of the Environment, Maryland Department of the Environment, and Interstate Commission for the Potomac River Basin announce the sixth Technical Advisory Committee (TAC) meeting to present the draft Potomac PCB TMDL Report and allocation scenarios to members of the TAC and other interested stakeholders.

Technical Advisory Committee Meeting: Northern Regional Office, Virginia Department of Environmental Quality, 13901 Crown Court, Conference Rooms 1 and 2, Woodbridge, Virginia 22193, Thursday, July 12, 2007, from 1 p.m. to 3 p.m.

Meeting description: This is the sixth Technical Advisory Committee meeting for the Potomac PCB Project. The TMDL study addresses elevated levels of polychlorinated biphenyls (PCBs) in the Potomac River estuary. The purpose of this meeting will be to present the draft TMDL allocation scenarios and report to the TAC.

Description of study: Virginia, Maryland, and Washington D.C. agencies are working to understand the nature of the PCB contamination in the tidal waters of the Potomac River. This study aims to identify the sources of PCBs into the estuary, understand the fate and transport of the pollutants, and determine the reductions in PCB loadings needed to achieve compliance with water quality standards and fish consumption goals. These load reductions are known as total maximum daily loads, or TMDLs. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality targets. To restore water quality, PCB levels have to be reduced to the TMDL amount.

How to comment: The public comment period for the draft TMDL report will extend from July 11, 2007, to August 10, 2007. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and

be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Mark Richards, Virginia Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4392, FAX (804) 698-4116, or email marichards@deq.virginia.gov.

#### **Study to Restore Water Quality in the Tidal Potomac River**

Announcement of a total maximum daily load (TMDL) study to restore water quality in the tidal Potomac River, including selected tributaries to the tidal Potomac River in Maryland, Washington, D.C. and Virginia, that are impaired by the pollutant polychlorinated biphenyl (PCBs).

Public meetings: (Washington D.C. Meeting) Metropolitan Washington Council of Governments, 777 North Capitol Street, NE, Washington, DC 20002 on July 11, 2007, from 7 p.m. to 9 p.m. (Virginia Meeting) Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193 on July 12, 2007, from 7 p.m. to 9 p.m. (Maryland Meeting) Charles County Public Library, 2 Garrett Ave, La Plata, MD, 20646 on July 17, 2007, from 6:30 p.m. to 8:30 p.m.

Purpose of notice: The Virginia Department of Environmental Quality, Washington D.C. Department of the Environment, Maryland Department of the Environment, and Interstate Commission for the Potomac River Basin announce the second series of public meetings for the Tidal Potomac PCB TMDL Project.

Meeting description: This series of public meetings is the second round of meetings for the Potomac PCB TMDL project. The TMDL study addresses elevated levels of polychlorinated biphenyls (PCBs) in the Potomac River estuary. The purpose of these public meetings is to present the draft Potomac PCB TMDL Report and allocation scenarios to the general public, and provide a chance for public comment.

Description of study: Virginia, Maryland, and Washington D.C. agencies are working to understand the nature of the PCB contamination in the tidal waters of the Potomac River. This study aims to identify sources of PCBs in the estuary, understand the fate and transport of the pollutants, and determine the reductions in PCB loadings needed to achieve compliance with water quality targets.

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. After public comments have been considered and addressed, the TMDL report will be submitted to the U.S. Environmental Protection Agency for review and approval. This TMDL is scheduled to be submitted to the U.S. EPA on September 1, 2007.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, July 11, 2007, to August 10, 2007. Written and oral comments will also be accepted at the public meetings announced in this notice.

Contact for additional information: Mark Richards, Virginia Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4392, email [marichards@deq.virginia.gov](mailto:marichards@deq.virginia.gov), FAX (804) 698-4116; Monir Chowdhury, District of Columbia Department of the Environment, 51 N Street, NE, Washington, DC 20002, telephone (202) 727-9367, email [monir.chowdhury@dc.gov](mailto:monir.chowdhury@dc.gov) or Anna Soehl, Maryland Department of the Environment, 1800 Washington Blvd., Suite 540, Baltimore, MD 21230, telephone (410) 537.3509, email [asoehl@mde.state.md.us](mailto:asoehl@mde.state.md.us).

## 2008 Water Quality Assessment Guidance Manual

The Virginia Department of Environmental Quality (DEQ) will release the final 2008 Water Quality Assessment Guidance Manual on June 25, 2007.

The DEQ Assessment Guidance contains the assessment procedures and methods to be used for the development of Virginia's 2008 § 305(b)/ § 303(d) Integrated (i.e. combined Water Quality Assessment and Impaired Waters) Report. That report is due to the U. S. Environmental Protection Agency (EPA) by April 1, 2008. The DEQ Assessment Guidance seeks to address all key elements of the EPA 2006 Assessment Guidance, 2008 Assessment Guidance updates, and changes to the methods of assessing Chesapeake Bay Water Quality Standards, consistent with "The Final Revised Draft 3/16/07 Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity, and Chlorophyll *a* for the Chesapeake Bay and Its Tidal Tributaries 2007 Addendum" by the U.S. Environmental Protection Agency.

Section 62.1-44.19:5 C of the Code of Virginia requires DEQ to develop and publish the procedures used for defining and determining impaired waters and provide for public comment on the procedures. A draft version of this guidance was released for public review and comment on April 2, 2007. The comment period closed on May 4. Comments were received from the United States Environmental Protection Agency (EPA) and the public. In response to public comments, citizen monitoring organizations can request that their data not be used for the assessment.

A copy of the final revised DEQ Assessment Guidance is available to download from the DEQ Water Quality Assessment webpage at <http://www.deq.virginia.gov/wqa/>. A hard copy can also be requested from Harry Augustine, DEQ Water Quality Assessment Coordinator, using his contact information below.

Collective responses to comments received during the earlier public comment period are also available for download at the URL above. This document has also been mailed to each person or organization that submitted comments.

Contact: Harry Augustine, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4037, FAX (804) 698-4116, or via email at [hhaugustine@deq.virginia.gov](mailto:hhaugustine@deq.virginia.gov).

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on June 4, 2007. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

#### Director's Order Number Twenty-One (07)

Virginia's Instant Game Lottery 784; "\$21,000 Blackjack Tripler" (effective 5/29/07)

#### Director's Order Number Twenty-Two (07)

Virginia's Instant Game Lottery 333; "Bingo" (effective 5/29/07)

#### Director's Order Number Twenty-Three (07)

Virginia's Instant Game Lottery 789; "Game Card Series" (effective 5/29/07)

#### Director's Order Number Twenty-Four (07)

Virginia's Instant Game Lottery 786; "One Word Cashword" (effective 5/29/07)

#### Director's Order Number Twenty-Seven (07)

Virginia's Instant Game Lottery 794; "Pink Panther" (effective 5/29/07)

#### Director's Order Number Twenty-Eight (07)

Virginia's Instant Game Lottery 795; "Blackjack" (effective 5/29/07)

#### Director's Order Number Twenty-Nine (07)

Virginia's Instant Game Lottery 796; "Ruby Red 7's" (effective 5/29/07)

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# General Notices/Errata

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## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### State Plan for Medical Assistance

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Amount, Duration and Scope of Medical and Remedial Services and the Methods and Standards for Establishing Payment Rates; Other Types of Care. The changes contained in this public notice are occurring in response to language in the 2007 Appropriation Act. The Appropriation Act directs DMAS to modify reimbursement for pediatric hearing aids to reimburse the actual cost of the device within the limits set by the department, plus provides a fixed rate dispensing fee and fitting fee. The above changes would be effective January 1, 2008. This change is being made pursuant to the department's authority under Title XIX of the Social Security Act. This change is expected to increase expenditures \$68,000 in state funds and \$68,000 in federal funds per year.

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Mary M. Carpenter, Policy Analyst, Maternal and Child Health Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall ([www.townhall.com](http://www.townhall.com)). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Ms. Carpenter and such comments are available for review at the same address.

### STATE WATER CONTROL BOARD

#### Bacteria and Benthic Total Maximum Daily Loads for Callahan Creek

Notice is hereby given that the State Water Control Board seeks comment on proposed modifications to the bacteria and benthic total maximum daily loads (TMDLs) developed for Callahan Creek in Wise County.

Total maximum daily loads of *E. coli*, total dissolved solids (TDS), and sediment were developed to address bacterial and benthic impairments in Callahan Creek. These TMDLs were approved by the Environmental Protection Agency on June 22, 2006, and can be found at the following website: <http://www.deq.virginia.gov/tmdl>.

The Virginia Department of Environmental Quality (VDEQ) seeks written comments from interested persons on the minor modification of this TMDL. A minor increase in the wasteload allocation is requested as part of mining permit applications submitted by the coal industry. DEQ proposes to modify the wasteload allocation and TMDL to accommodate

this minor 69.3 Mg/yr increase. The above revisions would result in an insignificant increase in the total allocated sediment load for the sediment TMDL. The revisions would result in a 1.0% increase in the Callahan Cr. sediment TMDL. To review the proposed revisions to the wasteload allocation tables and TMDL equation tables, please contact Shelley Williams using the contact information below.

The public comment period for these modifications will end on July 25, 2007. Questions or information requests should be addressed to Shelley Williams. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Shelley Williams, Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845 or email [sdwilliams@deq.virginia.gov](mailto:sdwilliams@deq.virginia.gov).

### VIRGINIA CODE COMMISSION

#### Elimination of the Calendar of Events Section

Effective July 1, 2007, the Calendar of Events section will no longer be published in the Virginia Register of Regulations. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at [www.virginia.gov](http://www.virginia.gov) and click on the calendar on the right side of the screen.

#### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

#### 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

### DEPARTMENT OF TRANSPORTATION

Title of Regulation: 24 VAC 30-155. Traffic Impact Analysis Regulations.

Publication: 23:18 VA.R. 2915-2930 April 16, 2007.

Correction to Final Regulation:

Page 2915, 24 VAC 30-155-10, definition of "Link," line 4, remove "but"

Page 2916, 24 VAC 30-155-30 A, line 13, should read [ component plan ]

Page 2917, 24 VAC 30-155-30 C, line 9, should read [ the VDOT's ] receipt

Page 2917, 24 VAC 30-155-40 A 1, line 4, after "criteria" change the period to a colon

Page 2917, 24 VAC 30-155-40 A 1 a, last sentence, add [   ] after highways

Page 2918, 24 VAC 30-155-50 A 1 a, last sentence, add [   ] after highways

Page 2920, 24 VAC 30-155-60 A, last paragraph, line 2, should read [ the department VDOT ]

Page 2926, 24 VAC 30-155-60 D 8, after subdivision f, line 7, after "vehicles." insert [ intersection treatments. ]

Page 2928, 24 VAC 30-155-60 D 11, line 2, should read [ performed performed ]

Page 2928, 24 VAC 30-155-80 B 2, line 7, after "hour" insert [ of the generator ]

VA.R. Doc. No R06-343

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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

Effective July 1, 2007, the Calendar of Events section will no longer be published in the *Virginia Register of Regulations*. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the *Virginia Register*. In lieu of publication in the *Virginia Register*, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit Commonwealth of Virginia's homepage at [www.virginia.gov](http://www.virginia.gov) and click on the calendar on the right side of the screen.

VA 23230-4923, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY ☎, email [boa@boa.virginia.gov](mailto:boa@boa.virginia.gov).

## STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

† August 23, 2007 - 9:30 a.m. -- Public Hearing  
102 Governor Street, Room 220, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to adopt regulations entitled **VAC 5-206, Regulation for Scrapie Eradication**. The purpose of the proposed action is to promulgate a new regulation for the eradication of scrapie in Virginia goats and sheep. The federal regulation that became effective in September 2001 restricts interstate movement of sheep and goats from states that have not initiated intrastate regulatory action concerning scrapie eradication.

Statutory Authority: §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Public comments may be submitted until August 24, 2007.

**Contact:** David Cardin, D.V.M., Deputy State Veterinarian, Division of Animal and Food Industry Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 692-0601, FAX (804) 371-2380 or email [david.cardin@vdacs.virginia.gov](mailto:david.cardin@vdacs.virginia.gov).

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Virginia Marine Products Board

July 11, 2007 - 6 p.m. -- Open Meeting  
Ann's Family Dining, Route 17, Glenss, Virginia. ♿

## EXECUTIVE

### BOARD OF ACCOUNTANCY

June 27, 2007 - 10 a.m. -- Open Meeting  
Richmond Marriott West, 4240 Dominion Boulevard, Franklin Room, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting to include 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 interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 West Broad St., Suite 378, Richmond,

A meeting to (i) read and approve minutes of the previous board meeting; and (ii) hear reports on finance, trade shows, industry tours, and cooperative program with the Virginia Department of Agriculture and Consumer Services. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Blvd., Suite B, Newport News, VA 23608, telephone (757) 874-3474, FAX (757) 886-0671, email shirley.estes@vdacs.virginia.gov.

### Virginia Peanut Board

**July 17, 2007 - 10 a.m.** -- Open Meeting  
Tidewater Agriculture Research and Extension Center, 6321 Holland Road, Suffolk, Virginia. 

A meeting to (i) hear and approve minutes of the last meeting held on Thursday, March 29, 2007; (ii) review the board's financial statement; and (iii) hear the chairman's report, including information on the board's program area accomplishments and expenses. 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 Thomas R. Cotton at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Thomas R. (Dell) Cotton, Jr., Program Director, Department of Agriculture and Consumer Services, 1001 Campbell Ave., P.O. Box 59, Franklin, VA 23851-0059, telephone (757) 569-0249, FAX (757) 562-0744.

### Virginia Small Grains Board

**July 18, 2007 - 8 a.m.** -- Open Meeting  
Sheraton Richmond West Hotel, 6624 West Broad Street, Richmond, Virginia. 

A meeting to (i) review FY 2006-07 project reports and receive and approve the 2007-08 project proposals; (ii) hear and approve minutes from the last board meeting and a current financial statement; and (iii) take action on any other new business that comes before the group. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 102 Governor St., 3rd Floor, Room 316, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, email phil.hickman@vdacs.virginia.gov.

### STATE AIR POLLUTION CONTROL BOARD

**† July 25, 2007 - 10 a.m.** -- Open Meeting  
Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Conference Room #1, Woodbridge, Virginia. 

A public meeting to receive comments on the notice of intended regulatory action to amend (Rev.D06) the Regulations for the Control and Abatement of Air Pollution concerning certain consumer and commercial products (specifically, for emissions from consumer products and portable fuel container spillage) and to adopt a regulation concerning VOC emissions from adhesives and sealants.

**Contact:** Gary Graham, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, email degraham@deq.virginia.gov.

### ALCOHOLIC BEVERAGE CONTROL BOARD

**July 2, 2007 - 9 a.m.** -- Open Meeting  
**July 16, 2007 - 9 a.m.** -- Open Meeting  
**August 6, 2007 - 9 a.m.** -- Open Meeting  
**August 20, 2007 - 9 a.m.** -- Open Meeting  
**September 5, 2007 - 9 a.m.** -- Open Meeting  
**September 10, 2007 - 9 a.m.** -- Open Meeting  
**† September 24, 2007 - 9 a.m.** -- Open Meeting  
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

An executive staff meeting to receive and discuss reports and activities from staff members and to discuss other matters as necessary.

**Contact:** W. Curtis Coleburn, III, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY , email curtis.coleburn@abc.virginia.gov.

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

**July 26, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Architects Section to conduct board business. A portion of the board's business may be

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## Calendar of Events

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discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

NOTE: CHANGE IN MEETING DATE

† **August 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 interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

**August 14, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, 5th Floor, 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 interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

**August 16, 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 interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

**August 21, 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 interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

† **August 24, 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 Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to amend regulations entitled **18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations**. The purpose of the proposed action is to amend regulations to prohibit mail-order life experience degrees for engineer-in-training and professional engineer applicants.

Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

† **September 13, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting to discuss board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

## ART AND ARCHITECTURAL REVIEW BOARD

**July 6, 2007 - 10 a.m.** -- Open Meeting

**August 3, 2007 - 10 a.m.** -- Open Meeting

**September 7, 2007 - 10 a.m.** -- Open Meeting

Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS Forms Center at [www.dgs.virginia.gov](http://www.dgs.virginia.gov). Request form #DGS-30-905 or submittal instructions #DGS-30-906. The deadline for submitting project datasheets and other required information is two weeks prior to the meeting date.

**Contact:** Brian H. Ohlinger, Chairman, Art and Architectural Review Board, 700 W. Grace St., Suite 2200, Richmond, VA 23284, telephone (804) 827-9647, FAX (804) 827-1288 or email [bjohlinger@vcu.edu](mailto:bjohlinger@vcu.edu).

## VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

NOTE: CHANGE IN MEETING DATE

**August 22, 2007 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** David E. Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, (804) 367-9753/TTY , email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

## ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

† **July 19, 2007 - 9 a.m.** -- Open Meeting

1602 Rolling Hills Drive, Suite 107, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A quarterly business meeting of the Board of Directors.

**Contact:** Joey Wallace, Executive Director, Assistive Technology Loan Fund Authority, 1602 Rolling Hills Dr., Suite 107, Richmond, VA, telephone (804) 662-9997, FAX (804) 662-9533, toll-free (866) 835-5976, email [joey.wallace@atlfa.org](mailto:joey.wallace@atlfa.org).

## AUCTIONEERS BOARD

**July 12, 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. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Marian H. Brooks, Regulatory Board Administrator, 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).

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† **July 12, 2007 - 10 a.m.** -- Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Auctioneers Board intends to consider amending regulations entitled **18 VAC 25-21, Rules and Regulations of the Virginia Auctioneers Board**. The purpose of the proposed action is to perform a general review of the existing regulations to clarify the basic qualifications for license by examination and license by reciprocity, modify the examination application procedures, and to establish and modify the standards of practice and standards of conduct to identify requirements that affect the administration of, and compliance with, the board's regulations. The proposed changes will improve clarity that will enhance compliance by the board's licensees and thereby better protect the citizens of the Commonwealth of Virginia. Other changes which may be necessary may also be considered.

Statutory Authority: § 54.1-602 of the Code of Virginia.

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# Calendar of Events

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Public comments may be submitted until August 24, 2007.

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**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 OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

**July 12, 2007 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A Special Conference Committee will convene an informal conference to inquire into allegations that may have violated certain laws and regulations governing the practice of audiology and speech language pathology. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

**Contact:** Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

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**July 12, 2007 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

**August 10, 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 Board of Audiology and Speech-Language Pathology intends to amend regulations entitled **18 VAC 30-20, Regulations Governing the Practice of Audiology and Speech-Language Pathology**. The purpose of the proposed action is to establish criteria for provisional licensure in audiology.

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

Public comments may be submitted until August 10, 2007, to Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

**August 10, 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 Board of Audiology and Speech-Language Pathology intends to amend regulations entitled **18 VAC 30-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update certain provisions of the regulation pursuant to recommendations from a periodic review.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Contact:** Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**September 6, 2007 - 9:30 a.m.** -- Open Meeting  
**† September 13, 2007 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to discuss general business matters including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at 662-9924 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:** Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

## BOARD FOR BARBERS AND COSMETOLOGY

NOTE: CHANGE IN MEETING DATE

**July 30, 2007 - 9 a.m.** -- Open Meeting  
**August 6, 2007 - 9 a.m.** -- Canceled  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to discuss general business matters including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting

and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, email barbercosmo@dpor.virginia.gov.

## BOARD FOR BRANCH PILOTS

**July 26, 2007 - 8:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ♿

A meeting of the Examination Administrators to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for 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.

**July 27, 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. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for 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.

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† **August 24, 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 Board for Branch Pilots intends to amend regulations entitled **18 VAC 45-20, Board for**

**Branch Pilots Regulations.** The purpose of the proposed action is to amend subdivisions 4, 13, and 14 of 18 VAC 45-20-40 to be consistent with the wording in subdivision 11 and the wording in § 54.1-902 of the Code of Virginia.

Statutory Authority: § 54.1-902 of the Code of Virginia.

**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

**August 14, 2007 - 10 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 17th Floor Conference Room, Richmond, Virginia.

A regular 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.

**August 14, 2007 - 2 p.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 17th Floor Conference Room, Richmond, Virginia.

A regular 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.

† **September 17, 2007 - 10 a.m.** -- Open Meeting  
Location to be announced.

A regular meeting 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

**July 18, 2007 - 1:30 p.m.** -- Open Meeting  
† **September 19, 2007 - 1:30 p.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 15th Floor, Room 315, Godwin-Hamel Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Budget and Finance Committee and the Academic, Student Affairs and Workforce Development Committee

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## Calendar of Events

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will meet at 1:30 p.m. The Audit Committee will meet at 3 p.m. and the Facilities Committee will meet with the Personnel Committee at 3:30 p.m.

**Contact:** Jeffrey J. Kraus, Assistant Vice Chancellor for Public Relations, State Board for Community Colleges, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

**July 19, 2007 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 15th Floor, Room 315, Godwin-Hamel Board Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

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, State Board for Community Colleges, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

### COMPENSATION BOARD

**July 18, 2007 - Noon** -- Open Meeting  
Compensation Board, 102 Governor Street, Lower Level, Room LL22, Richmond, Virginia. 

A monthly board meeting.

**Contact:** Cindy Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 225-3308, FAX (804) 371-0235, email cindy.waddell@scb.virginia.gov.

### DEPARTMENT OF CONSERVATION AND RECREATION

**July 19, 2007 - Noon** -- Open Meeting  
**August 16, 2007 - Noon** -- Open Meeting  
**† September 20, 2007 - Noon** -- Open Meeting  
Richmond City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia.

A regular meeting of the Falls of the James Scenic River Advisory Committee to discuss river issues.

**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.

### Virginia Soil and Water Conservation Board

**July 19, 2007 - 9:30 a.m.** -- Open Meeting  
Association of Electric Cooperatives, 4201 Dominion Boulevard, Richmond, Virginia.

**† July 20, 2007 - 9:30 a.m.** -- Open Meeting  
Natural Resources Conservation Service, 1606 Santa Rosa Road, Richmond, Virginia.

**† September 20, 2007 - 9:30 a.m.** -- Open Meeting  
Location to be announced.

A regular board meeting.

**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.

### BOARD FOR CONTRACTORS

**June 26, 2007 - 9 a.m.** -- Open Meeting  
**† June 28, 2007 - 9 a.m.** -- Open Meeting  
**July 10, 2007 - 9 a.m.** -- Open Meeting  
**† July 17, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, 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.

**July 24, 2007 - 9 a.m.** -- Open Meeting  
**September 11, 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.

**August 28, 2007 - 1 p.m.** -- Canceled  
**September 10, 2007 - 4 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 at the conclusion of the Board for Contractors regular meeting.

**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.

## BOARD OF CORRECTIONS

**July 17, 2007 - 10 a.m.** -- Open Meeting

† **September 18, 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.

**July 17, 2007 - 11 a.m.** -- Open Meeting

† **September 18, 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.

**July 18, 2007 - 9:30 a.m.** -- Open Meeting

NOTE: CHANGE IN MEETING LOCATION  
Green Rock Correctional Center, 475 Green Rock Lane, Chatham, Virginia.

† **September 19, 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.

**July 18, 2007 - 10 a.m.** -- Open Meeting

NOTE: CHANGE IN MEETING LOCATION  
Green Rock Correctional Center, 475 Green Rock Lane, Chatham, Virginia.

† **September 19, 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.

## BOARD OF COUNSELING

**August 9, 2007 - 1 p.m.** -- Public Hearing

Department of Health Professions, 6603 West Broad Street, Board Room, 5th Floor, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to amend regulations entitled:

**18 VAC 115-20, Regulations Governing the Practice of Professional Counseling.**

**18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapists.**

**18 VAC 115-60, Regulations Governing the Licensure of Substance Abuse Professionals.**

The purpose of the proposed action is to update and provide for consistency of regulations relating to supervision, residency, and endorsement requirements for the three professions licensed by this board.

Statutory Authority: §§ 54.1-2400 and Chapter 35 (§54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until August 10, 2007, to Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email elaine.yeatts@dhp.virginia.gov.

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**August 10, 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 Board of Counseling intends to amend regulations entitled **18 VAC 115-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update the public participation guidelines.

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# Calendar of Events

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Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

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

## CRIMINAL JUSTICE SERVICES BOARD

**September 13, 2007 - 9 a.m.** -- Public Hearing  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

**July 27, 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 Criminal Justice Services Board intends to amend regulations entitled **6 VAC 20-80, Rules Relating to Certification of Criminal Justice Instructors**. The purpose of the proposed action is to enhance the effectiveness of criminal justice instructors.

Statutory Authority: § 9.1-10 of the Code of Virginia.

**Contact:** Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 202 N. 9th St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410 or email [judith.kirkendall@dcjs.virginia.gov](mailto:judith.kirkendall@dcjs.virginia.gov).

† **September 13, 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, 8th Street Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, email [lbaker@dcjs.state.va.us](mailto:lbaker@dcjs.state.va.us).

## BOARD OF DENTISTRY

**June 29, 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](mailto:sandra.reen@dhp.virginia.gov).

**June 29, 2007 - 9 a.m.** -- Open Meeting  
**August 3, 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](mailto:sandra.reen@dhp.virginia.gov).

**June 29, 2007 - 10 a.m.** -- Open Meeting  
**September 6, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A formal hearing. 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](mailto:sandra.reen@dhp.virginia.gov).

**July 13, 2007 - 9 a.m.** -- Open Meeting  
† **September 14, 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](mailto:sandra.reen@dhp.virginia.gov).

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**August 3, 2007 - 8:30 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to expand the time limit for practice of a dental hygienist on an order from a dentist from seven to 10 months.

Public comments may be submitted until August 10, 2007, to Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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**August 10, 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 Board of Dentistry intends to amend regulations entitled **18 VAC 60-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update the board's public participation guidelines.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**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).

**August 17, 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](mailto:sandra.reen@dhp.virginia.gov).

**† September 7, 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).

## DESIGN BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

**July 19, 2007 - 11 a.m.** -- Open Meeting

**August 16, 2007 - 11 a.m.** -- Open Meeting

**† September 20, 2007 - 11 a.m.** -- Open Meeting

Department of General Services, 202 North Ninth Street, Room 412, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use the design build or construction management type contracts. Contact the Division of Engineering and Buildings to confirm this meeting. Board rules and regulations can be obtained on-line at [www.dgs.virginia.gov](http://www.dgs.virginia.gov) under DGS Forms, Form #DGS-30-904.

**Contact:** Kristy H. Martin, Administrative Assistant, Division of Engineering and Buildings, Department of General Services, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY ☎ email [rhonda.bishton@dgs.virginia.gov](mailto:rhonda.bishton@dgs.virginia.gov).

## BOARD OF EDUCATION

**June 28, 2007 - 9 a.m.** -- Open Meeting

**July 25, 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 [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).

**July 18, 2007 - 9 a.m.** -- Open Meeting

**July 19, 2007 - 9 a.m.** -- Open Meeting

**July 20, 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,

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## Calendar of Events

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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).

### STATE BOARDS OF EDUCATION; JUVENILE JUSTICE; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; AND SOCIAL SERVICES

**July 9, 2007 - 6:30 p.m.** -- Public Hearing  
First Campbell Square Building, 210 1st Street, Roanoke, Virginia. 

**July 10, 2007 - 6:30 p.m.** -- Public Hearing  
Tuckahoe Area Library, 1901 Starling Drive, Richmond, Virginia. 

**July 11, 2007 - 6:30 p.m.** -- Public Hearing  
Department of Social Services, Virginia Beach Regional Office, Pembroke IV, 291 Independence Boulevard, 3rd Floor, Virginia Beach, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to repeal regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities;** and adopt regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities.** The purpose of the proposed action is to repeal the existing regulation 22 VAC 42-10, and promulgate a new regulation, 22 VAC 42-11. These standards will protect vulnerable children who are separated from their families and reside in children's residential facilities, and assure that an acceptable level of care and education are provided. The new regulation will (i) comply with federal regulation, (ii) ensure that services provided to residents are appropriate for their needs, (iii) bring the requirements in line with the current industry practices, (iv) clarify frequently misinterpreted standards, and (v) delete unnecessary requirements.

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-203, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 66-10 and 66-24 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

**Contact:** Charlene Vincent, Coordinator, Office of Interdepartmental Regulation, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095 or email [charlene.vincent@dss.virginia.gov](mailto:charlene.vincent@dss.virginia.gov).

### SECRETARY OF EDUCATION

**July 18, 2007 - 10 a.m.** -- Open Meeting

**August 15, 2007 - 10 a.m.** -- Open Meeting

† **September 19, 2007 - 10 a.m.** -- Open Meeting  
Capital One West Creek Campus, 1500 Capital One Drive, Richmond, Virginia.

A meeting of the Start Strong Pre-K Task Force.

**Contact:** Kendall Tyree, Special Assistant to the Secretary of Education, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 692-2550, email [kendall.tyree@governor.virginia.gov](mailto:kendall.tyree@governor.virginia.gov).

**July 26, 2007 - 12 p.m.** -- Open Meeting  
Patrick Henry Building, 1111 East Broad Street, Richmond, Virginia.

A meeting of the Governor's P-16 Council.

**Contact:** Kendall Tyree, Special Assistant to the Secretary of Education, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 692-2550, email [kendall.tyree@governor.virginia.gov](mailto:kendall.tyree@governor.virginia.gov).

### DEPARTMENT OF ENVIRONMENTAL QUALITY

† **July 11, 2007 - 7 p.m.** -- Open Meeting  
Metropolitan Washington Council of Governments, 777 North Capitol Street, NE, Washington, DC. 

† **July 12, 2007 - 7 p.m.** -- Open Meeting  
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. 

† **July 17, 2007 - 6:30 p.m.** -- Open Meeting  
Charles City County Public Library, 2 Garrett Avenue, La Plata, Maryland. 

The second of several public meeting for the Potomac PCB TMDL project. The purpose is to present the draft Potomac PCB TMDL Report and allocation scenarios to the general public and provide a chance for public comment. The public notice appears in the Virginia Register of Regulations on June 25, 2007. The public comment period begins on July 11, 2007, and ends on August 10, 2007.

**Contact:** Mark Richards, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4392, email [marichards@deq.virginia.gov](mailto:marichards@deq.virginia.gov).

† **July 12, 2007 - 1 p.m.** -- Open Meeting  
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. 

The sixth meeting of the technical advisory committee for the Potomac PCB Project addressing elevated levels of polychlorinated biphenyls (PCBs) in the Potomac River estuary.

**Contact:** Mark Richards, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA

23218, telephone (804) 698-4392, email marichards@deq.virginia.gov.

**July 17, 2007 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, 1st Floor Conference Room, 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.

**July 19, 2007 - 3 p.m.** -- Open Meeting  
Tappahannock USDA Service Center, 772 Richmond Beach Road, Meeting Room, Tappahannock, Virginia. 

A meeting on the advisory committee assisting in the development of a bacteria TMDL for Hoskins Creek and its tributaries in Essex County. The public notice appears in the Virginia Register of Regulations on April 30, 2007.

**Contact:** Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, email rcfrench@deq.virginia.gov.

## VIRGINIA FIRE SERVICES BOARD

**August 16, 2007 - 10 a.m.** -- Open Meeting  
Convention Center, Hampton, Virginia. 

An Executive Committee meeting.

**Contact:** Brook Pittinger, Virginia Fire Services Board, 1005 Technology Park Dr., Glen Allen, VA 23059-4500, telephone (804) 371-0220, email brook.pittinger@vdfp.virginia.gov.

**August 17, 2007 - 10 a.m.** -- Open Meeting  
Convention Center, Hampton, Virginia. 

Meetings of the following committees:

- 10 a.m. - Education and Training
- 2 p.m. - Fire Prevention and Control
- 3 p.m. - Administration, Policy and Finance

**Contact:** Brook Pittinger, Department of Fire Services, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, email brook.pittinger@vdfp.virginia.gov.

**August 18, 2007 - 10 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia. 

A full board meeting.

**Contact:** Brook Pittinger, Virginia Fire Services Board, 1005 Technology Park Dr., Glen Allen, VA 23059, telephone (804) 371-0220, email brook.pittinger@vdfp.virginia.gov.

## BOARD OF FORENSIC SCIENCE

† **August 8, 2007 - 10 a.m.** -- Open Meeting  
Department of Forensic Science, 700 North 5th Street, Classroom 1, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Forensic Science intends to adopt regulations entitled **6 VAC 40-50, Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material**. The purpose of the proposed action is to establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department in accordance with § 19.2-188.1 B of the Code of Virginia that become effective July 1, 2006, as emergency regulations. Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 of the Code of Virginia regarding whether or not any plant material, the identity of which is at issue, is marijuana.

Statutory Authority: §§ 9.1-1110 and 19.2-188.1 B of the Code of Virginia.

**Contact:** Michele M. Gowdy, Department Counsel, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or email michele.gowdy@dfs.virginia.gov.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **June 28, 2007 - 8:30 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled **18 VAC 65-20, Regulations of the Board of Funeral Directors and Embalmers**. The purpose of the proposed action is to update and clarify regulations for funeral services licensees and establishments.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public comments may be submitted until August 24, 2007, to Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 6603 West Broad St., 5th Floor, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St.,

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# Calendar of Events

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Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

**June 28, 2007 - 9 a.m.** -- Open Meeting

**July 31, 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 to review and discuss discipline cases.

**Contact:** Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 6603 West Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , email [elizabeth.young@dhp.virginia.gov](mailto:elizabeth.young@dhp.virginia.gov).

## DEPARTMENT OF GAME AND INLAND FISHERIES

† **June 25, 2007 - 7 p.m.** -- Open Meeting

Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public input meeting to discuss and receive public comments regarding season lengths and bag limits for the 2007-2008 hunting seasons for dove, woodcock, snipe, rail, September Canada goose, and September teal. All interested citizens are invited to attend. DGIF Wildlife Division staff will review the federal frameworks for the 2007-2008 seasons and bag limits for these species established by the U. S. Fish and Wildlife Service and receive input on suggested seasons and bag limits for Virginia as it prepares recommendations to the board. A summary of the results of this meeting will be presented to the Virginia Board of Game and Inland Fisheries for its scheduled July 17, 2007, meeting. At the July 17 meeting the board will hold another public hearing, after which it intends to set 2007-2008 hunting seasons and bag limits for the above species.

**Contact:** Bob Ellis, Assistant Director, Wildlife Division, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond VA 23230, telephone (804) 367-0904, email [bob.ellis@dgif.virginia.gov](mailto:bob.ellis@dgif.virginia.gov).

## CHARITABLE GAMING BOARD

**September 11, 2007 - 10 a.m.** -- Open Meeting

Science Museum of Virginia, 2500 West Broad Street, RF and P Forum Room, Richmond, Virginia.

A regular meeting.

**Contact:** Harry M. Durham, Interim Director, Charitable Gaming Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-2444, FAX (804) 786-1079, email [harry.durham@dgc.virginia.gov](mailto:harry.durham@dgc.virginia.gov).

## BOARD FOR GEOLOGY

**July 11, 2007 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general business meeting to include consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** 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).

## DEPARTMENT OF HEALTH

**August 10, 2007 - 10 a.m.** -- Open Meeting

Children's Hospital, 2924 Brook Road, Richmond, Virginia. 

A meeting of the Virginia Early Hearing Detection and Intervention Program Advisory Committee to assist the Department of Health in the implementation of the Virginia Early Hearing Detection and Intervention Program.

**Contact:** Pat Dewey, M.Ed, Program Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7713, email [pat.dewey@vdh.virginia.gov](mailto:pat.dewey@vdh.virginia.gov).

## State Emergency Medical Services Advisory Board

**August 16, 2007 - 1 p.m.** -- Open Meeting

Richmond Marriott West, 4240 Dominion Boulevard, Glen Allen, Virginia. 

A meeting of the Financial Assistance Review Committee (FARC). FARC is responsible for recommending to the Commissioner of Health monetary awards as stipulated in the Code of Virginia. The quarterly meeting is to discuss upcoming grant cycle and initiatives, problems with past grants and Rescue Squad Assistance Fund (RSAF) finances.

**Contact:** Amanda Davis, Grants Administrator, 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 [amanda.davis@vdh.virginia.gov](mailto:amanda.davis@vdh.virginia.gov).

**August 17, 2007 - 9 a.m.** -- Open Meeting

Richmond Marriott West, 4240 Dominion Boulevard, Glen Allen, Virginia. 

A quarterly meeting of the Communications Committee to review and recommend policies on EMS communications and coordinate the development and implementation of communications and associated technology that support EMS operations at the local, regional and state level.

**Contact:** Ken Crumpler, Communications Coordinator, 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 ken.crumpler@vdh.virginia.gov.

**August 17, 2007 - 1 p.m.** -- Open Meeting  
Richmond Marriott West, 4240 Dominion Boulevard, Glen Allen, Virginia. ☎

A quarterly meeting to provide advice and counsel regarding methods and procedures for planning, developing and maintaining a statewide emergency medical services (EMS) system to OEMS and the State Board of Health.

**Contact:** Gary R. Brown, Director, 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.

† **September 14, 2007 - 9 a.m.** -- Open Meeting  
109 Governor Street, 5th Floor Conference Room, Richmond, Virginia.

Will also be scheduled in remote locations via video conference.

A meeting of the Authorized Onsite Soil Evaluator Regulations Advisory Committee to make recommendations to the commissioner regarding AOSE/PE policies and programs.

**Contact:** Dwayne Roadcap, Program Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7462, FAX (804) 864-7476, email dwayne.roadcap@vdh.virginia.gov.

## **Sewage Handling and Disposal Appeals Review Board**

**June 27, 2007 - 10 a.m.** -- Open Meeting

**August 8, 2007 - 10 a.m.** -- Open Meeting  
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

A meeting to hear all administrative appeals of denials of onsite sewage disposal system permits and appeals of refusals of indemnification requests filed pursuant to § 32.1-164.1:01 and render its decision on any such appeal, which decision shall be the final administrative decision.

**Contact:** Donna Tiller, Executive Secretary, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7470, FAX (804) 864-7476, email donna.tiller@vdh.virginia.gov.

## **STATE BOARD OF HEALTH**

† **August 24, 2007** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia intends to amend regulations entitled **12 VAC 5-90, Regulations for Disease Reporting and Control**. The purpose of the proposed action is to identify the process acute care hospitals shall use in reporting healthcare-associated infections to the Virginia Department of Health.

Statutory Authority: § 32.1-35.1 of the Code of Virginia.

**Contact:** Diane Woollard, PhD, MHP, Director, Division of Surveillance and Investigation, Department of Health, P.O. Box 2448, Suite 516E, Richmond, VA 23218, telephone (804) 864-8141, FAX (804) 864-8139 or email diane.woollard@vdh.virginia.gov.

## **BOARD OF HEALTH PROFESSIONS**

**August 10, 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 Board of Health Professions intends to amend regulations entitled **18 VAC 75-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update the regulations for public participation in the regulatory process.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-9943, or email elizabeth.carter@dhp.virginia.gov.

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† **August 24, 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 Board of Health Professions intends to amend regulations entitled **18 VAC 75-20, Regulations Governing Practitioner Self-Referral**. The purpose of the proposed action is to set out criteria for delegation of applications for advisory opinions or exceptions to an agency subordinate.

Statutory Authority: §§ 54.1-2400 and 54.1-2412 of the Code of Virginia.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-

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# Calendar of Events

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9910, FAX (804) 662-9943,  
email elizabeth.carter@dhp.virginia.gov.

or 6295, (804) 367-9753/TTY ☎, email  
hearingaidspec@dpwr.virginia.gov.

## DEPARTMENT OF HEALTH PROFESSIONS

**July 25, 2007 - 11 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. ☎

A meeting of the Prescription Monitoring Program  
Advisory Committee to review practitioners notification  
education plan.

**Contact:** Ralph A. Orr, PMP, Program Manager,  
Department of Health Professions, Alcoa Bldg., 6603 W.  
Broad St., 5th Floor, Richmond, VA 23230-1712, telephone  
(804) 662-9129, FAX (804) 662-9240, (804) 662-7197/TTY  
☎, email ralph.orr@dhp.virginia.gov.

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**August 10, 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 Health Professions  
intends to amend regulations entitled **18 VAC 76-10,  
Public Participation Guidelines**. The purpose of the  
proposed action is to follow recommendations of a periodic  
review of regulations to update and clarify public  
participation guideline regulations.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2505 of the  
Code of Virginia.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator,  
Department of Health Professions, 6603 W. Broad St.,  
Richmond, VA 23230, telephone (804) 662-9918, FAX (804)  
662-9114 or email elaine.yeatts@dhp.virginia.gov.

## BOARD FOR HEARING AID SPECIALISTS

**July 11, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A general business meeting including consideration of  
regulatory issues as may be presented on the agenda. The  
meeting is open to the public; however, a portion of the  
board's business may be discussed in closed session. Public  
comment will be heard at the beginning of the meeting.  
Person desirings to participate in the meeting and requiring  
special accommodations or interpreter services should  
contact the department at least 10 days prior to the meeting  
so that suitable arrangements can be made. The department  
fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Executive Director, Board  
for Hearing Aid Specialists, 3600 W. Broad St., Richmond,  
VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**July 10, 2007 - 11:30 a.m.** -- Open Meeting  
Norfolk State University, Norfolk, Virginia. ☎

**September 11, 2007 - 11:30 a.m.** -- Open Meeting  
James Monroe Building, 101 North Street, Richmond,  
Virginia.

Council meeting times are approximate and subject to  
change. Committee meetings will begin in the morning.  
Agenda materials will be available on the website  
approximately one week prior to the meeting at  
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, James Monroe Bldg., 101 N. 14th St., 9th Floor,  
Richmond, VA 23219, telephone (804) 225-2602, FAX (804)  
371-7911, email leannrung@schev.edu.

## VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

### Virginia College Savings Plan Board

† **June 28, 2007 - 11 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 5th Floor,  
Virginia College Savings Plan Boardroom, Richmond,  
Virginia. ☎

A regular board meeting.

**Contact:** Jennifer Jones, Administrative Operations  
Specialist, Virginia Higher Education Tuition Trust Fund,  
James Monroe Bldg., 101 N. 14th St., 5th Floor, Richmond,  
VA 23219, telephone (804) 225-2853, FAX (804) 786-2453,  
toll-free (888) 567-0540, (804) 786-2766/TTY ☎, email  
vcspinfo@virginia529.com.

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

**June 25, 2007 - 10 a.m.** -- Open Meeting  
The Jackson Center, 501 North 2nd Street, 1st Floor  
Boardroom, Richmond, Virginia. ☎

A regular business meeting.

**Contact:** Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY ☎, email [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.virginia.gov).

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**July 24, 2007 - 10 a.m.** -- Public Hearing  
Greater Richmond Convention Center, 403 North 3rd Street, Lecture Room, Room B-10, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled **13 VAC 5-63, Virginia Uniform Statewide Building Code (USBC)**. The purpose of the proposed action is to update regulations to the 2006 ICC model codes.

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

Public comments may be submitted until August 11, 2007.

**Contact:** Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY ☎, email [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.virginia.gov).

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**July 24, 2007 - 10 a.m.** -- Public Hearing  
Greater Richmond Convention Center, 403 North 3rd Street, Lecture Room, Room B-10, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled **13 VAC 5-51, Virginia Statewide Fire Prevention Code**. The purpose of the proposed action is to update regulations to the 2006 ICC model codes.

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

Public comments may be submitted until August 11, 2007.

**Contact:** Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY ☎, email [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.virginia.gov).

## VIRGINIA COUNCIL ON HUMAN RESOURCES

**July 19, 2007 - 9:30 a.m.** -- Open Meeting  
† **September 20, 2007 - 9:30 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, PDS #4, Richmond, Virginia.

A quarterly meeting.

**Contact:** Barbara Tanner, Executive Assistant, Department of Human Resource Management, James Monroe Bldg., 101 N. 14th St., 13th Floor, Richmond, VA 23219, telephone (804) 225-2237, FAX (804) 371-7401, email [barbara.tanner@dhrm.virginia.gov](mailto:barbara.tanner@dhrm.virginia.gov).

## STATE BOARDS OF EDUCATION; JUVENILE JUSTICE; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; AND SOCIAL SERVICES

**July 9, 2007 - 6:30 p.m.** -- Public Hearing  
First Campbell Square Building, 210 1st Street, Roanoke, Virginia. ♿

**July 10, 2007 - 6:30 p.m.** -- Public Hearing  
Tuckahoe Area Library, 1901 Starling Drive, Richmond, Virginia. ♿

**July 11, 2007 - 6:30 p.m.** -- Public Hearing  
Department of Social Services, Virginia Beach Regional Office, Pembroke IV, 291 Independence Boulevard, 3rd Floor, Virginia Beach, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to repeal regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities**; and adopt regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities**. The purpose of the proposed action is to repeal the existing regulation 22 VAC 42-10, and promulgate a new regulation, 22 VAC 42-11. These standards will protect vulnerable children who are separated from their families and reside in children's residential facilities, and assure that an acceptable level of care and education are provided. The new regulation will (i) comply with federal regulation, (ii) ensure that services provided to residents are appropriate for their needs, (iii) bring the requirements in line with the current industry practices, (iv) clarify frequently misinterpreted standards, and (v) delete unnecessary requirements.

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-203, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 66-10 and 66-24 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

**Contact:** Charlene Vincent, Coordinator, Office of Interdepartmental Regulation, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095 or email [charlene.vincent@dss.virginia.gov](mailto:charlene.vincent@dss.virginia.gov).

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# Calendar of Events

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## STATE BOARD OF JUVENILE JUSTICE

† **September 12, 2007 - 10 a.m.** -- Open Meeting  
Merrimac Detention Center, 9300 Merrimac Trail,  
Williamsburg, 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 meets at 10 AM to take action on the certification reports and hear other such business as comes before the board. The Board of Juvenile Justice is pleased to receive public comment at each of its regular meetings. In order to allow the board sufficient time for its other business, the total time allotted to public comment 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 time frames provided at the chairman's discretion to accommodate large numbers of speakers. Those wishing to speak to the board are strongly encouraged to 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 pre-registered. 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 insure 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.

**Contact:** Deborah C. Hayes, Administrative Assistant, State Board of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0704, FAX (804) 371-0725.

## DEPARTMENT OF LABOR AND INDUSTRY

### Safety and Health Codes Board

**June 26, 2007 - 10 a.m.** -- Open Meeting  
State Corporation Commission, 1300 East Main Street,  
Courtroom A, Richmond, Virginia. (Interpreter for the deaf  
provided upon request)

A meeting to conduct general business.

**Contact:** Regina P. Cobb, Agency Management Analyst  
Senior, Department of Labor and Industry, Powers-Taylor  
Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804)

786-0610, FAX (804) 786-8418, (804) 786-2376/TTY, email rlc@doli.virginia.gov.

## COMMISSION ON LOCAL GOVERNMENT

**July 16, 2007 - 10 a.m.** -- Open Meeting  
Department of Housing and Community Development, 501  
North Second Street Richmond, Virginia.

A regular business meeting.

**Contact:** Susan Williams, Commission on Local  
Government, 501 N. 2nd St., Richmond, VA 23219,  
telephone (804) 786-6508, FAX (804) 371-7090, email  
susan.williams@dhcd.virginia.gov.

## BOARD OF LONG-TERM CARE ADMINISTRATORS

**July 10, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Richmond, Virginia.

A meeting to discuss board matters.

**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.

## VIRGINIA MANUFACTURED HOUSING BOARD

**July 25, 2007 - 1 p.m.** -- Open Meeting  
Wyndham Hotel, 5700 Atlantic Avenue, Virginia Beach,  
Virginia.

A regular business meeting. The board meeting will be held  
in conjunction with the annual convention of the Virginia  
Manufactured and Modular Housing Association.

**Contact:** Curtis McIver, State Building Code Administrator,  
Virginia Manufactured Housing Board, The Jackson Center,  
501 N. 2nd St., Richmond, VA 23219-1321, telephone (804)  
371-7161, FAX (804) 371-7092, (804) 371-7089/TTY,  
email curtis.mciver@dhcd.virginia.gov.

## MARINE RESOURCES COMMISSION

**June 26, 2007 - 9:30 a.m.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue,  
4th Floor, Newport News, Virginia. (Interpreter for the deaf  
provided upon request)

A monthly commission meeting.

**Contact:** Jane McCroskey, Commission Secretary, Marine  
Resources Commission, 2600 Washington Ave., 3rd Floor,  
Newport News, VA 23607, telephone (757) 247-2215, FAX  
(757) 247-8101, toll-free (800) 541-4646, (757) 247-  
2292/TTY, email jane.mccroskey@mrc.virginia.gov.

**BOARD OF MEDICAL ASSISTANCE SERVICES**

**September 11, 2007 - 10 a.m.** -- Open Meeting  
 Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. 

A routine quarterly meeting.

**Contact:** Mamie White, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY , email mamie.white@dmas.virginia.gov.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**August 2, 2007 - 2 p.m.** -- Open Meeting  
 Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. 

A meeting of the Drug Utilization Review Committee to discuss issues related to this committee.

**Contact:** Rachel Cain, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, (800) 343-0634/TTY , email rachel.cain@dmas.virginia.gov.

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**August 10, 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 30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care.** The purpose of the proposed action is to clarify the definition of Medicaid utilization so the regulations and providers' cost reports are the same.

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

**Contact:** William Lessard, Director, 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.

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**August 10, 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 30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services.**

**12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care.**

**12 VAC 30-90; Methods and Standards for Establishing Payment Rates for Long-Term Care.**

The purpose of the proposed action is to implement provider reimbursement increases mandated by the 2006 Acts of the General Assembly.

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

**Contact:** Carla Russell, Provider Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (804) 786-1680 or email carla.russell@dmas.virginia.gov.

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**August 10, 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 change school division reimbursement to cost basis.

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

**Contact:** Lois Gray, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680 or email lois.gray@dmas.virginia.gov.

**BOARD OF MEDICINE**

**July 11, 2007 - 9:15 a.m.** -- Open Meeting  
 Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. 

**July 19, 2007 - 9:30 a.m.** -- Open Meeting  
 Holiday Inn, 3315 Ordway Drive, Roanoke, Virginia. 

**July 25, 2007 - 8:45 a.m.** -- Open Meeting

**August 8, 2007 - 9 a.m.** -- Open Meeting  
 Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

**July 31, 2007 - 9:15 a.m.** -- Open Meeting  
 Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

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# Calendar of Events

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**August 23, 2007 - 9 a.m.** -- Open Meeting  
Wytheville Meeting Center, 333 Community Boulevard,  
Wytheville, 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.

**August 10, 2007 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. ☎

A meeting of the Executive Committee to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email william.harp@dhp.virginia.gov.

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**August 10, 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 Board of Medicine intends to amend regulations entitled

**18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic.**

**18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners.**

**18 VAC 85-50. Regulations Governing the Practice of Physician Assistants.**

**18 VAC 85-80. Regulations for Licensure of Occupational Therapists.**

**18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.**

**18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists.**

The purpose of the proposed action is to set out the fees and renewal requirements for a person holding a restricted volunteer license.

Statutory Authority: Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

**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.

**August 10, 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 Board of Medicine intends to amend regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic.** The purpose of the proposed action is to require a practitioner who makes claims in an advertisement to the public to maintain documentation in support of those claims.

Statutory Authority: Chapters 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email elaine.yeatts@dhp.virginia.gov.

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**August 10, 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 Board of Medicine intends to amend regulations entitled **18 VAC 85-10, Public Participation Guidelines.** The purpose of the proposed action is to clarify and update regulations as recommended by periodic review.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2505 of the Code of Virginia.

**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.

**† September 21, 2007 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. ☎

A meeting of the Legislative Committee to consider regulatory matters as 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, 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).

† **September 21, 2007 - 1:30 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

A meeting of the Credentials Committee 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](mailto:william.harp@dhp.virginia.gov).

**DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES**

**July 2, 2007 - 10 a.m.** -- Public Hearing  
Jefferson Building, 1220 Bank St., 8th Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Community Mental Health Services Performance Partnership Block Grant Application for federal fiscal year 2008. Copies of the application are available for review at the Office of Mental Health Services, 10th floor, Jefferson Building and at each community services board office. Comment may be made at the hearing or in writing by no later than July 2, 2007 to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), P.O. Box 1797 Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact Jo-Amrah S. McElroy, M.Ed. Copies of oral presentations should be filed at the time of the hearing.

**Contact:** JoAmrah S. McElroy, M.Ed., Office of Mental Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-2316, FAX (804) 371-0091, (804) 371-8977/TTY ☎

**STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD**

**July 9, 2007 - 6:30 p.m.** -- Public Hearing  
First Campbell Square Building, 210 1st Street, Roanoke, Virginia. ♿

**July 10, 2007 - 6:30 p.m.** -- Public Hearing  
Tuckahoe Area Library, 1901 Starling Drive, Richmond, Virginia. ♿

**July 11, 2007 - 6:30 p.m.** -- Public Hearing  
Department of Social Services, Virginia Beach Regional Office, Pembroke IV, 291 Independence Boulevard, 3rd Floor, Virginia Beach, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to repeal regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities;** and adopt regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities.** The purpose of the proposed action is to repeal the existing regulation 22 VAC 42-10, and promulgate a new regulation, 22 VAC 42-11. These standards will protect vulnerable children who are separated from their families and reside in children's residential facilities, and assure that an acceptable level of care and education are provided. The new regulation will (i) comply with federal regulation, (ii) ensure that services provided to residents are appropriate for their needs, (iii) bring the requirements in line with the current industry practices, (iv) clarify frequently misinterpreted standards, and (v) delete unnecessary requirements.

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-203, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 66-10 and 66-24 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

**Contact:** Charlene Vincent, Coordinator, Office of Interdepartmental Regulation, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095 or email [charlene.vincent@dss.virginia.gov](mailto:charlene.vincent@dss.virginia.gov).

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† **August 24, 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to amend regulations entitled **12 VAC 35-105, Rules and Regulations for the Licensing of Providers of Mental**

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# Calendar of Events

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**Health, Mental Retardation and Substance Abuse, the Individual and Families Disabilities Support Waiver, and Brain Injury Residential Services.** The purpose of the proposed action is to add provisions for issuing an order of summary suspension of a license.

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

**Contact:** Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank St., Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066 or email [leslie.anderson@co.dmhmrzas.virginia.gov](mailto:leslie.anderson@co.dmhmrzas.virginia.gov).

## DEPARTMENT OF MINES, MINERALS AND ENERGY

**June 28, 2007 - 9 a.m.** -- Open Meeting  
Oxbow Center, 16620 East Riverside Drive, St. Paul, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Division of Mined Land Reclamation Permit Enhancement Work Group to discuss potential enhancement to the DMLR permitting process. Public comments will be received as the last item of the meeting. Special accommodations for the disabled will be made available at the public meeting on request. Contact the Department of Mines, Minerals and Energy Division of Mined Land Reclamation at least seven days prior to the meeting date.

**Contact:** Les Vincent, Technical Services Manager, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, 3405 Mountain Empire Rd., Big Stone Gap, VA 24219, telephone (276) 523-8156, FAX (276) 523-8163, (800) 828-1120/TTY , email [les.vincent@dmme.virginia.gov](mailto:les.vincent@dmme.virginia.gov).

## VIRGINIA MUSEUM OF FINE ARTS

NOTE: CHANGE IN MEETING DATE

**July 25, 2007- 3 p.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 200 North Boulevard, Pauley Center Dining Room, Richmond, Virginia. 

A meeting of the Marketing and Branding Committee for staff to update the trustees. 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).

## FOUNDATION FOR VIRGINIA'S NATURAL RESOURCES

**July 11, 2007 - 10 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia.  (Interpreter for the deaf provided upon request)

A business meeting of the Board of Trustees.

**Contact:** Brenda Taylor, Administrative Staff Specialist, Foundation for Virginia's Natural Resources, 900 Natural Resources Dr., Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, email [brenda.taylor@dof.virginia.gov](mailto:brenda.taylor@dof.virginia.gov).

## BOARD OF NURSING

**June 26, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A Special Conference Committee comprised of two or three members of the Virginia Board of Nursing or agency subordinate will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

**Contact:** Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 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).

**July 16, 2007 - 9 a.m.** -- Open Meeting

† **July 17, 2007 - 9 a.m.** -- Open Meeting

† **September 17, 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. A formal hearing may also be held. 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

**July 18, 2007 - 9 a.m.** -- Open Meeting

**July 19, 2007 - 9 a.m.** -- Open Meeting

† **September 19, 2007 - 9 a.m.** -- Open Meeting

† **September 20, 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).

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**August 10, 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 Board of Nursing intends to amend regulations entitled **18 VAC 90-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update regulations for public participation in the regulatory process.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2505 of the Code of Virginia.

**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).

**† September 18, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to conduct general business including receipt of committee reports and consideration of regulatory action and discipline case decisions as presented on the agenda. Public comment will be received at 11 a.m.

**Contact:** Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, email [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

## JOINT BOARDS OF NURSING AND MEDICINE

**July 13, 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 Boards of Nursing and Medicine intend to amend regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to clarify that one must hold an active license as a registered nurse to be licensed as a nurse practitioner.

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

Public comments may be submitted until July 13, 2007, to Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, email [nursebd@dhp.virginia.gov](mailto:nursebd@dhp.virginia.gov).

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

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**July 17, 2007 -- 11:30 a.m.** - Public Hearing  
Department of Health Professions, 6603 West Broad Street, Board Room 2, 5th Floor, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Boards of Nursing and Medicine intend to amend regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to provide for practice of certified nurse midwives in collaboration and consultation with a licensed physician.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public comments may be submitted until August 10, 2007, to Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, email [nursebd@dhp.virginia.gov](mailto:nursebd@dhp.virginia.gov).

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

## BOARD FOR OPTICIANS

**August 17, 2007 - 9:30 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. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, email [opticians@dpor.virginia.gov](mailto:opticians@dpor.virginia.gov).

## BOARD OF OPTOMETRY

**August 10, 2007** - Public comments may be submitted until this date.

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## Calendar of Events

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Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled **18 VAC 105-10, Public Participation Guidelines**. The purpose of the proposed action is to update and clarify the board's public participation guidelines.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY ☎, email elizabeth.carter@dhp.virginia.gov.

### VIRGINIA OUTDOORS FOUNDATION

**September 5, 2007 - 1 p.m.** -- Open Meeting

**September 6, 2007 - 9 a.m.** -- Open Meeting

Department of Forestry Headquarters, 2nd Floor Board Room, 900 Natural Resources Drive, Charlottesville, Virginia. ♿

A quarterly meeting of the Board of Trustees to discuss policy and easement consideration. Public comment will be received.

**Contact:** Trisha Cleary, Executive Assistant, Department of Conservation and Recreation, 101 N. 14th Street, 17th Floor Richmond, VA 23219, telephone (804) 225-2147, FAX (804) 371-4810, email tcleary@vofonline.org.

### VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

**July 17, 2007 - 10 a.m.** -- Open Meeting

202 North 9th Street, 9th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct new grantee orientation.

**Contact:** Lynne Talley, Grants Administrative Manager, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA, telephone (804) 786-9375, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY ☎, email lynne.talley@vbpd.virginia.gov.

† **September 20, 2007 - 10 a.m.** -- Open Meeting  
Location to be announced. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Executive Committee.

**Contact:** Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th Street, 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.

† **September 21, 2007 - 8:30 a.m.** -- Open Meeting  
Location to be announced. ♿ (Interpreter for the deaf provided upon request)

A quarterly board meeting.

**Contact:** Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th Street, 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.

### PESTICIDE CONTROL BOARD

† **July 19, 2007 - 9 a.m.** -- Open Meeting

Oliver Hill Building 102 Governor Street, 2nd Floor VDACS 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 the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

**Contact:** Dr. W. Wayne Surles, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., 2nd Floor, Richmond, VA 23219, telephone (804) 371-6559, FAX (804) 786-9149, toll-free (800) 552-9963, email Wayne.Surles@vdacs.virginia.gov.

### BOARD OF PHARMACY

**August 10, 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 Board Pharmacy intends to amend regulations entitled **18 VAC 110-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update regulations pursuant to a periodic review.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY ☎, email scotti.russell@dhp.virginia.gov.

## BOARD OF PHYSICAL THERAPY

**August 10, 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 Board of Physical Therapy intends to amend regulations entitled **18 VAC 112-10, Public Participation Guidelines**. The purpose of the proposed action is to clarify and update certain provisions of the regulation pursuant to the recommendations from a periodic review.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**August 17, 2007 - 9 a.m.** -- Canceled

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, 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 interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

## POLYGRAPH EXAMINERS ADVISORY BOARD

**July 10, 2007 - 11 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. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Kevin Hoeft, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-0674, (804) 367-9753/TTY ☎, email [kevin.hoeft@dpor.virginia.gov](mailto:kevin.hoeft@dpor.virginia.gov).

## BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† **September 17, 2007 - 10 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A 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).

## BOARD OF PSYCHOLOGY

† **June 29, 2007 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Informal Conference Committee to determine if any laws or regulations governing the practice of psychology in Virginia have been violated.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

**July 10, 2007 - 9:30 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A business meeting to include reports from standing committees and any regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

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**August 10, 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 Board of Psychology intends to amend regulations entitled **18 VAC 125-10, Public Participation Guidelines**. The purpose of the proposed

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# Calendar of Events

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action is to update and clarify regulations for public participation in the promulgation of regulations.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

## VIRGINIA PUBLIC GUARDIANSHIP AND CONSERVATOR ADVISORY BOARD

**June 28, 2007 - 10 a.m.** -- Open Meeting

† **September 20, 2007 - 10 a.m.** -- Open Meeting

Virginia Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. ♿

A meeting of the Executive Committee.

**Contact:** Faye D. Cates, MSSW, Human Services Program Coordinator, 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).

## REAL ESTATE APPRAISER BOARD

**August 21, 2007 - 10 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room, Richmond, Virginia. ♿

A meeting to discuss board business.

**Contact:** Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, email [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov).

## REAL ESTATE BOARD

† **June 25, 2007 - 10 a.m.** -- Open Meeting

**June 27, 2007 - 9:30 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ♿

Informal fact-finding conferences.

**Contact:** Christine Martine, Executive Director, Real Estate 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](mailto:reboard@dpor.virginia.gov).

**July 18, 2007 - 3 p.m.** -- Open Meeting

† **September 19, 2007 - 3 p.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting of the Education Committee to discuss education issues.

**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](mailto:reboard@dpor.virginia.gov).

**July 19, 2007 - 9 a.m.** -- Open Meeting

† **September 20, 2007 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to discuss board business.

**Contact:** Christine Martine, Executive Director, Real Estate 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](mailto:reboard@dpor.virginia.gov).

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† **August 1, 2007 - 10 a.m.** -- Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled **18 VAC 135-20, Virginia Real Estate Board Licensing Regulations**. The purpose of the proposed action is to make clarifying changes, incorporate new education requirement and ensure consistency with state law.

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

**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](mailto:reboard@dpor.virginia.gov).

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† **August 1, 2007 - 10 a.m.** -- Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled **18 VAC 135-60, Common Interest Community Management Information Fund Regulations**. The purpose of the proposed action is to implement a fee structure that is divided into seven categories reflecting a graduated scale that represents the number of units/lots in a community. Also, the initial application fee is different and slightly higher than the annual renewal fee. Language has been added to have registration certificate expiration dates coincide with the community's annual meeting to elect officers.

Statutory Authority: § 55-530 of the Code of Virginia.

**Contact:** Thomas K. Perry, Property Registration Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475 or email [propreg@dpor.virginia.gov](mailto:propreg@dpor.virginia.gov).

## DEPARTMENT OF REHABILITATIVE SERVICES

### Virginia Brain Injury Council

**July 27, 2007 - 1 p.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Conference Rooms, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting. Materials will be provided in alternate format upon request. Public comment will be received 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](mailto:Kristie.chamberlain@drs.virginia.gov).

### Statewide Independent Living Council

**† July 10, 2007 - 4:30 p.m.** -- Open Meeting  
ENDependence Center of Northern Virginia, INC (ECNV), 3100 Clarendon Boulevard, Arlington, Virginia.  (Interpreter for the deaf provided upon request)

Community Action Specialist (CAS) quarterly reports will be provided to team members electronically prior to the meeting. CAS Review Team will meet to review quarterly reports for the CAS projects.

**Contact:** Lisa Grubb, Executive Director, Department of Rehabilitative Services, 32 Abbey Court, Fishersville, VA 22939, telephone (540) 949-7452, FAX (540) 949-7453, toll-free (800) 552-5019, (800) 464-9950/TTY , email [va.silc.lisa@comcast.net](mailto:va.silc.lisa@comcast.net).

### Commonwealth Neurotrauma Initiative Trust Fund Advisory Board

**† September 21, 2007 - 10 a.m.** -- Open Meeting  
8004 Franklin Farms Drive, Conference Room 101, Richmond, Virginia. 

A quarterly business meeting.

**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](mailto:kristie.chamberlain@drs.virginia.gov).

## State Rehabilitation Council

**† August 13, 2007 - 11 a.m.** -- Open Meeting  
8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting. Public comments will be received at approximately 11:15 a.m. Materials provided in alternate format are provided upon prior request.

**Contact:** Barbara Tyson, Staff Support, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7010, FAX (804) 662-7644, toll-free (800) 552-5019, (800) 464-9950/TTY , email [barbara.tyson@drs.virginia.gov](mailto:barbara.tyson@drs.virginia.gov).

## STATE BOARDS OF EDUCATION; JUVENILE JUSTICE; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; AND SOCIAL SERVICES

**July 9, 2007 - 6:30 p.m.** -- Public Hearing  
First Campbell Square Building, 210 1st Street, Roanoke, Virginia. 

**July 10, 2007 - 6:30 p.m.** -- Public Hearing  
Tuckahoe Area Library, 1901 Starling Drive, Richmond, Virginia. 

**July 11, 2007 - 6:30 p.m.** -- Public Hearing  
Department of Social Services, Virginia Beach Regional Office, Pembroke IV, 291 Independence Boulevard, 3rd Floor, Virginia Beach, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to repeal regulations entitled **22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities**; and adopt regulations entitled **22 VAC 42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities**. The purpose of the proposed action is to repeal the existing regulation 22 VAC 42-10, and promulgate a new regulation, 22 VAC 42-11. These standards will protect vulnerable children who are separated from their families and reside in children's residential facilities, and assure that an acceptable level of care and education are provided. The new regulation will (i) comply with federal regulation, (ii) ensure that services provided to residents are appropriate for their needs, (iii) bring the requirements in line with the current industry practices, (iv) clarify frequently misinterpreted standards, and (v) delete unnecessary requirements.

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# Calendar of Events

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Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-203, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 66-10 and 66-24 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

**Contact:** Charlene Vincent, Coordinator, Office of Interdepartmental Regulation, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095 or email [charlene.vincent@dss.virginia.gov](mailto:charlene.vincent@dss.virginia.gov).

## BOARD OF PSYCHOLOGY

**August 10, 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 Board of Social Work intends to amend regulations entitled **18 VAC 140-10, Public Participation Guidelines**. The purpose of the proposed action is to update and clarify the board's public participation guidelines.

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

## VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

† **September 18, 2007 - Noon** -- Open Meeting  
Westfields Marriott, Washington Dulles 14750 Conference Center Drive, Chantilly, Virginia.

A quarterly meeting. Public comment will be accepted at approximately 4 p.m.

**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](mailto:nvorona@cit.org).

## DEPARTMENT OF SOCIAL SERVICES

† **July 25, 2007 - 10 a.m.** -- Open Meeting  
Department of Social Services, 7 North 8th Street, Richmond, Virginia. ♿

A regular business meeting of the Virginia Commission for National and Community Service.

**Contact:** Susan Patton, Executive Assistant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219,

telephone (804) 726-7065, FAX (804) 726-7024, toll-free (800) 638-3839, (800) 828-1120/TTY ☎, email [susan.c.pattton@dss.virginia.gov](mailto:susan.c.pattton@dss.virginia.gov).

## STATE BOARD OF SOCIAL SERVICES

† **August 15, 2007 - 9 a.m.** -- Open Meeting  
† **August 16, 2007 - 9 a.m.** -- Open Meeting  
Norfolk Workforce Development Center, 201 East Little Creek Road, Norfolk, Virginia. ♿

A regional meeting.

**Contact:** Pat Rengnerth, Board Liaison, State Board of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St. Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY ☎, email [patricia.rengnerth@dss.virginia.gov](mailto:patricia.rengnerth@dss.virginia.gov).

## BOARD OF SOCIAL WORK

**July 12, 2007 - 2 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Regulatory Committee to review current regulations regarding supervision and standards of practice.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY ☎, email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

**July 13, 2007 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A regular business meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY ☎, email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

## BOARD FOR SOIL SCIENTISTS AND WETLAND PROFESSIONALS

**July 17, 2007 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, email soilscientist@dpor.virginia.gov.

## DEPARTMENT OF TAXATION

### State Land Evaluation Advisory Council

**August 13, 2007 - 11 a.m.** -- Open Meeting  
**September 10, 2007 - 11 a.m.** -- Open Meeting  
2220 West Broad Street, Richmond, Virginia. 📍

A meeting to adopt suggested ranges of value for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

**Contact:** H. Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020, email keith.mawyer@tax.virginia.gov.

## BOARD OF TOWING AND RECOVERY OPERATORS

† **June 26, 2007 - 9:30 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Board Street, Conference Room 702, Richmond, Virginia. 📍

A meeting of the Second Signature Ad Hoc Committee to discuss and review issues surrounding requirements for second signatures in instances of private property towing.

**Contact:** Benjamin Foster, Executive Director, Board of Towing and Recovery Operators, Department of Motor Vehicles, P.O. Box 2741, Richmond, VA 23269, telephone (804) 367-0226, FAX (804) 367-6631, email benjamin.foster@dmv.virginia.gov.

† **July 10, 2007 - 9:30 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Board Street, Conference Room 702, Richmond, Virginia. 📍

The following committees will meet: Administrative Affairs, Bylaws and Policy, Communication and Consumer Affairs, and Licensure and Regulatory Affairs.

**Contact:** Benjamin Foster, Executive Director, Board of Towing and Recovery Operators, Department of Motor Vehicles, P.O. Box 2741, Richmond, VA 23269, telephone (804) 367-0226, FAX (804) 367-6631, email benjamin.foster@dmv.virginia.gov.

## COMMONWEALTH TRANSPORTATION BOARD

**July 18, 2007 - 2 p.m.** -- Open Meeting  
† **September 19, 2007 - 2 p.m.** -- Open Meeting  
VDOT Central Office, 1221 East Broad Street, Auditorium, Richmond, Virginia. 📍

A work session of the Commonwealth Transportation Board and transportation staff.

**Contact:** Carol A. Mathis, Administrative Staff Assistant, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, email carol.mathis@vdot.virginia.gov.

**July 19, 2007 - 9 a.m.** -- Open Meeting  
† **September 20, 2007 - 9 a.m.** -- Open Meeting  
VDOT Central Office, 1221 East Broad Street, Auditorium, Richmond, Virginia. 📍

A regularly scheduled meeting to transact CTB business, such as permits, additions/deletions to the highway system, and other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups will be asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

**Contact:** Carol A. Mathis, Administrative Staff Assistant, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2701, email carol.mathis@vdot.virginia.gov.

## DEPARTMENT OF TRANSPORTATION

**July 30, 2007 - 8:30 a.m.** -- Open Meeting  
Patrick Henry Building, 3rd Floor, 1111 East Broad Street, Richmond, Virginia. 📍

A meeting of the Transportation Accountability Commission on outcome measures.

**Contact:** Tracey Williams, Department of Transportation, Transportation and Mobility Planning Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 371-8304, FAX (804) 225-4785, email tracey.williams@vdot.virginia.gov.

## TREASURY BOARD

**July 18, 2007 - 9 a.m.** -- Open Meeting  
**August 15, 2007 - 9 a.m.** -- Open Meeting  
† **September 19, 2007 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia.

A regular meeting.

**Contact:** Kathi B. Scarce, Secretary to the Board, Treasury Board, James Monroe Bldg., 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, email kathi.scarce@trs.virginia.gov.

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# Calendar of Events

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## DEPARTMENT OF VETERANS SERVICES

### Board of Veterans Services

**July 16, 2007 - 9:30 a.m.** -- Open Meeting

Location to be determined. 

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.

**† September 17, 2007 - 11:30 a.m.** -- Open Meeting

National Guard Armory, 5901 Beulah Road, Sandston, Virginia. 

A board retreat. Contact Rhonda Earman to preregister for public comment.

**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.

### STATE WATER CONTROL BOARD

**June 27, 2007 - 9:30 a.m.** -- Open Meeting

**June 28, 2007 - 9:30 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, House Room C, 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.

**† July 26, 2007 - 6:30 p.m.** -- Public Hearing

Tuckahoe School, 443 Monocan Drive, Nellysford, Virginia. 

A public hearing on the proposed reissuance of a VPDES permit for the Wintergreen Stoney Creek Sewage Treatment Plant in Nelson County. The DEQ staff will conduct an informational briefing on this proposed permit action at 6 p.m. The public comment period closes on August 10, 2007.

**Contact:** Trevor Wallace, State Water Control Board, 4411 Early Rd., P.O. Box 3000 Harrisonburg, VA 22801, telephone (540) 574-7807, email thwallace@deq.virginia.gov.

### BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**† September 19, 2007 - 8:30 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Board Street, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , email waterwasteoper@dpor.virginia.gov.

## INDEPENDENT

### STATE LOTTERY BOARD

**† August 1, 2007 - 9 a.m.** -- Open Meeting

State Lottery Department, 900 East Main Street, 13th Floor, Richmond, Virginia. 

A regular meeting. There will be an opportunity for public comment shortly after the meeting is convened.

**Contact:** Frank S. Ferguson, Director, Legislative and Regulatory Affairs, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7901, FAX (804) 692-7905, email fferguson@valottery.com.

### SPECIAL ADVISORY COMMISSION ON MANDATED HEALTH INSURANCE BENEFITS

**July 18, 2007 - 10 a.m.** -- Public Hearing

General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A public hearing of the Special Advisory Commission on Mandated Health Insurance Benefits on three bills introduced during the 2007 General Assembly session. The hearing is on the following bills: HB 2156 (mandates coverage for second opinions at the National Cancer Institute Comprehensive Cancer Centers for primary malignant brain tumors), HB 2426 (repeals current mandated offer of coverage for dose-intensive chemotherapy/autologous bone marrow and stem cell transplants for breast cancer), and SB 991 (repeals the mandated offer of coverage for dose-intensive chemotherapy/autologous bone marrow transplants for breast cancer).

**Contact:** Ann Colley, Principal Insurance Analyst, Life and Health Division, Research Section, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9813, FAX (804) 371-9944, toll-free 1-877-310-6560, or (804) 371-9206/TTY 

## VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

### July 24, 2007 - 9 a.m. -- Open Meeting

Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, VOPA Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Board of Directors. Public comment will be received beginning at 9 a.m. 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 July 10, 2007. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. For more information on participating in this conference call or to provide public comment via telephone. If interpreter services or accommodations are required, please contact Ms. Shehi no later than July 10, 2007.

**Contact:** Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7413, toll-free (800) 552-3962, (804) 225-2042/TTY , email [lisa.shehi@vopa.virginia.gov](mailto:lisa.shehi@vopa.virginia.gov).

### June 28, 2007 - 10:30 a.m. -- Open Meeting

Endeppence Center of Northern Virginia, 3100 Clarendon Boulevard, Arlington, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Public Awareness and Goals Committee. Public comment by telephone is welcomed by the Public Awareness and Goals Committee and will be received at the beginning of the meeting. For information on participating in this conference call or if you wish to provide public comment via telephone, you must call Lisa Shehi, Executive Assistant at 1-800-552-3962 (Voice/TTY) or email her at [lisa.shehi@vopa.virginia.gov](mailto:lisa.shehi@vopa.virginia.gov) no later than Thursday, June 14, 2007. For further information, please contact Ms. Shehi. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than Thursday, June 14, 2007. Directions to the meeting site may be found at <http://www.ecnv.org/Contact/driving.html>.

**Contact:** Lisa Shehi, Executive Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, Virginia, 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).

### July 23, 2007 - 4 p.m. -- Open Meeting

VOPA Office, 1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Public Policy Committee. Public comment is welcomed by the Public Policy Committee and will be received beginning at 4 p.m. on Monday, July 23, 2007. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Executive 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 Monday, July 9, 2007. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. Directions to the meeting site are below. For further information, please contact Ms. Shehi. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than Monday, July 9, 2007.

**Contact:** Lisa Shehi, Executive Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23235, 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).

### July 23, 2007 - 4 p.m. -- Open Meeting

VOPA Office, 1910 Byrd Avenue, Suite 5, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Internal Policy Committee. Public comment is welcomed by the Internal Policy Committee and will be received beginning at 4 p.m. on Monday, July 23, 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 Monday, July 9, 2007. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. Directions to the meeting site are below. For further information, please contact Ms. Shehi. If interpreter services or other accommodations are required, please contact Ms. Shehi, no later than Monday, July 9, 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).

### † September 25, 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. 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 September 11, 2007. Ms. Shehi will take your name and phone number

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## Calendar of Events

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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 September 11, 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

**September 5, 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 accepted by telephone. If you wish to provide public comments 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 June 6, 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 June 6, 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).

### PAIMI Advisory Council

† **June 27, 2007 - 10 a.m.** -- Open Meeting  
Piedmont Geriatric Hospital, 5001 East Patrick Henry Highway, Burkeville, Virginia. ♿ (Interpreter for the deaf provided upon request)

Public comment is welcome and will be received at the beginning of the meeting. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than June 11, 2007.

**Contact:** Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 662-7213, 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).

### VIRGINIA RETIREMENT SYSTEM

**July 18, 2007 - 1:30 p.m.** -- Open Meeting  
† **September 25, 2007 - 1:30 p.m.** -- Open Meeting

Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A meeting of the Benefits and Actuarial Committee. 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, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, email [lking@varetire.org](mailto:lking@varetire.org).

**July 19, 2007 - 1 p.m.** -- Open Meeting  
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

The 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, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, email [lking@varetire.org](mailto:lking@varetire.org).

**August 15, 2007 - 10 a.m.** -- Open Meeting  
Virginia Retirement System Investment Department, 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).

† **September 19, 2007 - 3 p.m.** -- Open Meeting  
Virginia Retirement System Investment Department, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Audit and Compliance 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).

## LEGISLATIVE

### JOINT COMMISSION ON ADMINISTRATIVE RULES

† **July 10, 2007 - 1 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 Elizabeth Palen, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

**Contact:** Patty Lung, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

## JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **July 9, 2007 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Street, Senate Room A, Richmond, Virginia.

A meeting to receive the following reports: VRS Semi-Annual Investment Report; VRS Status Report Update on Compensation Study; and Final Report: Impact of Assisted Living Facility Regulations.

**Contact:** Patricia Bishop, Principal Legislative Analyst, Joint Legislative Audit and Review Commission, General Assembly Bldg., Senate Room A, Richmond, VA 23219 telephone (804) 786-1258, FAX (804) 371-0101, email [tbishop@leg.state.va.us](mailto:tbishop@leg.state.va.us).

## VIRGINIA CODE COMMISSION

**July 25, 2007 - 10 a.m.** -- Open Meeting  
**August 15, 2007 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A regular meeting.

**Contact:** Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, email [jchaffin@leg.state.va.us](mailto:jchaffin@leg.state.va.us).

## VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

**July 12, 2007 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 

The third meeting of the Electronic Meetings Subcommittee in 2007.

**Contact:** Maria J.K. Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond,

VA 23219, telephone (804) 225-3056, FAX (804) 371-8705, toll-free (866) 448-4100, email [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us).

**July 12, 2007 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. 

The second meeting of the Personal Identifying Information Subcommittee in 2007.

**Contact:** Maria J.K. Everett, Executive Director, Virginia Freedom of Information Advisory Council, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-8705, toll-free (866) 448-4100, email [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us).

## JOINT SUBCOMMITTEE STUDYING THE COMMONWEALTH'S PROGRAM FOR PRISONER REENTRY TO SOCIETY

**June 28, 2007 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A regular meeting. For questions regarding the meeting agenda, please contact Sarah Stanton, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations at (804) 698-7450, (804) 698-7419/TTY, or write to Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, at least seven days prior to the meeting.

**Contact:** Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

## VIRGINIA UNIFORM LAWS COMMISSIONERS

† **July 11, 2007 - 10 a.m.** -- Open Meeting  
State Capitol, House Room 1, Richmond, Virginia. 

A review of uniform acts to be considered by the National Conference of Commissioners on Uniform State Laws at its annual meeting in July.

**Contact:** Jessica D. French, Senior Attorney, Virginia Uniform Laws Commissioners, Division of Legislative Services, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-8705, email [jfrench@leg.state.va.us](mailto:jfrench@leg.state.va.us).

## VIRGINIA COMMISSION ON YOUTH

† **September 16, 2007 - 5 p.m.** -- Open Meeting  
† **September 17, 2007 - 8:30 a.m.** -- Open Meeting  
† **September 18, 2007 - 8:30 a.m.** -- Open Meeting  
Hotel Roanoke and Conference Center, Roanoke, Virginia. 

A statewide conference co-sponsored by the Virginia Commission on Youth and the Virginia Department of

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# Calendar of Events

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Mental Health, Mental Retardation, and Substance Abuse Services for behavioral health and juvenile justice professionals, caregivers, families, and youth on systems of care and ways to utilize evidence-based practices for youth with behavioral health disorders within a system of care.

**Contact:** Leah Hamaker, Senior Legislative Policy Analyst, Virginia Commission on Youth, General Assembly Bldg., Suite 269, Richmond, VA 23219, telephone (804) 371-2481, email coymail@leg.state.va.us.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### June 25

† Game and Inland Fisheries, Department of  
Housing and Community Development, Board of  
† Real Estate Board

#### June 26

Contractors, Board for  
Labor and Industry, Department of  
- Safety and Health Codes Board  
Marine Resources Commission  
Nursing, Board of  
† Towing and Recovery Operators, Board of

#### June 27

Accountancy, Board of  
Health, Department of  
- Sewage Handling and Disposal Appeals Review Board  
† Protection and Advocacy, Virginia Office for  
- PAIMI Advisory Council  
Real Estate Board  
Water Control Board, State

#### June 28

† Contractors, Board for  
Education, Board of  
Funeral Directors and Embalmers, Board of  
† Higher Education Tuition Trust Fund, Virginia  
Mines, Minerals and Energy, Department of  
Prisoner Reentry to Society, Joint Subcommittee to Study  
the Commonwealth's Program for  
Protection and Advocacy, Virginia Office for  
Public Guardianship and Conservator Advisory Board,  
Virginia  
Water Control Board, State

#### June 29

† Dentistry, Board of  
† Psychology, Board of

#### July 2

Alcoholic Beverage Control Board

#### July 6

Art and Architectural Review Board

#### July 9

† Audit and Review Commission, Joint Legislative

#### July 10

† Administrative Rules, Joint Commission on

Contractors, Board for  
† Higher Education for Virginia, State Council of  
Long-Term Care Administrators, Board of  
Polygraph Examiners Advisory Board  
Psychology, Board of  
† Rehabilitative Services, Department of  
† Towing and Recovery Operators, Board of

#### July 11

Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
† Environmental Quality, Department of  
Geology, Board for  
Hearing Aid Specialists, Board for  
Medicine, Board of  
Natural Resources, Foundation for Virginia's  
† Uniform Laws Commissioners, Virginia

#### July 12

Auctioneers Board  
Audiology and Speech-Language Pathology, Board of  
† Environmental Quality, Department of  
Freedom of Information Advisory Council, Virginia  
Social Work, Board of

#### July 13

Dentistry, Board of  
Social Work, Board of

#### July 16

Alcoholic Beverage Control Board  
Local Government, Commission on  
Nursing, Board of  
Veterans Services, Department of  
- Board of Veterans Services

#### July 17

Agriculture and Consumer Services, Department of  
- Virginia Peanut Board  
† Contractors, Board for  
Corrections, Board of  
† Environmental Quality, Department of  
† Nursing, Board of  
People with Disabilities, Virginia Board for  
Soil Scientists and Wetland Professionals, Board for  
Professional

#### July 18

Agriculture and Consumer Services, Department of  
- Virginia Small Grains Board  
Community Colleges, State Board for  
Compensation Board  
Corrections, Board of  
Education, Board of  
Education, Secretary of  
- Start Strong Pre-K Council  
Nursing, Board of  
Real Estate Board  
Retirement System, Virginia  
Transportation Board, Commonwealth  
Treasury Board

**July 19**

† Assistive Technology Loan Fund Authority  
Community Colleges, State Board for  
Conservation and Recreation, Department of  
- Virginia Soil and Water Conservation Board  
Design-Build/Construction Management Review Board  
Education, Board of  
Environmental Quality, Department of  
Human Resources, Virginia Council on  
Medicine, Board of  
Nursing, Board of  
† Pesticide Control Board  
Real Estate Board  
Retirement System, Virginia  
Transportation Board, Commonwealth

**July 20**

† Conservation and Recreation, Department of  
- Virginia Soil and Water Conservation Board  
Education, Board of

**July 23**

Protection and Advocacy, Virginia Office for

**July 24**

Contractors, Board for  
Protection and Advocacy, Virginia Office for

**July 25**

† Air Pollution Control Board, State  
Code Commission, Virginia  
Education, Board of  
Health Professions, Department of  
Manufactured Housing Board, Virginia  
Medicine, Board of  
Museum of Fine Arts, Virginia  
† Social Services, Department of

**July 26**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Branch Pilots, Board for  
Education, Secretary of

**July 27**

Branch Pilots, Board for  
Rehabilitative Services, Department of  
- Virginia Brain Injury Council

**July 30**

Barbers and Cosmetology, Board for  
Transportation, Department of

**July 31**

Funeral Directors and Embalmers, Board of  
Medicine, Board of

**August 1**

† Lottery Board, State

**August 2**

Medical Assistance Services, Department of

**August 3**

Art and Architectural Review Board

Dentistry, Board of

**August 6**

Alcoholic Beverage Control Board  
Barbers and Cosmetology, Board for

**August 8**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
† Forensic Science, Board of  
Health, Department of  
Medicine, Board of

**August 10**

Health, Department of  
Medicine, Board of

**August 13**

† Rehabilitative Services, Department of  
Taxation, Department of

**August 14**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Chesapeake Bay Local Assistance Board

**August 15**

Code Commission, Virginia  
Education, Secretary of  
- Start Strong Pre-K Council  
† Social Services, State Board of  
Treasury Board  
Retirement System, Virginia

**August 16**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Conservation and Recreation, Department of  
Design-Build/Construction Management Review Board  
Fire Services Board, Virginia  
Health, Department of  
- State EMS Advisory Board  
† Social Services, State Board of

**August 17**

Dentistry, Board of  
Fire Services Board, Virginia  
Health, Department of  
- State EMS Advisory Board  
Opticians, Board for

**August 18**

Fire Services Board, Virginia

**August 20**

Alcoholic Beverage Control Board

**August 21**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Real Estate Board Appraiser Board

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# Calendar of Events

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**August 22**

Asbestos, Lead, and Home Inspectors, Virginia Board for

**August 23**

Medicine, Board of

**September 5**

Alcoholic Beverage Control Board

Outdoors Foundation, Virginia

Protection and Advocacy, Virginia Office for

**September 6**

Audiology and Speech-Language Pathology, Board of

† Dentistry, Board of

Outdoors Foundation, Virginia

**September 7**

Art and Architectural Review Board

† Dentistry, Board of

**September 10**

Alcoholic Beverage Control Board

Contractors, Board for

Taxation, Department of

**September 11**

Contractors, Board for

Gaming Board, Charitable

Higher Education for Virginia, State Council of

Medical Assistance Services, Board of

**September 12**

† Juvenile Justice, State Board of

**September 13**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for

† Audiology and Speech-Language Pathology, Board of

† Criminal Justice Services Board

**September 14**

† Dentistry, Board of

† Health, Department of

**September 16**

† Youth, Virginia Commission on

**September 17**

† Chesapeake Bay Local Assistance Board

† Nursing, Board of

† Professional and Occupational Regulation

† Veterans Services, Department of

- Board of Veterans Services

† Youth, Virginia Commission on

**September 18**

† Corrections, Board of

† Nursing, Board of

† Research and Technology Advisory Commission

† Youth, Virginia Commission on

**September 19**

† Community Colleges, State Board for

† Corrections, Board of

† Education, Secretary of

- Start Strong Pre-K Council

† Nursing, Board of

† People with Disabilities, Virginia Board for

† Real Estate Board

† Retirement System, Virginia

† Transportation Board, Commonwealth

† Treasury Board

† Waterworks and Wastewater Works Operators, Board for

**September 20**

† Conservation and Recreation, Department of

- Virginia Soil and Water Conservation Board

† Design-Build/Construction Management Review Board

† Human Resources, Virginia Council on

† Nursing, Board of

† People with Disabilities, Virginia Board for

† Public Guardianship and Conservator Advisory Board,  
Virginia

† Real Estate Board

† Transportation Board, Commonwealth

**September 21**

† Medicine, Board of

† People with Disabilities, Virginia Board for

† Rehabilitative Services, Department of

- Commonwealth Neurotrauma Trust Fund Advisory  
Board

**September 24**

† Alcoholic Beverage Control Board

**September 25**

† Protection and Advocacy, Virginia Office for

† Retirement System, Virginia

## PUBLIC HEARINGS

**June 28**

† Funeral Directors and Embalmers, Board of

**July 2**

Mental Health, Mental Retardation and Substance Abuse  
Services, Department of

**July 9**

Education; Juvenile Justice; Mental Health, Mental  
Retardation and Substance Abuse Services; and Social  
Services, State Boards of

**July 10**

Education; Juvenile Justice; Mental Health, Mental  
Retardation and Substance Abuse Services; and Social  
Services, State Boards of

**July 11**

Education; Juvenile Justice; Mental Health, Mental  
Retardation and Substance Abuse Services; and Social  
Services, State Boards of

**July 12**

† Auctioneers Board

Audiology and Speech-Language Pathology, Board of

**July 17**

Nursing and Medicine, Joint Boards of

**July 18**

† Mandated Health Insurance Benefits, Special Advisory  
Commission

**July 24**

Housing and Community Development, Board of

**July 26**

† Water Control Board, State

**August 1**

† Real Estate Board

**August 3**

Dentistry, Board of

**August 9**

Counseling, Board of

**August 23**

† Agriculture and Consumer Services, State Board of

**September 13**

Criminal Justice Services Board

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## Calendar of Events

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