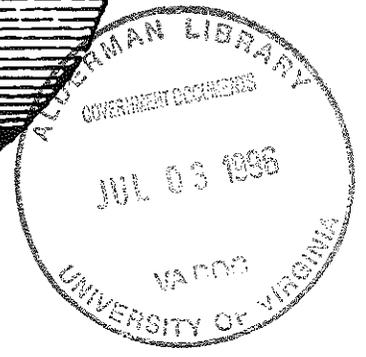
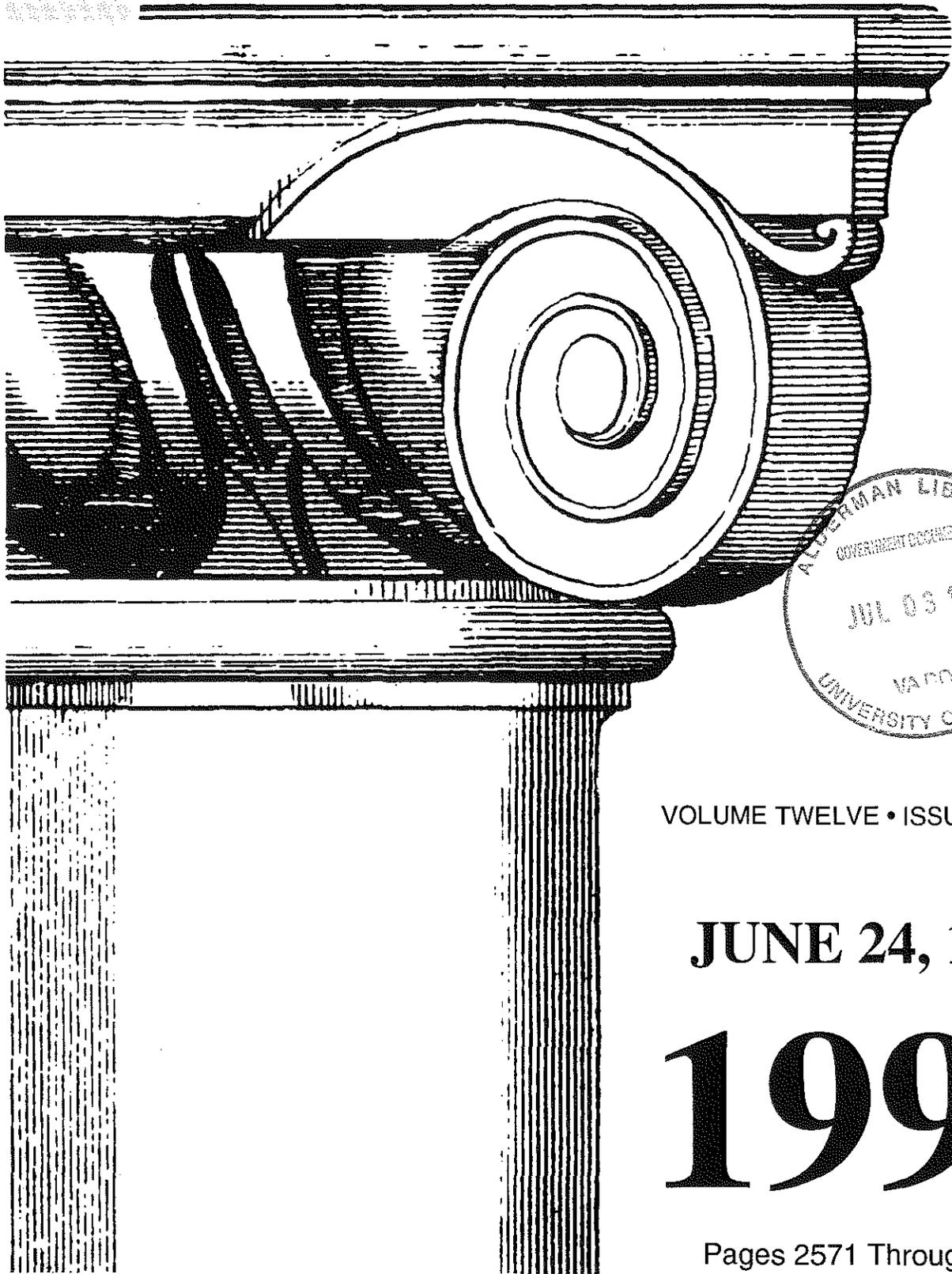


COB 5/R 26/12-20 c.2

# THE VIRGINIA REGISTER

OF REGULATIONS

VA  
DOC



VOLUME TWELVE • ISSUE TWENTY

JUNE 24, 1996

# 1996

Pages 2571 Through 2726

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in *The Virginia Register of Regulations*. In addition, the *Virginia Register* is a source of other information about state government, including all emergency regulations and 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 appropriate standing committee of each branch 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 committee, 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 standing committees 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 extension 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.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

#### **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) deliver the Notice of Intended Regulatory Action to the Registrar in time to be published within 60 days of the effective date of the emergency regulation; and (ii) deliver the proposed regulation to the Registrar in time to be published 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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 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. **12:8 V.A.R. 1096-1106 January 8, 1996**, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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Staff of the Virginia Register: E. M. Miller, Jr., Acting Registrar of Regulations; Jane D. Chaffin, Deputy Registrar of Regulations.

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# PUBLICATION DEADLINES AND SCHEDULES

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June 1996 through March 1997

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By Noon Wednesday**

**Will Be Published On**

**Volume 12**

June 5, 1996

June 24, 1996

**INDEX 3 - Volume 12**

**July 1996**

June 19, 1996

July 8, 1996

July 3, 1996

July 22, 1996

July 17, 1996

August 5, 1996

July 31, 1996

August 19, 1996

August 14, 1996

September 2, 1996

August 28, 1996

September 16, 1996

**FINAL INDEX - Volume 12**

**October 1996**

**Volume 13**

September 11, 1996

September 30, 1996

September 25, 1996

October 14, 1996

October 9, 1996

October 28, 1996

October 23, 1996

November 11, 1996

November 6, 1996

November 25, 1996

November 19, 1996 (Tuesday)

December 9, 1996

December 4, 1996

December 23, 1996

**INDEX 1 - Volume 13**

**January 1997**

December 17, 1996 (Tuesday)

January 6, 1997

December 31, 1996 (Tuesday)

January 20, 1997

January 15, 1997

February 3, 1997

January 29, 1997

February 17, 1997

February 12, 1997

March 3, 1997

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**April 1997**

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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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### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **2 VAC 5-180-10 et seq. Rules and Regulations Governing Pseudorabies in Virginia.** Pseudorabies is a disease that exacts a high death toll among the animals it infects, many of which are domesticated animals. Among the animals that can be infected with pseudorabies are cattle, sheep, dogs, cats, and notably, swine. There is no known evidence that humans can contract pseudorabies. Most kinds of animals infected with pseudorabies die before they can infect other animals (death usually occurs within 72 hours after infection). Swine are a different matter. Although pseudorabies can kill swine (the younger the swine, the higher the rate of mortality), they can also recover from the disease and spread it to other swine and to other kinds of animals. Virginia's regulations to eradicate pseudorabies from swine are part of a national program designed to rid the nation of pseudorabies. This regulation provides rules to govern the program for the eradication of pseudorabies from swine in Virginia. The purpose of the contemplated regulatory action is to review the regulation for effectiveness and continued need including, but not limited to, a proposal to allow Virginia to participate in the national program to eradicate pseudorabies at whatever stage its circumstances at a particular time would allow -- whether stage 1 or stage 5, or any stage in between. The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is (i) a standing advisory panel, (ii) an ad-hoc advisory panel, (iii) a consultant with groups, (iv) a consultant with individuals, or (v) any combination thereof. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until 8:30 a.m. on August 26, 1996, to Dr. W. M. Sims, Jr., Department of Agriculture and Consumer Services, Division of Animal Industry Services, P.O. Box 1163, Richmond, VA 23218-1163.

**Contact:** T. R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Office of Veterinary Services, P.O. Box 1163, Richmond, VA 23218-1163, telephone (804) 786-2483.

VA.R. Doc. No. R96-368; Filed May 28, 1996, 2:30 p.m.

### VIRGINIA BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Board for Asbestos Licensing and Lead Certification intends to consider promulgating regulations entitled: **18 VAC 15-30-10 et seq. Virginia Lead-based Paint Activities Regulations.** The purpose of the proposed action is to promulgate regulations governing lead-based paint activities to replace the emergency regulations, which were effective October 1, 1995, to implement an act of the 1995 session of the General Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public comments may be submitted until June 27, 1996.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

VA.R. Doc. No. R96-368; Filed May 8, 1996, 11:57 a.m.

### CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Chesapeake Bay Local Assistance Board intends to consider amending regulations entitled: **9 VAC 10-20-10 et seq. Chesapeake Bay Preservation Area Designation and Management Regulations.** The purpose of the proposed action is to amend these regulations to accomplish the following:

1. Achieve greater clarity in all regulatory language to minimize confusion and misinterpretation.
2. Eliminate any conflicts and unnecessary redundancies between the requirements in the regulations and those in other related state and federal laws and regulations, while still providing for maximum water quality protection. Specific issues under consideration where conflicts or redundancies are perceived to exist are as follows:
  - a. Stormwater management criteria;
  - b. Erosion and sediment control criteria;
  - c. Septic system criteria;
  - d. Agricultural criteria;

# Notices of Intended Regulatory Action

- e. Silvicultural criteria; and
- f. Criteria regarding revision of Comprehensive Plans and Zoning Ordinances.

3. Improve vegetative buffer area criteria to provide greater flexibility and consistency with riparian forest buffer policies being developed by the Executive Council of the regional Chesapeake Bay Program.

4. Improve agricultural conservation criteria to correct the inability to meet the conservation plan approval deadline, reduce administrative overhead and result in more water quality protection practices on the land.

5. Add criteria regarding a board/department process to review local program implementation for consistency with the regulations.

**Need:** The Chesapeake Bay Preservation Act was passed by the Virginia General Assembly in 1988 and final regulations for its implementation were adopted in November 1990. The Chesapeake Bay Local Assistance Board, established to implement the Act in partnership with Tidewater Virginia local governments, anticipated from the outset that this kind of complex new state-local partnership program would require review and adjustment at some point to maximize its effectiveness. This amendment process is proposed to address recommendations resulting from two stakeholder evaluations of the regulations (1992 and 1994), a legislative study of state stormwater management programs (1993-94), and two separate agency reviews (1995) mandated by the General Assembly and the Governor.

**Subject Matter and Intent:** The list of general issues above is the result of the several studies mentioned in the previous paragraph. The board desires to accomplish a comprehensive amendment of the regulations to clarify the meaning of various provisions, provide greater implementation flexibility, and reduce costs for both local governments and members of the public who must comply with the state/local requirements.

**Estimated Impacts:** Tidewater Virginia local governments will experience the most immediate impact of an amendment of these regulations, because each of these local governments has adopted a local program, including adoption or amendment of various ordinances, to implement the provisions of these regulations. Amendments to the regulations will result in each of the 84 Tidewater localities having to enact at least some amendments of its local ordinance(s) and program. However, a number of the changes under consideration have been recommended by the local governments themselves. The intention of the amendments is to make the process of complying with these state-mandated local programs more reasonable and cost-efficient to implement and follow without sacrificing water quality protection. Apart from this program, such local ordinance amendments are enacted routinely by local governing bodies for similar reasons.

Many of the specific changes under consideration should result in clearer, simpler, more flexible, nonconflicting program requirements. These changes are intended and expected to make local programs easier and more cost efficient to implement. The board expects that, generally, net

costs to the private sector complying with these requirements will, at worst, remain at current levels and, at best, diminish somewhat. However, the proposals under consideration at this time are not specific enough to allow for refined estimates of economic impact.

**Alternatives:** The board could leave the current regulation in place without change. However, this would result in continued confusion regarding certain definitions and requirements and continued conflict or unnecessary redundancies with some provisions of certain related state and federal laws and regulations.

**Comments:** The board requests written comments from interested persons regarding its purpose as stated above. Comments are requested regarding the costs and benefits of the intended proposals as well as the stated alternatives or other alternatives. Comments also are invited regarding additional regulatory issues the public believes the board should consider. The board intends to hold two public information meetings during this comment period, as follows:

1. Classroom 127, Marshall-Wythe School of Law, College of William and Mary, Williamsburg, Virginia, 7 p.m., Wednesday, June 19, 1996
2. Theatre, City Public Library, Fredericksburg, Virginia, 7 p.m., Thursday, June 27, 1996

As well, the board intends to hold three public hearings on the proposed regulation after amendment language is published for public comment. Dates, times and locations of those public hearings will be specified in the Notice of Public Comment.

Statutory Authority: §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on Friday, June 28, 1996.

**Contact:** Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Suite 701, Richmond, Virginia 23219-1924, telephone (804) 225-3440, FAX (804) 225-3447, or toll free 1-800-243-7229/TDD

VA.R. Doc. No. R96-358; Filed May 8, 1996, 10:29 a.m.

## DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to consider amending regulations entitled: **22 VAC 20-30-10 et seq. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.** The purpose of the proposed action is to (i) improve clarity and reduce redundancy through general language changes; (ii) add provisions for the establishment of a Virginia Quality Assurance Screening Equivalency for nationally certified interpreters; (iii) add provisions for maintenance of Virginia Quality Assurance Screening Levels; (iv) add provisions for a

# Notices of Intended Regulatory Action

consumer input and grievance procedure; and (v) revise the Virginia Quality Assurance Screening Process, Awarding of Screening Levels. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-85.4 and 63.1-85.4:1 of the Code of Virginia.

Public comments may be submitted until June 30, 1996.

**Contact:** Leslie G. Hutcheson, Special Projects Manager, Washington Bldg., 1100 Bank St., 11th Floor, Richmond, VA 23219, telephone (804) 371-7885, FAX (804) 371-7882, toll-free 1-800-552-7917, or (804) 371-7885/TDD ☎

VA.R. Doc. No. R96-356; Filed May 8, 1996, 9:01 a.m.

## DEPARTMENT OF HEALTH (STATE BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled: **12 VAC 5-585-10 et seq. Biosolids Use Regulations.** The purpose of the proposed action is to revise the current version of the Biosolids Use Regulations in accordance with the recommendations of the Biosolids Use Regulations Advisory Committee. The Biosolids Use Regulations were most recently published in the Virginia Register of Regulations on August 21, 1995. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-164, 32.1-164.5 and 62.1-44.19 of the Code of Virginia.

Public comments may be submitted until July 26, 1996.

**Contact:** C. M. Sawyer, Division Director, Department of Health, Division of Wastewater Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

VA.R. Doc. No. R96-387; Filed May 23, 1996, 1:25 p.m.

## DEPARTMENT OF LABOR AND INDUSTRY

### Safety and Health Codes Board

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Safety and Health Codes Board intends to consider promulgating regulations entitled: **16 VAC 25-35-10 et seq. Regulations Concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees.** The purpose of the proposed action is to implement the lead project notification and permit requirements of § 40.1-51.20 of the Code of Virginia. The notification and permit requirements will enable the Department of Labor and Industry to monitor lead contractors' compliance with state and federal requirements for the safe

removal and disposal of lead through onsite inspection of lead projects. In addition, the regulation will provide lead contractors with detailed instructions regarding the required notification of the department and payment of lead project permit fees.

During the 1995 session, the General Assembly amended § 40.1-51.20 of the Code of Virginia to require certified lead contractors to comply with the same notification and permitting requirements as those of licensed asbestos contractors. The amendment to the Code was in response to interim draft regulations of the U.S. Environmental Protection Agency (EPA) (40 CFR Part 745).

The board approved the promulgation of an emergency regulation to comply with § 40.1-51-20 of the Code of Virginia regarding lead notification. The emergency regulation was developed in accordance with the Administrative Process Act (APA) and Governor's Executive Order Number 14 (94) and is effective June 26, 1996. Please include in any comments submitted on this proposed regulatory action, responses to the following questions regarding the emergency regulation.

1. If you represent a lead abatement contractor, what is the approximate size (in contract dollar value) of the average lead abatement project which you performed in calendar year 1995? What is the approximate size of the average lead abatement project you anticipate performing in calendar year 1996?

2. If you represent a lead abatement contractor, what was the total dollar volume of lead abatement work you performed in calendar year 1995? What total dollar volume of lead abatement work do you anticipate performing in calendar year 1996?

3. If you represent a lead abatement contractor, how many lead abatement projects do you project your company will conduct during calendar year 1996? Of these, how many do you anticipate will have a dollar value of \$2,000 or more? How many of these projects would be in residential buildings (as defined in the department's Emergency Regulation Concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees, VR 425-03-185), where the dollar value of the contract would not exceed \$2,000? How many of these projects would be in residential buildings, where the dollar value of the contract equals or exceeds \$2,000?

4. The department's Emergency Regulation Concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees contains a lead project permit fee based upon a percentage of the contract price (i.e., lead abatement projects with a contract value of \$2,000 or more will be charged a notification fee of the greater of \$100 or 1.0% of the contract price, with a maximum fee of \$500; projects involving residential buildings must comply with the notification requirement but will be exempted from the fee requirement). We are seeking suggestions on how to develop a permit fee based on the amount of lead abated (e.g., square footage or some other measure), instead of a percentage of the contract. Please describe any suggestions you have. Would a

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# Notices of Intended Regulatory Action

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system similar to the method used in the department's Asbestos Notification Regulation be feasible?

5. The department's Emergency Regulation Concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees contains requirements for amending lead project notifications which are identical to the current requirements for amending asbestos notifications. Other than this amendment process, what alternate means would you recommend for apprising the Department of Labor and Industry in a reliable and timely manner of changes in the project schedule?

6. The department's Emergency Regulation Concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees contains requirements for blanket notifications which are identical to the current blanket notification procedures for asbestos notifications. Should the department maintain the proposed provisions for blanket notifications? Why or why not?

7. The department's Emergency Regulation Concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees contains requirements for emergency notifications which are identical to the current emergency notification procedures for asbestos notifications. Should the department maintain the proposed provisions for emergency notifications? Why or why not?

8. If you represent a lead abatement contractor, please estimate the economic impact that complying with the department's Emergency Regulation Concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees would have on your business. Please express the impact in terms of the number of average dollars per lead project notification. (Note: the regulation does not apply to projects under \$2,000 in value, and projects involving residential buildings are exempt from the fee). For your estimate to be used in our evaluation, please also provide the background data upon which you base your calculation.

9. The department may wish to contact individuals providing comments to seek clarification of comments or to request additional information on the impact the proposed regulation may have on lead abatement contractors or lead abatement employees. If you wish to make yourself available for such contact, please provide your name, business address and business telephone number.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 40.1-51.20 of the Code of Virginia.

Public comments may be submitted until July 24, 1996.

**Contact:** Clarence H. Wheeling, Director of Occupation Health Compliance, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0574, FAX (804) 786-8418, or (804) 786-2376/TDD ☎

VA.R. Doc. No. R96-406; Filed June 5, 1996, 11:46 a.m.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-130-700.1 et seq. Virginia Coal Surface Mining Reclamation Regulations.** The purpose of the proposed action is to provide blow-out protection where underground mine workings end near the surface outcrop of the coal seam. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Public comments may be submitted until June 26, 1996.

**Contact:** Danny Brown, Division Director, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8152, FAX (804) 523-8163, or toll-free 1-800-828-1120 (VA Relay Center).

VA.R. Doc. No. R96-369; Filed May 8, 1996, 1:06 p.m.

### Board of Coal Mining Examiners

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Coal Mining Examiners intends to consider amending regulations entitled: **4 VAC 25-20-10 et seq. Board of Coal Mining Examiners Certification Regulations.** The purpose of the proposed action is to establish a separate regulation setting requirements for the certification of coal miners. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 45.1-161.28 of the Code of Virginia.

Public comments may be submitted until June 26, 1996.

**Contact:** Frank A. Linkous, Mine Division Chief, Department Mines, Minerals and Energy, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100, FAX (804) 523-8239, or toll-free 1-800-828-1129 (VA Relay Center).

VA.R. Doc. No. R96-330; Filed May 3, 1996, 3:06 p.m.

### Virginia Gas and Oil Board

#### Notice of Intended Regulation Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Gas and Oil Board intends to consider amending regulations entitled: **4 VAC 25-160-10 et seq. Virginia Gas and Oil Board Regulations.** The purpose of the proposed action is to amend the Virginia Gas

# Notices of Intended Regulatory Action

and Oil Board Regulations governing protection of gas and oil resources. The board's regulations establish requirements for applications and hearings to (i) define pools of gas or oil; (ii) establish drilling units within pools; (iii) establish a mechanism where all gas and oil owners in a drilling unit will equitably share the costs and proceeds from the drilling unit's production; (iv) establish escrow accounts for coalbed methane well proceeds until there are conflicting claims to ownership of the gas are settled; and (v) hear appeals of Department of Mines, Minerals and Energy decisions.

The amendments to be considered would implement the recommendations identified during the Department of Mines, Minerals and Energy's regulation review under Executive Order 15(94). The recommendations will streamline the regulatory process, eliminate unnecessary regulatory requirements, clarify language, and implement changes based on the board's, gas and oil operators', and citizens' experience with the regulation since it was promulgated in 1991. Copies of the regulatory review report are available at the Department of Mines, Minerals and Energy's Division of Gas and Oil office in Abingdon and at the department's office in Richmond. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Public comments may be submitted until June 26, 1996.

**Contact:** B. Thomas Fulmer, Division Director, Department of Mines, Minerals and Energy, Division of Gas and Oil, P.O. Box 1416, Abingdon, VA 24212, telephone (540) 676-5423, FAX (804) 676-5459, or toll-free 1-800-828-1120 (VA Relay Center)

VA.R. Doc. No. R96-328; Filed May 2, 1996, 3:19 p.m.

## DEPARTMENT OF MOTOR VEHICLES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to consider repealing regulations entitled: **24 VAC 20-20-10 et seq. Privacy Protection Act**. The purpose of the proposed action is to repeal the regulation in accordance with changes adopted by the 1994 session of the General Assembly. Sections 46.2-208 through 46.2-210 of the Code of Virginia have made the regulation obsolete. It appears that the regulation is neither applicable nor necessary. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 46.2-203 and 46.2-208 of the Code of Virginia.

Public comments may be submitted until July 1, 1996, to Bruce Gould, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23369-0001.

**Contact:** Karen Chappell, Administrator, Department of Motor Vehicles, P.O. Box 27412, Room 311, Richmond, VA 23269-0001, telephone (804) 367-0146, FAX (804) 367-8891, or toll-free 1-800-272-9278/TDD ☎

VA.R. Doc. No. R96-334; Filed May 6, 1996, 11:56 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to consider repealing regulations entitled: **24 VAC 20-30-10 et seq. Virginia Driver Improvement Act Rules and Regulations**. The purpose of the proposed action is to repeal the existing regulation which was originally promulgated in 1975 and last amended in 1978. As such, the regulation has no substantive relationship to either the current statute or program. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 46.2-203 and 46.2-489 of the Code of Virginia.

Public comments may be submitted until July 1, 1996.

**Contact:** Marc Copeland, Legislative Analyst, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23269-0001, telephone (804) 367-1875, FAX (804) 367-6631, or toll-free 1-800-272-9278/TDD ☎

VA.R. Doc. No. R96-333; Filed May 6, 1996, 11:55 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to consider amending regulations entitled: **24 VAC 20-120-10 et seq. Commercial Driver Training School Regulations**. The purpose of the proposed action is to delete unnecessary language and reflect changes in the law. The amendments also bring about technical changes or clarify requirements. The most substantial revision allows students who are enrolled in public or nonpublic/private education schools and who are completing driver education through a commercial driver training school to receive four periods of instruction on weekends and holidays. The revision also allows students who are not enrolled in public or nonpublic/private education schools and who are completing driver education through a commercial driver training school to receive four periods of instruction on weekdays, weekends, and holidays. Details of the amendments will be provided upon request. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Public comments may be submitted until July 1, 1996, to P.A. Bowling, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23369-0001.

**Contact:** Frank C. Yancey, Office Manager, Motorist Licensing Administrator, Department of Motor Vehicles, P.O. Box 27412, Room 417, Richmond, VA 23269-0001, telephone (804) 367-9156, FAX (804) 367-6683, or toll-free 1-800-272-9278/TDD ☎

VA.R. Doc. No. R96-331; Filed May 6, 1996, 11:55 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 § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to consider repealing regulations entitled: **24 VAC 20-130-10 et seq. International Registration Plan-Virginia Rules and Regulations.** The purpose of the proposed action is to repeal the regulations. This regulation was first published in 1975 when Virginia and 13 other jurisdictions were members of the International Registration Plan (Plan). The regulation was used by Virginia primarily as a tool to educate the motor carrier industry to the workings of the plan. Today, there are 49 jurisdictions that are members of the International Registration Plan. The plan has been changed many times in the intervening years, making the regulation published in 1975 obsolete. The current plan, along with various other related national policies and procedures, provides the necessary guidance to the member jurisdictions and the motor carrier industry alike. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 46.2-203 and 46.2-703 of the Code of Virginia.

Public comments may be submitted until July 1, 1996, to Marc Copeland, Department of Motor Vehicles, P.O. Box 27412, Room 724, Richmond, VA 23369-0001.

**Contact:** Jerry Fern, Manager, IRP and Tax Licensing, Department of Motor Vehicles, P.O. Box 27412, Room 607, Richmond, VA 23269-0001, telephone (804) 367-8487, FAX (804) 367-1578, or toll-free 1-800-272-9278/TDD ☎

VA.R. Doc. No. R96-332; Filed May 6, 1996, 11:55 a.m.

## BOARD OF NURSING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled: **18 VAC 90-20-10 et seq. Board of Nursing Regulations.** The purpose of the proposed action is to establish a modest increase in fees in order to maintain revenues consistent with expenditures. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113, 54.1-2400 and 54.1-3000 of the Code of Virginia.

Public comments may be submitted until June 26, 1996.

**Contact:** Nancy Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-329; Filed May 3, 1996, 1:38 p.m.

## REAL ESTATE BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to consider amending regulations entitled: **18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations.** The purpose of the proposed action is to promulgate permanent regulations to replace the emergency regulations governing the duties of real estate brokers and salespersons. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2105 of the Code of Virginia.

Public comments may be submitted until July 10, 1996.

**Contact:** Karen O'Neal, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

VA.R. Doc. No. R96-373; Filed May 17, 1996, 11:52 a.m.

# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



## PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

### BOARD OF HEALTH PROFESSIONS

**July 9, 1996 - 1 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia.

**August 23, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health Professions intends to adopt regulations entitled: **18 VAC 75-30-10. Regulations Governing Standards for Dietitians and Nutritionists.** The regulation establishes minimal standards for the use of the titles of dietitian or nutritionist in accordance with provisions of § 54.1-2731 of the Code of Virginia.

Statutory Authority: §§ 54.1-2400 and 54.1-2731 of the Code of Virginia.

**Contact:** Elaine J. Yeatts, Senior Regulatory Analyst, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9918.

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**August 23, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to **amend** regulations entitled: **12 VAC 30-10-10 et seq. State Plan for Medical Assistance Services: General Provisions** and **adopt** regulations entitled: **12 VAC 30-120-360 et seq. Part VI, Medallion II.** The proposed regulations govern mandatory HMO enrollment in accordance with the 1995 Appropriations Act. Several technical changes are also being made.

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

Public comments may be submitted until August 23, 1996, to Susan Prince, Program Delivery Systems, Department of

Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

### BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

**July 23, 1996 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia.

**August 23, 1996** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to amend regulations entitled: **18 VAC 115-20-10 et seq. Regulations Governing the Practice of Professional Counseling.** The purpose of the proposed amendments is to reduce fees for application processing, registration of supervision, and renewal of license.

Statutory Authority: §§ 54.1-113, 54.1-2400, and 54.1-3503 of the Code of Virginia.

**Contact:** Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

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**July 23, 1996 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia.

**August 23, 1996** - Public comments may be submitted until this date.

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## Public Comment Periods - Proposed Regulations

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Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to amend regulations entitled: **18 VAC 115-30-10 et seq. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed amendments is to reduce fees for application processing, registration of supervision, and renewal of certificate.

Statutory Authority: §§ 54.1-2400 and 54.1-3503 of the Code of Virginia.

**Contact:** Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

### VIRGINIA WASTE MANAGEMENT BOARD

**July 29, 1996 - 1 p.m.** -- Public Hearing  
Loudoun County Office Building, 1 Harrison Street, Southeast, Board of Supervisors Meeting Room, Leesburg, Virginia.

**July 30, 1996 - 10 a.m.** -- Public Hearing  
James City County Government Center, 101 C Mounts Bay Road, Building C, Board of Supervisors Room, Williamsburg, Virginia.

**August 1, 1996 - 10 a.m.** -- Public Hearing  
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Meeting Room, Roanoke, Virginia.

**August 23, 1996** -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to **repeal** regulations entitled: **9 VAC 20-100-10 et seq., Yard Waste Composting Facility Regulations** and **adopt** regulations entitled: **9 VAC 20-101-10 et seq., Vegetative Waste Management and Yard Waste Composting Regulations.** 9 VAC 20-100-10 et seq. is being simultaneously incorporated into the Vegetative Waste Management and Yard Waste Composting Regulations and is therefore redundant and unnecessary. 9 VAC 20-101-10 et seq. compiles, establishes, and provides requirements for certain facilities that may be exempted from some or all of the Solid Waste Management Regulations or subject to simplified procedures.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

**Contact:** Robert G. Wickline, P.E., Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4213.

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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

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

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## BOARD OF HEALTH PROFESSIONS

Title of Regulation: 18 VAC 75-30-10. Regulations Governing Standards for Dietitians and Nutritionists.

Statutory Authority: §§ 54.1-2400 and 54.1-2731 of the Code of Virginia.

Public Hearing Date: July 9, 1996 - 1 p.m.

Public comments may be submitted until August 23, 1996.

(See Calendar of Events section for additional information)

Basis: Section 54.1-2400 sets forth the general powers and duties of health regulatory boards including the power to establish professional qualifications and to promulgate regulations. Section 54.1-2731 establishes that the Board of Health Professions may determine the education, training, and experience appropriate for a person to hold himself out to be a dietitian or nutritionist.

Purpose: The Board of Health Professions, in compliance with requirements of Chapter 391 of the 1995 Acts of Assembly, has proposed minimum educational and experiential requirements for the use of the titles of dietitian or nutritionist.

In response to comment received from the Notice of Intended Regulatory Action, the board proposes criteria consistent with those required for employment by some agencies of the federal government, which are less restrictive than requirements set forth in § 54.1-2731 of the Code of Virginia.

Substance: The proposed regulation would establish that a person may call himself a dietitian or nutritionist if he holds a baccalaureate degree with a major or equivalent hours in foods and nutrition course work and has two years of related work experience concurrent with or subsequent to such degree.

Issues: The board determined that it did not have statutory authority and therefore did not consider adopting any standards more restrictive or stringent than those now established in § 54.1-2731 of the Code of Virginia. The board did consider the following alternatives:

1. "Grandfathering" persons who have been employed in the Commonwealth as "registered dietitians" or other such restricted titles and who do not otherwise meet the criteria of the Code of Virginia.

The board determined that it did not have statutory authority to adopt Option #1.

2. Adopt no new standards for use of these titles (other than those required by § 54.1-2731).

Although a 1994 report by the Board of Health Professions advised against regulation of these professions, legislation (House Bill 2191) passed by the

General Assembly and signed by the Governor established title protection and a penalty for violations of the provisions of the act. While Chapter 27.1 does not empower or mandate the board to regulate the professions (i.e.; register, certify, or license), the law clearly requires the board to set forth standards for education, training, and experience through regulation.

3. Adoption of standards which are more inclusive than those established in § 54.1-2731.

Standards proposed for minimal education and work experience are less restrictive than those established by § 54.1-2731 but are consistent with "Program Performance Standards" for Head Start programs established in the Code of Federal Regulations (45 CFR Part 1304).

Advantages to the public: There may be some benefit to public agencies and individuals seeking to staff federally funded programs with dietitians or nutritionists who meet the standards of the Code of Federal Regulations but would not comply with requirements of § 54.1-2731 of the Code of Virginia. Proposed regulations of the board are consistent with federal rules and would permit such employment in Virginia.

Disadvantages to the public: Since the proposed regulation offers slightly less restrictive criteria for use of restricted titles, there should be no disadvantages to the public. The credential proposed should provide adequate assurance to the public that persons are competent to use these titles.

Advantages to the agency: The board has proposed a regulation in order to fulfill its statutory responsibility. Failure to act would unduly restrict the use of the titles.

### Estimated Impact:

Projected number of regulated entities: It is estimated that this will allow less than 100 additional individuals to use the restricted titles.

Cost of Compliance: There will be no additional costs for compliance since the proposed regulation is less restrictive than criteria set forth in the Code of Virginia.

Costs to the agency for implementation: No additional staff will be required to implement these regulations. There will be a minimal costs to the agency for the promulgation of regulations (less than \$500) for such activities as: mailing of notices to the public participation guidelines list, providing a public hearing on proposed regulations, and copying and mailing final regulations. The board will attempt to combine mailing notices and information on regulations with other required mailings and will hold its hearing during a regularly scheduled board meeting.

Costs to local governments: There may be some benefit to localities seeking to staff federally funded programs with dietitians or nutritionists who meet the standards of the Code

# Proposed Regulations

of Federal Regulations but would not comply with requirements of § 54.1-2731 of the Code of Virginia. Proposed regulations of the board are consistent with federal rules and would permit such employment in Virginia.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic affects.

**Summary of the Proposed Regulation.** Section 54.1-2731 of the Code of Virginia, as enacted by the 1995 General Assembly, establishes minimum standards for individuals presenting themselves as dietitians or nutritionists in Virginia. Two sets of standards are contained in the Code. The first provides a detailed list of requirements and the second generically refers to "the minimum requisite education, training and experience determined by the Board of Health Professions" to be appropriate. The proposed regulation sets forth the set of standards determined by the Board of Health Professions to be appropriate.

In response to public comment, the standards adopted by the board reflect the current federal standards, which are relatively less restrictive than the alternative set of standards detailed in the Code. These standards are as follows:

- a baccalaureate degree with a major in foods and nutrition or dietetics or equivalent hours of food and nutrition course work; and
- two years of work experience in nutrition or dietetics concurrent with or subsequent to such degree.

**Estimated Economic Impact.** The proposed regulation is anticipated to have two economic effects: 1) it will likely enhance the quality of dietary and nutritionist services in Virginia by guaranteeing that individuals presenting themselves to the public as dietitians or nutritionists have met minimum standards of professional education and experience; and 2) it will likely increase the entry costs associated with becoming a dietitian or nutritionist in Virginia.

**Quality of Dietary and Nutritionist Services.** Prior to the legislation that engendered this proposed regulation, it was possible for anyone in Virginia to present themselves to the public as a qualified dietitian or nutritionist regardless of whether they had education or training in those professions. The primary benefit of the proposed regulation is that it establishes the board as a third party guarantor of the professional credentials of such individuals, thereby reducing the uncertainty and risk consumers confront when purchasing

dietary or nutritionist services. It would be cost prohibitive for DPB to quantify the exact magnitude of this benefit however.

**Increased Entry Costs.** The other economic effect of the proposed regulation is that it will increase the minimum costs associated with entry into the dietary or nutritionist professions in Virginia. In the wake of the proposed requirements, entry costs must at least include the tuition expenses necessary to obtain a baccalaureate degree in foods and nutrition, or dietetics. For a Virginia resident, graduating from a major Virginia University in 1995, those tuition expenses would have been approximately \$16,716.<sup>1</sup> Currently in Virginia, entry costs for these professions could presumably be zero, although it is likely that employer preferences toward hiring the most qualified applicants induce many prospective dietitians and nutritionists to make such educational investments anyway, even in the absence of the proposed regulation.

**Businesses and Entities Particularly Affected.** The proposed regulation will particularly affect all dietitians and nutritionists working in Virginia, and those members of the general public who make use of their services.

**Localities Particularly Affected.** No localities are particularly affected by the proposed regulation.

**Projected Impact on Employment.** The proposed regulation is not anticipated to have a significant effect on employment.

**Effects on the Use and Value of Private Property.** The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

**Summary of Analysis.** The proposed regulation establishes minimum standards for individuals presenting themselves as dietitians or nutritionists. These minimum standards are expected to: 1) enhance the quality of dietary and nutritionist services in Virginia by guaranteeing that individuals presenting themselves to the public as dietitians or nutritionists have met minimum standards of professional education and experience; and 2) increase the cost of entry into the dietary and nutritionist professions in Virginia by approximately \$16,716.

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

The agency had no comment on the economic impact analysis prepared by the Department of Planning and Budget.

### Summary:

*The proposed regulation establishes that, in addition to criteria set forth in § 54.1-2731 of the Code of Virginia, a person may hold himself out to be a dietitian or nutritionist if he holds a baccalaureate degree with a major or equivalent hours in foods and nutrition course work and has two years of related work experience concurrent with or subsequent to such degree.*

<sup>1</sup> This figure is derived by summing the average in-state tuition reported for major Virginia Universities for the four-year period ending in school year 1994-95 (in constant 1995 dollars: 1991-92, \$3,654; 1992-93 \$4,115; 1993-94, \$4,467; and 1994-95, \$4,480)

CHAPTER 30.  
REGULATIONS GOVERNING STANDARDS FOR  
DIETITIANS AND NUTRITIONISTS.

18 VAC 75-30-10. Requirements for use of title of dietitian or nutritionist.

In addition to the criteria established in § 54.1-2731 of the Code of Virginia, a person may hold himself out to be a dietitian or nutritionist who has met the following requirements:

1. Has a baccalaureate degree with a major in foods and nutrition or dietetics or has equivalent hours of food and nutrition course work, and
2. Has two years of work experience in nutrition or dietetics concurrent with or subsequent to such degree.

VA.R. Doc. No. R96-400; Filed June 5, 1996, 10:51 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE  
SERVICES

Title of Regulation: 12 VAC 30-10-10 et seq. State Plan for Medical Assistance Services: General Provisions (amending 12 VAC 30-10-60 and 12 VAC 30-10-530), 12 VAC 30-120-360 et seq. Part VI: MEDALLION II.

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

Public Hearing Date: N/A -- Public comments may be submitted until August 23, 1996.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) §§ 9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on January 1, 1996. The Code, at § 9-6.14:4.1(C) requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on February 19, 1996.

Chapter 853 Item O of the 1995 Acts of Assembly required DMAS to seek a HCFA waiver to begin phasing in the MEDALLION II program in the Tidewater area effective January 1, 1996. The program was implemented, as specified in the waiver, on January 1, 1996. Without an emergency regulation, this new regulation could not become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 were met. Therefore, an emergency regulation was needed to meet the January 1, 1996, effective date established by the General

Assembly and the subsequent HCFA waiver. Subsequent to the emergency adoption action and filing of this regulation with the Registrar of Regulations, this agency is initiating the public notice and comment process contained in Article 2 of the APA.

Purpose: The purpose of this proposal is to promulgate permanent regulations to govern mandatory HMO enrollment in accordance with the 1995 Appropriations Act. Several technical changes are also being made.

Summary and Analysis: The regulations affected by this action are MEDALLION II at 12 VAC 30-120-360 et seq. (Part VI). The sections of the State Plan affected by this action are Coverage and Eligibility: Application; determination of eligibility and furnishing Medicaid at 12 VAC 30-10-60 and Utilization and Quality Control at 12 VAC 30-10-530.

The 1995 Appropriation Act required that the Department of Medical Assistance Services (DMAS): "seek a 1915 waiver from the Health Care Financing Administration to begin phasing in the Medallion II program effective January 1, 1996...The Department shall initially contract with managed care organizations on a capitation basis in the Tidewater area." Based on this and the required implementation date contained in the waiver as approved by HCFA, DMAS implemented Medallion II in Tidewater on January 1. Medicaid clients in Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, and Virginia Beach were required to select a Health Maintenance Organization (HMO) to provide nearly all of their health care. Excluded from this proposed requirement were nursing home patients, foster care children, and recipients who qualify for federal waiver programs designed to restrain the costs of special-needs, high-intensity health care users (for example, ventilator-dependent persons).

The proposed MEDALLION II initiative is designed to improve health outcomes, build on the success of current programs, and restrain Medicaid costs. HMOs will be paid a fee per MEDALLION II client each month and will be responsible for providing the client's health care, regardless of how much care is needed. HMOs will have an incentive to provide preventive care and patient education to improve health status and avoid the need for expensive inpatient and emergency care. Although the majority of MEDALLION II clients' services will be provided by the HMO, some services will be provided outside the network: school-based services and community mental health services (rehabilitative, case management and waiver). Clients will have the option of seeking emergency and family planning services inside or outside the HMOs' network. The HMOs will be responsible for paying for emergency services and family planning services whether they are to be provided in or out of the network.

Immunizations will not be included in the fee that DMAS pays the HMOs. The HMOs' primary care physicians may choose to offer this service or may refer the patient to a local health department. The HMOs and the local health departments must bill DMAS directly for this service.

DMAS has sought input for program specifics from client and provider groups. The major health care associations in the Commonwealth have been supportive of this effort. DMAS

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has planned and implemented numerous information programs for providers and clients on program details to smooth the transition to MEDALLION II. HMOs will be selected as MEDALLION II providers based on quality, access, and cost. DMAS will be rigorously monitoring the quality of care provided by the HMOs. Additionally, the Williamson Institute of the Medical College of Virginia and an external quality review organization will perform focused studies on the quality of care. Quality report cards on the HMOs are planned.

Clients will receive letters indicating that they may select the contracted HMOs into which they will be enrolled. These letters will also indicate a "pre-assigned" HMO in which the client will be enrolled if they do not select an HMO. This "pre-assigned" HMO will be based on the choice of their currently assigned primary care provider if the client is in the MEDALLION managed care program or their current HMO if the client has voluntarily selected an HMO through the Options program. This assignment method is unique to Virginia and encourages the maintenance of existing medical relationships.

Technical changes are being made to several reference notes on State Plan pages 49 and 50. The note on page 49 no longer applies to the Medicaid Program, because the Commonwealth does not distinguish between skilled nursing facilities and intermediate care facilities. Because this distinction is no longer made, the transfer of a recipient from one type of facility to the other is no longer relevant programatically. This note is being deleted.

The notes on page 50 are being amended to reflect changes that have occurred previously in the program. The first note references skilled nursing facilities. Because the program no longer distinguishes between skilled nursing facilities and intermediate care facilities, the more generic term of nursing facilities is more appropriate. In the second note, utilization review for recipients in intermediate care facilities only applies to those facilities treating patients with mental retardation. This note is being amended to accurately refer to those facilities specifically.

Issues: The MEDALLION II program's primary advantage to all parties is the more efficient and economical delivery of services while protecting the health, safety and welfare of the Medicaid recipients. The initiative is designed to improve health outcomes, build on the success of current programs, and restrain Medicaid costs. HMOs will be paid a fee per MEDALLION II client each month and will be responsible for providing the client's health care, regardless of how much care is needed. HMOs will have an incentive to provide preventive care and patient education to improve health status and avoid the need for expensive inpatient and emergency care.

This initiative provides a means of controlling the costs of Medicaid while focusing on the true health care needs of the recipients. The agency projects no negative issues involved in implementing this proposed change.

There are no issues involved in the technical changes. These corrections are being made to reflect changes made previously so that the State Plan is internally consistent.

Fiscal/Budget Impact: The payment rate to HMOs will be based on contract negotiations. Currently, the department saves 5.0% per client in the voluntary Options program. That program has over 75,000 members enrolled in five HMOs in the Tidewater, Northern Virginia, and Richmond areas.

The only localities which are initially affected by these regulations are Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Poquoson, and Virginia Beach. The Tidewater area has been used as an initial site during the phase-in of several recent managed care initiatives. Once the program is implemented and is operating as planned, it is expected that the program will be expanded.

In the long term, DMAS expects to save 8.0% on medical expenditures per person in the MEDALLION II program compared to what expenditures would be under the MEDALLION I fee-for-service program. The Commonwealth does not realize this savings in the first year because of start-up costs which occur in the first few months when it is necessary to pay the prospective capitation payments as well as pay all outstanding fee-for-service claims which were incurred prior to the recipient enrolling in the HMO but have yet to be processed and paid by the claims payment system.

DMAS incurred many of the initial administrative start-up costs to HMO operations in its voluntary (nonwaiver) Options program. Additionally, DMAS has been able to use the shift to managed care as a catalyst for downsizing staffing over the past two years and anticipates no net staffing increases from implementation or operation of the MEDALLION II program. Staffing increases in the areas of contract administration, managed care implementation, managed care pricing, marketing monitoring, contract compliance, HMO helpline, and quality improvement oversight will be offset by decreases in utilization review, client/provider helpline, pending claims resolution, fee-for-service compliance, direct provider/client education, TPL recovery, and reimbursement determination.

Only HMOs that choose to contract with DMAS as MEDALLION II providers will be affected by this regulation. In Tidewater, five contracts have been negotiated with HMOs. Most of Virginia's HMOs are of the Individual Practice Association (IPA) model, in which the HMO uses the same physicians as are otherwise available to the community. Thus far, no group or staff model HMOs (with physicians that serve only the HMO population) have expressed a strong interest in contracting with DMAS as Medicaid providers.

Because the IPA model HMO uses the same physicians as are otherwise available to the community, under the MEDALLION II contracts the HMOs will be paying many of the same providers for the same services and visits provided under fee-for-service arrangements. One of the contract requirements is that all HMO primary care physicians be enrolled as Medicaid physicians. DMAS will be able to determine how provider payments are affected by comparing fee-for-service data with HMO encounter data.

The impact on recipients will be based in large part on their knowledge and experience with HMOs. Many of the recipients affected by this change are already enrolled in HMOs through the Options program and, therefore, have experience with health care services provided by HMOs.

Because many of the HMOs under contract as MEDALLION II providers were also under contract as Options providers, many of the eligible population (approximately 50,000) will be able to remain enrolled with the HMO they selected previously. For those eligibles who are not currently HMO clients, DMAS has conducted over 50 public forums in the Tidewater area during August and September 1995.

The department conducted many forums throughout the Commonwealth to obtain recommendations and suggestions on restraining Medicaid costs while continuing to offer good access to quality health care. Medicaid recipients in the Commonwealth have adjusted well to the "gatekeeper" model under the MEDALLION I program (the Commonwealth's primary care case management program) and the Options program (the voluntary HMO contracting program). Based on the input received through the public forums, the department is confident that Medicaid recipients will benefit from a managed care approach. The MEDALLION II program will establish a greater array of available providers, more stringent quality checks of the care which is provided, and the self respect which accompanies a mainstream HMO card versus a welfare Medicaid card. Although the MEDALLION II program was developed based on the input of the interested public, the agency will consider any additional alternatives identified through the public comment process.

There are no impacts as a result of the technical changes.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

#### I. Executive Summary

The Medallion II program establishes a mandatory capitated medical care program for a large part of the Medicaid population. Care will be provided by HMOs that receive a fixed payment for providing clients with all of the services for which they are eligible under Medicaid. The potential advantages of capitated HMO health care are numerous. So long as DMAS carries through on its aggressive program of access and quality assurance, Medicaid clients should benefit from the improved coordination of care and the competition among HMOs for their patronage.

Many of the aspects of Medallion II that are expected to save money should also be seen by Medicaid clients as improving the quality of health care services they receive. Medallion II will most likely result in lower emergency room use and greater use of primary care providers. The chances are good that HMOs will place an increased emphasis on preventive

care. To encourage this activity, DMAS may wish to consider ways of reducing the impact of episodic eligibility on HMO incentives and ability to offer comprehensive preventive care services.

The move to mandatory, capitated care provided by HMOs may be expected to save approximately 5.4% over costs without Medallion II for the same population. If the program is managed well, these savings could increase especially in urban areas where competition among HMOs should increase over time. Experience may eventually allow DMAS to place greater emphasis on competition among HMOs to reduce costs.

The move to Medallion II is not without its problems, however. Virginia's aggressive program to expand capitated care to especially needy, non-AFDC clients without any stop-loss protection for providers does carry some risk. Also, the presence of this high risk population may give rise to problems of adverse selection. DMAS should actively monitor the Medallion II program for problems related to these factors.

The move to capitated, HMO care will increase the downward pressure on the length of hospital stays. This will contribute to the pressures that already exist for a reduction in the number of hospital beds in the markets served.

Some nonprofit and public agencies may lose much of the funding they receive for providing medical services as these services are transferred to other providers by the HMOs responsible for client medical care. This could cause organizational dislocation at nonprofit and public agencies and could make the task of managing the complex array of social and medical problems confronting some Medicaid clients difficult. DMAS has already made efforts to address these problems, and continued monitoring can prevent any significant problems from developing.

We conclude that, if properly managed and monitored, these regulations implementing the Medallion II program have the potential to both save taxpayer dollars and improve medical care for Medicaid clients. If potential incidental consequences can be monitored and addressed, this program should prove a significant net benefit to the Commonwealth.

#### II. Summary of the proposed regulation

This regulation is being promulgated as a permanent replacement for an emergency regulation that became effective on January 1, 1996. Under this regulation, and the emergency rule it replaces, Medicaid clients in Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, and Virginia Beach are required to select a Health Maintenance Organization (HMO) to provide nearly all of their Medicaid-covered health care. Several categories of Medicaid clients are not covered by this requirement: nursing home patients, foster care children, and recipients who qualify for federal waiver programs designed to restrain the costs of special-needs, high-intensity health care users.

HMOs will be paid a flat rate (capitation) for providing most of the health care needs of each Medicaid client served. It is hoped that capitated HMO care will both improve health outcomes and restrain Medicaid costs.

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School-based services and community mental health services will not be included in those required of the providers under the capitated payment. Also, clients will have the option of seeking emergency and family planning services inside or outside their HMO's network, but the HMO will be responsible for paying for these services whether they were provided inside or outside the provider's network.

A number of quality assurance controls have been built into the regulation. First, clients will have great flexibility to move between competing HMOs. Second, HMOs will be chosen on the basis of quality of care and access to care as well as on cost. Third, DMAS has established a process of monitoring and enforcing standards of care among provider HMOs.

### III. Estimated Economic Impact

The Medallion II program provides that the health care services provided in the Tidewater region by the Medicaid program would, for most clients, be provided by HMOs. Before the Medallion II program was implemented in January 1, 1996, most Medicaid clients had the choice of receiving their health care either on a fee-for-service (FFS) basis under the Medallion I program, or they could enroll with a qualified HMO voluntarily under the Options program.<sup>1</sup> The Medallion II program as implemented here eliminates the FFS option and requires that all Medicaid services to this group will be provided by HMOs.

#### A. The key differences from the previous program

In anticipating the economic impact of this regulation, the two key changes introduced by Medallion II are (1) the way providers are reimbursed for care and (2) the way the rates for this reimbursement are set.

##### 1. Reimbursement for care

Reimbursement for care is through a flat fee (or capitation) paid to the HMO for each recipient for each month that the HMO provides for the health care needs of the recipient. Under Medallion I, primary care physicians are paid a small case management fee to provide referral services to Medicaid clients but a fee is paid by DMAS for each unit of service (procedure) performed both by the primary care provider and any other health care providers whose services or products are used. FFS rates are decided administratively by DMAS.

HMOs participating in the Options program are paid on a capitated basis. Participation in this alternative to FFS care was voluntary until Medallion II. The rates for Options capitation payments were set at 95% of what DMAS would have expected to pay if the clients had remained in FFS care.

Health care providers paid on a FFS basis have a clear economic incentive to increase the level of medical services provided since each new service provided increases the compensation to the provider. Under FFS systems, then, DMAS must concentrate on monitoring

and controlling utilization of medical services to ensure that the incentives to over treat Medicaid recipients do not greatly inflate Medicaid expenditures.<sup>2</sup>

The economic incentives are quite different under capitated payments. An HMO that is paid on the basis of the average costs that it is likely to incur for a certain class of patient has conflicting incentives. The HMO faces the uncertainty (risk) over whether the actual expenses for a Medicaid client will be lower or higher than the capitation amount. Healthier than average patients will result in profits and less healthy patients a loss. So a provider under capitation will have some incentive to keep its clients healthy if this can be done at a relatively low cost. It is important to keep in mind however that there is a relatively high turnover rate among Medicaid clients as individual move on and off the Medicaid eligibility roles. Any investments a firm makes in a client's health may end up benefiting someone else.

There is also a clear incentive for providers to limit their expenses on each individual so as to keep their average costs of care below the capitation rates. This gives providers incentive to reduce medical services and may result in a deterioration in health outcomes under some circumstances. The very quality that gives providers incentive to reduce Medicaid costs to the public gives them incentive to reduce costs potentially at the expense of Medicaid clients.<sup>3</sup> The role that DMAS plays under a capitated system is obviously very different than under FFS. The concern about overutilization is replaced with a concern about the possibility that the level of care may fall below some chosen standard.

##### 2. Choosing providers and capitation rates

The capitation rates for providers under Medallion II are set in a process that is a combination of competitive bidding and negotiation. DMAS initiated a competitive procurement process for choosing HMOs to provide care to Medicaid clients in Tidewater.<sup>4</sup> Bids are evaluated on three criteria: (1) access to care, (2) quality of care, and (3) cost. During the procurement process that led to the selection of the initial five providers under Medallion II, DMAS had extensive negotiations with the bidders on the issues of access and quality. The bidders were then asked to make their best and final offers. The firms were then given an overall score and ranked accordingly. For each geographic area served, the top three bidders, in terms of their combined score on the selection criteria, were selected to participate in Medallion II in Tidewater.<sup>5</sup>

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<sup>1</sup> With a few exceptions, the population covered under the Medallion I and Options program is the same as that covered by Medallion II.

<sup>2</sup> See Smith, Wally R., James Cotter, and Louis Rossiter, "Changing the System: Quality Assessment and Improvement for Medicaid Managed Care." *Health Care Finance Review*. (forthcoming).

<sup>3</sup> As we shall see in the next section, this incentive to reduce services is offset to some significant degree by the competition among providers for Medicaid clients.

<sup>4</sup> That this process was limited to HMOs is an issue that will be discussed later in this report.

<sup>5</sup> As it turns out, not all HMOs bid to serve clients in all parts of Tidewater. Two of the firms did not have any overlap in service areas.

The bidders each gave a maximum number of clients that they would serve and DMAS adjusted these numbers to some degree based on its assessment of each bidder's abilities.

The maximum cost bid allowed was 95% of what DMAS expected that it would cost to provide for Tidewater Medicaid clients under its Medallion I FFS program. Expected costs were based on DMAS forecasts of FFS costs per eligible and administration costs. This implies that the expected savings to taxpayers of moving to Medallion II were at least 5.0%. Naturally, the actual savings will vary depending on how the forecast compares with what actually occurs. If the forecast of FFS cost per eligible was too high, then actual savings would be lower and if the forecast was low, savings would be higher than expected.

### 3. The competitiveness of the bidding process

Before discussing what savings we can actually expect from the current program, we need to consider whether the bidding process is likely to result in the best quality and access for the least cost to the taxpayer. The question here is one of the competitiveness of the bidding process. If the bidding process is highly competitive then we can have great confidence that the level of quality and access "purchased" by DMAS is acquired at the least cost. That said, it simply may not be possible (or even desirable) to arrange a highly competitive bidding process for the bundle of services required of the providers given the small number of potential bidders and the newness of the program.

Consider for a moment the incentives of the bidders. Each firm knows that once it meets the minimum standards for quality and access, it needs only rate third or better in any one of the three criteria in order to be selected to serve the market. In a market with five bidders, each firm probably has a good idea about the bids of the other firms. It would probably not be that difficult to infer what sort of bid would get a firm accepted under at least one category. Once that is accomplished, then the firm has incentive to structure a bid that is minimally acceptable in the other two criteria. The number of clients assigned to a firm does not depend on the quality of the bid as long as the bid is accepted. In fact, all five bidding firms were accepted as Medallion II providers.

On its face then, the bidding process is not a highly competitive one. It is unlikely to get a low cost bid except from a firm that is offering an otherwise unattractive bundle of quality and access. Alternatively, a firm that knows that its level of access is rated highly would certainly have incentive to place a cost bid at very close to the limit allowed by DMAS even if its costs were relatively low.

There is, however, a dimension in which this market appears to be highly competitive. The Medallion II providers have, by all accounts, competed hotly for Medicaid clients. They have marketed their services aggressively. From the point of view of the Medicaid clients this is promising. It indicates that client mobility

between providers will give providers incentive to provide customer satisfaction. Otherwise clients will sign up with a competing provider. However, this competition for the maximum number of clients is not the kind of competition that will lead to savings on Medicaid expenditures for the taxpayer. The intensity of price competition is clearly blunted by the structure of the bidding process.

We conclude, then, that the bidding process for selecting providers under Medallion II is not very competitive. It does not necessarily follow that the bidding arrangements should be altered, at least at this early stage in the implementation process. The current bidding arrangements may represent a reasonable and cautious approach to implementing a program that goes far beyond what most other states have done.

There is considerable experience nationally with using capitated payments for medical services to AFDC clients. There is very little experience in using capitated payments for those with special needs in the aged, blind and disabled (ABD) population. Two problems can potentially damage the effectiveness of such a program. First, the cost of providing medical services to the most needy members of this group can be very large indeed. Neither DMAS nor the providers have direct experience providing services on these terms. Since the regulations contain no stop-loss provisions, there is some significant probability that some of the current providers could be forced out of the market altogether.

The second sort of problem that may arise with capitated care for the ABD population is known as adverse selection. If one provider offers better care than the other providers for special needs (and, hence, high cost) patients, then the higher cost patients will tend to choose that provider. Weaker providers might even encourage high cost clients to enroll in other plans. This clustering of high cost patients with one provider would drive that provider's costs above the capitation rate, which is based on specific population averages. A significant degree of adverse selection could drive even highly efficient providers out of the Medicaid market. And adverse selection also gives all providers some incentive to reduce the amount of attention they pay to the medical needs of higher cost patients.

It is not yet known how serious these problems will be. DMAS should pay special attention to the early detection of problems caused by unexpectedly high loss rates and by adverse selection. It may have to consider stop-loss provisions and mechanisms to reduce the impact of adverse selection. Problems due to adverse selection may be ameliorated by the use of comprehensive rate-setting schemes that disaggregate the eligibles into finer demographic categories. This is the strategy used in Arizona and Tennessee.<sup>6</sup>

As DMAS gains experience with managing Medallion II in Tidewater and elsewhere, it should periodically reevaluate the design of the bidding process to determine whether an effort should be made to encourage greater price competition among providers when there is confidence that the greater

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<sup>6</sup> Robert Hurley, personal communication.

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price competition would not hurt the quality of and access to health care for Medicaid clients.<sup>7</sup>

### B. Expected savings

The price bids ranged from a low of 92% of the forecast cost to 99.75% of the maximum allowable bid.<sup>8</sup> The weighted average was approximately 97% for an expected saving of 8.0% from the expected FFS cost of serving the same population. The actual savings are less than 8.0% for two reasons. First, according to sources at DMAS, at the time of this writing, the forecast appeared to be about 1.0% too high.<sup>9</sup> So savings should be reduced accordingly. Second, about one third of the population now in Medallion II were served by the Options program. That program already had a 5.0% (expected) savings built in. So, the improvement from moving to a mandatory managed care program for this population amounted to approximately 2.0% of expected FFS expenditures. From this information, we would estimate the savings from moving to Medallion II for calendar year 1996 at approximately 5.4% under what would have been spent without the new, mandatory program.

Given the relative lack of price competition, the DMAS FFS forecast probably provides an important price signal to the potential bidders. In other words, the prices offered will be affected by the DMAS FFS forecast; a high forecast will induce high bids and a low forecast will induce lower bids down to the point where some providers would drop out of the bidding. This places a great burden on the FFS forecast. A relatively more competitive bidding process would place less of a burden on the accuracy of the FFS forecast.

The setting of an upper limit on cost bids will also become problematic over time as ever larger populations are covered under mandatory capitated care programs. Then the forecast FFS costs will become less and less reliable as indicators of what cost bids should be expected of capitated care providers.

The estimate provided here is very rough. Since estimates of savings are based on forecast amounts, DMAS may want to provide some indication of the estimated variance of its forecast errors on its cost per eligible forecast so that policy makers can have a better understanding of the range of likely outcomes. This will be more and more important as Medallion II expands to cover greater segments of the Medicaid population such as Medicare eligibles and as the program expands to other parts of Virginia.

### C. Where do the expected savings come from?

Fee-for-service compensation of Medicaid providers has led to a pattern of overutilization of certain medical services by Medicaid clients.<sup>10</sup> In an effort to control costs in the

presence of this overutilization, Medicaid administrators have lowered the rate of compensation for most provider services to rates well below those paid in private markets. This in turn has led to difficulties with the availability and quality of care received by Medicaid clients.

It would not be surprising, then, that eliminating the incentives to overutilize certain services would result in savings. What may be surprising to some is that this reduction in utilization could be associated with an actual improvement in the quality and access of care for Medicaid clients. However, taking as given an expected level of savings to taxpayers, it is important to ask where the savings arise. Some savings may come at the expense of costs elsewhere. Any such costs that are paid for by residents of Virginia must be subtracted off of the budget savings in order to calculate the net benefit of the change.

#### 1. Administrative costs

DMAS administrative costs for Medallion I are in the range of 3.0% of expenditures.<sup>11</sup> HMO administrative costs are, in general, much higher than this. So even if DMAS could save all of its administrative costs by moving to Medallion II, the cost of administering Medicaid access to health care will increase. And, in fact, DMAS has indicated that it does not expect great savings in its own administrative costs, since reduced efforts to manage utilization will be offset by increased quality assurance costs.

#### 2. Savings from better care

It is asserted by DMAS and by others that there will be savings due to better preventive care and a generally healthier clientele due to HMO capitation incentives. This is not an unreasonable assertion. When a firm is paid a set amount for providing all of the health care needs of an individual, that firm has incentive to spend money on preventive care (broadly defined) up to the point where a dollar spent on prevention is equal to the gain in reduced costs later on. A competitive firm would not spend any more because an additional dollar would earn less than a dollar in reduced costs later. What is more, HMOs, as organized medical care delivery systems, have the capacity and infrastructure to do a better job on prevention than would be expected of a primary care case manager (PCCM) physician.<sup>12</sup>

This does not necessarily imply that there will be more preventive care under capitated programs than under FFS. A FFS provider also has incentive to provide preventive care. Suppose for a moment that some physician cares only about fees and not about a patient's health. That physician may be tempted to see a patient's future illness as an opportunity for future FFS income and hence might choose not to emphasize preventive care. Well, even if the physician were exclusively

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<sup>7</sup> This is one reason why DMAS might consider relaxing the restriction that providers be limited to those with HMO status. This question will be discussed in more detail later in this report.

<sup>8</sup> Tom McGraw, DMAS, personal communication.

<sup>9</sup> Michael Jay, DMAS, personal communication.

<sup>10</sup> See Hurley, Robert, Deborah Freund, John Paul, *Managed Care in Medicaid: Lessons for Policy and Program Design*. Ann Arbor: Health Administration Press, 1993.

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<sup>11</sup> Tom McGraw, DMAS, personal communication.

<sup>12</sup> Empirical evidence consistently shows, for example, that physician offices have relatively poor rates of immunization. [Robert Hurley, personal communication]

concerned with maximizing cash income, he may end up offering significant amounts of preventive care.

There are two reasons for this. First, the physician is sure to get the income from the FFS preventive care. An acute illness later on may not result in any FFS income to him but rather to someone else. Second, customers may demand it. Most Medicaid clients are quite capable of making rational choices about quality of care. A physician who emphasizes wellness over treatment of illness may often be preferred by clients, especially the mothers of young children, one would suspect.

The actual magnitude of these various incentives is not known, but their presence helps explain an empirical fact from a number of studies comparing the level of preventive care under capitated and FFS programs. These studies have been decidedly mixed on the question of whether there is any statistically significant difference in measures of preventive care efforts under capitated and FFS programs.

There are some outstanding examples of success in preventive care under capitated programs. For example, Medicaid recipients in Milwaukee are served by HMOs and have been for more than a decade. Milwaukee HMO care routinely outperforms the FFS care in the rest of the state on numerous measures of the effectiveness of preventive care. It may be that the relative emphasis on preventive care depends on factors that are highly variable between programs. If so, this issue may require special emphasis by DMAS to ensure that it is given a high priority by the HMOs.

The single most important impediment to HMOs providing greater preventive care to Medicaid clients in the episodic nature of eligibility. With as much as 50% turnover in a given year, turnover erodes the HMO's ability to have an impact on patient lives and it lets the providers avoid responsibility for the consequences of poor preventive care. Following clients as they move on and off the Medicaid eligibility rolls is not the responsibility of the providers. HMOs only serve Medicaid clients during their enrollment and not beyond. Thus, DMAS may wish to study the possibility of implementing a system that tracks the preventive care received by a given Medicaid recipient over his or her lifetime. Such a system might significantly reduce some of the worst consequences of episodic eligibility for cost-effective preventive care.

### 3. Savings from reduced utilization

A number of studies of capitated health care programs in the U.S. and Canada have shown that the single most dramatic impact of capitated care on medical costs is on the patterns of use of hospital care.<sup>13</sup> Capitated care reduces emergency room use, reduces length of stay, and, possibly to a lesser extent, reduces admission rates. Early indications from Medallion II indicate that this has been the case in Tidewater as well. Hospitals in

the region are already reporting significant reductions in emergency room use.<sup>14</sup>

This may come as an unexpected result to some. One of the functions of the primary care gatekeeper concept of the Medallion I program was to reduce emergency room (ER) visits. Many ER visits were thought to be substitutes for primary care. Assigning a primary care case manager (PCCM) to Medicaid clients would, it was argued, substitute for hospital visits. In fact, there is evidence that much of the 5.0% saving attributed to Medallion I resulted from substitution of primary care provider visits for outpatient hospital visits.

If Medallion II has been more effective than Medallion I in reducing ER use, this may be due to a number of things. First, gatekeeper PCPs are not at financial risk under Medallion I. PCCMs do not have any great incentive to reduce emergency room use. While they do stand to benefit from providing more services, they are not held responsible for excessive emergency room visits by their patients. Capitated health plans stand to benefit greatly by reducing the number and intensity of hospital visits.

Second, the involvement by physicians as gatekeepers under Medallion I is reported to have been "unenthusiastic."<sup>15</sup> Thus, little "excitement" was generated by the prospect of saving Medicaid expenditures by paying attention to reducing hospital visits.

Third, in the Tidewater area, many Medicaid clients had local health departments as their PCCM. A number of these health departments did not have particularly good off-hour coverage. For clients served by these organizations, the ER was the primary care provider off hours.

Finally, changes in physician behavior may just take time. Jim Dahling of the Children's Hospital of The King's Daughters in Norfolk indicates that rates of use have fallen for their ER.<sup>16</sup> However, it is not clear that Medallion II is responsible for even most of the change. Dahling reports that rates have been falling steadily since Medallion I was implemented in Tidewater. The rate may have picked up a bit in January but there is not yet the hard data to support this conclusion. Other factors are also at play. For example, there seems to be an increasing resistance among AFDC mothers to bring their children to downtown Norfolk, especially at night. In response, some hospitals are establishing satellite facilities which may be preferred by clients.

Dahling concludes that much of the change has been due to a gradual change in physician practices that may not have that much to do with who is paying for a patient's medical care. Rather, physicians in focus groups are indicating a greater awareness of controlling medical costs and are taking these factors into account

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<sup>13</sup> Rowland, Diane, et al., *Medicaid and Managed Care: Lessons from the Literature*. Kaiser Commission on the Future of Medicaid, 1995.

<sup>14</sup> Personal communication with Tom McGraw, DMAS.

<sup>15</sup> Hurley, personal communication.

<sup>16</sup> Jim Dahling, personal communication.

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more than in the past. The advent of Medallion II is an incremental, not dramatic, reinforcement of this trend.

Evidence from other states supports the notion that physician visits are being substituted for some hospital visits. Indeed, informal reports from Medallion II is that visits to primary care physicians have increased somewhat.

The evidence about the use of specialist physicians is mixed. It is not likely that specialist visits will change dramatically. What is likely is that business will shift between specialists. HMOs (and probably other capitated providers) are somewhat sensitive to the quality of physicians in their network. Thus, the specialists with better reputations will be hired preferentially by HMOs, and those perceived to be of lower quality will lose business.<sup>17</sup>

Pharmaceutical costs are not expected to change much. Most HMOs contract out formulary management to formulary consultants. These firms base formulary choices on outcome data. Thus, while providers are interested in using the least expensive drugs available, they are financially at risk if the choice of a less expensive but less effective drug results in additional acute care expenses. It should be noted that the high rate of eligibility turnover among Medicaid clients does blunt this incentive if HMOs believe that a significant fraction of clients will sign up with a competitor should they regain their eligibility.

#### 4. Input prices

It has been asserted that some of the savings from Medallion II is due to the improved bargaining power of HMOs in negotiating better terms with suppliers. This assertion should probably be viewed somewhat skeptically given the historical record of low provider compensation rates in the Medicaid program. There is, however, another problem with this argument. Much of these savings, if they exist, are probably transfers between Virginians. Some of the reduced costs will be lost net revenues for others.

HMOs probably do have significant market power in negotiating terms with suppliers. This is likely to be especially true vis a vis hospitals with their large stock of fixed assets. The possibility that HMOs can negotiate lower prices with hospitals may appear, at first, to be an unambiguous advantage of Medallion II. There are a number reasons to be cautious in drawing conclusions about the value of this shift in bargaining power.

Costs of hospital consolidation. Over the past several years, the number of hospital days per thousand of population has been falling.<sup>18</sup> Since hospitals have large stocks of long-lived fixed assets, the decline in use has led to increasing vacancy rates for hospital beds. This trend is evident in Virginia. For example, Richmond is estimated to have more than twice the hospital bed

capacity required to meet the needs of the current population at today's lower use rates. The existence of excess capacity in fixed assets will induce hospitals to lower the prices they charge for beds to a level that is below their average total costs. If a hospital can cover a little more than the cost of staffing and serving the bed, it can reduce its losses even though it is still not making enough to pay a competitive return on its assets or even cover the payments on its long-term obligations.

In the short and medium term, the price that HMOs (and some other insurers) pay for hospital beds under Medallion II may not fully cover costs.<sup>19</sup> This may force a consolidation of hospital capacity in the longer term. While the consolidation may represent a necessary reallocation of resources away from hospital beds, there could be substantial dislocations in the mean time. Those hospitals that stay in business will have to find the resources to cover their costs during the consolidation in the industry. For example, in the case of community hospitals, one possibility is that taxpayers in the communities will be asked to make larger contributions to the operating expenses of the hospital until capacity rates improve. For private sector hospitals, the lost revenues will be covered by a combination of investor contributions and higher rates for non-managed care customers.

Hospital bed consolidation will almost certainly take place with or without Medallion II. However, Medallion II could speed this process up somewhat and could possibly add to the amount of dislocation and cross subsidy that occurs during the consolidation.

Effect on nonprofit and public agencies. Nonprofit and public agencies provide a complex array of medical and non-medical services to communities across Virginia. Some of the expansion of the organizations was encouraged by the expansion of Medicaid coverage. Since nearly all medical services to Medicaid eligibles are provided by HMOs under Medallion II, any Medicaid financed services offered at these agencies will be offered under contract with HMOs. Some nonprofit and public agencies may not be able to compete successfully for HMO contracts. DMAS has provided a forum for nonprofit and public agencies to market their services to HMOs and many of these providers have been brought into the networks of one or more HMOs. The extent of integration cannot be determined at this point.

Reallocating medical services away from these agencies may cause some organizational dislocation. Also, to the extent that medical services offered under Medicaid are no longer offered by these agencies, there may be increased difficulty in coordinating the services provided to those with a complex mix of social and medical problems: drug abuse, family violence, teen pregnancy, abandonment by a parent. If we are to continue to offer services to those with complex social needs, then it is important to make sure that the Medallion II program

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<sup>17</sup> Louis Rossiter, personal communication.

<sup>18</sup> Robert Hurley, personal communication.

<sup>19</sup> Some hospitals report that their contracts with HMOs for Medicaid services are actually an improvement over Medicaid FFS terms. [Per Tom McGraw, personal communication.]

does not inadvertently increase the cost and difficulty of doing so. In recognition of this interdependence, DMAS facilitates quarterly meetings between the HMO case supervisors and the case management supervisors from the health departments, social services agencies, community service boards, and local nonprofits in Tidewater.

The move to capitated managed care is not inconsistent with the desire to address other social problems. However, the interaction between medical services and social services should be recognized and accounted for in the design of the reform of medical care services under Medicaid. DMAS is already taking the initiative in this area, and continued monitoring can prevent significant problems from developing in the future.

**Market competitiveness.** In some markets, there will be a problem ensuring the competitiveness of the market. For example, a small number of HMOs could have significant market power as large scale buyers of health care services and bidders to provide Medallion II services. This problem will be especially acute in more rural areas. There may even need to be consideration of limiting the market power of large buyers of provider services.

One approach to this is to follow the suggestion of the hospitals that they be allowed to compete with HMOs for providing capitated care to Medicaid clients through provider sponsored networks (PSNs). They could do this by establishing a network of providers that, while financially sound enough to provide capitated Medicaid services, would not have to be licensed as HMOs. In other words, in the interest of better functioning markets, DMAS may want to consider whether it is appropriate to restrict the provision of capitated Medicaid services to licensed HMOs. It may be that a wider array of organizational arrangements could provide the needed level of financial assurance while improving the competitiveness of the local health care market.

One difficulty with this suggestion is that it would put DMAS in the position of regulator as well as customer for these providers.<sup>20</sup> HMOs are highly regulated to ensure financial soundness. DMAS would have to take on some of the role of an insurance regulator in its dealings with PSNs. Such a move could be an improvement if it results in improvements in access, quality and cost for the population served.

Medallion II may even be implemented in non-urban areas through the use of sole source contracting since vertically integrated systems of health care may already exist or may be encouraged through PSNs. The need for sole source contracting will be especially important for the non-AFDC, special needs population since quite often there will only be one provider of the special services needed.

### D. Quality of care issues

Earlier in this paper, we discussed the conflicting incentives that providers may have in determining the level of care to provide patients. The capitation form of payment shifts the burden of uncertainties about how much a given patient will cost to treat to the providers. Thus, providers have incentive to minimize the actual expenditures on a patient once a capitation is paid. Running against this incentive is the provider's continuing responsibility for the patient. A level of care so low as to compromise health outcomes will likely result in repeat physician visits and even in avoidable hospital stays. As the level of care falls, the added costs due to poor health outcomes will eventually become greater than the savings.

Providers also face another important incentive not to cut back too far on the level of care. In Medallion II, Medicaid clients can change HMOs with relative ease. If care levels for one HMO fall too far below the level other HMOs are providing, then the client will simply shift to a competing provider.

The net impact of these conflicting incentives is not known. In response, Medallion II establishes an aggressive quality assessment program that evaluates the quality of Medicaid client care in three ways: event analysis for complaints and voluntary disenrollment, analysis of actual health outcomes, and surveys of client satisfaction. Much of this analysis will be carried out by the Williamson Institute and the Virginia Health Care Quality Center.

#### 1. Benefits to the client population

Although there is no data yet available on the quality of care for Medicaid clients under Options and under Medallion II, this data is being collected and will be available soon. Even without this data, there are indications that Medicaid clients will see a significant improvement in medical care under Medallion II over what they would have had under Medallion I. The main reason is that they will receive better coordinated care. This may be an especially important characteristic of a program that serves a population with limited resources.

Studies of capitated Medicaid programs in other states indicate that the care is generally comparable with FFS programs but that in a number of cases care is actually better. The Medallion II program has a number of features that give it a better than average chance of improving care relative to the physician gatekeeper program in Medallion I. As already mentioned, DMAS has established an aggressive program to monitor actual health outcomes and consumer satisfaction. Second, the bidding process for selecting providers probably selects for providers that emphasize quality rather than price. Third, the providers must seek and then maintain accreditation by the National Committee for Quality Assurance.

Another factor that works in the favor of Medallion II is its emphasis on the continuity of care for Medicaid clients. National evidence suggests that one of the most important determinants of success of managed care programs for Medicaid clients is the continuity of care both at the beginning of the program and for those

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<sup>20</sup> Of course, this is not altogether different from the role DMAS already plays as quality assurance regulator.

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clients who move on and off the eligibility roles with some frequency. All of the physicians serving Medicaid clients in Tidewater have signed up with at least one HMO. This means that no Medicaid clients would have to change their primary care physician in moving into Medallion II.

DMAS has established a process of assigning clients to HMOs that gives clients choice but maximizes their opportunity to maintain the continuity of health care. The principle determinant for picking the HMO to which a new client will be preassigned is continuity of care. This customer friendly approach to assignment is probably a major factor in the relatively smooth transition to Medallion II in Tidewater.

## IV. Businesses and entities affected

A number of businesses will feel an affect from the move to Medallion II. As currently structured, Medallion II, offers an opportunity for HMOs to expand the range of clients they serve to include Medicaid eligibles. Insofar as the HMOs participate in the voluntary bidding process, then we can conclude that they expect to be better off for having done so.

Physician practices were already in a period of fairly rapid consolidation before Medallion II was implemented. The expansion of this program may accelerate that process to some extent but will probably not have any major impact on the net income of medical practices. There is a significant chance that physician net income from serving Medicaid clients may increase since rates will be set by the market.

Hospitals will see a large impact from Medallion II. The use of hospital outpatient services, especially ER services will fall. The impact on hospital income of this change on net income is not known but may be positive since hospitals frequently only receive a triage fee for ER use by Medicaid clients, and these fees may not cover costs incurred. Prices for hospital inpatient days will fall in the short and medium term. This is because HMOs are not restricted by law to cover a hospital's cost of service. In the presence of excess capacity, hospitals may offer their services at below cost until the number of beds available falls enough to bring the supply and demand into equilibrium.

## V. Localities particularly affected

The localities particularly affected are those included in the Medallion II pilot program: Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, and Virginia Beach. As mentioned previously, these locations should experience a somewhat increased rate of hospital consolidation with some accompanying adjustment costs. The consolidation process may reduce the availability of "safety-net" care for uninsured indigents. Nonprofit and public agencies will be forced to restructure either to continue to offer medical care under contract with the Medallion II HMOs or to reduce the medical services offered.

Medicaid recipients in these areas can reasonably expect better coordinated care with a greater emphasis than in the past on maintaining good health. The improved coordination of care will result in fewer ER visits and more visits to a primary care provider.

## VI. Projected impact on employment

The impact on employment in the project area will not be large. Hospital consolidation is mostly in terms of reducing the level of fixed investment in facilities. There will be some reductions in ER staff with commensurate increases in employment in physician offices.

## VII. Effects on the use and value of private property

These regulations could have an effect on two types of property. First, ownership shares of for profit HMOs could change in value. Since these regulations are in the nature of a market opportunity that HMOs enter into voluntarily, there is no issue of a regulatory action involuntarily reducing the value of HMO shares. Given the voluntary nature of participation, firms will only participate if they expect a net gain from participating. Hence, we have every confidence that HMO share values will not (on average) be reduced by this regulation.

Second, ownership shares in private hospitals could fall somewhat. However, this effect will probably not be large because the overcapacity of hospital beds would already have been factored into the price of the stock for these firms.

## VIII. Summary of Analysis

The Medallion II program establishes a mandatory capitated medical care program for a large part of the Medicaid population. Care will be provided by HMOs that receive a fixed payment for providing clients with all of the services for which they are eligible under Medicaid. The potential advantages of capitated HMO health care are numerous. So long as DMAS carries through on its aggressive program of access and quality assurance, Medicaid clients should benefit from the improved coordination of care and the competition among HMOs for their patronage.

Many of the aspects of Medallion II that are expected to save money should also be seen by Medicaid clients as improving the quality of health care services they receive. Medallion II will most likely result in lower emergency room use and greater use of primary care providers. The chances are good that HMOs will place an increased emphasis on preventive care. To encourage this activity, DMAS may wish to consider ways of reducing the impact of episodic eligibility on HMO incentives and ability to offer comprehensive preventive care services.

The move to mandatory, capitated care provided by HMOs may be expected to save approximately 5.4% over costs without Medallion II for the same population. If the program is managed well, these savings could increase especially in urban areas where competition among HMOs should increase over time. Experience may eventually allow DMAS to place greater emphasis on competition among HMOs to reduce costs.

The move to Medallion II is not without its problems, however. Virginia's aggressive program to expand capitated care to especially needy, non-AFDC clients without any stop-loss protection for providers does carry some risk. Also, the presence of this high risk population may give rise to problems of adverse selection. DMAS should actively

monitor the Medallion II program for problems related to these factors.

The move to capitated, HMO care will increase the downward pressure on the length of hospital stays. This will contribute to the pressures that already exist for a reduction in the number of hospital beds in the markets served.

Some nonprofit and public agencies may lose much of the funding they receive for providing medical services as these services are transferred to other providers by the HMOs responsible for client medical care. This could cause organizational dislocation at nonprofit and public agencies and could make the task of managing the complex array of social and medical problems confronting some Medicaid clients difficult. DMAS has already made efforts to address these problems and continued monitoring can prevent any significant problems from developing.

We conclude that, if properly managed and monitored, these regulations implementing the Medallion II program have the potential to both save taxpayer dollars and improve medical care for Medicaid clients. If potential incidental consequences can be monitored and addressed, this program should prove a significant net benefit to the Commonwealth.

#### Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:

The agency has reviewed the Economic Impact Analysis prepared by the Department of Planning and Budget regarding the regulations concerning Medallion II and has no objection to the analysis.

#### Summary:

*The proposed regulations govern mandatory HMO enrollment in accordance with the 1995 Appropriations Act. Several technical changes are also being made.*

#### **12 VAC 30-10-60. Application; determination of eligibility and furnishing Medicaid.**

A. The Medicaid agency meets all requirements of 42 CFR Part 435, Subpart J for processing applications, determining eligibility and furnishing Medicaid.

B. 1. Except as provided in items *subdivisions* 2 and 3 ~~below of this subsection~~, individuals are entitled to Medicaid services under the plan during the three months preceding the month of application, if they were, or on application would have been, eligible. The effective date of prospective and retroactive eligibility is specified in 12 VAC 30-40-10.

2. For individuals who are eligible for Medicaid cost sharing expenses as qualified Medicare beneficiaries under § 1902(a)(10)(E)(i) of the Act, coverage is available for services furnished after the end of the month in which the individual is first determined to be a qualified Medicare beneficiary. 12 VAC 30-40-10 specifies the requirements for determination of eligibility for this group.

3. Pregnant women are not entitled to ambulatory prenatal care under the plan during a presumptive

eligibility in accordance with § 1920 of the Act. 12 VAC 30-40-10 specifies the requirements for determination of eligibility of this group.

C. *The Medicaid agency elects to enter into a risk contract with an HMO that is qualified under Title XIII of the Public Health Service Act or is provisionally qualified as an HMO pursuant to § 1903(m)(3) of the Social Security Act (42 USC § 1396(m)).*

The Medicaid agency elects to enter into a risk contract with an HMO that is not federally qualified, but meets the requirements of 42 CFR 434.20(c) and is defined in 12 VAC 30-20-60.

D. The Medicaid agency has procedures to take applications, assist applicants, and perform initial processing of applications from those low income pregnant women, infants, and children under age 19, described in § 1902(a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), and (a)(10)(A)(ii)(IX) at locations other than those used by the Title IV-A program including FQHCs and disproportionate share hospitals. Such application forms do not include the ADFC form except as permitted by HCFA instructions.

#### **12 VAC 30-10-530. Utilization and quality control.**

A. A Statewide program of surveillance and utilization control has been implemented that safeguards against unnecessary or inappropriate use of Medicaid services available under this plan and against excess payments, and that assesses the quality of services. The requirements of 42 CFR 456 are met directly.

*Quality review requirements described in § 1902(a)(30)(C) of the Act relating to services furnished by HMO's under contract are undertaken through contract with the PRO designated under 42 CFR Part 462.*

B. The Medicaid agency meets the requirements of 42 CFR Part 456, Subpart C, for control of the utilization of inpatient hospital services.

No waivers have been granted.

C. The Medicaid agency meets the requirements of 42 CFR Part 456, Subpart D, for control of utilization of inpatient services in mental hospitals.

No waivers have been granted.

D. The Medicaid agency meets the requirements of 42 CFR Part 456, Subpart E, for the control of utilization of skilled nursing facility services.

No waivers have been granted.

~~The program will allow a maximum of ten administrative days for placement and transfer for SNF to ICF in order to make an orderly transfer or placement possible without potential harm or trauma to the patient in accordance with 42 CFR 456.4.~~

E. The Medicaid agency meets the requirements of 42 CFR Part 456, Subpart F, for control of the utilization of intermediate care facility services as provided through:

1. Direct review by personnel of the medical assistance unit of the state agency.

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2. Personnel under contract to the medical assistance unit of the state agency.

The program will allow a maximum of ten administrative days for placement and transfer from ICF/NF to community in order to make an orderly transfer or placement possible without potential harm or trauma to the patient in accordance with 42 CFR 456.4.

One of the semiannual utilization reviews required by 42 CFR 456.434(b)(1) for intermediate care ICF/MR recipients will be conducted by the Virginia Department of Health as part of the inspection of care visit. The second utilization review will be conducted by personnel of the Medical Assistance unit of the state agency.

F. The Medicaid agency meets the requirements of § 1902(a)(30) of the Act for control of the assurance of quality furnished by each health maintenance organization under contract with the Medicaid agency.

## PART VI. MEDALLION II.

### 12 VAC 30-120-360. Definitions.

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

"ABD" means aged, blind and disabled recipients as defined in 12 VAC 30-30-10.

"AFDC" means Aid to Families with Dependent Children which is a public assistance program, administered by the Department of Social Services, providing financial assistance to needy citizens.

"AFDC-related" means those clients who are eligible for medical assistance under rules related to the AFDC program, such as pregnant women and indigent children under specific ages. It shall not include foster care, subsidized adoption, or spend-down medically needy clients.

"Area of record" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means the payment issued to an HMO contractor by DMAS on behalf of a client, in return for which the HMO accepts responsibility for the services to be provided under a contract.

"Client," "clients" or "enrollee" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of MEDALLION II.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"DMAS" means the Department of Medical Assistance Services.

"Eligible person" means any person determined by DMAS as eligible to receive services and benefits under the State Plan for Medical Assistance in the categories of AFDC, AFDC-related, and ABD.

"Emergency services" means services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

1. Placing the client's health in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"Foster care" means a child who received either Foster Care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Health care plan" means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"HMO" means a health maintenance organization, as licensed by the State Corporation Commission's Bureau of Insurance, which undertakes to provide or arrange for one or more health care plans.

"Network" means doctors, hospitals or other health care providers who participate or contract with an HMO and as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

"Subsidized adoption" means any child for whom an adoption assistance agreement is in effect.

### 12 VAC 30-120-370. MEDALLION II enrollees.

A. DMAS shall determine enrollment in MEDALLION II. Enrollment in MEDALLION II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Program.

B. The following individuals shall be excluded from participating in MEDALLION II. Individuals not meeting the exclusion criteria must participate in the MEDALLION II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are eligible for federal waiver programs for home-based and community-based Medicaid coverage;
5. Individuals who are participating in foster care or subsidized adoption programs;

6. Individuals who are in the third trimester of pregnancy upon initial assignment to MEDALLION II and who request exemption;

7. Individuals who reside in health, mental health, or social rehabilitation programs not funded by their HMO that are outside of their area of record for greater than 60 days; and

8. Individuals who enter into a Medicaid approved hospice program in accordance with DMAS criteria.

C. Client shall be enrolled as follows:

1. All Medicaid eligible individuals, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in MEDALLION II.

2. Newly eligible individuals and individuals who lose then regain eligibility under the Virginia Medical Assistance Program shall not participate in MEDALLION II until completion of the MEDALLION II enrollment process.

3. Clients shall receive an interim Medicaid card from DMAS, and shall be provided authorized medical care in accordance with DMAS' procedures, after eligibility requirements are met.

4. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted HMOs. These letters shall indicate a preassigned HMO, determined as provided in subsection D of this section, in which the client will be enrolled if they do not make a selection.

D. Assignments shall be made for those clients not selecting an HMO as described in subdivision C 4 of this section. The assignment process shall be as follows:

1. MEDALLION primary care physicians will be asked to select the HMO in which their MEDALLION clients will be enrolled.

2. Clients currently enrolled in "Options" shall be assigned to the HMO in which they participate under "Options" if that HMO contracts with DMAS for MEDALLION II.

3. Clients already receiving other insurance through a MEDALLION II HMO shall also be assigned to that same HMO for Medicaid purposes. This will override any default assignment pursuant to subdivision 1 or 2 of this subsection.

4. Clients not assigned pursuant to subdivision 1, 2, or 3 shall be assigned to the HMO of a family case number, if applicable.

5. All other clients shall be assigned to an HMO.

E. HMO enrolled recipients shall be permitted to change HMOs, upon request to their new HMO, within 60 days of the request. Clients in State Plan defined HMOs which are also competitive medical plans with current Medicare contracts or are federally qualified HMOs will be permitted to change HMOs upon request to their new HMO only:

1. During DMAS specified open enrollment periods;

2. During the first month of the six-month enrollment period without cause;

3. During the remainder of the six-month enrollment period if the current HMO permits it and the change is permitted by the current HMO's MEDALLION II contract;

4. During the remainder of the six-month enrollment period, if determined to be advantageous to the current HMO, the requested HMO, and DMAS; or

5. If all of the following requirements are met:

a. The enrollee requests in writing to DMAS and to the current HMO for good cause;

b. The request cites the reasons for the disenrollment; and

c. DMAS determines that good cause for disenrollment exists.

F. DMAS will inform those HMOs which are competitive medical plans with current Medicare contracts, or are federally qualified HMOs, of open enrollment periods. Open enrollment periods will occur at a minimum of twice per calendar year and will held no more than six months apart.

G. Good cause for disenrollment shall include the following:

1. A recipient's desire to seek services from a federally qualified health center not under contract to the HMO that is under contract to another HMO available to the recipient; or

2. An unusual combination of factors which causes the recipient's access to needed services to be prevented by continued enrollment in the HMO. Nothing in this subdivision shall excuse the HMO from having an adequate network to provide (or from providing through out-of-network arrangements) all services required by this part.

3. Performance or nonperformance of service to the recipient by an HMO or one or more of its providers which is deemed by the department's external quality review organization to be below the generally accepted community practice of health care as determined by the department's external quality review organization.

Good cause for disenrollment shall be determined at the sole discretion of DMAS and shall be determined in sufficient time to ensure that, if approved, recipients are permitted to change HMOs within 60 days of the request.

Good cause for disenrollment may be appealed by the client in accordance with the department's appeals process.

The current HMO shall provide, within two working days of the request, information requested by DMAS necessary to determine good cause.

H. Competitive medical plans with current Medicare contracts and federally qualified HMOs will notify their enrolled recipients of open enrollment periods no less than

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30 days before the start of each new period of enrollment and at least twice each year.

12 VAC 30-120-380. MEDALLION II provider responsibilities.

A. The HMOs shall be responsible for the provision and management of each client's health care regardless of how much care is needed or the cost of such care.

B. Services that shall be provided outside the HMO network are school-based services and community mental health services (rehabilitative, targeted case management and waiver services). Clients may also seek emergency and family planning services from a provider outside the HMO. The HMOs shall pay for emergency services and family planning services whether they are to be provided inside or outside the HMO network.

The HMOs shall pay for services furnished in another state to the same extent they would pay for services within their networks if services are needed because of a medical emergency; medical services are needed and the recipient's health would be endangered if he were required to travel to his place of residence; or the needed medical services or necessary supplementary resources are more readily available in another state.

C. Immunizations shall not be included in the fee that DMAS pays the HMOs. The HMO may choose to offer immunizations under the regular Medicaid immunization reimbursement methodology or may refer the patient to a local health department.

D. The HMOs shall report encounter data to DMAS under the contract requirements, which may include data reports based on the Health Plan Employer Data and Information Set (HEDIS), report cards for clients, and ad hoc quality studies performed by third parties.

E. The HMO shall maintain such records as may be required by federal and state law and regulation and by DMAS policy. The HMO 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.

F. The HMO 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.

12 VAC 30-120-390. Payment rate for MEDALLION II HMOs.

The payment rate to HMOs shall be based on contract negotiations.

12 VAC 30-120-400. Quality Control and Utilization Review (UR).

A. DMAS shall rigorously monitor the quality of care provided by the HMOs. DMAS may contract with an external quality review organization to perform focused studies on the quality of care provided by the HMOs. Specifically, DMAS shall monitor to determine if the HMO:

1. Fails substantially to provide the medically necessary items and services required under law or under the

contract to be provided to an enrolled recipient and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual. This shall be monitored through the review of encounter data on a routine basis and other methods determined by DMAS.

2. Imposes on clients premium amounts in excess of premiums permitted. This shall be monitored through surveying a sample of clients at least annually and other methods determined by DMAS.

3. Engages in any practice that discriminates among individuals on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by § 1903(m) of the Social Security Act (42 USC § 1396b(m))) by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services. This shall be monitored through surveying a sample of clients at least annually and other methods determined by DMAS.

4. Misrepresents or falsifies information that it furnishes, under § 1903(m) of the Social Security Act (42 USC § 1396b(m)) to HCFA, DMAS, an individual, or any other entity. This shall be monitored through surveying a sample of clients at least annually and other methods determined by DMAS.

B. DMAS shall ensure that data on performance and patient results is collected. Specifically, DMAS shall review, which may include on-site reviews, encounter data submitted by the HMOs as defined in the contracts. This review shall include, but not be limited to:

1. Excessive or inappropriate services,
2. Unauthorized or excluded services, and
3. Analysis of possible trends in increases or reductions of services.

C. DMAS shall ensure that quality outcomes information is provided to practitioners. DMAS shall ensure that changes which are determined to be needed as a result of quality control or utilization review are made.

12 VAC 30-120-410. Sanctions.

A. If DMAS determines that an HMO is not in compliance with state or federal laws, regulations, or their MEDALLION II contract, DMAS may impose sanctions on the HMO. The sanctions may include but are not limited to:

1. Limiting enrollments in the HMO by freezing voluntary recipient enrollments,
2. Freezing DMAS assignment of recipients to the HMO,
3. Limit HMO enrollment to specific areas,
4. Denying, withholding, or retracting payments to the HMO,
5. Terminating the HMO's MEDALLION II contract, and

6. Drafting procedures with which the HMO must comply to eliminate specific sanctions.

B. In the event DMAS determines that the HMO poses a threat to the life or safety of a recipient, that MEDALLION II provider may be terminated from participation in the Virginia Medicaid program without prior notice. In accordance with the terms of the contract, HMOs shall have the right to appeal any adverse action taken by DMAS. For appeal procedures not addressed by the contract, the HMO shall proceed in accordance with the appeals provisions of the Virginia Public Procurement Act, § 11-35 et seq. of the Code of Virginia, and the provisions in DMAS' applicable regulation or policy for provider appeals.

C. When DMAS determines that an HMO committed one of the violations specified in 12 VAC 30-120-400 A, DMAS shall implement the provisions of 42 CFR 434.67.

1. Any sanction imposed pursuant to this subsection shall be binding upon the HMO.

2. The HMO shall have the appeals rights for any sanction imposed pursuant to this subsection as specified in 42 CFR 434.67.

12 VAC 30-120-420. Client grievances.

A. Disputes between the HMO and the client concerning medical necessity shall be resolved through a grievance process operated by the HMO.

B. The HMO shall develop written materials describing the informal and formal grievance system and its procedures and operation.

C. The HMO shall designate a person or persons to be responsible for the receipt and timely processing of client grievances.

D. At the time of enrollment, the HMO shall notify the client, in writing, that:

1. Medical necessity issues may be resolved through a system of informal and formal grievances, and that the client is entitled to appeal the HMO's action directly to DMAS, and

2. Clients have the right to appeal directly to DMAS, if they believe that the HMO is interfering with their right to freedom of choice for a family services provider.

E. The HMO shall issue informal grievance decisions within seven days from the date of initial receipt of the grievance. The informal decision is not required to be in writing.

The HMO must maintain a grievance log summarizing each grievance. The grievance log shall capture the dates of receipt and decision and the nature of the decision. The log shall distinguish between Medicaid clients and commercial clients unless the HMO maintains a separate system for Medicaid clients.

F. The HMO shall issue formal grievance decisions within 14 days from the date of initial receipt. The formal decision shall be required to be in writing.

G. Any formal appeal decision by the HMO may be appealed by the client to DMAS in accordance with the department's Client Appeals regulations (12 VAC 30-110-10 et seq.). DMAS shall conduct an evidentiary hearing and reserves the right to affirm, modify, or reject any formal appeal decision of the HMO. The HMO shall be responsible for actions required by a DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the HMO.

H. A client may, in lieu of utilizing the HMO's appeal process, appeal directly to DMAS in accordance with the department's appeal process. DMAS shall conduct an evidentiary hearing and reserves the right to affirm, modify, or reject any decision of the HMO. The HMO shall be responsible for actions required by a DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the HMO.

12 VAC 30-120-430. MEDALLION II phase-in.

The MEDALLION II Program will be implemented in phases. DMAS will, in the first phase, implement the program for all clients in a specific area of the Commonwealth except those receiving Medicare insurance coverage. DMAS will notify those Medicare clients and clients in other areas of the state prior to the implementation dates for subsequent phases. Providers will also be given advance notification of implementation for subsequent phases. DMAS has the U.S. Health Care Financing Administration's (HCFA) approval for implementing MEDALLION II in phases. The first phase will be implemented January 1, 1996.

VA.R. Doc. No. R96-411; Filed June 5, 1996, 12:25 p.m.

**BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS**

**Title of Regulation:** 18 VAC 115-20-10 et seq. Regulations Governing the Practice of Professional Counseling (amending 18 VAC 115-20-20, 18 VAC 115-20-100 and 18 VAC 115-20-110).

**Statutory Authority:** §§ 54.1-113, 54.1-2400 and 54.1-3503 of the Code of Virginia.

**Public Hearing Date:** July 23, 1996 - 9 a.m.

Public comments may be submitted until August 23, 1996.

(See Calendar of Events section for additional information)

**Basis:** Chapter 24 (§ 54.1-2400 et seq.) and Chapter 35 (§ 54.1-3500 et seq.) of the Code of Virginia provide the basis for these regulations. Chapter 24 establishes the general powers and duties of health regulatory boards including the power to set fees and the responsibility to promulgate regulations. Chapter 35 establishes the requirement for licensure to engage in the practice of counseling and marriage and family therapy. Section 54.1-113 requires the board to amend its fees when an analysis of the biennial report of revenues and expenses shows more than a 10% differential.

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# Proposed Regulations

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Purpose: The purpose of the proposed amendments is to comply with the statutory requirement of § 54.1-113 for a reduction in fees which will eliminate the surplus in board funds and yet produce sufficient revenue to meet expenses for projected budgets. An amendment is also proposed to establish a biennial rather than an annual renewal schedule.

Substance: 18 VAC 115-20-20 is being amended to:

1. Reduce the fee for registration of supervision from \$75 to \$25.
2. Reduce the fee for processing of an application for licensure from \$100 to \$25 in 1997 and \$50 thereafter.
3. Reduce the annual renewal fee of \$85 for licensed professional counselors to a biennial renewal fee of \$75.
4. Eliminate the fee for the licensure examination as the fee is now paid directly to an examination service with which the board has contracted for administration and grading.

Amendments are proposed to 18 VAC 115-20-100 to change the renewal schedule from annual renewal to biennial renewal for all licensees.

Amendments to 18 VAC 115-20-110 are proposed to conform the requirements to the proposed biennial renewal of licenses.

Issues: Issues for the board to consider in the reduction of its fees were: (i) whether to adopt a one-time reduction and then establish higher permanent fees; (ii) whether to adopt a biennial renewal schedule; and (iii) which fees should be reduced. To determine proposed amendments, the finance office of the department presented the board with a projection of the revenue and expenses with the current fee structure and three proposals for fee reductions.

Proposal #1 would include a one-time reduction of fees in 1997 and a permanent reduction in FY 1998 and would retain an annual renewal.

Proposal #2 would include a one-time free renewal for 1997 and a reduction in other fees and would retain an annual renewal. The application fee and registration of supervision fee would be lowered in 1997 and would be set at a higher rate thereafter. However, all fees would be equal to or less than current fees.

Proposal #3 would change the renewal of certification to a biennial cycle and would permanently lower the renewal fee to \$75 biennially. The application fee would be reduced from the current cost of \$100 to \$25 in 1997 and \$50 thereafter. The registration of supervision would be lowered from the current fee of \$75 to \$25.

The board selected proposal #3 as the more reasonable and equitable for all certified licensed professional counselors as well as for those seeking licensure. Proposal #3 also changes renewals to a biennial schedule, which is more cost effective for the board and its regulated practitioners. Proposals #1 and #2 would result in higher renewal costs over the two-year period.

Fees identified for reduction are those applicable to all applicants and licensees rather than a select number of

persons who might have a late renewal or need a duplicate wall certificate. Therefore, the proposals do not reduce those fees.

Advantages for applicants and licensees:

1. There is a cost benefit to the applicant for whom licensure would be a less expensive process (application fee would be reduced from \$100 to \$25 in 1997 and \$50 thereafter). Applicants who have completed their educational requirements and are in the process of securing their supervised practice requirements will benefit from a significant reduction in the cost of registering supervision from the current fee of \$75 to a proposed fee of \$25. Since the trainee is required to work in a variety of practice settings with different supervisors, there will be significant savings (approximately \$200) in the costs of applying and qualifying for licensure as a professional counselor.
2. Likewise, there would be a significant benefit to current licensees whose renewal fees would be reduced from \$85 annually to \$75 each biennium.

Advantages for the public: There may be an indirect advantage to the public. Since costs for initial licensure and for renewals of licensure would be significantly reduced, those savings may be passed along to persons who utilize the services of a licensed professional counselor. The significant reduction in costs for initial licensure may encourage additional counselors to set up practice in the state, thereby improving the availability of mental health services to its citizens.

Disadvantages: There are no disadvantages of the proposed regulation to licensees or to the public.

Fiscal Impact Prepared by the Agency:

A. Approximately 1,835 licensed professional counselors are affected.

Cost of Compliance: Proposed regulations would reduce costs to individuals applying for licensure from approximately \$215 (\$100 for application processing and \$115 for registration of supervision) to \$115 (\$50 for application processing and \$65 for registration of supervision).

Professional counselors currently licensed by the board will have renewals fees reduced from \$85 each year to \$75 paid biennially for a total savings of \$95 every two years.

B. Costs to the agency for implementation: There will be minimal costs (less than \$1,000) to the agency for the promulgation of regulations, such as: mailing of notices to the public participation guidelines list, providing a public hearing on proposed regulations, and copying and mailing final regulations. The board will attempt to combine mailing notices and information on regulations with other required mailings and will hold its hearing during a regularly scheduled board meeting.

The reduction in revenue for the board will result in a reduction of its current surplus for the 1996-98 biennium and

is projected to result in a small net deficit of approximately 4.0% of the total budget for the 1998-2000 biennium.

C. Costs to local governments: There will be no impact of these regulations on local government.

D. Costs to small businesses: There will be a positive impact on counselors who operate their practices as a small business. The reduction in renewal fees from \$85 annually to \$75 biennially will save each licensed professional counselor in practice \$95 over a two-year period.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic affects.

**Summary of the Proposed Regulation.** The proposed regulation reduces fees paid by professional counselors for licensure in the Commonwealth of Virginia. The purpose of these fee reductions is to bring the Board of Professional Counselors and Marriage and Family Therapists into compliance with § 54.1-113 of the Code of Virginia. Section 54.1-113 requires all regulatory boards under the Department of Health Professions to revise their fee schedules if, after the close of any biennium, there is a more than 10% difference between revenues and expenses.

The proposed regulation makes the following fee revisions:

- The current \$75 fee for registration of supervision would be reduced to \$25 after December 31, 1996;
- The current \$100 fee for application processing would be reduced to \$25 after December 31, 1996, and \$50 after June 30, 1997;
- The current \$120 fee for examination is deleted from the regulation as this fee is now paid directly to an examination service contracted by the board; and
- The currently annual fee of \$85 for certification renewal would be reduced to a biennial fee of \$75.

**Estimated Economic Impact.** The primary economic effect of the proposed regulation would be to reduce the regulatory compliance costs incurred by licensed professional counselors. According to information provided by the Board of Professional Counselors and Marriage and Family Therapists, each year approximately 250 licensed professional counselors pay the registration of supervision fee, 200 pay the application fee, and 1,695 pay the license renewal fee. These figures imply that the total reduction in regulatory compliance costs occasioned by the proposed fee

reductions would be roughly \$211,025 in the biennium FY 97-98, and \$206,025 each biennium thereafter.<sup>1</sup>

Even though the total reduction in regulatory compliance costs occasioned by the proposed fee reductions is substantial, from an individual perspective, such fees represent only a very small portion of the total cost of entry into the counseling profession (e.g., total cost of entry would include all educational and training expenses). As a result, fee changes like the ones contained in the proposed regulation are unlikely to have a significant effect on the decision of individuals to enter or exit this profession. For this reason, the proposed regulation should have no economic affects beyond the anticipated reduction in regulatory compliance costs.

**Businesses and Entities Particularly Affected.** The proposed regulation particularly affects the 1,835 professional counselors currently licensed in Virginia, and anyone who may apply for such licensure in the future.

**Localities Particularly Affected.** No localities are particularly affected by this proposed regulation.

**Projected Impact on Employment.** The proposed regulation is not anticipated to have a significant effect on employment.

**Effects on the Use and Value of Private Property.** The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

**Summary of Analysis.** The proposed regulation reduces fees paid by professional counselors for licensure in the Commonwealth of Virginia. It is anticipated that the primary economic effect of these fee reductions would be to decrease total regulatory compliance costs by approximately \$211,025 in the biennium FY 97-98, and \$206,025 each biennium thereafter.

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

The agency concurs in the report of the Department of Planning and Budget.

#### Summary:

*The amendments are proposed to comply with statutory requirements to maintain revenue within 10% of expenditures over each biennium. The board is proposing the following fee changes:*

1. Reduce the application processing fee (currently \$100) to \$25 in FY 1997, adjusted to \$50 for FY 1998 and thereafter.

<sup>1</sup> These totals are based on the following calculations. For the FY 97-98 biennium: 1) a \$25,000 reduction in total registration of supervision fees (i.e., 250 times 2, times the \$50 fee reduction); plus 2) a \$25,000 reduction in total application fees (i.e., 200 times the FY 97 \$75 fee reduction, plus 200 times the FY 98 \$50 fee reduction); plus 3) a \$161,025 reduction in total license renewal fees (i.e., 1,695 times the \$95 fee reduction occasioned by changing to a biennial fee of \$75). For all subsequent bienniums: 1) a \$25,000 reduction in total registration of supervision fees (i.e., 250 times 2, times the \$50 fee reduction); plus 2) a \$20,000 reduction in total application fees (i.e., 200 times two, times the \$50 fee reduction); plus 3) a \$161,025 reduction in total license renewal fees (i.e., 1,695 times the \$95 fee reduction occasioned by changing to a biennial fee of \$75).

# Proposed Regulations

2. Reduce the registration processing fee (currently \$75) to \$25.

3. Change the current annual renewal fee of \$75 to a biennial renewal of \$75.

license fee prescribed for each year *biennium* the license was not renewed.

## 18 VAC 115-20-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a professional counselor:

	After December 31, 1996	After June 30, 1997
Registration of supervision	\$75 \$25	\$25
Change of supervisor	\$20	\$20
Application processing	\$100 \$25	\$50
Examination	\$120	
Biennial license renewal	\$85 \$75	\$75
Duplicate license	\$15	\$15
Endorsement to another jurisdiction	\$10	\$10
Late renewal	\$10	\$10
Replacement of or additional wall certificate	\$15	\$15
Returned check	\$15	\$15

B. Examination fees shall be paid directly to the examination service according to its requirements.

B. C. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

C. All fees are nonrefundable.

## 18 VAC 115-20-100. Annual *Biennial* renewal of licensure.

A. All licensees shall renew licenses on or before June 30 of each *odd-numbered* year.

A. B. Every license holder who intends to continue to practice shall submit to the ~~executive director~~ board on or before June 30 of each *odd-numbered* year:

1. A completed application for renewal of the license; and
2. The renewal fee prescribed in 18 VAC 115-20-20.

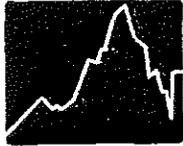
B. C. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

## 18 VAC 115-20-110. Late renewal; reinstatement.

A. A person whose license has expired may renew it within four years after its expiration date by paying the penalty fee prescribed in 18 VAC 115-20-20 as well as the license fee prescribed for each year *biennium* the license was not renewed.

B. A person who fails to renew a license for four years or more and wishes to resume practice shall reapply and pay the application fee prescribed in 18 VAC 115-20-20 and take the written examination.

C. Upon approval for reinstatement, the applicant shall pay the penalty fee prescribed in 18 VAC 115-20-20 and the



**COMMONWEALTH OF VIRGINIA**  
**BOARD OF PROFESSIONAL COUNSELORS AND**  
**MARRIAGE AND FAMILY THERAPISTS**

Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9912

**PROFESSIONAL COUNSELOR**  
**LICENSURE APPLICATION**

I hereby make application for licensure to practice as a Professional Counselor in the Commonwealth of Virginia. The following evidence of my qualifications is submitted with a check or money order in the amount of \$100.00 made payable to the Treasurer of Virginia. The application fee is non-refundable.

INSTRUCTIONS		PLEASE TYPE OR PRINT		USE BLACK INK	
1. Applicants must complete all sections.					
2. Completed application should be mailed to the above address.					
3. Application and supporting documents must be received no less than 90 days prior to the date of the written examination.					
<b>I. GENERAL INFORMATION</b>					
Name (Last, First, M.I., Suffix, Maiden Name)			Social Security Number		Date of Birth
Mailing Address (Street and/or Box Number, City, State, ZIP Code)				Home Telephone Number	
Business Name and Address (if different from above)				Business Telephone Number	
<b>EDUCATION:</b> State in chronological order the name and location of each graduate school where graduate course work has been completed. <b>GRADUATE TRANSCRIPTS MUST BE SUBMITTED DIRECTLY TO THE BOARD OFFICE FROM THE GRADUATE INSTITUTION.</b>					
Institution	Dates of Attendance		Major and/or Concentration	Degree Received	Date Degree Conferred
	From	To			

**ANSWER THE FOLLOWING QUESTIONS:**

	YES	NO
1. Have you ever been denied the privilege of taking an occupational licensure or certification examination? If yes, state what type of occupational examination and where: _____	[ ]	[ ]
2. Have you ever had any disciplinary action taken against an occupational license to practice or are any such actions pending? If yes, explain in detail (use extra paper if necessary): _____	[ ]	[ ]
3. Have you ever been convicted of a violation of or pled nolo contendere to any federal, state, or local statute, regulation or ordinance or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except for driving under the influence.) If yes, explain in detail: _____	[ ]	[ ]
4. Have you ever been terminated or asked to withdraw from any health care facility, agency, or practice? If yes, provide an explanation on a separate sheet of paper. _____	[ ]	[ ]

**II. SUPERVISED COUNSELING EXPERIENCE**

Indicate below person(s) designated as your supervisor(s) for professional counseling supervised experience, to whom verification form(s) will be sent. Verification of Supervision forms must be returned to the applicant by the supervisor in an envelope with the supervisor's signature on the envelope seal.

Supervisor's Name \_\_\_\_\_

Institution or Business Name and Address \_\_\_\_\_

Current Address (if different from above) \_\_\_\_\_

Dates Applicant Employed	Total Hours of Face-to-Face Supervision	Total Hours of Group Supervision
From:	To:	

Description of Supervised Work Experience \_\_\_\_\_

Supervisor's Name		
Institution or Business Name and Address		
Current Address (if different from above)		
Dates Applicant Employed From: To:	Total Hours of Face-to-Face Supervision	Total Hours of Group Supervision
Description of Supervised Work Experience		
Supervisor's Name		
Institution or Business Name and Address		
Current Address (if different from above)		
Dates Applicant Employed From: To:	Total Hours of Face-to-Face Supervision	Total Hours of Group Supervision
Description of Supervised Work Experience		
<b>III. POST-GRADUATE DEGREE INTERNSHIP</b> (May not apply to all applicants) Have you had a post-graduate degree internship or practicum? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Institution or Business Name: _____		
Street Address: _____		
City _____	State _____	ZIP Code _____
Hours per week: _____	Dates: From _____ to _____	
(If Applicable, Submit Verification of Supervision Form)		

**IV. STANDARDS OF PRACTICE** - Your practice is limited to your demonstrated areas of competence. Please list below your specialized areas of practice that can be supported by documentation of training or education.

CLIENT POPULATION(S)	COUNSELING TECHNIQUES USED	ASSESSMENT INSTRUMENTS USED

**V. LICENSURE/CERTIFICATION** - List all the states in which you now hold or have ever held an occupational license or certificate to practice professional counseling in order of attainment.

STATE	LICENSE/CERTIFICATE NUMBER	ISSUE DATE	TYPE OF LICENSE/CERTIFICATE

**VI. REFERENCES** - Please list and submit references from three individuals other than your supervisors who are acquainted with your professional work.

NAME AND ADDRESS	TITLE

The following statement must be executed by a Notary Public. This form is not valid unless properly notarized.

**AFFIDAVIT**  
(To be completed before a notary public)

State of \_\_\_\_\_ County/City of \_\_\_\_\_

Name \_\_\_\_\_ being duly sworn, says that he/she is the person who is referred to in the foregoing application for licensure as a professional counselor in the Commonwealth of Virginia; that the statements herein contained are true in every respect, that he/she has complied with all requirements of the law; and that he/she has read and understands this affidavit.

\_\_\_\_\_  
Signature of Applicant

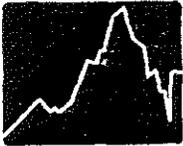
Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

My commission expires on \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

SEAL

VA.R. Doc. No. R96-401; Filed June 5, 1996, 10:50 a.m.



**COMMONWEALTH OF VIRGINIA**

**BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS**

Department of Health Professions  
6606 West Broad Street, 4th Floor  
Richmond, Virginia 23230-1717  
(804) 662-9912

**REGISTRATION OF SUPERVISION  
POST-GRADUATE DEGREE SUPERVISED EXPERIENCE**

**FEES:** \$75.00 Initial Registration (one supervisor)  
\$20.00 Each Additional Registration  
Make all checks payable to THE TREASURER OF VIRGINIA - Registration fees are NON-REFUNDABLE

THIS FORM IS TO BE COMPLETED BY THE TRAINEE AND THE SUPERVISOR

CHECK ONE:  Initial Registration       Add Supervisor       Change Supervisor

<b>TRAINEE INFORMATION</b> (Please type or print)			
Name (Last, First, M.I., Suffix, Maiden Name)		Social Security Number	Date of Birth
Mailing Address (Street and/or Box Number, City, State, ZIP Code)		Home Telephone Number	
Business Name and Address (Where you are providing supervised counseling services)		Business Telephone Number	

**EDUCATION:** State in chronological order the name and location of each graduate school where graduate course work has been completed. GRADUATE TRANSCRIPTS MUST BE SUBMITTED DIRECTLY TO THE BOARD OFFICE FROM THE GRADUATE INSTITUTION PRIOR TO APPROVAL OF SUPERVISION.

Institution	Dates of Attendance		Major and/or Concentration	Degree Received	Date Degree Conferred
	From	To			

REGISTRATION OF SUPERVISION (continued)

<b>SUPERVISOR INFORMATION</b>			
Name (Last, First, M.I., Suffix, Maiden Name)		Social Security Number	Date of Birth
Business Address		Telephone Number	
License	License Number	Initial Licensure Date	Licensure Expiration Date
State: _____ (If supervisor is not licensed in Virginia, a completed Verification of Licensure form from the state in which the supervisor is licensed must be submitted to the Board.)			
<b>SUPERVISION CONTRACT</b>			
<p><b>SUPERVISION TO BE PROVIDED TRAINEE</b> - Supervision agreement should include at least one hour per week of face-to-face supervision. Two hours of group supervision may be substituted for one hour of individual face-to-face supervision for one-half of the required 200 hours of supervision. Indicate whether supervision is on-site or off-site. Provide detailed information of supervision to be given.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>			
<p><b>SERVICES TO BE RENDERED BY THE TRAINEE WHILE IN SUPERVISION</b> - Include population of clients to receive service, assessments to be used, and counseling techniques to be used.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>			
<p>I, _____ (Supervisor) declare under penalty of perjury under the laws of the Commonwealth of Virginia that I have professional training in supervision, and that I will not provide supervision to _____ (Trainee) in areas outside of the competencies of my license to practice as a _____ (License of Supervisor) As supervisor, I assume responsibility for the clinical activities of the individual registered under my supervision. We hereby agree to this supervision contract which is being registered with the Board of Professional Counselors and Marriage and Family Therapists.</p> <p>Signature of Supervisor: _____ Date: _____</p> <p>Signature of Trainee: _____ Date: _____</p>			

# Proposed Regulations

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**Title of Regulation:** 18 VAC 115-30-10 et seq. **Regulations Governing the Certification of Substance Abuse Counselors (amending 18 VAC 115-30-30, 18 VAC 115-30-110, and 18 VAC 115-30-120).**

**Statutory Authority:** §§ 54.1-113, 54.1-2400, and 54.1-3503 of the Code of Virginia.

**Public Hearing Date:** July 23, 1996 - 9 a.m.

Public comments may be submitted until August 23, 1996.

(See Calendar of Events section for additional information)

**Basis:** Chapter 1 (§ 54.1-100 et seq.) and Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia provide the basis for these regulations. Chapter 24 establishes the general powers and duties of health regulatory boards including the power to set fees and the responsibility to promulgate regulations. Section 54.1-113 requires the board to amend its fees when an analysis of the biennial report of revenues and expenses shows more than a 10% differential.

**Purpose:** The purpose of the amendments is to comply with the statutory requirement of § 54.1-113 for a reduction in fees which will eliminate the surplus in board funds and yet produce sufficient revenue to meet expenses for projected budgets. An amendment is also proposed to establish a biennial rather than an annual renewal schedule.

**Substance:** 18 VAC 115-30-30 is being amended to:

1. Reduce the fee for registration of supervision from the current fee of \$25 to \$10 in 1997 and \$15 in 1998 and thereafter.
2. Reduce the fee for processing of an application for certification from \$50 to \$20 in 1997 and \$25 in 1998 and thereafter.
3. Reduce the annual renewal fee of \$40 for certified substance abuse counselors to a biennial renewal fee of \$40.
4. Eliminate the fee for the certification examination as the fee is now paid directly to an examination service with which the board has contracted for administration and grading.

Amendments are proposed to 18 VAC 115-30-110 to change the renewal schedule from an annual renewal to a biennial renewal for certificate holders.

18 VAC 115-30-120 is being amended to conform regulations on reinstatement with the amended language on biennial renewal.

**Issues:** Issues for the board to consider in the reduction of its fees were: (i) whether to adopt a one-time reduction and then establish higher permanent fees; (ii) whether to adopt a biennial renewal schedule; and (iii) which fees should be reduced. To determine proposed amendments, the finance office of the department presented the board with a projection of the revenue and expenses with the current fee structure and three proposals for fee reductions.

Proposal #1 would include a one-time reduction of fees in 1997 and a permanent reduction in FY 1998 and would retain an annual renewal.

Proposal #2 would include a one-time free renewal for 1997 and a reduction in other fees and would retain an annual renewal. The application fee and registration of supervision fee would be lowered in 1997 and would be set at a higher rate thereafter. However, all fees would be equal to or less than current fees.

Proposal #3 would change the renewal of certification to a biennial cycle and would permanently lower the renewal fee to \$40 biennially. The application fee would be reduced from the current cost of \$50 to \$20 in 1997 and \$25 thereafter. The registration of supervision would be lowered from the current fee of \$25 to \$10 in 1997 and then \$15 thereafter.

The board selected proposal #3 as the more reasonable and equitable for all certified substance abuse counselors as well as for those seeking certification. Proposal #3 also changes renewals to a biennial schedule, which is more cost effective for the board and its regulated practitioners. Proposals #1 and #2 would result in higher renewal costs over the two-year period. Fees identified for reduction are those applicable to all applicants and certificate holders rather than a select number of persons who might have a late renewal or need a duplicate certificate. Therefore, the proposals do not reduce those fees.

Advantages for applicants and certified substance abuse counselors:

1. There is a cost benefit to the applicant for whom certification would be a less expensive process (application fee would be reduced from \$50 to \$20 in 1997 and \$25 thereafter). Applicants who have completed their educational requirements and are in the process of securing their supervised practice requirements will benefit from a significant reduction in the cost of registering supervision from the current fee of \$25 to a proposed fee of \$10 in 1997 and \$15 in 1998. The savings in the costs of applying and qualifying for certification as a substance abuse counselor will be approximately \$40.
2. Likewise, there would be a significant benefit to current certificate holders whose renewal fees would be reduced from an annual fee of \$40 to a biennial fee of \$40.

Advantages for the public: There may be an indirect advantage to the public. Since costs for initial certification and for renewal would be significantly reduced, those savings may be passed along to persons who utilize the services of a substance abuse counselor. The significant reduction in costs for initial certification may encourage additional counselors to become certified and to set up practice in the state thereby improving the quality and availability of mental health services to its citizens.

Disadvantages: The proposed regulation poses no disadvantages to regulated entities or to the public.

## Fiscal Impact Prepared by the Agency:

A. There are approximately 859 certified substance abuse counselors affected by this proposal.

Cost of Compliance: Proposed regulations would reduce costs to individuals applying for certification from approximately \$75 (\$50 for application processing and \$25 for registration of supervision) to \$30 in 1997 (\$20 for application processing and \$10 for registration of supervision) and \$40 thereafter (\$25 for application processing and \$15 for registration of supervision).

Substance abuse counselors currently certified by the board will have renewal fees reduced from \$40 each year to \$40 paid biennially for a total savings of \$40 every two years.

B. Costs to the agency for implementation: There will be minimal costs (less than \$1,000) to the agency for the promulgation of regulations, such as: mailing of notices to the public participation guidelines list, providing a public hearing on proposed regulations, and copying and mailing final regulations. The board will attempt to combine mailing notices and information on regulations with other required mailings and will hold its hearing during a regularly scheduled board meeting.

The reduction in revenue for the board will result in a reduction of its current surplus for the 1996-98 biennium and is projected to result in a small net deficit of approximately 4.0% of the total budget for the 1998-2000 biennium.

C. Costs to local governments: There will be no impact of these regulations on local government.

D. Costs to small businesses: There will be a positive impact on counselors who operate their practices as a small business. The reduction in renewal fees from \$40 annually to \$40 biennially will save each counselor in private practice \$40 over a two-year period.

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

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic affects.

Summary of the Proposed Regulation. The proposed regulation reduces fees paid by substance abuse counselors for certification in the Commonwealth of Virginia. The purpose of these fee reductions is to bring the Board of Professional Counselors and Marriage and Family Therapists into compliance with § 54.1-113 of the Code of Virginia. Section 54.1-113 requires all regulatory boards under the Department of Health Professions to revise their fee

schedules if, after the close of any biennium, there is a more than 10% difference between revenues and expenses.

The proposed regulation makes the following fee revisions:

- The current \$25 fee for registration of supervision would be reduced to \$10 after December 31, 1996, and \$15 after June 30, 1997;
- The current \$50 fee for application processing would be reduced to \$20 after December 31, 1996, and \$25 after June 30, 1997;
- The current \$120 fee for examination is deleted from the regulation as this fee is now paid directly to an examination service contracted by the Board; and
- The currently annual fee of \$40 for certification renewal would be reduced to a biennial fee of \$40.

Estimated Economic Impact. The primary economic effect of the proposed regulation would be to reduce the regulatory compliance costs incurred by substance abuse counselors. According to information provided by the Board of Professional Counselors and Marriage and Family Therapists, each year approximately 65 substance abuse counselors pay the registration or supervision fee, 95 pay the application processing fee, and 730 pay the certificate renewal fee. These figures imply that the total reduction in regulatory compliance costs occasioned by the proposed fee reductions would be roughly \$36,050 in the biennium FY 97-98, and \$35,250 each biennium thereafter.<sup>1</sup>

Even though the total reduction in regulatory compliance costs occasioned by the proposed fee reductions are substantial, from an individual perspective, such fees represent only a very small portion of the total cost of entry into the profession of substance abuse counseling (e.g., total cost of entry would include all educational and training expenses). As a result, fee changes like the ones contained in the proposed regulation are unlikely to have a significant effect on the decision of individuals to enter or exit this profession. For this reason, the proposed regulation should have no economic affects beyond the anticipated reduction in regulatory compliance costs.

Businesses and Entities Particularly Affected. The proposed regulation particularly affects the 859 substance abuse counselors currently certified in Virginia, and anyone who may apply for such certification in the future.

Localities Particularly Affected. No localities are particularly affected by this proposed regulation.

<sup>1</sup> These totals are based on the following calculations. For the FY 97-98 biennium: 1) a \$1,625 reduction in total registration of supervision fees (i.e., 65 times the FY 97 \$15 fee reduction, plus 65 times the FY 98 \$10 fee reduction); plus 2) a \$5,225 reduction in total application processing fees (i.e., 95 times the FY 97 \$30 fee reduction, plus 65 times the FY 98 \$25 fee reduction); plus 3) a \$29,200 reduction in total certification renewal fees (i.e., 730 times the \$40 fee elimination for FY 98). For all subsequent bienniums: 1) a \$1,300 reduction in total registration of supervision fees (i.e., 65 times two, times the \$10 fee reduction); plus 2) a \$4,750 reduction in total application processing fees (i.e., 95 times two, times the \$25 fee reduction); plus 3) a \$29,200 reduction in total certification renewal fees (i.e., 730 times the \$40 fee elimination for one of the two years).

# Proposed Regulations

**Projected Impact on Employment.** The proposed regulation is not anticipated to have a significant effect on employment.

**Effects on the Use and Value of Private Property.** The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

**Summary of Analysis.** The proposed regulation reduces fees paid by substance abuse counselors for certification in the Commonwealth of Virginia. It is anticipated that the primary economic effect of these fee reductions would be to decrease total regulatory compliance costs by approximately \$36,050 in the biennium FY 97-98, and \$35,250 each biennium thereafter.

## Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:

The agency concurs in the report of the Department of Planning and Budget.

### Summary:

*The proposed amendments comply with statutory requirements to maintain revenue within 10% of expenditures over each biennium. The board is proposing the following fee changes:*

- Reduce the application processing fee (currently \$50) to \$20 in FY 1997, adjusted to \$25 for FY 1998 and thereafter.
- Reduce the registration processing fee (currently \$25) to \$10 in FY 1997, adjusted to \$15 for FY 1998 and thereafter.
- Change the current annual renewal fee of \$40 to a biennial renewal of \$40.

### **18 VAC 115-30-30. Fees required by the board.**

A. The board has established the following fees applicable to the certification of substance abuse counselors:

	After December 31, 1996	After June 30, 1997
Registration of supervision	\$25 \$10	\$15
Application processing	\$50 \$20	\$25
Examination	\$120	
Biennial certification renewal	\$40	\$40
Duplicate certificate	\$15	\$15
Late renewal	\$10	\$10
Replacement of or additional wall certificate	\$15	\$15
Name change	\$10	\$10
Returned check	\$15	\$15

B. Fees shall be paid by check or money order. Examination fees shall be made payable to the examination service and mailed directly to the examination service. All other fees shall be made payable to the Treasurer of Virginia and forwarded to the Board of Professional Counselors and Marriage and Family Therapists.

### **18 VAC 115-30-110. Annual Biennial renewal of certificate.**

Every certificate issued by the board shall expire on June 30 of each *odd-numbered* year.

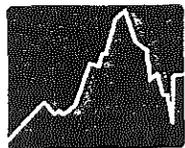
1. Along with the renewal application, the certified substance abuse counselor shall submit the renewal fee prescribed in 18 VAC 115-30-30 of this chapter.
2. Failure to receive a renewal notice and application forms shall not excuse the certified substance abuse counselor from the renewal requirement.

### **18 VAC 115-30-120. Reinstatement.**

A. A person whose certificate has expired may renew it within four years after its expiration date by paying the penalty fee prescribed in 18 VAC 115-30-30 and the certification fee prescribed for each year *biennium* the certificate was not renewed.

B. A person who fails to renew a certificate for four years or more shall:

1. Pay the late renewal fee prescribed in 18 VAC 115-30-30 and the certification fee prescribed for each year *biennium* the certificate was not renewed;
2. Provide evidence satisfactory to the board of current ability to practice as evidenced by:
  - a. Continuous practice of substance abuse counseling during the preceding two years and completion of 20 hours of continuing education in substance abuse counseling per year for the preceding two years; or
  - b. Completing at least 40 hours of substance abuse education in the preceding 12 months.



**COMMONWEALTH OF VIRGINIA**  
**BOARD OF PROFESSIONAL COUNSELORS AND**  
**MARRIAGE AND FAMILY THERAPISTS**

Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-7328

**APPLICATION FOR CERTIFICATION AS A**  
**SUBSTANCE ABUSE COUNSELOR**

I hereby make application for certification to practice as a Substance Abuse Counselor in the Commonwealth of Virginia. The following evidence of my qualifications is submitted with a check or money order in the amount of \$50.00 made payable to the Treasurer of Virginia. The application fee is non-refundable.

INSTRUCTIONS		PLEASE TYPE OR PRINT		USE BLACK INK	
1. Applicants must complete all sections. 2. Completed application should be mailed to the above address. 3. Application and supporting documents must be received no less than 90 days prior to the date of the written examination.					
<b>I. GENERAL INFORMATION</b>					
Name (Last, First, M.I., Suffix, Maiden Name)		Social Security Number		Date of Birth	
Mailing Address (Street and/or Box Number, City, State, ZIP Code)			Home Telephone Number		
Business Name and Address (if different from above)			Business Telephone Number		
<b>II. EDUCATIONAL EXPERIENCE</b>					
Applicants must submit official transcripts in sealed, signed envelopes with this application. Applicants with GED certificates must include official documentation of that certificate in a sealed, signed envelope.					
Educational Institutions Attended		Dates Attended		Degree	Conferred
High School/G.E.D./College		From To		Month	Year
City & State		Mo.	Yr.	Mo.	Yr.

III. SUPERVISED COUNSELING EXPERIENCE			
Indicate below person(s) designated as your supervisor(s) for substance abuse counseling supervised experience. Verification of Supervision forms must be returned to the applicant by the supervisor in an envelope with the supervisor's signature on the envelope seal.			
Supervisor's Name			
Institution or Business Name and Address			
Current Address (if different from above)			
Dates Applicant Employed From: To:		Total Hours of Face-to-Face Supervision	Total Hours of Group Supervision
Description of Supervised Work Experience			
Supervisor's Name			
Institution or Business Name and Address			
Current Address (if different from above)			
Dates Applicant Employed From: To:		Total Hours of Face-to-Face Supervision	Total Hours of Group Supervision
Description of Supervised Work Experience			

**IV. SUBSTANCE ABUSE COUNSELOR EDUCATIONAL REQUIREMENTS**

Applicants are required to document 400 hours in a substance abuse educational program from one of the following: (1) an accredited university or college; (2) an integrated program approved by the Board; (3) an individualized program of seminars and workshops approved by the Board at the time of the application.

**COURSE WORK MUST BE VERIFIED THROUGH OFFICIAL TRANSCRIPTS TO BE INCLUDED IN THE APPLICATION PACKAGE. CLOCK HOURS REPORTED MUST BE ONLY THOSE HOURS SPENT COVERING THE SPECIFIC CONTENT AREA. TO VERIFY COURSE CONTENT, ADDITIONAL INFORMATION SUCH AS COURSE DESCRIPTIONS OR SYLLABI MAY BE REQUIRED BY THE BOARD.**

**SEMINARS AND WORKSHOPS MUST BE VERIFIED THROUGH COPIES OF CERTIFICATES. IF CLOCK HOURS OR C.E.U.s ARE NOT RECORDED ON THE CERTIFICATE, SEPARATE DOCUMENTATION OF CLOCK HOURS, SIGNED BY THE PRESENTER OR YOUR SUPERVISOR MUST BE INCLUDED.**

**IV.A. DIDACTIC TRAINING (220 HOURS)**  
A minimum of ten (10) hours in each of the following areas must be documented.

Content	Institution/Agency	Course Number and Title/ Workshop Title	Clock Hours*
Understanding the Dynamics of Human Behavior			
Signs and Symptoms of Substance Abuse			
Counseling and Treatment Approaches, Substance Abuse Research, Group Therapy and Other Adjunctive Treatment and Support Groups			
Continuum of Care and Case Management Skills			
Recovery Process and Relapse Prevention Methods			
Ethics and Professional Identity			

\* One semester credit is equivalent to 15 clock hours; One quarter credit is equivalent to 10 clock hours; One C.E.U. credit is equivalent to 10 clock hours.

**IV.B. SUBSTANCE ABUSE EDUCATION TASKS (180 HOURS)**  
A minimum of eight (8) hours in each of the following areas must be documented. Please provide school transcripts for practicums and internships. If tasks were completed on the job, supervisor must sign the form verifying each task completed.

Tasks	Number of Hours Completed	School/Facility Agency	Course Number and Title of Practicum/Internship or Supervisor's Signature	Date
1. Screening				
2. Intake				
3. Orientation				
4. Assessment				
5. Treatment Plan				
6. Counseling Individual				
7. Case Management				
8. Crisis Intervention				
9. Client Education				
10. Referral				
11. Reports and Recordkeeping				
12. Consultation with other professionals				



APPLICANT'S NAME: \_\_\_\_\_

**FORM A  
SUPERVISOR'S EXPERIENCE AND EDUCATION**

Supervisor is a Certified Substance Abuse Counselor in the Commonwealth of Virginia;

1. who has two years experience as a board certified substance abuse counselor by the Virginia Board of Professional Counselors and Marriage and Family Therapists;

Certificate Number	Issue Date	Expiration Date

AND

2. who also has board recognized national certification in substance abuse counseling.

Certificate Issued By	Issue Date	Expiration Date

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA THAT THE FOREGOING IS TRUE AND CORRECT.

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

<b>NATURE OF SUPERVISION</b>	
Supervisory setting (Name of Institution, Agency) _____	
Hours of individual and/or group supervision planned PER WEEK: Individual _____ Group _____ <i>Review Section 18 VAC 113-30-60 of the regulations which outlines the experience requirement.</i>	
Nature of services to be rendered by the supervisee: _____ _____ _____	
Nature of services to be rendered by the supervisor: _____ _____ _____	
<b>SUPERVISORY AGREEMENT</b>	
I, _____ (Name of Supervisor) agree to provide supervision as described within this agreement for a _____	
TOTAL of _____ individual hours and/or _____ group hours. <i>Review Section 18 VAC 113-30-60 of the regulations which outlines the experience requirement.</i> I agree to supervise _____ (Name of Supervisee) in accordance with the regulations of the Virginia Board of Professional Counselors and Marriage and Family Therapists governing the Certification of Substance Abuse Counselors. I also agree to report the performance of the supervisee on a form provided by the Board at the conclusion of the supervised experience.	
I, _____ (Name of Supervisee) agree to present myself for supervision for the number of hours designated in this agreement. I understand _____ (Name of Supervisor) is responsible for my professional activities during the time I am working under his/her supervision.	
DATE SUPERVISION BEGAN/WILL BEGIN: _____	
_____ Signature of Supervisor	_____ Signature of Supervisee
Date: _____	
NOTE: 1. SUPERVISEES MUST SUBMIT A REGISTRATION OF SUPERVISION FORM FOR EACH INDIVIDUAL PROVIDING SUPERVISION FOR THE PURPOSE OF CERTIFICATION.	
2. THIS FORM WILL NOT BE REVIEWED BY THE BOARD UNTIL OFFICIAL TRANSCRIPTS ARE RECEIVED DOCUMENTING COMPLETION OF HIGH SCHOOL OR A COLLEGE DEGREE.	



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# Proposed Regulations

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## VIRGINIA WASTE MANAGEMENT BOARD

### Title of Regulation: 9 VAC 20-100-10 et seq. Yard Waste Composting Facility Regulations (REPEALING).

V.A.R. Doc. No. R96-403; Filed June 5, 1996, 11:00 a.m.

### Title of Regulation: 9 VAC 20-101-10 et seq. Vegetative Waste Management and Yard Waste Composting Regulations.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

Public Hearing Dates: July 29, 1996 - 1 p.m. (Leesburg)  
July 30, 1996 - 10 a.m. (Williamsburg)  
August 1, 1996 - 10 a.m. (Roanoke)

Public comments may be submitted until August 23, 1996.

(See Calendar of Events section for additional information)

Basis: Article 2 (§ 10.1-1408.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia contains the laws governing the management of nonhazardous solid wastes. Section 10.1-1408.1 of the Code of Virginia requires all disposal, treatment and storage of nonhazardous solid waste be by permit from the Director of the Department of Environmental Quality (department). In subsections I, K, and L, the statute mandates exemptions and reduced permitting procedures for vegetative waste management and yard waste composting facilities. The Virginia Waste Management Board (board) is authorized by § 10.1-1402 of the statute to promulgate regulations concerning the permitting process, and the board has adopted general regulations for nonhazardous solid waste management. Under the same rulemaking authority, the board intends to make separate regulations to provide the exemptions and reduced permitting procedures required of it by the Act's subsections previously cited.

Purpose: The principal purpose of the board's regulations is to provide clear and appropriate regulations for the management of waste so that improved waste management practices in the Commonwealth will protect the public health and the environment. In order to fulfill its duty to prescribe an orderly process for the issuance of the permits required by the Act, the board has adopted procedural and substantive regulations governing the management of nonhazardous solid waste. Additions and modifications of the Act have defined vegetative waste and yard waste for the purpose of mandating exemptions and reduced permitting requirements for several types of facilities if they meet specified criteria. The purpose of these regulations is to provide administrative procedures and technical standards for those facilities and to consolidate in one text the statutory and regulatory provisions related to yard waste composting and vegetative waste management facilities.

Substance: The regulations provide regulatory relief in the form of exemptions from regulation and reduced permitting requirement for vegetative waste management and yard waste composting facilities. Both procedural and technical provisions are included. Some of the same items of regulatory relief are provided in the Act and other regulations of the board; however, some provisions of the Act have been added or amended since the adoption of parallel regulations

by the board. Revisions paralleling the statutory changes are included in the regulation. The regulations also provide new relief needed to ensure that facilities similar to those expressly mentioned in the Act or previous regulations are treated in a similar manner. One exemption relieves the owners of real property from the requirement to obtain a permit to dispose of arboreal wastes cleared from the land in small units located on that property; however, the owner must comply with 15 criteria to qualify for the exemption.

Issues: By clarifying and extending regulatory relief for operators of vegetative waste management and yard waste composting facilities and by consolidation of applicable statutory and regulatory provision in one place for convenience, the regulations are a significant advantage to those operators. The briefer review of proposals by the department's staff prior to construction because of the reduced permitting requirements could be a disadvantage to host communities if the facilities prove inadequate. The lower risk associated with arboreal waste facilities and the participation of local governments in the "permit by rule" process should minimize the potential for problems. Also, if an operator intentionally violates the criteria for an exemption or reduced permitting requirement, that operator would forfeit the exemption or reduced status.

An operator under an exemption or reduced permitting requirement will receive less preconstruction scrutiny by the department. Therefore, violations of the regulations may occur more frequently and be more difficult to resolve. This additional caseload for the department may be offset by a decreased number of unpermitted operation and clandestine operators.

The exemption from permitting requirements for small disposal units for on-site disposal of land clearing debris would reduce the cost of disposal for owners developing their land, and it would eliminate delays from governmental review. The lowered surveillance by government may encourage abuse by developers and other who can gain access to a site. A plethora of these sites could arise producing numerous open dumps, sometimes illicitly containing paints, solvents and other hazardous wastes.

Estimated Impact: The Act or current regulations contain many of the same provisions in these regulations, and many vegetative waste and yard waste composting facilities will not experience any direct impact. An undetermined number of vegetative waste treatment and disposal facilities will have reduced permitting requirements. Developmental costs and market forces are likely to limit the development of such facilities to less than 20 per year. Each could realize savings in development costs and fees of \$20,000 to \$100,000. Assuming the median savings per site, the maximum overall saving to operators would be \$1,200,000 per annum. Others generators could benefit from expanded disposal options and competitive markets for disposal services. Some disposal service vendors may experience reduced markets for their services.

Some owners in the development of their real property may choose to use the exemption for small on-site disposal units. Because of the qualification criteria, only a few larger developments are expected to use the exemption, mostly in rural areas where lot values are lower. If each year six sites

of two hundred lots each open two units per site, the twelve units would save the costs of disposing of the waste by other methods. Because land has varying amounts of arboreal wastes, the value of this disposal could be \$1,000 to \$3,000 per lot. A median value gives a total projected value of \$2,400,000 annual. This amount would be the amount of the fees that would no longer go to teamsters and off-site landfill operators; however, the real estate developer would have lesser saving because the exemption requires expenses for groundwater monitoring and other qualification tasks. If these expenses are \$50,000 per unit, the savings are reduce by \$600,000 per year, and the actual amount saved by the developers would be \$1,800,000 per year. Commonwealth and local government agencies would expend funds in increased surveillance and enforcement tasks; however, there is no history on which to project an incremental cost for these activities.

Local Governments Subject to Disproportionate Impact: No local governments are known to be uniquely or disproportionately impacted.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic affects.

**Summary of the Proposed Regulation.** The proposed regulation provides certain exemptions from current solid waste management regulations for: 1) vegetative waste and yard waste composting facilities; and 2) small waste disposal units for vegetative wastes generated by land clearing. Vegetative waste is defined as including, but not limited to, leaves, grass trimmings, and woody wastes such as pruning, bark, roots, and stumps.

**Vegetative Waste Facilities.** For the most part, this portion of the proposed regulation simply incorporates existing regulations for yard waste composting facilities and expands them to include provisions for composting woody waste. One difference is that the requirement that such facilities have a minimum required separation of 24 inches between seasonal high water table and ground surface has been removed and replaced with language that permits a separation of less than 24 inches if facilities meet certain specified standards for the control of run-on, run-off, and leachate.

**Small Waste Disposal Units.** The proposed regulation exempts owners of real property who operate small waste disposal units (small landfills) for the receipt of vegetative waste generated by on-site land clearing from some provisions of the solid waste management regulations. Such

units must: not receive waste other than vegetative or yard waste, and not receive grass trimmings or bulk leaves; be no larger than one-half acre; be at least 100 feet from any stream or body of water; be more than 200 feet from any groundwater source of drinking water; be at least 24 inches above the seasonal high water table; not obstruct the scenic view from any public road; have controlled access; and be closed within two years from the date they first receive waste. In addition, such units are not exempt from those portions of the solid waste management regulations pertaining to: ground water monitoring; decomposition gas monitoring and venting; and financial assurance requirements.

**Estimated Economic Impact.**

**Vegetative Waste Facilities.** There are two primary economic impacts associated with this portion of the proposed regulation: 1) a potential reduction in the regulatory compliance costs associated with disposal of vegetative waste; and 2) a potential reduction in the future landfill space required for disposal of vegetative waste.

With respect to the reduction in regulatory compliance costs, industry estimates provided by DEQ indicate that exempting vegetative waste facilities from the more stringent solid waste management regulation and placing them under the less stringent proposed regulation may reduce development costs by \$20,000 to \$100,000 per facility, depending on the size of the facility involved. This implies an average reduction in development costs of roughly \$60,000 per facility. Because the types of facilities covered by the proposed regulation are a relatively new phenomena, it is difficult to estimate the precise number of facilities that will be affected. Rough estimates by DEQ suggest that as many as 20 of these facilities could be opened per year. This would suggest a state-wide reduction in regulatory compliance costs of approximately \$1,200,000 per year.

With respect to the reduction in future landfill space requirements, most vegetative waste is currently disposed of in Construction, Demolition, and Debris (CDD) landfills. A survey conducted in 1989 by the Virginia Cooperative Extension Service indicated that approximately 11 percent of municipal solid waste in Virginia is comprised of woody waste.<sup>1</sup> To the extent that the proposed regulation encourages the creation of new vegetative waste facilities, some proportion of the woody waste currently buried in CDD landfills will be diverted to alternative facilities where it will be recycled into compost. Such diversion would reduce the need for future landfill space and, because production costs are lower for composting facilities than for landfills, reduce the overall costs associated with disposing of woody waste. Without additional information on the number of new vegetative waste facilities that may be opened, and the volume of woody waste that would be diverted to such facilities, it is difficult to estimate of the exact magnitude of this reduction in disposal costs however.

Finally, because this portion of the proposed regulation involves a reduction in regulatory stringency, a natural question would be whether such a change poses a significant

<sup>1</sup> See The Feasibility of a Statewide Yardwaste Composting Program for Virginia, House Document No. 34, Commonwealth of Virginia, p.36.

# Proposed Regulations

risk of negative environmental impact. Experts in this field, such as Dr. Gregory Evanylo, Department of Crop and Soil Environmental Sciences, Virginia Polytechnic Institute, have informed DPB that, because of the nature of the vegetative waste involved, it is highly improbable that the proposed change would have adverse environmental consequences. In addition, because these facilities would be relatively few in number and could be monitored fairly easily, and because composting is an above ground recycling process, the potential for these facilities accepting material other than vegetative waste is small.

**Small Waste Disposal Units.** DPB's analysis indicates that the compliance costs associated with disposal of vegetative waste in accordance with this portion of the proposed regulation are in some cases close to, or in excess of, the compliance costs associated with approved alternative methods. As a result, it is likely that many real property owners will choose not to take advantage of this proposed alternative for disposing of vegetative waste. Consequently, the realized economic impact of this portion of the proposed regulation will presumably be small.

The currently available alternatives for disposing of the vegetative waste that would be received by the proposed facilities (*i.e.*, primarily stumps and root mats) are: 1) hauling to CDD landfills; and 2) grinding/chipping. According to estimates provided by the Home Builders Association of Virginia (HBAV), current costs for hauling the amount of material that could be disposed of in one of the proposed small waste disposal units to CDD landfills are \$232,848 for the central Virginia area, and \$347,760 for the southwestern Virginia area.<sup>2</sup> Alternatively, the estimated current cost for grinding/chipping the same amount of material is \$157,248.<sup>3</sup>

Information provided by HBAV indicates that the approximate costs associated with disposal of vegetative waste in one of the proposed small waste disposal units would be: \$52,000 for excavation, erosion and sediment control, security, daily

cover, and capping costs;<sup>4</sup> \$73,000 for installation of groundwater and gas monitoring equipment, and periodic monitoring over the required ten year period; \$15,000 for land; and \$64,000 to meet financial assurance requirements.<sup>5</sup> These component costs indicate a total cost per disposal unit of around \$204,000. Taking into account potential liability and other contingencies that might arise during, or after, the required ten year period of post-closure care, this total cost is close to the estimated alternative cost of \$232,848 for hauling to CDD landfills in the central Virginia area, and is in excess of the estimated alternative cost of \$157,248 for grinding/chipping.

**Businesses and Entities Particularly Affected.** The proposed regulation particularly affects the general public, composting facilities, developers, and other businesses involved in the disposal of vegetative waste and yard waste.

**Localities Particularly Affected.** No localities are particularly affected by the proposed regulation.

**Projected Impact on Employment.** The proposed regulation is not expected to have a significant affect on employment.

**Effects on the Use and Value of Private Property.** To the extent that the proposed regulation increases the options available to real property owners for the commercial use and development of their property, it could have a positive impact on the value of that property.

**Comments.** The proposed small waste disposal units are unlikely to be considered an economically viable method for the disposal of vegetative waste unless the costs associated with these units are made comparable to, or below, those of currently approved alternatives. One way to accomplish this would be modify the regulation to expand the economic potential of these units. For example, removing the restriction that such units not obstruct the scenic view from any public road might allow developers to sometimes employ these units as sound barriers around subdivisions.

<sup>2</sup> This estimate is provided by HBAV. DPB has reviewed this estimate, as well as those that follow, and is reasonably confident of its accuracy. HBAV's estimate is based on the following assumptions. Accounting for sloping, daily cover, and other factors, a small waste disposal unit, as currently specified in the proposed regulation, can accept 12,067 cubic yards, or 6,046 tons of material. This equates to 756 truck loads of 8 tons of material each.

Average tipping fees in central Virginia are estimated to be \$240 per truckload, and average hauling costs are estimated to be \$68 (calculated as 1.5 hours times \$45 per hour). This provides an estimate of total cost per truckload of \$308. Multiplying this total cost per truckload times the estimated number of truckloads provides the \$232,848 figure for estimated equivalent total cost per disposal site.

Average tipping fees in southwestern Virginia are estimated to be \$360 per truckload, and average hauling costs are estimated to be \$100 (calculated as 2.2 hours times \$45 per hour). This provides an estimate of total cost per truckload of \$460. Multiplying this total cost per truckload times the estimated number of truckloads provides the \$347,760 figure for estimated equivalent total cost per disposal site.

<sup>3</sup> This estimate is also provided by HBAV and is based on the following assumptions: 1) as above, it is assumed that each proposed small waste disposal unit can accept 756 truckloads of 8 tons of material each; 2) average estimated hauling costs per truckload are \$68 (the same estimate used above for central Virginia); and 3) average estimated grinding/chipping fees are \$140 per truckload. This provides an estimate of total cost per truckload of \$208. Multiplying this total cost per truckload times the estimated number of truckloads provides the \$157,248 figure for estimated equivalent total cost per disposal site.

<sup>4</sup> This cost estimate is based on the following assumptions: 1) \$2,250 in clearing costs; 2) a \$24,009 cost for excavation of a ten foot deep pit; 3) a \$1,800 cost for construction of a siltation pit; 4) a \$7,880 cost for erecting a security fence; 5) \$14,973 in daily and final capping costs; and 6) \$975 in re-seeding costs.

<sup>5</sup> This figure represents the net discounted present value of the opportunity cost of capital associated with carrying \$130,000 in financial assurance bonds for a period of ten years. Net discounted present value is used to facilitate comparison of unequal costs and benefits arising at different points in time.

The \$130,000 figure for required financial assurance bonds is derived from HBAV's estimate of the worst-case-scenario costs of closing a disposal unit and is based on the following assumptions: 1) cost of closure would be \$12,000 for covering a half-filled site, \$7,770 for final capping, \$975 for re-seeding, \$7,000 for fence removal, \$21,042 for removal of 63 truckloads of stockpiled material, and \$3,000 in miscellaneous closure costs; and 2) post-closure care costs of \$73,000 for groundwater and gas monitoring equipment, and \$5,000 in miscellaneous post-closure costs.

The final figure of \$64,000 is derived by computing the net discounted present value of a ten year stream of forgone profit revenues (*i.e.*, seven percent average profit times \$130,000 equals \$9,100 per year), and then computing the total sum that would be required to generate this annual stream of revenues. The discounting rate used in this calculation is seven percent, the standard figure used by the federal Office of Management and Budget and most other federal agencies.

The environmentally benign nature of the vegetative waste involved might cause some to erroneously conclude that another alternative for reducing the costs associated with these units would be to exempt them from the ground water monitoring, decomposition gas monitoring and venting, and financial assurance requirements of the solid waste management regulations. There are several reasons to believe that complete exemption from those requirements would be ill-advised however.

It is important to keep in mind that the proposed small waste disposal units are *landfills*. All material accepted in these units is required to be buried daily under a covering layer of earth. Also, the proposed units would probably be large in number and widely dispersed. For these reasons, in the absence of more stringent monitoring requirements, it would be exceedingly difficult to guard against the pernicious use of these facilities for the disposal of non-vegetative wastes, such as oil, paint, and various construction debris. Moreover, unlike CDD landfills, the proposed small waste disposal units would generally be located in proximity of residential neighborhoods. As a result, should these units be misused in the manner described above, the associated risk of adverse economic impact from negative health or environmental consequences could be non-trivial.

**Summary of Analysis.** The proposed regulation provides certain exemptions from current solid waste management regulations for vegetative waste and yard waste composting facilities, and small waste disposal units that receive vegetative wastes generated by on-site land clearing. The likely economic affects of that portion of the proposed regulation pertaining to vegetative waste and yard waste composting facilities are: 1) an average reduction in development costs of roughly \$60,000 per facility; and 2) some potential diversion of woody waste from CDD landfills into less expensive composting facilities.

That portion of the proposed regulation pertaining to small waste disposal units is unlikely to have a significant economic affect because the probable costs associated with this method for disposing of vegetative waste are close to, or exceed, the costs associated with approved alternative methods. As a result, it is likely that many real property owners will choose to not to take advantage of this portion of the proposed regulation.

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

The report entitled "Economic Impact Analysis, Virginia Department of Planning and Budget, Proposed Regulations for Vegetative Waste Management and Yard Waste Composting, Department of Environmental Quality (DEQ), VR 672-20-32(sic)" has been reviewed by this department. While the department neither confirms nor disputes the information and calculations included therein from other sources, the department does not object to the report.

#### Summary:

*Part I contains definitions. Part II states the basis of authority for the regulations and their relationship to other regulations.*

*The regulations supersede the board's Yard Waste Composting Facility Regulations, 9 VAC 20-100-10 et seq. The Virginia Solid Waste Management Act and other regulations of the board contain exemptions for certain vegetative waste management or yard waste composting facilities from the general requirements for solid waste management facilities. These exemptions are restated in Part III. Some facilities are exempt from all regulatory control and others are limited to relief from the requirement for the operator to have a permit from the director of the department. Conditions are specified under which the exemptions apply, and some conditions require a report be submitted to the department. Forms for those reports are included in Part III. An exemption applying to owners of real property who use small waste disposal units to bury vegetative (primarily tree stumps and root mat) on-site contains 15 qualifying criteria and allows the use of qualifying units without a permit.*

*Part IV prescribes the technical and other standards for vegetative waste management and yard waste composting facilities. The standards address siting, design and construction, operation, and closure. Part V set out the procedures for obtaining a permit by rule, which constitutes the reduced requirements for permitting called for in the Solid Waste Management Act. The permit by rule procedure minimizes the documentation submitted by the facility operator in order to obtain the permit and the time required to obtain the permit. The penalties for violation of the regulations are listed in Part VI.*

## CHAPTER 101. VEGETATIVE WASTE MANAGEMENT AND YARD WASTE COMPOSTING REGULATIONS.

### PART I. DEFINITIONS.

#### 9 VAC 20-101-10. Definitions.

*The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., define additional words and terms that supplement those in the statute and this chapter. When the statute, as cited, and the solid waste management regulations, as cited, define a word or term differently, the definition of the statute is controlling.*

*"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including but not limited to the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity.*

*"Board" means the Virginia Waste Management Board.*

*"Building" means an enclosed structure which has no open side.*

*"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to byproducts*

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of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained or coated.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Decomposed vegetative waste" means a stabilized organic product produced from vegetative waste by a controlled natural decay process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Decomposition of vegetative waste" means a controlled natural process, active or passive, which results in the decay and chemical breakdown of vegetative waste.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director, which includes:

1. The full name, business address, and social security number of all key personnel;
2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;
3. A description of the business experience of all key personnel listed in the disclosure statement;
4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;
5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as

felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Equity" means both legal and equitable interests.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Securities Exchange Act of 1934 (15 USC § 78 a et seq.), the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

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"Land clearing activities" means the removal of flora from a parcel of land.

"Land clearing debris" means vegetative waste resulting from land clearing activities.

"Landscape maintenance" means the care of lawns, shrubbery, and vines, and includes the pruning of trees.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial waste water.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste which has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under these regulations or the Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

"Off-site" means any site that does not meet the definition of on-site as defined in this part.

"On-site" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that he controls and to which the public does not have access, is also considered on-site property.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment or present a hazard to human health.

"Owner of real property" means a person, persons or legal entity who holds title to a parcel of real property, and, for the purpose of these regulations, any person, persons or legal entity who holds more than 5.0% of the stock or substance of a company or corporation that holds title to a parcel of real property.

"Permit by rule" means provisions of the regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Putrescible waste" means solid waste which contains organic material capable of being decomposed by micro-organisms and causes odors.

"Runoff" means any rainwater, wastewater, leachate, or other liquid that drains over land from any part of the solid waste management facility.

"Runon" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Solid waste management facility" means a site used for planned treating, long term storage, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units. For the purposes of this chapter only, "long term storage" shall be deemed to occur if during any period of 30 consecutive calendar days the site was not free of solid waste.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Vegetative waste decomposition" means a controlled natural process, active or passive, which results in the decay and chemical breakdown of vegetative waste.

"Vegetative waste decomposition facility" means an engineered facility for the decomposition of vegetative waste which is so located, designed, constructed, and operated as to isolate, process, and manage the vegetative waste and decomposed vegetative waste so that it represents no nuisance or potential hazard to human health or the environment.

"Vegetative waste management facility" means a solid waste management facility that manages vegetative waste.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter. (Note: Yard wastes are also vegetative waste; however, the terms are not interchangeable because vegetative wastes may include wastes that are not yard wastes.)

"Yard waste compost" means a stabilized organic product produced from yard waste by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land so that it does not pose a present or potential hazard to human health or the environment.

"Yard waste composting" means the controlled aerobic yard waste decomposition process by which yard waste compost is produced.

"Yard waste composting facility" means an engineered facility for composting of yard waste which is so located, designed, constructed, and operated to isolate, process, and manage the yard waste and yard waste compost so that it does not pose a present or potential hazard to human health or the environment.

## PART II. PURPOSE AND APPLICABILITY.

9 VAC 20-101-20. Purpose.

The purpose of these regulations is to establish appropriate standards for siting, design, construction, operation and closure, and expedited permitting procedures pertaining to certain vegetative waste management facilities, including those for yard waste composting. Further, these regulations provide reasonable exemptions from the

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permitting requirements contained in the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), both procedural and substantive, in order to encourage the development of vegetative waste management and yard waste composting facilities as required by subsections I, K, and L of § 10.1-1408.1 of the Code of Virginia.

9 VAC 20-101-30. *Applicability.*

A. The Virginia Waste Management Act (Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia) prohibits any person from operating a facility for the treatment, storage, or disposal of nonhazardous solid waste without a permit from the director. Except as provided in Part III (9 VAC 20-101-60 et seq.), vegetative waste is nonhazardous solid waste, and facilities that treat, store or dispose of vegetative waste shall not be operated by any person who does not hold a permit for its operation from the director. All vegetative waste management facilities may be permitted as solid waste management facilities under the Solid Waste Management Regulations, 9 VAC 20-80-10 et seq. The regulations herein provide alternate, abbreviated requirements for obtaining a permit from the director, and they apply to vegetative waste management facilities provided:

1. Except as provided in Part IV (9 VAC 20-101-110 et seq.), the vegetative wastes are not combined with other refuse, sludges, animal manures, or other solid wastes controlled by the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), and
2. Except as provided in Part IV, the vegetative waste is not managed atop a partially or fully closed solid waste disposal unit at a solid waste disposal facility.

B. Persons who do not meet the conditions of subsection A of this section and are not otherwise exempted under Part III (9 VAC 20-101-60 et seq.) shall manage their waste in accordance with all provisions of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

9 VAC 20-101-40. *Consequence of failure to comply with provisions.*

In the event that an owner or operator of an agricultural operation or vegetative waste management facility operating under these exemptions violates any provisions of that exemption, the owner or operator shall lose that exemption and become subject to all the requirements of this chapter and applicable requirements of the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

9 VAC 20-101-50. *Relationship to other regulations.*

A. This chapter supersedes, replaces and repeals all existing previous regulations of the board adopted as the Yard Waste Composting Facility Regulations (9 VAC 20-100-10 et seq.).

B. This chapter does not affect the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), except that persons subject to and in compliance with this chapter are exempt from the Solid Waste Management Regulations only for those activities covered by this chapter.

C. Persons subject to this chapter are subject to applicable provisions of the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.).

D. All vegetative waste management facilities that exist on the effective date of these regulations and are operated under a permit by rule under the provisions of the Yard Waste Composting Facility Regulations (9 VAC 20-100-10 et seq.) may continue to operate under the terms of that permit by rule until its closure plan is amended, terminated, or the owner or operator otherwise loses permit by rule status.

E. Section 10.1-1408.2 of the Code of Virginia requires certain employees of solid waste management facilities be certified by the Board of Waste Management Facility Operators and that certain facilities be under the direct supervision of an operator certified by the Board of Waste Management Facility Operators. Nothing in this chapter shall be interpreted so as to conflict with the statute. The Board of Waste Management interprets the statute to apply only to permitted facilities.

## PART III.

### EXEMPTIONS FOR SPECIAL VEGETATIVE WASTE MANAGEMENT FACILITIES TO THESE REGULATIONS OR TO THE REQUIREMENT TO HAVE A PERMIT.

9 VAC 20-101-60. *General exemptions.*

The Code of Virginia and previous regulations adopted by the board included exemptions from some requirements of the board regarding specified activities involving vegetative waste. Nothing contained in these Vegetative Waste Management and Yard Waste Composting Regulations shall be construed to interfere with those exemptions or add requirements or conditions to those existing exemptions. These exemptions include:

1. Solid waste management practices that involve only the placing of stumps and other land clearing debris from agricultural or forestal activities at the site of the clearing that do not receive waste from off-site and that do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter and of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.).
2. Solid waste management practices that involve only the on-site placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the Department of Mines, Minerals and Energy, that do not include any municipal solid waste, are accomplished in an environmentally sound manner, and that do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter and of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.).
3. Owners or operators of agricultural operations or owners of the real property or those authorized by owners of the real property who compost only the vegetative wastes and yard waste generated on said property shall be exempt from all other provisions of this chapter and from all requirements of the Solid Waste

Management Regulations (9 VAC 20-80-10 et seq.) as applied to the composting activity providing that:

- a. All decomposed vegetative waste and compost produced is utilized on said property;
- b. No vegetative waste or other waste material generated from sources other than said property is received;
- c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and
- d. They pose no nuisance or present or potential threat to human health or the environment.

4. Owners or operators of agricultural operational activities which accept yard wastes generated off-site shall be exempt from all other provisions of this chapter and from all requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) as applied to the composting activities providing that:

- a. All decomposed vegetative waste and compost produced is utilized on said property within 18 months of receipt;
- b. No waste material other than yard waste and solid waste under 9 VAC 20-80-150 F of the Solid Waste Management Regulations is received;
- c. The total amount of yard waste received from off-site never exceeds 6,000 cubic yards in any 12-month period;
- d. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied;
- e. They pose no nuisance or present or potential threat to human health or the environment; and
- f. The owner submits a complete certification letter in accordance with 9 VAC 20-101-90 A before receiving any waste at the site.

5. Owners or other persons authorized by the owner of real property who receive only vegetative waste generated off-site for the purpose of producing compost on said property shall be exempt from all other provisions of this chapter and from all requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) as applied to the composting activity provided that:

- a. Not more than 500 cubic yards of yard waste generated off-site is received at the owner's said property in any consecutive 12-month period;
- b. No compensation will be received, either directly or indirectly, by the owner or other persons authorized by the owner of said property from parties providing vegetative waste generated off said property;
- c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and

d. They pose no nuisance or present or potential threat to human health or the environment.

6. Mulch shall be exempt from all other provisions of this chapter and from all requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) provided it is reclaimed or temporarily stored incidental to reclamation and is not accumulated speculatively and is managed without creating an open dump, hazard or a public nuisance.

9 VAC 20-101-70. Exemption of small waste disposal units for vegetative wastes from land clearing.

A. Owners of real property who operate small waste disposal units that qualify under all the conditions of this section shall be exempt from other provisions of this chapter as applied to those units. They shall likewise be exempt from the requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) except for those sections cited below. No person other than the owner of the real property shall be exempt under this section. All owners of the real property who hold title to property at the time the disposal unit is initially opened or during the time the unit remains open (limited to two calendar years below) shall, in the exercise of this exemption, accept responsibility for maintaining compliance of the unit with all requirements of this chapter as set out in this exemption. The owner agrees that he shall not sell, give or otherwise transfer the responsibility for the unit's compliance to any other party throughout its active life, the post-closure care period, and the corrective action period, and that he shall remain the principal party responsible for the compliance of the unit with this chapter.

Only units that are in compliance with all requirements of this section shall qualify, and waste disposal units that are not in compliance with all requirements of this section shall not qualify or shall cease to qualify. Units that qualify for this exemption shall comply with the following requirements.

- 1. No waste that is not a vegetative waste or yard waste as defined in 9 VAC 20-101-10 shall be placed in the disposal unit. Grass trimmings and bulk leaves shall not be placed in the disposal unit.
- 2. The waste disposal unit shall not be larger than 0.50 acres in size.
- 3. The waste disposal unit shall not be located within 1,000 feet of any other waste disposal unit of any type, including other disposal units exempted by these regulations.
- 4. The waste disposal unit shall not be located within 150 feet of any existing building or planned building. The waste disposal unit shall not be located within 50 feet of any existing or planned subdivision lot that may be used for the erection of a building.
- 5. The waste disposal unit shall not be located within 100 feet of a flowing stream; body of water; any well, spring, sinkhole, or unstable geologic feature. Also, it shall not be located within 200 feet of any groundwater source of drinking water.

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6. The waste disposal unit shall be constructed to separate all waste by at least two feet vertically from the seasonal high water table.

7. The waste disposal unit shall not obstruct the scenic view from any public road and shall be graded to present a good appearance.

8. Mounding of the waste disposal unit shall not reach an elevation more than 10 feet above the original elevation of the terrain before the disposal began. (Note: the elevation of the original terrain should be based on the general area and not the bottom of ravines and small depressions in the disposal area.)

9. The waste received by the waste disposal unit shall be limited to the following:

a. Waste generated on-site;

b. Waste generated by clearing the path of a roadway or appurtenances to the roadway when buried within the right-of-way of the roadway or adjacent land under a permanent easement and the terms of the easement incorporate the construction of the disposal unit; and

c. Waste from property that is owned by the owner of the disposal unit, within the same construction project, and generated not more than two miles from the unit.

10. The waste disposal unit shall be closed two calendar years from the date it first receives waste. The closure shall include cover with two feet of compacted soil, grading for good appearance with slopes that prevent erosion, and seeding or revegetation. During the life of the unit, sufficient earth should be applied periodically to prevent excessive subsidence of the waste disposal unit when closed. Sides of the finished unit shall be sloped to prevent erosion, and slopes shall not be steeper than one vertical foot to two horizontal feet.

11. The location of all units that are not located wholly within the bed or right-of-way of a public road shall be recorded prior to the first receipt of waste in the deed book for the property in the court of record.

12. The owner shall maintain continuous control of access to all disposal units from the time they are opened until they are closed in accordance with this chapter. The owner shall prevent fires and provide standby equipment and supplies sufficient to easily suppress a fire. Brush and small limbs that might provide tinder for a fire shall be covered at the end of the work day with one foot of soil.

13. The owner shall not be exempt from the groundwater monitoring and corrective action requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) to include required monitoring during the post-closure period. The owner of a small waste disposal unit shall comply in all respects with the groundwater monitoring and corrective action requirements contained in 9 VAC 20-80-260 B 11, C 12, C 13, D and 9 VAC 20-80-310.

14. The owner shall not be exempt from the decomposition gas monitoring and venting requirements

of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.). The owner of a small waste disposal unit shall comply in all respects with the decomposition gas monitoring and venting requirements as established in 9 VAC 20-80-260 B 9 and 9 VAC 20-80-280.

15. The owner shall not be exempt from any requirement of the Financial Assurance Regulations For Solid Waste Disposal Facilities, 9 VAC 20-70-10 et seq., and shall comply with all financial assurance requirements.

B. The use of small amounts of brush used on-site with filter cloth to form a barrier for erosion control shall not be considered a waste disposal unit or require a permit when the barrier is constructed in accordance with the approved erosion control plan for the site.

9 VAC 20-101-80. Exemptions to permitting requirements.

A. The Code of Virginia includes exemptions from permitting requirements of the board for specified activities involving vegetative waste. Persons entitled to these exemptions are not required to comply with the permitting requirements of Part V (9 VAC 20-101-160 et seq.) of this chapter or to have a permit under the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.). Unless exempted by other provisions of this chapter or other regulations of the board, they are required to comply with facility standards contained in Part IV (9 VAC 20-101-110 et seq.) of this chapter.

B. Any person who removes trees, brush, or other vegetation from land used for agricultural or forestal purposes is exempted from the requirement to obtain a permit for that operation under this chapter or the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., provided that such material is deposited or placed on the same or other property of the same landowner from which such materials were cleared.

C. Owners or operators of agricultural operations which include yard waste composting units are not required to receive a permit for the construction or operation of those vegetative waste composting units under these regulations or the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., provided that:

1. The composting area is located not less than 300 feet from a property boundary of a parcel owned or controlled by another person, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain;

2. The agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated;

3. The total time for the composting process and storage of material that is being composted or has been composted shall not exceed 18 months prior to the field application or sale as a horticultural or agricultural product;

4. The owner and operator of any agricultural operation that receives in any 12-month period (consecutive) more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator shall submit by July 15 each year to the director an annual report in accordance with 9 VAC 20-101-100 describing the volume and types of yard waste received for composting by the operation between July 1 and June 30 of the preceding consecutive 12 months and shall certify that the yard waste composting facility complies with local ordinances; and

5. Prior to the receipt of yard waste generated off-site, the owner or operator of the agricultural operation submits to the director a certification letter in compliance with 9 VAC 20-101-90 B.

9 VAC 20-101-90. Contents of certification letter.

A. Prior to the receipt of yard waste generated off-site, the owner or operator of the agricultural operation intending to operate under the exemption contained in subdivision 4 of 9 VAC 20-101-60 shall submit to the director a certification letter which shall include all of the following:

1. The name and address of the agricultural operation owner or operator;
2. The name, physical location and mailing address of the agricultural operation;
3. The location of the yard waste management site at the address specified pursuant to subdivision 2 of this subsection and the amount of land available for receipt of yard waste;
4. A statement by the owner or operator that the owner or operator agrees to receive no solid waste other than yard waste;
5. A statement by the owner or operator that no yard waste that is received will remain on-site, in any combination of processing time and storage time, for more than 18 months.
6. A statement by the owner or operator that, at least, 1.0 acres of suitable ground per 150 cubic yards of finished compost generated annually will be reserved at the site to receive the yard waste;
7. A statement by the owner or operator that the total amount of yard waste received from off-site generators will not exceed 6,000 cubic yards in any consecutive 12-month period;
8. A statement by the owner or operator that the yard waste management site at the agricultural operation specified pursuant to subdivision 2 of this subsection is not within an area subject to base floods, is located no less than 300 feet from a property boundary, is located no less than 1,000 feet from any occupied dwelling not located on the same parcel;
9. The following statement signed by the owner or operator:

"I certify that I have personally examined and am familiar with the information submitted in this letter and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

B. Prior to the receipt of yard waste generated off-site, the owner or operator of the agricultural operation intending to operate under the exemption contained in 9 VAC 20-101-80 C shall submit to the director a certification letter which shall include all of the following:

1. The name and address of the agricultural operation owner or operator;
2. The name, physical location and mailing address of the agricultural operation;
3. The location of the yard waste management site at the address specified pursuant to subdivision 2 of this subsection and the amount of land available for receipt of yard waste;
4. A statement by the owner or operator that the owner or operator agrees to receive no solid waste other than yard waste;
5. A statement by the owner or operator that no yard waste that is received will remain on-site, in any combination of processing time and storage time, for more than 18 months.
6. A statement by the owner or operator that, at least, 1.0 acres of suitable ground per 150 cubic yards of finished compost generated annually will be reserved at the site to receive the yard waste;
7. A statement by the owner or operator that the total amount of yard waste received from off-site generators will not exceed 6,000 cubic yards in any consecutive 12-month period, or a statement by the owner that he will file an annual report in accord with 9 VAC 20-101-100 each and every year of its operation and that operation under the exemption is contingent upon prompt and complete filing of the annual report;
8. A statement by the owner or operator that any yard waste management sites at the agricultural operation specified pursuant to subdivision 2 of this subsection is not within an area subject to base floods, is located no less than 300 feet from a property boundary, is located no less than 1,000 feet from any occupied dwelling not located on the same parcel;
9. The following statement signed by the owner or operator:

"I certify that I have personally examined and am familiar with the information submitted in this letter and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

**YARD WASTE COMPOSTING  
NOTICE OF INTENT AND CERTIFICATION**

Name of the Owner or Operator:

Mailing Address:

Composting Site Address:

Telephone Number:

Telephone Number:

**COMPOSTING SITE CONDITIONS**

*Agricultural operations receiving only yard waste for composting are exempt from permitting requirements if the following conditions are met:*

- The area designated for composting is located greater than 300 feet from all property boundaries;*
- The area designated for composting is located more than 1,000 feet from any occupied dwelling not located on the same property as the composting area;*
- The area designated for composting is not located within an area designated as a flood plain as defined in § 10.1-600 of the Code of Virginia;*
- The agricultural operation has, at least, one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated annually; and*
- The total time for the composting process and storage of the material that is being composted or has been composted shall not exceed 18 months prior to its field application or sale as a horticultural or agricultural product.*

*I hereby certify that the site designated for this yard waste composting operation meets each of the above requirements for an agricultural exemption from the permitting requirements.*

Signature of the Owner or Operator:

Date:

*In addition to the above certification, an owner or operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste in any consecutive twelve months from property not within the control of the owner or operator shall complete the certification on the reverse side of this form.*

FORM DEQ-YW-1 (Provided in accordance with § 10.1-1408.1 K of the Code of Virginia)

*Certification required for owners or operators of agricultural operations that receive more than 6,000 cubic yards of yard waste generated annually from property not within control of owner or operator.*

*The undersigned certifies that the location and operation of the composting facility complies with all local ordinances.*

*Signature of the owner or operator:*

*Type or printed name:*

*Title:*

*Date:*

*Note: Section 10.1-1408.1 K of the Code of Virginia requires that owners or operators of composting facilities receiving more than 6,000 cubic yards of yard wastes generated from property not within control of the owner or operator submit an annual report describing the volume and types of yard waste received to operate the composting facility. Form DEQ-YW-2 shall be submitted to the director by July 15 for the preceding 12 months.*

*(Provided in accordance with § 10.1-1408.1 K of the Code of Virginia)*

**9 VAC 20-101-100. Contents of annual report.**

Owners or operators of agricultural operation which include yard waste composting units who intend to operate under the exemption of 9 VAC 20-101-80 C shall submit by July 15 each year to the director an annual report on the following form describing accurately and completely the volume and types of yard waste received for composting by the operation between July 1 and June 30 of the preceding 12 months and shall certify that the yard waste composting facility continues to comply with local ordinances.

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**YARD WASTE COMPOSTING  
ANNUAL REPORT**

Owners or operators of an agricultural composting operation receiving only yard waste, who are exempt from permitting requirements, and who may receive more than 6,000 cubic yards of yard waste generated from property not within control of the owner or operator in any twelve months period, shall submit to the director an annual report describing the volume and types of yard waste received for composting. Completion and filing of this form by July 15 will constitute compliance with the statutory requirement for the preceding twelve months, July 1 through June 30.

Calendar Year:

Name of owner or operator:

Address:

Telephone Number:

Type of Waste	Volume (Cubic Yards)
Leaves	
Grass Trimmings	
Brush	
Wood Chips	
Shrub and Tree Trimmings	
Total	

Signature or the owner or operator:

Type or printed name:

Title:

Date:

Form DEQ-YW-2 (Provided in accordance with § 10.1-1408.1 K of the Code of Virginia)

PART IV.  
STANDARDS FOR ALL VEGETATIVE WASTE  
MANAGEMENT FACILITIES.

9 VAC 20-101-110. Compliance.

Vegetative waste management facilities, including yard waste composting facilities, shall comply with the requirements of this part unless otherwise exempted by other provisions elsewhere in this chapter.

9 VAC 20-101-120. Siting.

A. Yard waste composting and vegetative waste management facilities shall not be sited or constructed in areas subject to base floods. No facility shall be closer than 50 feet to any regularly flowing stream.

B. Yard waste composting and vegetative waste management facilities shall not be located in areas which are geologically unstable or where the site topography is heavily dissected.

C. Acceptable yard waste composting or vegetative waste management facility sites must have sufficient area and terrain to allow for control and proper management of runoff, and leachate.

D. The boundary of a yard waste composting or vegetative waste management facility shall not be located within 200 feet of any dwelling, a health care facility, school, or similar type of public institution. The director may reduce this set-back distance if the owner or operator successfully shows that a nuisance will not be created owing to the operation of such facility.

E. A yard waste composting or vegetative waste management facility shall not be located atop a closed waste disposal unit located on property whose deed or some other instrument which is normally examined during title searches contains a notation required under 9 VAC 20-80-250 E 8, E 6, or 9 VAC 20-80-270 E 7 of the Virginia Solid Waste Management Regulations with the following exceptions:

1. For a closed unpermitted waste disposal unit at a solid waste management facility closed prior to December 1988, the following conditions shall apply:

- a. The yard waste composting or vegetative waste management facility does not pose a present or potential hazard to human health or the environment;
- b. All siting, design and construction, operating and closure standards of this part have been satisfied;
- c. The owner or operator of the yard waste composting or vegetative waste management facility successfully satisfies all provisions of Part V (9 VAC 20-101-160 et seq.).

2. For a waste disposal unit closed prior to December 1988 which is located at a solid waste management facility for which a permit has been issued and that is operating under the provisions of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), the following conditions shall apply:

a. The yard waste composting or vegetative waste management facility does not pose a present or potential hazard to human health or the environment;

b. All siting, design and construction, operating and closure standards of this part have been satisfied;

c. The owner or operator of the yard waste composting or vegetative waste management facility successfully demonstrates to the director that all provisions of Part V (9 VAC 20-101-160 et seq.) have been satisfied.

d. The closure plan for the solid waste management facility is amended to incorporate the operating and approved closure plans of the yard waste composting or vegetative waste management facility. The owner or operator of the solid waste management facility must request the amendment to the solid waste facility closure plan in accordance with 9 VAC 20-80-250 E of the Solid Waste Management Regulations.

3. For waste disposal units closed after December 1988 and under the provisions of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.), the following conditions shall apply:

a. The yard waste composting or vegetative waste management facility does not pose a present or potential hazard to human health or the environment;

b. The existing permit issued for the solid waste management facility at which the closed waste disposal unit is located is amended to include any changes that may be required as a result of the operation of the vegetative or yard waste composting operation. The owner or operator must request the permit amendment in accordance with Part VII (9 VAC 20-80-480 et seq.) of the Solid Waste Management Regulations.

9 VAC 20-101-130. Design and construction.

A. A handling area and equipment shall be provided to segregate waste other than vegetative waste and noncompostable components in the vegetative waste and to store such components in properly constructed containers prior to their disposal at a permitted solid waste disposal facility.

B. If the yard waste composting or vegetative waste management facility is located in any area where the seasonal high water table lies within 24 inches of the ground surface, the composting and handling areas shall be hard-surfaced and diked or bermed to prevent entry of runoff or escape of runoff, leachate, and other liquids, and a sump with either a gravity discharge to atmosphere or an adequately sized pump located at the low point of the hard-surfaced area shall be provided to convey liquids to a waste water treatment (including but not limited to recirculation), disposal or holding facility.

C. Sound engineering controls shall be incorporated into design of yard waste composting and vegetative waste management facilities located on sites with:

- 1. Springs, seeps, and other groundwater intrusions;

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2. Gas, water, or sewage lines under the active areas; or electrical transmission lines above or below the active areas.

D. Areas used for mixing, composting, curing, screening, and storing shall be graded to prevent runoff, collect runoff, and provided with a drainage system to route the collected runoff to a waste water storage, treatment (including but not limited to recirculation), or disposal facility.

E. A buffer zone with the minimum size of 100 feet shall be incorporated in the yard waste composting or vegetative waste management facility design between the facility boundaries and process operations.

F. Roads serving the unloading, handling, composting, and storage areas shall be usable under all weather conditions.

9 VAC 20-101-140. Operations.

A. The addition of any other solid waste including but not limited to hazardous waste, regulated medical waste, construction waste, debris, demolition waste, industrial waste, or other municipal solid waste to the vegetative waste received at the yard waste composting or vegetative waste management facility is prohibited, except that the materials which are excluded from regulation as solid waste under 9 VAC 20-80-150 F of the Solid Waste Management Regulations may be combined with yard waste for the purpose of producing compost under the provisions of Parts II (9 VAC 20-101-20 et seq.) and III (9 VAC 20-101-60 et seq.) of this chapter.

B. Solid waste other than vegetative waste shall be segregated from the vegetative waste and promptly removed from the yard waste composting or vegetative waste management facility site for proper management at a solid waste management facility permitted by the department. Segregated solid waste shall not remain at the yard waste composting or vegetative waste management facility at the end of the working day unless it is stored in containers specifically designed for storage of solid waste. Containerized putrescible waste shall not remain at the yard waste composting or vegetative waste management facility for more than seven days. Containerized nonputrescible waste shall be collected for disposal at intervals of less than 30 days.

C. Access to a yard waste composting or vegetative waste management facility that has not been closed in accordance with 9 VAC 20-101-150 shall be permitted only when an attendant is on duty.

D. Dust, odors, and vectors shall be controlled so they do not constitute nuisances or hazards.

E. The owner or operator shall prepare, implement, and enforce a safety program and a fire prevention and suppression program designed to minimize hazards.

F. Open burning shall be prohibited with the waste management facility property.

G. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances.

H. Leachate or other runoff from a yard waste composting or vegetative waste management facility shall not be permitted to drain or discharge directly into surface waters.

I. Designed buffer zones shall be maintained.

9 VAC 20-101-150. Closure.

A. The owner or operator shall close his yard waste composting or vegetative waste management facility in a manner that minimizes the need for further maintenance. All waste and residues, including unfinished compost, shall be removed and disposed in a permitted solid waste management facility. Any finished compost present at the time of closure shall be removed and marketed or utilized in accordance with the operational plan for the facility, or disposed in a permitted solid waste management facility. If the owner or operator is unable or unwilling to remove all compost, the facility shall close in accordance with Part V (9 VAC 20-80-240 et seq.) of the Solid Waste Management Regulations.

B. The following items shall be considered in development of the closure plan and an amendment of plan:

1. The owner or operator of a yard waste composting or vegetative waste management facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when its operation is most extensive. The closure plan shall include, at least a schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

2. The closure plan shall be submitted to the department prior to the construction and operation of the yard waste composting or vegetative waste management facility, unless the owner or operator is exempt from the requirements of the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.), in which case the closure plan shall be submitted no later than 30 days from the date the yard waste composting or vegetative waste management facility commences operation. The department shall review each closure plan no later than 90 days from receipt. If the department finds plan to be deficient, it shall cite the reasons for the finding and state what amendments are necessary. If found to be deficient, the closure plan shall be amended by the owner or operator within 90 days of the director's finding. If the amended closure plan continues to be deficient, the department will amend the plan to meet the closure performance requirements within 90 days.

3. The owner or operator may amend his closure plan at any time during the active life of the yard waste composting or vegetative waste management facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affects the closure plan. Amended plans shall be submitted to the department within 15 days of such changes. The director may require that amended plans be modified to meet the closure requirements.

4. At any time during the operating life of the yard waste composting or vegetative waste management facility, the closure plan shall be made available to the department upon request of the director.

5. The owner or operator shall submit an updated closure plan to the director at least 180 days before the date he expects to begin final closure. The director will modify, approve, or disapprove the plan within 90 days of receipt. If the closure plan is disapproved, the owner or operator shall modify the plan to meet the closure requirements. If an owner or operator plans to begin closure within 180 days after the effective date on these regulations, he shall submit the necessary plans on the effective date of these regulations.

C. The owner or operator shall complete closure activities in accordance with the approved closure plan and within 12 months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than 12 months to complete; and that he has taken all necessary steps to eliminate any significant threat to human health and the environment from the unclosed but inactive yard waste composting or vegetative waste management facility.

D. At the beginning of the closure activities, the owner or operator shall post at least one sign notifying all persons of the closing, and providing a notice prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

E. A yard waste composting or vegetative waste management facility shall be deemed properly closed when the above actions have been taken by the owner or operator and a representative of the department verifies same by an on-site inspection and provides a written confirmation that closure has been completed properly.

PART V.  
FACILITY PERMIT BY RULE.

9 VAC 20-101-160. Permit by rule provisions.

Notwithstanding any provisions of Part VII (9 VAC 20-80-480 et seq.) of the Virginia Solid Waste Management Regulations, the owner or operator of a vegetative waste management facility which accepts only vegetative wastes as defined in 9 VAC 20-101-10 shall be deemed to have a solid waste management facility permit if the owner or operator:

1. Demonstrates to the director the legal control over the site for the useful life of the vegetative waste management facility. A documentation of an option to purchase will be considered as a temporary substitute for a deed; however, the true copy of a deed shall be provided to the department before construction begins.

2. Notifies the director of his intent to operate such a facility and provides the department:

a. The certification from the governing body of the county, city, or town in which the facility is to be

located that the location and operation of the facility are consistent with all applicable ordinances; and

b. A disclosure statement as defined in 9 VAC 20-101-10 as required under § 10.1-1408.1 B of the Code of Virginia.

3. Provides the director with a certification that the facility meets the siting standards of 9 VAC 20-101-120.

4. Furnishes to the director a certificate signed by a professional engineer licensed to practice by the Commonwealth that the facility has been designed and constructed in accordance with the standards of 9 VAC 20-101-130. Such certificate shall contain no qualifications or exceptions from the requirements and plans.

5. Submits to the director an operational plan describing how the standards of 9 VAC 20-101-140 will be met and the procedure for marketing or utilizing the finished compost.

6. Submits to the director a closure plan describing how the standards of 9 VAC 20-101-150 will be met.

7. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.).

9 VAC 20-101-170. Change of ownership.

A permit by rule may not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner or operator shall notify the department of the sale and fulfill all the requirements contained in 9 VAC 20-101-160 with the exception of subdivision 7 of 9 VAC 20-101-160 within 30 days of the date of the sale. If required by the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.), financial assurance proof shall be posted by the new owner or operator within 30 days from the date of the sale; provided however, that until the actual posting of such financial assurance proof, the old owner or operator shall not be relieved of his responsibility to post financial assurance. Upon presentation of the financial assurance proof required by subdivision 7 of 9 VAC 20-101-160 by the new owner or operator, the department will release the old owner or operator from his closure and financial responsibilities under the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.) and acknowledge existence of the new permit by rule in the name of the new owner or operator.

9 VAC 20-101-180. Facility modifications.

The owner or operator of a vegetative waste management facility may modify the design and operation of the facility by furnishing the department a new certificate required by subdivision 4 of 9 VAC 20-101-160 and a new operational plan required by subdivision 5 of 9 VAC 20-101-160. Whenever modifications in the design or operation of the facility affect the provisions of the approved closure plan, the owner or operator shall submit an amended closure plan in accordance with the requirements of 9 VAC 20-101-150. Should there be an increase in the closure costs, the owner

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or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations of Solid Waste Facilities (9 VAC 20-70-10 et seq.).

### PART VI. ENFORCEMENT.

#### 9 VAC 20-101-190. Loss of permit by rule status.

In the event that a vegetative waste management facility operating under a permit by rule violates any provisions of these regulations in a substantive manner, the owner or operator of the facility will be considered to be operating an unpermitted facility as provided for in 9 VAC 20-80-80 of the Virginia Solid Waste Management Regulations and shall be required to either obtain a new permit as required by Part VII (9 VAC 20-80-480 et seq.) or close under Part V (9 VAC 20-80-240 et seq.) or VI (9 VAC 20-80-320 et seq.) of those regulations, as applicable.

#### 9 VAC 20-101-200. Termination.

In addition to the grounds identified in § 10.1-1409 of the Code of Virginia, the director shall terminate permit by rule and shall require closure of the facility whenever he finds that:

1. As a result of changes in key personnel, the requirements necessary for a permit by rule are no longer satisfied;
2. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in his disclosure statement, or any other report or certification required under these regulations, or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement; or
3. Any key personnel have been convicted of any of the crimes listed in § 10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner.

#### 9 VAC 20-101-210. Enforcement.

Loss or termination of a permit by rule under these regulations shall not preclude additional action for remediation or enforcement, including (without limitation) the assessment of civil charges or civil penalties, as is otherwise authorized by law.

VA.R. Doc. No. R96-404; Filed June 5, 1996, 11:01 a.m.

# FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

## Symbol Key

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

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Title of Regulation: 13 VAC 5-70-10 et seq. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1993 (amending 13 VAC 5-70-10 and 13 VAC 5-70-90, and adding 13 VAC 5-70-100).

Statutory Authority: §§ 36-98 and 36-99.9:1 of the Code of Virginia.

Effective Date: August 1, 1996.

### Summary:

*This amendment to the Uniform Statewide Building Code, Volume II - Building Maintenance Code/1993 provides replacement provisions for the emergency regulations promulgated by the Board of Housing and Community Development. The regulations establish standards for automatic sprinkler systems in patient rooms and other areas customarily used for patient care in hospitals, regardless of when such facilities were constructed.*

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7170.

## PART I. CHAPTER 1. ADMINISTRATION.

### 13 VAC 5-70-10. General.

100.1. Title: These regulations shall be known as Volume II - Building Maintenance Code of the 1993 edition of the Virginia Uniform Statewide Building Code (USBC). Except as otherwise indicated, Building Maintenance Code (BMC) or code, shall mean Volume II - Building Maintenance Code of the 1993 edition of the USBC. "Chapter" means a chapter in the Uniform Statewide Building Code, Vol. II.

Note: See Volume I - New Construction Code (13 VAC 5-60-10 et seq.) of the USBC for regulations applicable to new construction.

100.2. Authority: The Building Maintenance Code is adopted according to regulatory authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6, (§ 36-97 et seq.) Title 36, of the Code of Virginia.

100.3. Adoption: The Building Maintenance Code was adopted by order of the Board of Housing and Community Development on December 13, 1993. This order was prepared according to the requirements of the Administrative

Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.4. Effective date: The Building Maintenance Code shall become effective on April 1, 1994.

100.5. Effect on other codes: The Building Maintenance Code shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law, Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia. The Building Maintenance Code supersedes all building maintenance codes and regulations of the counties, municipalities political subdivisions and state agencies that have been or may be enacted or adopted, except as modified by § 100.6, below.

Note: This will not prevent adoption in accordance with Chapter 1 (§ 15.1-1 et seq.) of Title 15.1 of the Code of Virginia or other special or general legislation, or requirements by local governments which do not affect the manner of construction or materials to be used in the erection, alteration, repair, maintenance or use of a building or structure.

100.6. Application to pre-USBC buildings: Buildings or portions thereof constructed, altered, converted or repaired before the effective date of the initial edition of the USBC shall be maintained in compliance with the Building Maintenance Code. No provisions of the Building Maintenance Code shall require alterations to buildings or equipment unless an unsafe or unhealthy condition exists.

100.6.1. Hotels and motels: Pre-USBC hotels and motels shall also comply with applicable provisions of ~~§ 108-9~~ 13 VAC 5-70-90.

100.6.2. Nursing homes and homes for adults: Pre-USBC nursing homes licensed by the Virginia Department of Health, and pre-USBC homes for adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of ~~§ 108-9~~ 13 VAC 5-70-90.

100.6.3. Reserved.

100.6.4. Hospitals: Pre-USBC hospitals shall also comply with applicable provisions of 13 VAC 5-70-90.

100.7. Application to post-USBC buildings: Buildings or portions thereof that were subject to the USBC when constructed, altered, converted or repaired shall be maintained in compliance with the Building Maintenance Code and with the edition of the USBC that was in effect at that time.

100.7.1. Hotels and motels: Post-USBC hotels and motels shall also comply with applicable provisions of ~~§ 108-8~~ 13 VAC 5-70-90.

100.7.2. Nursing homes and homes for adults: Post-USBC nursing homes licensed by the Virginia Department of Health, and post-USBC homes for adults licensed by the Virginia

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# Final Regulations

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Department of Social Services shall also comply with applicable provisions of ~~§ 108.0~~ 13 VAC 5-70-90.

100.7.3. Reserved.

*100.7.4 Hospitals: Post-USBC hospitals shall also comply with applicable provisions of 13 VAC 5-70-90.*

100.8. Exemptions for certain equipment: The provisions of the Buildings Maintenance Code shall not apply to equipment installed by a provider of publicly regulated utility services, or to electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights.

Exception: Buildings or service equipment associated with the exempt equipment.

100.9. Exemptions for farm structures: Farm structures not used for residential purposes shall be exempt from the provisions of the Building Maintenance Code.

Exception: Farm structures lying within a flood plain or in a mudslide prone area shall be subject to floodproofing regulations or mudslide regulations, as applicable.

100.10. Purpose: The purpose of the Building Maintenance Code is to ensure public safety, health and welfare through proper building maintenance and use and continued compliance with minimum standards of building construction, energy conservation, water conservation, and physically handicapped and aged accessibility. Proper building maintenance shall be deemed to include the maintenance and inspection of building equipment defined by § 36-97(13) of the Code of Virginia.

## **13 VAC 5-70-90. Special provisions.**

108.1. General: The provisions of this section contain requirements for improving the safety of certain buildings by requiring the installation of materials or equipment not originally required. Unless otherwise noted, these provisions shall apply equally to both pre-USBC and post-USBC buildings.

108.2. Hotels and motels: Existing hotels and motels shall comply with the provisions of this section.

108.2.1. Fire sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment (effective date March 1, 1990), for Use Group R-1, shall be installed throughout existing hotels and motels by either March 1, 1997, or within seven years of the date upon which an adequate water supply is made available to meet the needs of the suppression system, whichever is later.

Exceptions:

1. Hotels and motels that are equipped throughout with an automatic sprinkler system.
2. Hotels and motels which are three stories or less in height.

108.2.2. Single and multiple station smoke detectors: Single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Second

Amendment, for Use Group R-1, shall be installed in existing hotels and motels.

Exception: Hotels and motels that are equipped throughout with single and multiple station smoke detectors.

108.3. Nursing homes and nursing facilities: Existing nursing homes and nursing facilities licensed by the Virginia Department of Health shall comply with the provisions of this section.

108.3.1. Automatic sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment (effective date October 1, 1990), for Use Group I-2, shall be installed in existing nursing homes and nursing facilities as follows:

1. NFIPA 13D Standard for one story buildings.
2. NFIPA 13R Standard for buildings two or three stories in height.
3. NFIPA 13 Standard for buildings four or more stories in height.

Exceptions:

1. Nursing homes and nursing facilities which are equipped throughout with an automatic sprinkler system.
2. Nursing facilities consisting of certified long-term care beds located on the ground floor of general hospitals.

108.3.1.1. Quick response sprinklers: Quick response sprinklers shall be installed in patient sleeping rooms of buildings subject to § 108.3.1.

108.3.1.2. Exceptions provided for: Buildings equipped throughout with an automatic fire sprinkler system meeting the requirements of NFIPA 13 shall be permitted to use the exceptions provided in the USBC, Volume I, 1987 Edition, Third Amendment including, but not limited to, the following:

1. Section 502.3 (Area Increase)
2. Section 503.1 (Height Increase)
3. Section 610 (Use Group I-2 Areas)
4. Section 807 (Types and Location of Means of Egress)
5. Section 808 (Capacity of Egress Components)
6. Section 809 (Number of Exits)
7. Section 810 (Exit Access Passageways and Corridors)
8. Section 921 (Firestopping and Draftstopping)

108.3.2. Fire protective signaling system: A fire protective signaling system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

Exception: Nursing homes and nursing facilities that are equipped throughout with an automatic fire protective signaling system.

108.3.3. Fire detection system: An automatic fire detection system meeting the requirements of the USBC, Volume I,

1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

108.3.3.1. Fire detection system in existing sprinklered facilities: Nursing homes and nursing facilities that are exempt from § 108.3.1 because of an existing automatic sprinkler system shall install a fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group I-2.

108.4. Homes for Adults: Existing Homes for Adults licensed by the Virginia Department of Social Services shall comply with this section.

108.4.1. Fire protective signaling system and fire detection system: A fire protective signaling system and an automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in homes for adults by August 1, 1994.

Exception: Homes for adults that are equipped throughout with a fire protective signaling system and an automatic fire detection system.

108.4.2. Single and multiple station smoke detectors: Battery or AC-powered single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for Adults that are equipped throughout with single and multiple station smoke detectors.

108.5. Identification of handicapped parking spaces: All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with a bottom edge no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be installed in accordance with applicable provisions of the current edition of Volume I of the USBC.

108.6. Reserved.

108.7. Hospitals: Existing hospitals licensed by the Virginia Department of Health shall comply with this section.

108.7.1. Fire sprinkler system: An automatic sprinkler system meeting the requirements of National Fire Protection Association Standard 13-91, listed in USBC, Volume I (13 VAC 5-60-10 et seq.), Chapter 35, shall be provided in existing hospitals by January 1, 1998.

Exceptions:

1. The Commissioner of the Virginia Department of Health may, at his discretion, extend the time for compliance with this section for any hospital that can demonstrate its inability to comply, if such hospital submits, prior to January 1, 1998, a plan for compliance by a date certain which shall be no later than July 1, 1998.

2. Any hospital located in a city having a population of more than 16,100 but less than 18,000, or in a county having a population of more than 17,350, but less than

17,500, may submit a plan of compliance by a date certain which shall be no later than July 1, 2003.

3. Hospitals that are equipped throughout with a sprinkler system are exempt from this section.

108.7.1.1. Areas of protection: Sprinkler protection shall only be required in patient sleeping rooms, operating and emergency treatment rooms and spaces adjoining such rooms. The area of protection shall extend to an approved smoke barrier or a minimum one-half hour rated assembly. The one-half hour rated assembly shall have self-closing doors and shall be continuous from floor slab to floor or roof deck above.

108.7.1.2. Sprinkler: Patient sleeping rooms shall be provided with quick response sprinklers.

108.7.1.3. Water-control valves: All valves in water supply pipes to sprinkler systems, except underground valves in roadway boxes, shall be supervised open with an audible and visual alarm to signal at a constantly attended location.

**13 VAC 5-70-100. Addendum 1: Amendments to the BOCA National Property Maintenance Code/1993 Edition.**

As provided in § 101.3 of Volume II - Building Maintenance Code of the 1993 Edition of the USBC (13 VAC 5-70-20), the amendments noted in this addendum shall be made to the BOCA National Property Maintenance Code/1993 Edition for use as part of the Building Maintenance Code.

CHAPTER 1.  
ADMINISTRATION AND ENFORCEMENT.

(A) Chapter 1, Administration and Enforcement, is deleted in its entirety and replaced with Chapter 1 of the Building Maintenance Code (13 VAC 5-70-10).

CHAPTER 3.  
ENVIRONMENTAL REQUIREMENTS.

- (A) Delete § PM-303.1.
- (B) Delete § PM-303.4.
- (C) Delete § PM-303.5.
- (D) Delete § PM-303.8.

Note: The above sections of this code have been deleted because the agency's Attorney General representative advises that they cannot be interpreted as building regulations under the current language of § 36-97 of the Code of Virginia.

- (E) Change § PM-304.1 to read:

PM-304.1. General: The exterior of all structures, occupied, vacant or otherwise, shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

- (F) Change § PM-304.12 to read:

PM-304.12. Insect screens: During the period from April 1 to December 1 every door, window and other outside opening required for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for

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human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.

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

(G) Change § PM-305.4 to read as follows:

PM-305.4. Lead-based paint: Interior and exterior painted surfaces of dwellings, child and day care facilities, including fences and outbuildings, that contain in excess of 0.5% lead by weight shall be removed or covered in an approved manner.

(H) Delete § PM-306.2.

(I) Delete § PM-306.3.

## CHAPTER 4.

### LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS.

(A) Change § PM-403.1 to read:

PM-403.1. Habitable spaces: Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total window area, measured between stops, for every habitable space shall be 4.0% of the floor area of such room, except in kitchens when artificial light may be provided in accordance with the provisions of the building code. Whenever walls or other portions of a structure face a window of any other room and such obstructions are located less than three feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

(B) Delete § PM-405.10.

## CHAPTER 6.

### MECHANICAL AND ELECTRICAL REQUIREMENTS.

(A) Change § PM-602.2 to read:

PM-602.2. Residential buildings: Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guest room on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C) in all habitable rooms, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours. When the outdoor temperature is below the outdoor design temperature required for the locality by the mechanical code listed in Chapter 8, the owner or operator shall not be required to maintain the minimum room temperatures, provided the heating system is operating at full capacity, with supply valves and dampers in a full open position.

(B) Delete §§ PM-602.2.1 and PM-602.2.2.

(C) Change § PM-602.3 to read:

PM-602.3. Nonresidential structures: Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.

2. Areas in which persons are primarily engaged in vigorous physical activities.

(D) Add new § PM-606.3 to read:

PM-606.3. Inspection: Routine and periodic inspections shall be performed in accordance with Part X of ASME A-17.1 listed in Chapter 8.

## CHAPTER 7.

### FIRE SAFETY REQUIREMENTS.

(A) Add new § PM-705.5.4.

PM-705.5.4. Visual and audible alarms: Visual and audible alarms meeting the requirements of ANSI/UL Standard 1638 and ANSI/NFPA 72G shall be provided in occupancies housing the hard of hearing as required by § 36-99.5 of the Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be accepted.

## CHAPTER 8.

### REFERENCED STANDARDS.

(A) Delete standard reference number BOCA NBC 93, BOCA National Building Code and substitute the Virginia Uniform Statewide Building Code, Volume I/1993 Edition.

(B) Delete standard reference number BOCA NFPC 93, BOCA National Fire Prevention Code and substitute the Virginia Statewide Fire Prevention Code/1993 Edition.

VA.R. Doc. No. R96-398; Filed June 5, 1996, 10:08 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**Title of Regulation:** 12 VAC 30-120-450 through 12 VAC 30-120-480. **Part VII: Assisted Living Services for Individuals Receiving Auxiliary Grants Residing in Adult Care Residences.**

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

**Effective Date:** August 1, 1996.

**Summary:**

*This regulation allows DMAS to establish coverage criteria and payment for two types of assisted living services available to recipients of auxiliary grants residing in licensed adult care residences: (i) regular assisted living services for those individuals who do not meet the criteria for waiver services but who require at*

least a moderate level of assistance with activities of daily living and (ii) intensive assisted living for those individuals who meet the level of care criteria for waiver services. This regulation also establishes the same coverage criteria and payment for regular assisted living services, which is available to recipients of general relief residing in the two public homes for adults.

**Summary of Public Comment and Agency 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.

**Agency Contact:** Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

## PART VII.

### ASSISTED LIVING SERVICES FOR INDIVIDUALS RECEIVING AUXILIARY GRANTS RESIDING IN ADULT CARE RESIDENCES.

#### 12 VAC 30-120-450. Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Assessor" means a case manager employed by a public human service agency or other qualified assessor which has a contract with the Department of Medical Assistance Services to perform assessments and authorize service in an adult care residence.

"Assisted living facility" or "facility" means an adult care residence which has been licensed by the Department of Social Services to provide a level of service for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Within assisted living, there are two payment levels for recipients of an auxiliary grant: regular assisted living and intensive assisted living.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement the income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income and who resides in a licensed adult care residence.

"Case management agency" means a public human service agency having a contract with DMAS to provide case management services to any adult care residence recipient who meets the criteria set forth in Attachment 3.1, Supplement 2 of the State Plan for Medical Assistance (12 VAC 30-50-470) and which employs or contracts for case management.

"Case manager" means an employee of a public human service agency who is qualified and designated to authorize

service in an adult care residence and to perform case management functions, such as the development, [ and ] implementation [ , coordination and monitoring ] of plans of care and completion of the annual reassessment.

"DMAS" or "department" means the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

[ "General relief" means money payments and other forms of relief made to eligible persons as established by the local department of social services board in accordance with the rules and regulations of the State Board of Social Services. For purposes of this part, these recipients must reside in a public home for adults in Waynesboro and Manassas. ]

"Instrumental activities of daily living (IADLS)" means meal preparation, housekeeping, laundry, and money management. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Individualized service plan" means the written description of actions to be taken by the assisted living facility to meet the assessed needs of the resident.

"Intensive assisted living services" means services provided under the Social Security Act, § 1915(c) waiver program, to persons who have dependencies in at least four ADLs, or who have a combination of dependencies in two or more ADLs and are rated as semi-dependent or dependent in a combination of behavior and orientation.

"Licensed health care professional" means a health care professional as defined by § 32.1-162.7 of the Code of Virginia.

"Moderate assistance" means dependency in two or more of the activities of daily living [ as documented on the uniform assessment instrument ]. Included in this level of service are recipients who are dependent in behavior pattern (i.e., the recipient exhibits acts detrimental to the life, comfort, safety or property of the recipient or others).

"Qualified assessor" means an entity contracting with DMAS to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a [ home-based and ] community-based waiver program, including an independent physician contracting with DMAS to complete the uniform assessment instrument for applicants to adult care residences, or any hospital which has contracted with DMAS to perform nursing facility preadmission screenings. Qualified assessors may only perform the initial assessment or assessments for changes in level of care. Qualified assessors will not have a contract with DMAS to provide case management services for adult care residence recipients which includes the annual reassessment.

"Regular assisted living services" means [ a level of ] services provided by licensed adult care residences to persons who have dependencies in two ADLs or behavior but who do not meet the criteria for intensive assisted living.

"Uniform assessment instrument (UAI)" means the department-designated assessment form.

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## **12 VAC 30-120-460. General coverage and requirements for assisted living services.**

A. *Service populations.* Two levels of assisted living, regular and intensive assisted living, shall be available to individuals eligible for an auxiliary grant who require assistance in activities of daily living and instrumental activities of daily living, which are above the room, board, and supervision provided by the adult care residence as reimbursed by an auxiliary grant program. [ Regular assisted living only shall be available to individuals eligible for general relief payments residing in public homes for adults in Waynesboro and Manassas and who meet the program criteria. ] The individual shall be classified into one of these two levels by the assessor responsible for completing the UAI and authorization of admissions to the adult care residence.

Coverage shall be provided under a state-funded program for individuals who have been determined to require regular assisted living services.

Coverage shall be provided under a waiver of § 1915(c) of the Social Security Act for individuals who have been determined to require intensive assisted living services. [ This coverage is not available to general relief recipients. ]

B. *Covered services.* DMAS shall pay the facility a per diem fee for each recipient authorized to receive assisted living services, based on whether the recipient is authorized for regular or intensive assisted living. Payment of the per diem fee is limited to the days in which the recipient is physically present in the facility.

The facility shall employ or contract with staff who will provide hands-on assistance or supervision with ADLs and IADLs to recipients according to the individual service plan. This plan shall be developed by the facility in accordance with the current needs of the recipient and as specified in 22 VAC 40-71-170 of the Standards and Regulations for Licensed Adult Care Residences.

The facility shall retain a licensed health care professional as specified in 22 VAC 40-71-630 J of the Standards and Regulations for Licensed Adult Care Residences [ except that ] the records maintained by the facility shall document that the care needs for auxiliary grant recipients authorized to receive intensive assisted living services have been reviewed during an onsite visit at least monthly by a licensed health care professional. [ The licensed health care professional shall, as appropriate, participate in the development and monitoring of an individualized service plan to meet the resident's service needs. ]

C. *Eligibility requirements.* Individuals authorized to receive optional state supplement (auxiliary grant) payments and who meet the criteria for regular or intensive assisted living shall be eligible.

[ Individuals authorized to receive optional general relief payments, who meet the criteria for regular assisted living, and who reside in public homes for adults in Waynesboro and Manassas shall be eligible. ]

The department's payment for either regular or intensive assisted living services shall not be reduced by any payment from the individual's income.

[ The requirements related to spousal income and resource allowances found in § 1924 of the Social Security Act do not apply to those individuals receiving intensive assisted living services under a waiver of § 1915(c) of the Social Security Act. ]

D. *Assessment and authorization of regular or intensive assisted living services.*

1. The assessor shall evaluate the individual's functional and medical needs and authorize services to meet those needs pursuant to this part.

2. The assessment shall be completed using the UAI, and authorization for care shall be made based on the following criteria:

a. *Regular assisted living.* The individual must be dependent in two ADLs or dependent in behavior. The rating of functional dependencies shall be as specified in 22 VAC 40-745-70 of the Assessment in Adult Care Residences regulations.

b. *Intensive assisted living.* The individual must be determined to be at risk of nursing facility placement in the absence of [ home-based and ] community-based waiver services such as those provided in an assisted living facility and the individual's functional capacity is described by one of the following. The rating of functional dependencies shall be as specified in 12 VAC 30-60-300 of the State Plan for Medical Assistance (§ 1.1 of Supplement 1 to Attachment 3.1 C:)

(1) Dependent in four or more ADLs;

(2) Dependent in two or more ADLs and has dependencies or semidependencies in a combination of behavior and orientation; or

(3) Semidependent in two or more ADLs and has dependencies in a combination of behavior and orientation.

3. Payment for regular and intensive assisted living services shall only be available for recipients residing in a licensed assisted living facility which has a valid DMAS provider agreement.

4. The assessor shall notify DSS eligibility personnel, upon completion of the UAI, that the recipient has been authorized for regular or intensive assisted living services and shall forward the UAI and authorization forms to DMAS, the facility chosen by the recipient and to the case manager, if case management services have been authorized.

5. The assessor shall give all recipients who have been denied assisted living services written notification that services have been denied and give the recipient the right to appeal the decision pursuant to DMAS Client Appeals Regulations (Part 1 of 12 VAC 30-110-10 et seq.). The assessor shall submit to DMAS the UAI, authorization form, and a copy of the notification showing denial of services before reimbursement for the assessment shall be made.

6. The assisted living facility shall forward a copy of the Long-Term Care Preadmission Screening Authorization form, completed by the assessor, and the individualized service plan, completed by the facility, to DMAS for authorization to bill DMAS for regular assisted or intensive assisted living services.

7. A recipient may not receive regular or intensive assisted living services concurrently with any other Medicaid-funded in-home or residential support waiver services authorized under § 1915(c) of the Social Security Act.

8. All authorizations and individualized service plans for assisted living services shall be subject to the approval of DMAS prior to Medicaid payment.

**E. Effective date for assisted living payments.**

1. DMAS shall pay the facility for services rendered while the recipient is both (i) determined, in accordance with regulations promulgated by DSS, to be eligible for benefits under the auxiliary grants [ or general relief ] program and (ii) authorized for a level of assisted living.

2. The assisted living authorization shall be considered effective as of the date the authorization form is signed and dated, except in the following situations:

a. In the case of an emergency placement as defined in regulations promulgated by DSS, the assisted living authorization shall be considered effective as of the date of the emergency placement, provided that the authorization form is signed and dated within seven working days after the date of the emergency placement.

b. In the case of recipients residing in a facility on February 1, 1996, and requiring an initial assessment, the assisted living authorization shall be considered effective, as follows: (i) August 1, 1996, provided that the authorization form is signed and dated on or before August 1, 1996; or (ii) as of whichever date on or after August 1, 1996, can be documented as being the date the recipient required a level of assisted living provided that the authorization form is signed and dated on or before February 1, 1997.

3. In addition to the requirements of subdivisions 1 and 2 of this subsection, in order for assisted living payments to be made to a facility, the assisted living authorization shall be based on a UAI which complies with the requirements of § 63.1-173.3 of the Code of Virginia.

**12 VAC 30-120-470. Conditions and requirements for participating assisted living facilities.**

**A. General requirements.** Facilities approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any changes in the level of care authorized and the individualized service plan which the facility previously submitted to DMAS.

2. Ensure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other facility qualified to perform the service or services required and participating in the Medicaid program at the time the service or services are performed.

3. Ensure the recipient's freedom to reject medical care and treatment.

4. Accept referrals for services only when staff is available to deliver the required services.

5. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

6. Charge DMAS for the provision of services to recipients in amounts not to exceed the facility's usual and customary charges to the general public.

7. Accept DMAS payment from the first day of the recipient's eligibility.

8. Accept as payment in full the amount established by DMAS.

9. Use program-designated billing forms for submission of charges.

10. Record maintenance and retention requirements.

a. The facility agrees to maintain and keep adequate and verifiable information and records as is necessary to:

(1) Identify and disclose the extent of services [ , as identified on the uniform assessment instrument, ] the facility furnishes to recipients;

(2) Comply with the disclosure requirements of Subpart B of 42 CFR Part 455;

(3) Assure proper payment by the DMAS;

(4) Receive payments under the Medicaid program;

(5) Satisfy or secure overpayments, or both, made under the Medicaid program; and

(6) Survive any termination of the provider participation agreement.

b. The facility agrees to furnish the information required to be maintained to the DMAS, the Attorney General of Virginia or his authorized representatives, or the state Medicaid Fraud Control Unit on request and in the form requested. This right of access to [ information facilities ] and records shall survive any termination of this agreement.

c. Records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every adjustment, retraction, exception and appeal is resolved. [ Records of minors shall be

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~~kept for at least five years after such minor has reached the age of 18 years. ]~~

d. In the event a facility discontinues operation, DMAS shall be notified in writing of the location and procedures for obtaining stored records for review. The location, agent, or trustee shall be within the Commonwealth of Virginia.

11. Disclose all financial, beneficial, ownership, equity, surety, or other interests it has in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to Medicaid recipients.

12. Hold confidential and use only for authorized DMAS purposes all medical and identifying information regarding recipients served.

13. ~~[ Change of ownership. ]~~ When ownership of the facility changes, DMAS shall be notified within 15 calendar days of such change. ~~[ A new DMAS provider agreement shall be required. ]~~

B. Requests for participation. Requests for participation must be accompanied with verification of the facility's current licensure from DSS.

C. Facility participation standards. DMAS will contract only with adult care residences licensed to provide assisted living services.

D. Adherence to facility contract and special participation conditions. All adult care residences contracting with DMAS must be in compliance with the DSS licensure requirements for assisted living facilities (22 VAC 40-71-10 et seq.).

E. Choice of facilities. Recipients eligible for intensive assisted living services shall be informed at the time of the assessment of all available [ assisted living ] facilities in the community and shall have the option of selecting the facility.

F. Appeals of adverse actions.

1. A facility shall have the right to appeal adverse action taken against it by DMAS. Adverse action includes, but is not limited to, termination of the provider agreement by DMAS, and retraction of payments from the facility by DMAS for noncompliance with applicable law, regulation, policy or procedure.

2. A facility shall not have the right to appeal to DMAS the following:

a. The criteria for regular assisted living services or for intensive assisted living services;

b. The assignment or nonassignment of a recipient to a particular level of assisted living; [ or ]

c. The methodology for calculating the per diem fee paid for regular or intensive assisted living services.

3. Appeals procedure. The administrative appeals procedure shall consist of the following three phases:

a. A reconsideration of the preliminary findings and a written response to the facility by the DMAS division which made the preliminary findings;

b. An informal fact-finding conference held in accordance with the Administrative Process Act with a written decision issued by the Appeals Division; and

c. A formal evidentiary hearing held in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) with a written decision issued by the DMAS Director.

4. Time frames to request appeals. The facility shall have 15 days from the date of service of the notification of adverse action to request a reconsideration, 30 days from the date of service of the written reconsideration to request an informal fact-finding conference, and 30 days from the date of service of the written informal fact-finding conference decision to request a formal evidentiary hearing. The date of service shall be deemed to be the earlier to occur of the date the notification, reconsideration or decision (i) was mailed to the facility, or (ii) was received by the facility. In the event the notification, reconsideration or decision being appealed was served on the facility by mail, three days shall be added to the applicable 15-day or 30-day period.

G. Responsibility for sharing information. It shall be the facility's responsibility to notify the case manager, DMAS, and DSS in writing within 30 days [ , or within the time frame of applicable DSS regulations, whichever is shorter, ] of the occurrence of any of the following circumstances:

1. There is a change in the recipient's functional or cognitive ability which would require a change in the authorized level of care. Temporary changes in a recipient's condition that can be reasonably expected to last less than 30 days do not require a new assessment, authorization, or notification;

2. A recipient dies;

3. A recipient is discharged from the facility; or

4. Other circumstances arise (including hospitalizations) which cause services to cease or be interrupted for more than 30 days.

H. Changes or termination of care. It shall be the assessor's responsibility to authorize changes to a recipient's level of care or to terminate payment for services.

1. The assessor shall communicate in writing to the facility and the recipient any change in level of care or any termination of services. The recipient shall be notified of the right to request a reconsideration by DMAS of any decision that changes the level of care authorized or terminates [ regular ] assisted living or intensive assisted living services.

2. If a reconsideration is requested by the recipient, DMAS will review the assessor's recommendation and respond to the individual in writing within 10 days of receipt of the request. If the assessor's decision is upheld, DMAS shall give the recipient the right to appeal

the decision pursuant to DMAS' Client Appeals Regulations (Part I of 12 VAC 30-110-10 et seq.).

3. The effective date of a termination or change in level of services shall be at least 10 days from the date of the notification letter.

I. Suspected abuse or neglect. Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating facility, qualified assessor, or case management agency knows or suspects [ , or has reason to suspect, ] that a recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS' adult protective services [ of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred ].

J. Monitoring of adherence to facility participation standards. The Department of Social Services' Division of Licensing shall be responsible for monitoring each assisted living facility's adherence to licensure standards which provide the basis for DMAS provider participation standards. In addition, DMAS shall periodically conduct audits of the services billed to DMAS and interview recipients to ensure that services are being provided and billed in accordance with DMAS policies and procedures. A facility's noncompliance with DMAS policies and procedures shall result in a written request from DMAS for a corrective action plan which details the steps the facility must take and the length of time permitted to achieve full compliance with DMAS regulations, policies and procedures.

**12 VAC 30-120-480. Reevaluation of service need and utilization review.**

A. The case manager shall be responsible for review of each [ regular ] assisted living or intensive assisted living recipient's need for services [ annually at least every 12 months ], or more frequently as required, to ensure proper utilization of services. The outcome of this review shall be communicated to the DSS eligibility staff, DMAS, the recipient, and the facility where the resident resides.

B. The assisted living facility shall be required to maintain the following documentation for review by the case manager and DMAS staff for each [ regular ] assisted living or intensive assisted living resident:

1. All UAs, authorization forms, and individualized service plans completed for the recipient maintained for a period not less than five years from the recipient's start of care in that facility.

2. All written communication related to the provision of care between the facility and the assessor, case manager, licensed health care professional, DMAS, DSS, the recipient, or other related parties.

3. A log which documents each day that the recipient is present in the facility.

**MEDICAID FUNDED LONG-TERM CARE PRE-ADMISSION SCREENING AUTHORIZATION**

Please provide the appropriate answer by either filling in the space or putting the correct number in the box provided.

Name: \_\_\_\_\_ Social Security \_\_\_\_\_

Is Currently Medicaid Eligible? \_\_\_\_\_ Medicaid Number \_\_\_\_\_

- If no Medicaid number now, is it anticipated that the individual will be financially Medicaid eligible within 180 days of nursing home? Yes = 2 No = 3
- Has individual formally applied for Medicaid? Yes = 1 No = 0
- Is currently auxiliary grant eligible \_\_\_\_\_ If no, has individual applied? Yes = 1 No = 0

Dept of Social Services \_\_\_\_\_  
 (Eligibility Responsibility) (Services Responsibility)

**MEDICAID AUTHORIZATION**

Nursing Home Pre-Admission Screening

- 1 = Nursing Facility
- 2 = FACE/LTC/PHP
- 3 = AIDS/HIV Waiver Services
- 4 = Personal Care
- 5 = Adult Day Health Care (ADHC)
- 6 = ADHC + Personal Care
- 7 = Respite Care

Adult Care Residence

- 11 = Residential Living
- 12 = Regular Assisted Living
- 13 = Intensive Assisted Living  
 (If 12 or 13 is Authorized, enter the following)  
 ACR Provider # \_\_\_\_\_  
 ACR Start of Care \_\_\_\_\_  
 Targeted Case Management for ACR  
 0 = No 1 = Yes

- None
- 8 = Other Services Recommended
  - 9 = Active Treatment for MI/MR Condition
  - 0 = None

**ASSESSMENT COMPLETED**

1 = Full Assessment 2 = Short Assessment \_\_\_\_\_

**SERVICE AVAILABILITY**

- 1 = Client on waiting list for service authorized
- 2 = Desired service provider not available
- 3 = Service provider available, care to start immediately

**LENGTH OF STAY (If approved for Nursing Home)**

- 1 = Temporary (less than 3 months)
- 2 = Temporary (less than 6 months)
- 3 = Continuing (more than 6 months)
- 8 = Not Applicable

**LEVEL I SCREENING IDENTIFICATION**

- Name of Level I screener and provider number:  
 \_\_\_\_\_

**LEVEL II ASSESSMENT DETERMINATION**

- 0 = Not referred for Level II assessment
- 1 = Referred, Active Treatment needed
- 2 = Referred, Active Treatment not needed
- 3 = Referred, Active Treatment needed but individual chooses nursing home

- Name of Level II Screener and ID number:  
 \_\_\_\_\_

- Did the individual expire after the Screening decision but before services were received? 1 = Yes 0 = No

**SCREENING CERTIFICATION**

This authorization is appropriate to adequately meet the individual's needs and assures that all other resources have been explored prior to Medicaid authorization for this recipient.

Level I Screener/Title	Date
Level I Screener/Title	Date
Level I Physician	Date

**GENERAL INFORMATION**

- Name of individual being screened.
- Social Security Number.
- Medicaid number if currently has a Medicaid card. This number should have twelve digits.
- If the individual is not currently eligible for Medicaid, is it anticipated that private funds would be depleted within 180 days after nursing home admission?
- Formal application for Medicaid is made when the individual or a family member has taken the required financial information to the local Eligibility Department and completed forms needed to apply for benefits. The authorization for long-term care can be made regardless of whether the person has been determined Medicaid-eligible, but placement may not be available until the provider is assured of the person's Medicaid status.
- Assessment for admission to an Adult Care Residence should be completed only for persons eligible for an auxiliary grant or if the individual has applied. The local Eligibility Department in the person's locality of residence prior to admission to the ACR is the Department which completes the auxiliary grant determination.
- The Department of Social Services with service and eligibility responsibility, may not always be the same agency. Please indicate, if known, the departments for each in the area provided.

**MEDICAID AUTHORIZATION:** Record only one number in the box in this section to indicate the Pre-Admission Screening authorization.

Nursing Home Pre-Admission Screening

- 1= **NURSING FACILITY** authorize only if individual meets the nursing facility (NF) criteria and community-based care is not an option.
- 2= **FACE/LTC/PHP** authorize only if individual meets NF criteria (pre-NF criteria does not qualify) and requires a community-based service to prevent institutionalization.
- 3= **AIDS/HIV SERVICES** authorize only if individual meets the criteria for AIDS/HIV Waiver services and requires AIDS/HIV Waiver services to prevent institutionalization (i.e. case management, private duty nursing, personal/respite care, nutritional supplements).
- 4= **ELDERLY & DISABLED WAIVER SERVICES:** authorize (PERSONAL CARE, ADULT DAY HEALTH CARE, ADHC & PERSONAL, or RESPITE CARE) only if individual meets NF or pre-NF criteria and requires a community-based service to prevent institutionalization.

Adult Care Residence

- 11=**RESIDENTIAL LIVING** authorize only if individual has dependency in either 1 ADL, 1 IADL or medication administration.
- 12=**REGULAR ASSISTED LIVING** authorize only if individual has dependency in either 2 ADL's or behavior.
- 13=**INTENSIVE ASSISTED LIVING** authorize only if individual meets either nursing facility, pre-nursing facility or modified pre-nursing facility criteria and Intensive Assisted Living waiver services will meet the individual's needs.

If 12 or 13 is authorized, enter, if known, the ACR's provider number which will admit the individual and the date on which the individual will be admitted to that ACR

Resident must require coordination of multiple services and the ACR or other support is not available to assist in coordination/access of these services. Enter a "0" if only the annual reassessment is required.

None

8= **OTHER SERVICES RECOMMENDED** includes informal social support systems or any service excluding Medicaid-funded long-term care (such as Companion services, Meals on Wheels, MR Waiver, Rehab services, etc.).

9= **ACTIVE TREATMENT OF MI/MR CONDITION** applies to those individuals who meet nursing facility level of care but require active treatment for a condition of mental illness or mental retardation and cannot appropriately receive such treatment in a nursing facility.

0= **NONE** is used when the screening team recommends no services or the individual refuses services.

**ASSESSMENT COMPLETED:** If 1-7, 12 or 13 is authorized, you must complete the full assessment. If 11 is authorized, only the short assessment is required.

**SERVICE AVAILABILITY:** If a Medicaid-funded long-term care service is authorized, indicate whether the service can be started immediately (#3) or whether there is a waiting list (#1) or no available provider (#2).

**LENGTH OF STAY:** If approval for nursing facility is made, please indicate how long it is felt that these services will be needed by the individual. The physician's signature certifies expected length of stay as well as level-of-care.

If approved for any other service enter 8.

**LEVEL I SCREENING IDENTIFICATION**

Enter the name of the Level I screening agency or facility (i.e. hospital, local DSS, local Health, Area Agency on Aging, Community Service Board, state MH/MR facility, CIL) and below it, in the 7 boxes provided, that entity's 7 digit screening provider ID#.

In order for Medicaid to make prompt payments to Pre-Admission Screening committees, all of the information in the section must be completed. Failure to complete any part of this section will delay reimbursement.

If the screening is a Nursing Home Pre-Admission Screening completed in the locality, there should be two Level I screeners, both the local DSS and local Health departments. Otherwise, there will be only one Level I screener identification entered.

**LEVEL II ASSESSMENT DETERMINATION**

If the authorization is for nursing facility placement, there must be an entry in this section showing whether a Level II assessment was completed, and if so, whether active treatment was needed. If the Level II assessment for a condition of mental illness or mental retardation was completed, enter the name of the Community Services Board involved and their ID number.

When a screening committee is aware that an individual has expired prior to receiving the services authorized by the screening committee, a "1" should be entered.

**SCREENING CERTIFICATION:** Nursing Home Pre-Admission Screenings must be dated and signed by the individual(s) completing the screening, either a registered nurse, social worker or discharge planner and the physician. Adult Care Residence screenings must be signed by a case manager/assessor of the Level I screening agency. The date the screening certification is signed is the earliest date for which Medicaid reimbursed services may be

# VIRGINIA UNIFORM ASSESSMENT INSTRUMENT

Dates: Screen: \_\_\_/\_\_\_/\_\_\_  
Assessment: \_\_\_/\_\_\_/\_\_\_  
Reassessment: \_\_\_/\_\_\_/\_\_\_

## IDENTIFICATION/BACKGROUND

### Names & Vital Information

Client Name: \_\_\_\_\_ (Last) \_\_\_\_\_ (First) \_\_\_\_\_ (Middle Initial) Client SSN: \_\_\_\_\_

Address: \_\_\_\_\_ (Street) \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code)

Phone: ( ) \_\_\_\_\_ City/County Code: \_\_\_\_\_

Directions to House: \_\_\_\_\_ Pets? \_\_\_\_\_

### Demographics

Birthdate: \_\_\_/\_\_\_/\_\_\_ (Month) (Day) (Year) Age: \_\_\_\_\_ Sex: \_\_\_ Male 0 \_\_\_ Female 1

Marital Status: \_\_\_ Married 0 \_\_\_ Widowed 1 \_\_\_ Separated 2 \_\_\_ Divorced 3 \_\_\_ Single 4 \_\_\_ Unknown 9

Race: \_\_\_ White 0 \_\_\_ Black/African American 1 \_\_\_ American Indian 2 \_\_\_ Oriental/Asian 3 \_\_\_ Alaskan Native 4 \_\_\_ Unknown 9  
Education: \_\_\_ Less than High School 0 \_\_\_ Some High School 1 \_\_\_ High School Graduate 2 \_\_\_ Some College 3 \_\_\_ College Graduate 4 \_\_\_ Unknown 9  
Communication of Needs: \_\_\_ Verbally, English 0 \_\_\_ Verbally, Other Language 1 \_\_\_ Sign Language/Gestures/Device 2 \_\_\_ Does Not Communicate 3  
Specify: \_\_\_\_\_  
Hearing Impaired? \_\_\_\_\_

Ethnic Origin: \_\_\_\_\_ Specify: \_\_\_\_\_

### Primary Caregiver/Emergency Contact/Primary Physician

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: (H) \_\_\_\_\_ (W) \_\_\_\_\_

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: (H) \_\_\_\_\_ (W) \_\_\_\_\_

Name of Primary Physician: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

### Initial Contact

Who called: \_\_\_\_\_ (Name) \_\_\_\_\_ (Position to Client) \_\_\_\_\_ (Phone)

Presenting Problem/Diagnosis: \_\_\_\_\_

CLIENT NAME: \_\_\_\_\_ CLIENT SSN: \_\_\_\_\_

### Current Personal Services

Do you currently use any of the following types of services?

No	Yes	Check All Services That Apply	Provider/Frequency:
___	___	Adult Day Care	_____
___	___	Adult Protective	_____
___	___	Case Management	_____
___	___	Chore/Companion/Homemaker	_____
___	___	Congregate Meals/Senior Center	_____
___	___	Financial Management/Counseling	_____
___	___	Friendly Visitor/Telephone Reassurance	_____
___	___	Habilitation/Supported Employment	_____
___	___	Home Delivered Meals	_____
___	___	Home Health/Rehabilitation	_____
___	___	Home Repairs/Weatherization	_____
___	___	Housing	_____
___	___	Legal	_____
___	___	Mental Health (Inpatient/Outpatient)	_____
___	___	Mental Retardation	_____
___	___	Personal Care	_____
___	___	Respite	_____
___	___	Substance Abuse	_____
___	___	Transportation	_____
___	___	Vocational Rehab/Job Counseling	_____
___	___	Other: _____	_____

### Financial Resources

Where are you on this scale for annual (monthly) family income before taxes?

- \_\_\_ \$20,000 or More (\$1,667 or More) 0
- \_\_\_ \$15,000 - \$19,999 (\$1,250 - \$1,666) 1
- \_\_\_ \$11,000 - \$14,999 (\$ 917 - \$1,249) 2
- \_\_\_ \$ 9,500 - \$10,999 (\$ 792 - \$ 916) 3
- \_\_\_ \$ 7,000 - \$ 9,499 (\$ 583 - \$ 791) 4
- \_\_\_ \$ 3,500 - \$ 6,999 (\$ 458 - \$ 582) 5
- \_\_\_ \$ 5,499 or Less (\$ 457 or Less) 6
- \_\_\_ Unknown 9

Number in Family unit: \_\_\_\_\_  
Optional: Total monthly family income: \_\_\_\_\_

Do you currently receive income from ... ?

- | No  | Yes | Optional: Amount       |
|-----|-----|------------------------|
| ___ | ___ | Black Lung, _____      |
| ___ | ___ | Pension, _____         |
| ___ | ___ | Social Security, _____ |
| ___ | ___ | SSI/SSDI, _____        |
| ___ | ___ | VA Benefits, _____     |
| ___ | ___ | Wages/Salary, _____    |
| ___ | ___ | Other, _____           |

Does anyone cash your check, pay your bills or manage your business?

No	Yes	Names
___	___	Legal Guardian, _____
___	___	Power of Attorney, _____
___	___	Representative Payee, _____
___	___	Other, _____

Do you receive any benefits or entitlements?

- | No  | Yes |                                 |
|-----|-----|---------------------------------|
| ___ | ___ | Auxiliary Grant                 |
| ___ | ___ | Food Stamps                     |
| ___ | ___ | Fuel Assistance                 |
| ___ | ___ | General Relief                  |
| ___ | ___ | State and Local Hospitalization |
| ___ | ___ | Subsidized Housing              |
| ___ | ___ | Tax Relief                      |

What types of health insurance do you have?

- | No  | Yes |  |
|-----|-----|--|
| ___ | ___ | Medicare, # _____  |
| ___ | ___ | Medicaid, # _____  |
| ___ | ___ | Pending: <input type="checkbox"/> No <input type="checkbox"/> Yes  |
| ___ | ___ | QMB/SLMB: <input type="checkbox"/> No <input type="checkbox"/> Yes |
| ___ | ___ | All Other Public/Private _____                                     |

CLIENT NAME: \_\_\_\_\_ Client SSN: \_\_\_\_\_

**Physical Environment**

Where do you usually live? Does anyone live with you?

	Alone 1	Spouse 2	Other 3	Names of Persons in Household	
House: Own 0					
House: Rent 1					
House: Other 2					
Apartment 3					
Rented Room 4					
	Name of Provider (Place)			Admission Date	Provider Number (if Applicable)
Adult Care Residence 50					
Adult Foster 60					
Nursing Facility 70					
Mental Health/Retardation Facility 80					
Other 90					

Where you usually live, are there any problems?

No 0	Yes 1	Check All Problems That Apply	Describe Problems:
<input type="checkbox"/>	<input type="checkbox"/>	Barriers to Access	
<input type="checkbox"/>	<input type="checkbox"/>	Electrical Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	Fire Hazards/No Smoke Alarm	
<input type="checkbox"/>	<input type="checkbox"/>	Insufficient Heat/Air Conditioning	
<input type="checkbox"/>	<input type="checkbox"/>	Insufficient Hot Water/Water	
<input type="checkbox"/>	<input type="checkbox"/>	Lack of/Poor Toilet Facilities (Inside/Outside)	
<input type="checkbox"/>	<input type="checkbox"/>	Lack of/Defective Stove, Refrigerator, Freezer	
<input type="checkbox"/>	<input type="checkbox"/>	Lack of/Defective Washer/Dryer	
<input type="checkbox"/>	<input type="checkbox"/>	Lack of/Poor Bathing Facilities	
<input type="checkbox"/>	<input type="checkbox"/>	Structural Problems	
<input type="checkbox"/>	<input type="checkbox"/>	Telephone Not Accessible	
<input type="checkbox"/>	<input type="checkbox"/>	Unsafe Neighborhood	
<input type="checkbox"/>	<input type="checkbox"/>	Unsafe/Poor Lighting	
<input type="checkbox"/>	<input type="checkbox"/>	Unsanitary Conditions	
<input type="checkbox"/>	<input type="checkbox"/>	Other	

CLIENT NAME: \_\_\_\_\_ Client SSN: \_\_\_\_\_

**FUNCTIONAL STATUS** (Check only one block for each level of functioning)

	Needs Help?		MH Only 10 Mechanical Help	HH Only 2 Human Help	MH & HH 3	Performed by Others 40	Is Not Performed 50
	No 0	Yes	Supervision 1	Physical Assistance 2	Supervision 1	Physical Assistance 2	Spoon Fed 11 Syringe/Tube Fed 12 IV 3
Bathing							
Dressing							
Toileting							
Transferring							
Eating/Feeding							

	Needs Help?		Incontinent	External Device/ Indwelling/ Ostomy	Incontinent	External Device	Indwelling Catheter	Ostomy
	No 0	Yes	Less than weekly 1	Self care 2	Weekly or more 2	Not self care 4	Not self care 5	Not self care 5
Bowel								
Bladder								

Comments:

	Needs Help?		MH Only 10 Mechanical Help	HH Only 2 Human Help	MH & HH 3	Performed by Others 40	Is Not Performed 50
	No 0	Yes	Supervision 1	Physical Assistance 2	Supervision 1	Physical Assistance 2	Confined Moves About Does Not Move About
Walking							
Wheeling							
Stairclimbing							
Mobility							

	Needs Help?		Comments:				
	No 0	Yes 1					
Meal Preparation							
Housekeeping							
Laundry							
Money Management							
Transportation							
Shopping							
Using Phone							

Outcome: Is this a short assessment?

CLIENT NAME: \_\_\_\_\_ Client SSN: \_\_\_\_\_

**PHYSICAL HEALTH ASSESSMENT**

**Professional Visits/Medical Admissions**

Doctor's Name(s) (List all)	Phone	Date of Last Visit	Reason for Last Visit

Admissions: In the past 12 months, have you been admitted to a ... for medical or rehabilitation reasons?

No	Yes	Name of Place	Admit. Date	Length of Stay/Reason
		Hospital		
		Nursing Facility		
		Adult Care Residence		

Do you have any advanced directives such as ... (Who has it ... Where is it ...)?

No  Yes  Location \_\_\_\_\_

\_\_\_ Living Will, \_\_\_\_\_

\_\_\_ Durable Power of Attorney for Health Care, \_\_\_\_\_

\_\_\_ Other, \_\_\_\_\_

**Diagnoses & Medication Profile**

Do you have any current medical problems, or a known or suspected diagnosis of mental retardation or related conditions, such as ... (Refer to the list of diagnoses)?

Current Diagnoses	Date of Onset

Enter Codes for 3 Major, Active Diagnoses: \_\_\_ None 00 \_\_\_ DX1 \_\_\_ DX2 \_\_\_ DX3

Current Medications (Include Over-the-Counter)	Dose, Frequency, Route	Reason(s) Prescribed
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		
6. _____		
7. _____		
8. _____		
9. _____		
10. _____		

Total No. of Medications: \_\_\_ (If 0, skip to Sensory Function) Total No. of Tranquilizer/Psychotropic Drugs: \_\_\_\_\_

Do you have any problems with medicines? ...?		How do you take your medicines? ...?	
No <input type="checkbox"/>	Yes <input type="checkbox"/>	___ Without assistance 0	___ Administered/monitored by person 1
		___ Administered/monitored by professional nursing staff 2	

- Diagnoses:
- Alcoholism/Substance Abuse (20)
  - Blood-Related Problems (00)
  - Cancer (00)
  - Cardiovascular Problems
  - Circulation (00)
  - Heart Trouble (00)
  - High Blood Pressure (00)
  - Other Cardiovascular Problems (00)
  - Deviations
  - Alzheimer's (00)
  - Non-Alzheimer's (00)
  - Developmental Disabilities
  - Mental Retardation (00)
  - Related Conditions
  - Autism (10)
  - Cerebral Palsy (00)
  - Epilepsy (10)
  - Prion/Creutzfeldt-Jakob (00)
  - Multisystem Atrophy (00)
  - Muscular Dystrophy (00)
  - Spina Bifida (10)
  - Dignities/Lowest/Call Bladder (00)
  - Endocrine (Gland) Problems
  - Diabetes (00)
  - Other Endocrine Problems (00)
  - Eye Disorders (00)
  - Immune System Disorders (00)
  - Muscular/Skeletal
  - Arthritis: Rheumatoid Arthritis (00)
  - Other Muscular/Skeletal Problems (00)
  - Neurological Problems
  - Brain Trauma/Injury/Call
  - Spinal Cord Injury (00)
  - Stroke (00)
  - Other Neurological Problems (00)
  - Psychiatric Problems
  - Anxiety Disorders (00)
  - Major Depression (00)
  - Personality Disorder (00)
  - Schizophrenia (00)
  - Other Psychiatric Problems (00)
  - Respiratory Problems
  - Black Lung (00)
  - COPD (00)
  - Emphysema (00)
  - Other Respiratory Problems (00)
  - Urinary/Reproductive Problems
  - Sexual Function (00)

CLIENT NAME: \_\_\_\_\_ Client SSN: \_\_\_\_\_

**Sensory Functions**

How is your vision, hearing, and speech?

	No Impairment 0	Impairment		Complete Loss 3	Date of Last Exam
		Record Date of Onset/Type of Impairment			
		Compensation 1	No Compensation 2		
Vision					
Hearing					
Speech					

**Physical Status**

Joint Motion: How is your ability to move your arms, fingers and legs?

- \_\_\_ Within normal limits or instability corrected 0
- \_\_\_ Limited motion 1
- \_\_\_ Instability uncorrected or immobile 2

Have you ever broken or dislocated any bones ... Ever had an amputation or lost any limbs ... Lost voluntary movement of any part of your body? ...

Fractures/Dislocations	Missing Limbs	Paralysis/Paresis
___ None 000	___ None 000	___ None 000
___ Hip Fracture 1	___ Finger(s)/Toe(s) 1	___ Partial 1
___ Other Broken Bone(s) 2	___ Arm(s) 2	___ Total 2
___ Dislocation(s) 3	___ Leg(s) 3	Describe: _____
___ Combination 4	___ Combination 4	
Previous Rehab Program?	Previous Rehab Program?	Previous Rehab Program?
___ No/Not Completed 1	___ No/Not Completed 1	___ No/Not Completed 1
___ Yes 2	___ Yes 2	___ Yes 2
Date of Fracture/Dislocation?	Date of Amputation?	Onset of Paralysis?
___ 1 Year or Less 1	___ 1 Year or Less 1	___ 1 Year or Less 1
___ More than 1 Year 2	___ More than 1 Year 2	___ More than 1 Year 2

**Nutrition**

Height: \_\_\_\_\_ (inches) Weight: \_\_\_\_\_ (lbs.) Recent Weight Gain/Loss: \_\_\_ No \_\_\_ Yes 1

Describe: \_\_\_\_\_

Are you on any special diet(s) for medical reasons?	Do you have any problems that make it hard to eat?
___ None 0	No <input type="checkbox"/> Yes <input type="checkbox"/>
___ Low Fat/Cholesterol 1	___ Food Allergies
___ No/Low Salt 2	___ Inadequate Food/Fluid Intake
___ No/Low Sugar 3	___ Nausea/Vomiting/Diarrhea
___ Combination/Other 4	___ Problems Eating Certain Foods
Do you take dietary supplements?	___ Problems Following Special Diets
___ None 0	___ Problems Swallowing
___ Occasionally 1	___ Taste Problems
___ Daily, Not Primary Source 2	___ Tooth or Mouth Problems
___ Daily, Primary Source 3	___ Other: _____



CLIENT NAME: \_\_\_\_\_ Client SSN: \_\_\_\_\_

**Emotional Status**

In the past month, how often did you...?	Rarely/ Never 0	Some of the Time 1	Often 2	Most of the Time 3	Unable to Assess 9
Feel anxious or worry constantly about things?					
Feel irritable, have crying spells or get upset over little things?					
Feel alone and that you didn't have anyone to talk to?					
Feel like you didn't want to be around other people?					
Feel afraid that something bad was going to happen to you and/or feel that others were trying to take things from you or trying to harm you?					
Feel sad or hopeless?					
Feel that life is not worth living... or think of taking your life?					
See or hear things that other people did not see or hear?					
Believe that you have special powers that others do not have?					
Have problems falling or staying asleep?					
Have problems with your appetite... that is, eat too much or too little?					

Comments: \_\_\_\_\_

**Social Status**

Are there some things that you do that you especially enjoy?

No 0 Yes 1 Describe

\_\_\_\_ Solitary Activities, \_\_\_\_\_

\_\_\_\_ With Friends/Family, \_\_\_\_\_

\_\_\_\_ With Groups/Clubs, \_\_\_\_\_

\_\_\_\_ Religious Activities, \_\_\_\_\_

How often do you talk with your children, family or friends, either during a visit or over the phone?

<b>Children</b>	<b>Other Family</b>	<b>Friends/Neighbors</b>
____ No Children 0	____ No Other Family 0	____ No Friends/Neighbors 0
____ Daily 1	____ Daily 1	____ Daily 1
____ Weekly 2	____ Weekly 2	____ Weekly 2
____ Monthly 3	____ Monthly 3	____ Monthly 3
____ Less than Monthly 4	____ Less than Monthly 4	____ Less than Monthly 4
____ Never 5	____ Never 5	____ Never 5

Are you satisfied with how often you see or hear from your children, other family and/or friends? \_\_\_\_\_

CLIENT NAME: \_\_\_\_\_ Client SSN: \_\_\_\_\_

**Hospitalization/Alcohol- Drug Use**

Have you been hospitalized or received inpatient/outpatient treatment in the last 2 years for nerves, emotional/mental health, alcohol or substance abuse problems?

\_\_\_\_ No 0 \_\_\_\_ Yes 1

Name of Place	Admit Date	Length of Stay/Reason

Do (did) you ever drink alcoholic beverages?

\_\_\_\_ Never 0  
\_\_\_\_ At one time, but no longer 1  
\_\_\_\_ Currently 2

How much: \_\_\_\_\_  
How often: \_\_\_\_\_

Do (did) you ever use non-prescription, mood altering substances?

\_\_\_\_ Never 0  
\_\_\_\_ At one time, but no longer 1  
\_\_\_\_ Currently 2

How much: \_\_\_\_\_  
How often: \_\_\_\_\_

If the client has never used alcohol or other non-prescription, mood altering substances, skip to the tobacco question.

<p>Have you, or someone close to you, ever been concerned about your use of alcohol/other mood altering substances?</p> <p>____ No 0 ____ Yes 1</p> <p>Describe concerns: _____</p>	<p>Do (did) you ever use alcohol/other mood-altering substances with...?</p> <p>____ No 0 ____ Yes 1</p> <p>____ Prescription drugs? ____ OTC medicine? ____ Other substances?</p> <p>Describe what and how often: _____</p>	<p>Do (did) you ever use alcohol/other mood-altering substances to help you...?</p> <p>____ No 0 ____ Yes 1</p> <p>____ Sleep? ____ Relax? ____ Get more energy? ____ Relieve worries? ____ Relieve physical pain?</p> <p>Describe what and how often: _____</p>
---	--	--

Do (did) you ever smoke or use tobacco products?

\_\_\_\_ Never 0  
\_\_\_\_ At one time, but no longer 1  
\_\_\_\_ Currently 2

How much: \_\_\_\_\_  
How often: \_\_\_\_\_

Is there anything we have not talked about that you would like to discuss? \_\_\_\_\_

CLIENT NAME: \_\_\_\_\_ Client SSN: \_\_\_\_\_

**Client Case Summary**

[Empty box for Client Case Summary]

**Client Needs**

- |   |   |
|---|---|
| No <input type="checkbox"/> Yes <input type="checkbox"/> (Check All That Apply) | No <input type="checkbox"/> Yes <input type="checkbox"/> (Check All That Apply) |
| <input type="checkbox"/> Finances   | <input type="checkbox"/> Assistive Devices/Medical Equipment                    |
| <input type="checkbox"/> Home/Physical Environment                              | <input type="checkbox"/> Medical Care/Health                                    |
| <input type="checkbox"/> ADLS   | <input type="checkbox"/> Nutrition  |
| <input type="checkbox"/> IADLS  | <input type="checkbox"/> Cognitive/Emotional                                    |
|   | <input type="checkbox"/> Caregiver Support                                      |

**Assessment Completed By:**

Assessor's Name	Signature	Agency/Provider Name	Provider#	Section(s) Completed

CLIENT NAME: \_\_\_\_\_ Client SSN: \_\_\_\_\_

**ASSESSMENT SUMMARY**

*Indicators of Adult Abuse and Neglect: While completing the assessment, if you suspect abuse, neglect or exploitation, you are required by Virginia law, Section 63.1 - 65.3 to report this to the local Department of Social Services, Adult Protective Services.*

**Caregiver Assessment**

Does the client have an informal caregiver?  
 No 0 (Skip to Section on Preferences)     Yes 1

Where does the caregiver live?  
 With client 0  
 Separate residence, close proximity 1  
 Separate residence, over 1 hour away 2

Is the caregiver's help...  
 Adequate to meet the client's needs? 0  
 Not adequate to meet the client's needs? 1

Has providing care to the client become a burden for the caregiver?  
 Not at all 0  
 Somewhat 1  
 Very much 2

Describe any problems with continued caregiving:

[Empty box for Describe any problems with continued caregiving]

**Preferences**

Client's preferences for receiving needed care: \_\_\_\_\_  
 \_\_\_\_\_  
 Family/Representative's preferences for client's care: \_\_\_\_\_  
 \_\_\_\_\_  
 Physician's comments (if applicable): \_\_\_\_\_

## BOARD OF NURSING

**Title of Regulation:** 18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing (amending 18 VAC 90-20-210, 18 VAC 90-20-330, and 18 VAC 90-20-350).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3000 et seq. of the Code of Virginia.

**Effective Date:** July 24, 1996.

**Summary:**

*The amendment establishes a biennial renewal fee of \$20 for certified nurse aides. The amendment makes permanent the emergency regulation which became effective August 1, 1995. An emergency situation was created by drastic cuts in federal funding for the Nurse Aide Program in Virginia, which resulted in reductions in investigations of complaints and disciplinary actions, thereby necessitating the imposition of this fee. This regulation is essential to avoid a renewed threat to the health and safety of residents of long-term care facilities in Virginia.*

**Summary of Public Comment and Agency 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.

**Agency Contact:** Copies of the regulation may be obtained from Nancy K. Durrett, Executive Director, Board of Nursing, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

**18 VAC 90-20-210. Licensure of applicants from other countries.**

A. Applicants whose basic nursing education was received in, and who are duly licensed under the laws of another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in ~~18 VAC 90-20-210 subsections B and C~~ of this chapter section.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence of a passing score on the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and
2. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Request a transcript from the nursing education program to be submitted directly to the board office;
2. Provide evidence of secondary education to meet the statutory requirements;
3. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and
4. Submit the required application and fee for licensure by examination.

**18 VAC 90-20-330. Nurse aide education programs.**

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 ~~18 VAC 90-20-330 subsection B~~ of this chapter section.
3. The Education Special Conference Committee (the "committee"), comprised of not less than three members of the board, shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review the application and shall make a recommendation to the board for grant or denial of 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 § 9-6.14:12 and subdivision 9 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 demonstrate evidence of compliance with the following essential elements:

1. Curriculum content and length as set forth in ~~18 VAC 90-20-330 subsections D and 18 VAC 90-20-330 G~~ of this chapter section.
2. Maintenance of qualified instructional personnel as set forth in ~~18 VAC 90-20-330 subsection C~~ of this chapter section.
3. Classroom facilities that meet requirements set forth in ~~18 VAC 90-20-330 subsection H~~ of this chapter section.
4. Maintenance of records as set forth in ~~18 VAC 90-20-330 subsection E~~ of this chapter section.
5. Skills training experience in a nursing facility which 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, effective April 1, 1992) in the past two years.
6. Agreement that board representatives may make unannounced visits to the program.
7. 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.
8. Must report all substantive changes in subdivisions 1 through 7 of ~~18 VAC 90-20-330 subsection B~~ of this chapter section within 10 days of the change to the board.

C. Instructional personnel.

1. Program coordinator.

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- a. 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.
- b. The primary instructor may be the program coordinator in any nurse aide education program.
2. Primary instructor.
- a. Qualifications. The primary instructor, who does the actual teaching of the students:
- (1) Shall hold a current Virginia license as a registered nurse; and
  - (2) Shall have two years of experience as a registered nurse and at least one year of experience within the previous five years 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.
- b. Responsibilities. The primary instructor shall:
- (1) Participate in the planning of each learning experience;
  - (2) Ensure that course objectives are accomplished;
  - (3) Ensure that the provisions of ~~18 VAC 90-20-330 C subdivision 6~~ of this chapter subsection are maintained;
  - (4) Maintain records as required by ~~18 VAC 90-20-330 subsection E~~ of this chapter section; and
  - (5) Perform other activities necessary to comply with ~~18 VAC 90-20-330 subsection B~~ of this chapter section; and
  - (6) Ensure that students do not perform services for which they have not received instruction and been found proficient by the instructor.
3. Other instructional personnel.
- a. Qualifications.
- (1) A registered nurse shall:
    - (a) Hold a current Virginia license as a registered nurse; and
    - (b) Have had at least one year, within the preceding five years, of direct patient care experience as a registered nurse with the elderly or chronically ill, or both, of any age.
  - (2) A licensed practical nurse shall:
    - (a) Hold a current Virginia license as a practical nurse;
    - (b) Hold a high school diploma or equivalent;
    - (c) Have been graduated from a state-approved practical nursing program; and
    - (d) Have had at least two years, within the preceding five years, of direct patient care experience with the elderly or chronically ill, or both, of any age.
- b. Responsibilities. Other personnel shall provide instruction under the general supervision of the primary instructor.
4. 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:
- a. Complete satisfactorily a "train-the-trainer" program approved by the board. Such a program shall be approved by the board for five years, at which time the sponsor must request reapproval of the program. The content of the program must include:
    - (1) Basic principles of adult learning;
    - (2) Teaching methods and tools for adult learners; and
    - (3) Evaluation strategies and measurement tools for assessing the learning outcomes; or
  - b. Complete satisfactorily a credit or noncredit course or courses approved by the board. Such courses shall be evaluated for approval by the board upon request from the individual taking the course. The content of such credit or noncredit course shall be comparable to that described in ~~18 VAC 90-20-330 C subdivision 4~~ a of this chapter subsection; or
  - c. Provide evidence acceptable to the board of experience in teaching adult learners within the preceding five years.
5. The program may utilize resource personnel who have had at least one year of experience in their field to meet the planned program objectives for specific topics.
6. 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.
- D. Curriculum.
1. The graduate of the nurse aide education program shall be prepared to:
    - a. Communicate and interact competently on a one-to-one basis with the clients;
    - b. Demonstrate sensitivity to clients' emotional, social, and mental health needs through skillful directed interactions;

c. Assist clients in attaining and maintaining functional independence;

d. Exhibit behavior in support and promotion of clients' rights; and

e. Demonstrate skills in observation and documentation needed to participate in the assessment of clients' health, physical condition and well-being.

2. Content. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

a. Initial core curriculum. Prior to the direct contact of a student with a nursing facility client, a total of at least 16 hours of instruction in the following areas must be presented:

- (1) Communication and interpersonal skills,
- (2) Infection control,
- (3) Safety and emergency procedures, including the Heimlich Maneuver,
- (4) Promoting client independence, and
- (5) Respecting clients' rights.

b. Basic skills.

- (1) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor.
- (2) Measuring and recording routine vital signs.
- (3) Measuring and recording height and weight.
- (4) Caring for the clients' environment.
- (5) Measuring and recording fluid and food intake and output.
- (6) Performing basic emergency measures.
- (7) Caring for client when death is imminent.

c. Personal care skills.

- (1) Bathing and oral hygiene.
- (2) Grooming.
- (3) Dressing.
- (4) Toileting.
- (5) Assisting with eating and hydration including proper feeding techniques.
- (6) Caring for skin.
- (7) Transfer, positioning and turning.

d. Individual client's needs including mental health and social service needs.

- (1) Identifying the psychosocial characteristics of the populations who reside in nursing homes.

(2) Modifying the aide's behavior in response to behavior of clients.

(3) Identifying developmental tasks associated with the aging process.

(4) Providing training in and the opportunity for self care according to clients' capabilities.

(5) Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

(6) Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, providing and reinforcing other behavior consistent with clients' dignity.

(7) Utilizing client's family or concerned others as a source of emotional support.

(8) Responding appropriately to client's behavior.

e. Care of the cognitively impaired client.

(1) Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

(2) Communicating with cognitively impaired residents.

(3) Demonstrating and understanding the behavior of cognitively impaired residents.

(4) Responding appropriately to the behavior of cognitively impaired residents.

(5) Using methods to reduce the effects of cognitive impairment.

f. Skills for basic restorative services.

(1) Using assistive devices in transferring, ambulation, eating and dressing.

(2) Maintaining range of motion.

(3) Turning and positioning, both in bed and chair.

(4) Bowel and bladder training.

(5) Caring for and using prosthetic and orthotic devices.

(6) Teaching the client in self-care according to the client's abilities as directed by a supervisor.

g. Clients' rights.

(1) Providing privacy and maintaining confidentiality.

(2) Promoting the client's right to make personal choices to accommodate individual needs.

(3) Giving assistance in resolving grievances and disputes.

(4) Providing assistance necessary to participate in client and family groups and other activities.

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- (5) Maintaining care and security of the client's personal possessions.
  - (6) Promoting the resident's rights to be free from abuse, mistreatment and neglect and the need to report any instances of such treatment to appropriate staff.
  - (7) Avoiding the need for restraints in accordance with current professional standards.
- h. Legal aspects of practice as a certified nurse aide.
- 3. Unit objectives.
    - a. Objectives for each unit of instruction shall be stated in behavioral terms which are measurable.
    - b. Objectives shall be reviewed with the students at the beginning of each unit.
- E. Records.
    - 1. Each nurse aide education program shall develop 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 nurse aide must receive a copy of this record.
    - 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.
  - F. Student identification. The nurse aide students shall wear identification that is clearly recognizable to clients, visitors and staff.
  - G. Length of program.
    - 1. The program shall be at least 80 clock hours in length.
    - 2. The program shall provide for at least 16 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. Five of the clinical hours may be in a setting other than a nursing home.
    - 4. Employment orientation to facilities used in the education program must not be included in the 80 hours allotted for the program.
  - H. 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. All equipment needed, including audio-visual equipment and that needed for simulating resident care.
  - I. Program review.
    - 1. Each nurse aide education program shall be reviewed on site by an agent of the board at least every two years following initial review.
    - 2. The committee, in accordance with § 9-6.14:11 of the Code of Virginia, shall receive and review the report of the site visit and shall make recommendations to the board to grant or deny continued approval.
      - a. A nurse aide education program shall continue to be approved provided the requirements set forth in ~~18 VAC 90-20-330 subsections~~ B through H of this chapter section are maintained.
      - b. If the committee determines that a nurse aide education program is not maintaining the requirements of ~~18 VAC 90-20-330 subsections~~ B through H of this chapter section, with the exception of ~~18 VAC 90-20-330 subdivision~~ B 5 of this section, the committee shall 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.
        - (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 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 § 9-6.14:12 and subdivision 9 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 § 9-6.14:12 and subdivision 9 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.
    - 3. 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.
  - J. Curriculum changes. Changes in curriculum must be approved by the board prior to implementation and shall be submitted for approval at the time of a report of a site visit or the report submitted by the program coordinator in the intervening years.
  - K. Interruption of program.
    - 1. When a program provider does not wish to admit students 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 ~~18 VAC 90-20-330 subsection~~ B of the regulations this section 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 ~~18 VAC 90-20-330~~ *subsection L of this chapter section.*

L. Closing of a nurse 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 90-20-350. Nurse aide registry.

A. Initial certification by examination.

1. To be placed on the registry and certified, the nurse aide must:

- a. Satisfactorily complete a nurse aide education program approved by the board; or
- b. Be enrolled in a nursing education program preparing for registered nurse or practical nurse licensure, have completed at least one nursing course which includes clinical experience involving client care; or
- c. Have completed a nursing education program preparing for registered nurse licensure or practical nurse licensure; and
- d. Pass the competency evaluation required by the board; and
- e. Submit the required application and fee to the board.

2. Initial certification by endorsement.

- a. A graduate of a state approved nurse aide education program who has satisfactorily completed a competency evaluation program and is currently registered in another state may apply for certification in Virginia by endorsement.
- b. An applicant for certification by endorsement shall submit the required application and fee and submit the required verification form to the credentialing agency in the state where registered, certified or licensed within the last two years.

3. Initial certification shall be for two years.

B. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, an application 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 return the completed application with the required fee of \$20 and verification of performance of nursing-related activities for compensation within the preceding two years.
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.

C. Reinstatement of lapsed certification. An individual whose certification has lapsed shall file the required application and renewal fee and:

1. Verification of performance of nursing-related activities for compensation prior to the expiration date of the certificate and within the preceding two years; or
2. When nursing activities have not been performed during the preceding two years, evidence of having repeated and passed the nurse aide competency evaluation.

D. Evidence of change of name. 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 authorizing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.

E. Requirements for current mailing address.

1. 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.
2. Each certificate holder shall maintain a record of his current mailing address with the board.
3. Any change of address by a certificate holder shall be submitted in writing to the board within 30 days of such change.

VA.R. Doc. No. R96-399; Filed June 5, 1996, 10:52 a.m.

## DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

**REGISTRAR'S NOTICE:** The following regulation filed by the Department of Transportation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 1 and 2 of the Code of Virginia, which excludes orders or regulations fixing rates or prices and delegations of authority, respectively. The Department of Transportation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 24 VAC 30-620-10 et seq. Rules, Regulations, and Rates Concerning Toll and Bridge Facilities (amending 24 VAC 30-620-30).

Statutory Authority: §§ 2.1-20.01:2, 33.1-8, 33.1-12, 33.1-252, 33.1-269(3), 33.1-285 and 33.1-292 of the Code of Virginia.

Effective Date: July 24, 1996.

# Final Regulations

## Summary:

This regulation establishes the rate schedules and delegation of authority under which VDOT may temporarily suspend toll collection operations at two facilities currently conducting toll operations (Dulles Toll Road and the Powhite Parkway), and one facility proposed to reopen as a toll facility (George P. Coleman Bridge) in mid-1996. The major revision adds a new set of toll schedules for the George P. Coleman Bridge to take effect when the bridge reconstruction project is finished. This project is scheduled for completion in August 1996.

**Agency Contact:** Copies of the regulation may be obtained from David L. Roberts, Management Services Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3620.

### 24 VAC 30-620-30. Rates and delegation of authority to suspend toll collection.

A. The Commonwealth Transportation Commissioner delegates the authority to suspend toll collection operations on the Dulles Toll Road to the Northern Virginia District Administrator, subject to the conditions and criteria outlined in 24 VAC 30-620-20 A and B. At his discretion, the Northern Virginia District Administrator may delegate this authority to others within the district organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

B. 1. The following are the toll rate schedules for the Dulles Toll Road, and remain in effect until the FasToll system is fully implemented.

DULLES TOLL ROAD RATE STRUCTURE			
VEHICLE CLASS	MAIN PLAZA	SULLY ROAD	OTHER RAMPS
Passenger Cars	\$0.50	\$0.35	\$0.25
Passenger Cars w/trailers	\$1.00	\$0.70	\$0.50
Motorcycles	\$0.50	\$0.35	\$0.25
Trucks, two axles, four tires	\$0.50	\$0.35	\$0.25
Trucks, two axles, six tires	\$1.00	\$0.70	\$0.50
Trucks, two axles, w/trailer	\$1.00	\$0.70	\$0.50
Trucks, three or more axles	\$1.00	\$0.70	\$0.50
Trucks, three or more axles, w/trailer	\$1.00	\$0.70	\$0.50
Buses, two axles	\$1.00	\$0.70	\$0.50

Buses, three axles	\$1.00	\$0.70	\$0.50
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2. Upon full implementation of the FasToll system, the following are the toll rate schedules for the Dulles Toll Road.

DULLES TOLL ROAD RATE STRUCTURE			
VEHICLE CLASS	MAIN PLAZA	SULLY ROAD	OTHER RAMPS
Two axles <sup>1</sup>	\$0.50	\$0.35	\$0.25
Three axles <sup>2</sup>	\$0.75	\$0.60	\$0.50
Four axles	\$1.00	\$0.85	\$0.75
Five axles	\$1.25	\$1.10	\$1.00
Six axles or more	\$1.50	\$1.35	\$1.25

<sup>1</sup> Includes passenger cars, motorcycles, and trucks (4 and 6 tires).

<sup>2</sup> Includes trucks, buses, and passenger cars with trailers.

C. The Commonwealth Transportation Commissioner delegates the authority to suspend toll collection operations on the Powhite Parkway Extension Toll Road to the Richmond District Administrator, subject to the conditions and criteria outlined in 24 VAC 30-620-20 A and B. At his discretion, the Richmond District Administrator may delegate this authority to others within the district organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

D. The following are the toll rate schedules for the Powhite Parkway Extension Toll Road.

POWHITE PARKWAY EXTENSION TOLL ROAD MAXIMUM RATE STRUCTURE				
VEHICLE CLASS	MAIN LINE PLAZA	MAIN LINE PLAZA - EAST AND WEST RAMP	RAMP - ROUTE 60	RAMP - COURTHOUSE ROAD
Two axle vehicles	\$0.75	\$0.25	\$0.25	\$0.50
Three axle vehicles	\$1.00	\$0.35	\$0.35	\$0.60
Four axle vehicles	\$1.25	\$0.45	\$0.45	\$0.70
Five axle vehicles	\$1.50	\$0.55	\$0.55	\$0.80
Six axle vehicles	\$1.50	\$0.55	\$0.55	\$0.80

E. No tolls shall be collected on the George P. Coleman Bridge until the Virginia Department of Transportation determines that the bridge's reconstruction project is completed and it is opened to traffic. In anticipation of that date, the Commonwealth Transportation Commissioner delegates the authority to suspend pending toll collection operations on the George P. Coleman Bridge to the Suffolk District Administrator, subject to the conditions and criteria outlined in 24 VAC 30-620-20 A and B. At his discretion, the Suffolk District Administrator may delegate this authority to others within the district organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

F. Effective upon the date the reconstructed bridge is completed and opened to traffic, the following are the toll rate schedules for the George P. Coleman Bridge.

GEORGE P. COLEMAN BRIDGE TOLL RATE STRUCTURE	
VEHICLE CLASS <sup>1</sup>	ONE-WAY RATE
Motorcycles	\$0.50
Commuter cars, vans, pick-ups	\$0.50
Commuter commercial vans/trucks	\$0.50
Cars, vans, pick-ups	\$2.00
Two-axle, six-tire trucks and buses	\$2.00
Three-axle trucks and buses	\$6.00
Four or more axle vehicles	\$8.00

<sup>1</sup>Commuter toll rates will be available only via the FasToll system to two-axle vehicles making three round-trip crossings within a 90-day period on the George P. Coleman Bridge.

VA.R. Doc. No. R96-397; Filed June 4, 1996, 8:55 a.m.

## STATE WATER CONTROL BOARD

**Title of Regulation:** 9 VAC 25-30-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) Permit Program Regulations (REPEALED).

**Statutory Authority:** § 62.1-44.15(10) of the Code of Virginia.

**Effective Date:** July 24, 1996.

**Summary:**

The State Water Control Board (SWCB) repealed the permit regulation (9 VAC 25-30-10 et seq.). This regulation delineated the authority and general procedures to be followed in connection with issuing Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA)

permits. The board has adopted a VPDES permit regulation (9 VAC 25-31-10 et seq.) and a VPA permit regulation (9 VAC 25-32-10 et seq.) which incorporate the purpose and substance of the permit regulation.

**Agency Contact:** Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

VA.R. Doc. No. R96-408; Filed June 5, 1996, 10:57 a.m.

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**REGISTRAR'S NOTICE:** Due to its length, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31-10 et seq.) is not being published. Pursuant to § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of full text. The full text of the regulation is available from Richard Ayers, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075, or may be viewed at the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, 2nd Floor, Richmond, VA 23219.

**Title of Regulation:** [ ~~VR 680-14-01:1, 9 VAC 25-31-10 et seq.~~ ] Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

**Statutory Authority:** §§ 62.1-44.15, 62.1-44.16, 62.1-44.17, 62.1-44.18, and 62.1-44.19 of the Code of Virginia.

**Effective Date:** July 24, 1996.

**Summary:**

The State Water Control Board (SWCB) adopted a separate Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Currently the VPDES permit program is administered under the SWCB's Permit Regulation (9 VAC 25-30-10 et seq.) along with the Virginia Pollution Abatement (VPA) Permit Program. Concurrent with this rulemaking was the repeal of the permit regulation and the adoption of a separate VPA permit regulation.

The permit regulation was last amended in 1989 and did not represent the latest changes to the federal regulations. The adoption of a separate VPDES permit regulation replaced the VPDES portion of the permit regulation. The text of the VPDES permit regulation follows that of the federal NPDES permit regulations as closely as possible. Requirements of state law that are more stringent than federal regulations have also been adopted.

Public comment received following the publication of the draft regulation raised a number of issues associated with the VPDES permit program. Several changes were made to the regulation in response to these comments. Definitions were added for treatment facility, treatment works, and wastewater. The listing of federal effluent guidelines was updated. The reporting of spills and unauthorized discharges was raised as an issue. The regulation was revised to reflect changes to state law

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requiring the discharger to report such events. A proposal to require new dischargers to direct their wastewater to publicly owned treatment plants in lieu of discharging directly to surface waters was removed from the regulation based on comments which questioned its legality. A new section was added which clarified the use and intent of guidance documents issued by DEQ to implement the requirements of the regulation. References to the director's authority were to "the board" in response to comments that the director should not have the amount of discretion proposed in the draft. The delegation of authority from the board to the director provided by § 62.1-44.14 of the Code of Virginia is still referenced in the regulation. A requirement that applications include a certification from local government that the proposed discharge conforms to applicable local ordinances was deleted since that requirement was removed from the State Water Control Law by the 1995 General Assembly. The requirement that reissued permits contain limits at least as stringent as the previous permit was revised to reflect the antibacksliding language of the Clean Water Act (§ 402(o)) (33 USC § 1342). The provision of credit for pollutants in intake water drew numerous comments. It was revised to make the language more general with the understanding that the details of implementation will be developed as a guidance document. The time limit for compliance with water quality-based effluent limits was extended to a maximum not to exceed the term of the permit. The provisions for public participation in the permit issuance process were also the subject of several comments. The methods, content and time allowed for public comment were variously criticized. Since the requirements are taken from the federal regulations and they provide interstate consistency, the basic requirements were not changed. New sections were added regarding notice to all localities of applications for permits in their jurisdiction and notice to localities particularly affected by activities in proposed permits. They reflect new requirements of state law enacted by the General Assembly in 1995 and 1996. Recent changes to the federal NPDES regulations were incorporated; most notably application requirements in the storm water section and sludge quality criteria in the sludge use and disposal section. Outdated or obsolete compliance dates were deleted whenever possible.

Summary of Public Comment and Agency 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.

Agency Contact: Copies of the regulation may be obtained from Richard Ayers, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

VA.R. Doc. No. R96-410; Filed June 5, 1996, 10:59 a.m.

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Title of Regulation: 9 VAC 25-32-10 et seq. Virginia Pollutant Abatement (VPA) Permit Regulation.

Statutory Authority: §§ 62.1-44.15, 62.1-44.16, 62.1-44.17, 62.1-44.18, 62.1-44.19, 62.1-44.20, and 62.1-44.21 of the Code of Virginia.

Effective Date: July 24, 1996.

Summary:

The State Water Control Board (SWCB) has adopted a separate Virginia Pollution Abatement (VPA) Permit Regulation. The VPA Permit Regulation delineates the procedures and requirements to be followed in connection with VPA permits issued by the Department of Environmental Quality (DEQ) pursuant to the State Water Control Law. This action was undertaken concurrently with the repeal of the Permit Regulation (9 VAC 25-30-10 et seq.).

In 1988, the SWCB adopted the Permit Regulation. This regulation governed both the VPA permit program and the Virginia Pollutant Discharge Elimination System (VPDES) permit program. The SWCB has now adopted separate regulations for the VPA and VPDES permit programs, and repealed the current Permit Regulation. The VPA permit program is being separated from the Permit Regulation in order to recognize the distinction between this wholly state run permit program and the federal/state VPDES permit program.

Any pollutant management activity which does not result in a point source discharge to surface waters may be required to obtain a VPA permit in order to ensure that the activity does not alter the physical, chemical or biological properties of state waters.

VPA permits may be used to authorize the land application of sewage, sludge, animal waste or industrial waste or the complete reuse and recycle of wastewater.

Several changes were made after publication of the draft regulation. The definitions of "concentrated confined animal feeding operation," "confined animal feeding operation," "department," and "sewage sludge use or disposal" were added. The requirement of 9 VAC 25-32-30 to report unauthorized discharges was revised to conform with legislation passed by the 1996 General Assembly. A requirement that applications include a certification from local government that the proposed project conforms to applicable local ordinances was deleted since that requirement was removed from the State Water Control Law by the 1995 General Assembly. New sections were added regarding notice to all localities of applications for permits in their jurisdiction and notice to localities particularly affected by activities in proposed permits. Conditions applicable to publicly or privately owned sewage treatment works were consolidated into 9 VAC 25-32-90. Language was added to the provisions in 9 VAC 25-32-140 that requires identification of storage and land application sites in the permit public notice. The language of 9 VAC 25-32-150 regarding public access to information was revised to

reflect current state law. A provision was added to 9 VAC 25-32-310 that allows VPA permits for sewage sludge use or disposal to terminate upon coverage of the activity under a permit issued by the Health Department or under a VPDES permit issued by the board. Several other minor changes were made for clarification based on comments received during the public notice period. These comments are summarized and responses are provided in a memorandum that was distributed to the board and to those who participated in the rulemaking by attending a hearing or submitting written comments.

References to the director's authority were changed to "the board" in response to comments that the director should not have the amount of discretion proposed in the earlier draft. The delegation of authority from the board to the director provided by § 62.1-44.14 of the Code of Virginia is still referenced in the regulation.

**Summary of Public Comment and Agency 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.

**Agency Contact:** Copies of the regulation may be obtained from Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

[ CHAPTER 32.  
VIRGINIA POLLUTION ABATEMENT (VPA) PERMIT  
REGULATION. ]

PART I.  
GENERAL.

[ § 1.1. 9 VAC 25-32-10. ] Definitions.

The following words and terms, when used in this [ regulation chapter ] and in VPA permits issued under this [ regulation chapter ] shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

[ "~~Animal feeding operation~~" means ~~a lot or facility together with any associated treatment works where the following conditions are met:~~

- ~~1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and~~
- ~~2. Crops, vegetation forage growth, or post-harvest residues are not sustained over any portion of the operation of the lot or facility. ]~~

"Best Management Practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMP's include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bypass" means intentional diversion of waste streams from any portion of a treatment works.

[ "~~Concentrated animal feeding operation~~" means ~~an animal feeding operation at which:~~

- ~~1. More than the following number and types of animals are confined:~~
  - ~~a. 1,000 slaughter and feeder cattle,~~
  - ~~b. 700 mature dairy cattle (whether milked or dry cows),~~
  - ~~c. 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),~~
  - ~~d. 500 horses,~~
  - ~~e. 10,000 sheep or lambs,~~
  - ~~f. 55,000 turkeys,~~
  - ~~g. 100,000 laying hens or broilers,~~
  - ~~h. 1,000 animal units, and~~
- ~~2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm. ]~~

[ "~~Concentrated confined animal feeding operation~~" means an animal feeding operation at which:

1. At least the following number and types of animals are confined:
  - a. 300 slaughter and feeder cattle;
  - b. 200 mature dairy cattle (whether milked or dry cows);
  - c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
  - d. 150 horses;
  - e. 3,000 sheep or lambs;
  - f. 16,500 turkeys;
  - g. 30,000 laying hens or broilers; or
  - h. 300 animal units; and
2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm.

"Confined animal feeding operation" means a lot or facility together with any associated treatment works where the following conditions are met:

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a. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

b. Crops, vegetation forage growth, or post-harvest residues are not sustained over any portion of the operation of the lot or facility.]

"Department" means the Department of Environmental Quality. ]

"Director" means the Director of the Department of Environmental Quality [ , 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 discharge from a vessel or other floating craft when being used as a means of transportation.

"Draft VPA permit" means a document indicating the [ ~~director's board's~~ ] tentative decision to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent to terminate a VPA permit and a notice of intent to deny a VPA permit are types of draft VPA permits. A denial of a request for modification, revocation and reissuance or termination is not a draft VPA permit.

"General VPA permit" means a VPA permit issued by the [ ~~director board~~ ] authorizing a category of pollutant management activities [ ~~within a geographic area~~ ].

[ ~~"Intensified animal feeding operation" means an animal feeding operation at which:~~

~~1. Less than or equal to 1,000 animal units but more than the following number and type of animals are confined:~~

~~a. 300 slaughter and feeder cattle,~~

~~b. 200 mature dairy cattle (whether milked or dry cows),~~

~~c. 750 swine each weighing over 25 kilograms (approximately 55 pounds),~~

~~d. 150 horses,~~

~~e. 3,000 sheep or lambs,~~

~~f. 16,500 turkeys,~~

~~g. 30,000 laying hens or broilers,~~

~~h. 300 animal units, and~~

~~2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm. ]~~

"Land application" means the introduction of wastewaters or sludge into or onto the ground for treatment or reuse.

"Limitation" means any restriction imposed [ ~~by the director~~ ] on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

"Monitoring report" means forms supplied by the [ ~~director department~~ ] for use in reporting of self-monitoring results of the permittee.

"Municipality" means a city, county, town, district association, authority or other public body created under the law and having jurisdiction over disposal of sewage, industrial, or other wastes.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

"Permittee" means an owner or operator who has a currently effective VPA permit issued by the [ ~~director board~~ ].

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the [ ~~director board~~ ] determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollutant management activity" means a treatment works with a potential or actual discharge to state waters, but which does not have a point source discharge to surface waters.

"Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly owned.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the federal Clean Water Act (33 USC 1251 et seq.), the law, and board regulations, standards and policies.

[ "Sewage sludge use or disposal" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge. ]

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"State Water Control Law (law)" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Clean Water Act (33 USC [ ~~§ 1251 et seq.~~ 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.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste [ or ] necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the [ ~~director board~~ ], pursuant to this [ ~~regulation chapter~~ ], authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the [ ~~director board~~ ] pursuant to [ ~~VR 680-14-01.1~~ 9 VAC 25-31-10 et seq. ], authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"VPA application" means the standard form or forms approved by the [ ~~director board~~ ] for applying for a VPA permit.

[ ~~§ 1.2.~~ 9 VAC 25-32-20. ] Purpose.

This regulation delineates the procedures and requirements to be followed in connection with VPA permits issued by the [ ~~director board~~ ] pursuant to the State Water Control Law.

[ ~~§ 1.3.~~ 9 VAC 25-32-30. ] Requirements and prohibitions.

A. All pollutant management activities covered under a VPA permit shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm.

B. 1. Except in compliance with a VPA permit, or another permit [ ~~τ~~ ] issued by the [ ~~director board~~ ], it shall be unlawful for any person to:

- a. Discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

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b. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

2. ~~[ In the event a discharge not authorized by permit should occur, which may adversely affect state waters or may endanger public health, the owner shall make an oral report of the discharge, to the director, Any person required to obtain a permit pursuant to this chapter who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of subdivision B 1 of this section; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subdivision B 1 of this section shall notify the department of the discharge ] immediately upon discovery of the discharge and, in any event, no later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the [ director department ], within five days of discovery of the discharge.~~

a. The written report shall contain:

- (1) A description of the nature of the discharge;
- (2) The cause of the discharge;
- (3) The date on which the discharge occurred;
- (4) The length of time that the discharge continued;
- (5) The volume of the discharge;
- (6) If the discharge is continuing, how long it is expected to continue;
- (7) If the discharge is continuing, what the expected total volume of the discharge will be; and
- (8) Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

b. Discharges reportable to the [ director department ] under the immediate reporting requirements of other regulations are exempted from this requirement.

C. VPA permits may be utilized to authorize pollutant management activities including, but not limited to, animal feeding operations, storage or land application of sewage, sludge, industrial waste or other waste; or the complete reuse or recycle of wastewater. Point source discharges of pollutants to surface waters may be authorized by a VPDES permit (See [ ~~VR 680-14-017~~ 9 VAC 25-31-10 et seq. ], VPDES Permit Regulation).

D. No VPA permit shall be issued in the following circumstances:

1. Where the terms or conditions of the VPA permit do not comply with the applicable regulations or requirements of the law;

2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into state waters; or

3. For any pollutant management activity that is in conflict with any area-wide or basin-wide water quality control and waste management plan or policy established by the board pursuant to the law:

[ ~~§ 1.4.~~ 9 VAC 25-32-40. ] Exclusions.

The following do not require a VPA permit:

1. The introduction of sewage, industrial waste or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with VPA permits until all discharges of pollutants to [ surface state ] waters are eliminated [ ~~This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality or other person not leading to treatment works~~];

2. Any introduction of pollutants from nonpoint source agricultural [ or silvicultural ] activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to concentrated [ ~~or intensified~~ confined ] animal feeding operations;

3. Return flows from irrigated agricultural land;

4. Land disposal activity, including [ ~~the use and disposal of sewage sludge and sewage sludge use or disposal or onsite~~ ] waste treatment [ ~~by septic tanks~~ ], when this activity is authorized by a state Department of Health permit or otherwise authorized by the Department of Environmental Quality; and

5. Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC), 40 CFR [ Part ] 144, and approved, in writing, by the [ ~~director~~ board ].

[ ~~§ 1.5.~~ 9 VAC 25-32-50. ] Effect of a VPA permit.

A. Compliance with a VPA permit constitutes compliance with the VPA permit requirements of the law.

B. The issuance of a VPA permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

## PART II.

### PERMIT APPLICATION AND ISSUANCE.

[ ~~§ 2.1.~~ 9 VAC 25-32-60. ] Application for a VPA permit.

A. Duty to apply. Any owner of a pollutant management activity who does not have an effective VPA permit, except persons covered by general VPA permits or excluded under [ ~~§ 1.4.~~ 9 VAC 25-32-40 ], shall submit a complete application to the [ ~~director~~ department ] in accordance with this section.

1. a. A complete VPA permit application shall be submitted by the owner of the pollutant management activity before a VPA permit can be issued. This item does not apply where general VPA permits are applicable.

b. The [ ~~director board~~ ] may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the owner has supplied missing or deficient information and the [ ~~director board~~ ] considers the application complete. Further, when the owner becomes aware that he omitted one or more relevant facts from a VPA permit application, or submitted incorrect information in a VPA permit application or in any report to the [ ~~director department~~ ], he shall promptly submit such facts or the correct information.

2. a. Any owner proposing a new pollutant management activity shall submit an application for a VPA permit 180 days prior to the date planned for commencing erection, construction or expansion or employment of new processes at any site. There shall be no operation of said facilities prior to the issuance of a VPA permit.

b. Any owner with an existing pollutant management activity that has not been permitted shall submit an application within 60 days upon being requested to by the [ ~~director board~~ ]. The [ ~~director board~~ ], after determining there is pollution occurring, may allow the construction of treatment works prior to permit issuance. There shall be no operation of said treatment works prior to permit issuance.

c. Owners currently managing pollutants who have effective VPA permits shall submit a new application 180 days prior to proposed facility expansions, production increases, or process modification which will:

- (1) Result in significantly new or substantially increased amounts of pollutants being managed or a significant change in the nature of the pollutant management activity [ that was not anticipated and accounted for on the application for the effective VPA permit ]; or
- (2) Violate or lead to violation of the terms and conditions of the effective VPA permit.

3. Pursuant to § 62.1-44.15:3 of the Code of Virginia [ , ] no application for a VPA permit [ ~~will be deemed complete until the director receives notification from the governing body of the county, city or town in which the pollutant management activity is to take place that the location and operation of the pollutant management facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia. If the governing body of any county, city or town fails to respond within 45 days following receipt of a written request by certified mail, return receipt requested, by an applicant for certification that the location and operation of the proposed facility is~~

~~consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia, the application shall be deemed complete for the purposes of this regulation.~~

4. ~~No application for a VPA permit ] from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the [ director department ] with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.~~

B. Duty to reapply. Any permittee with an effective VPA permit shall submit a new application at least 180 days before the expiration date of the effective VPA permit unless permission for a later date has been granted by the [ ~~director board~~ ]. [ ~~The director shall not grant~~ ] Permission [ ~~shall not be granted~~ ] to submit an application later than the expiration date of the existing VPA permit.

C. Information requirements. All applicants for VPA permits shall provide information in accordance with forms provided by the [ ~~director department~~ ].

[ ~~§ 2.2.~~ 9 VAC 25-32-70. ] Signatory requirements.

Any application, report, including monitoring reports, or certifications shall be signed as follows:

1. Application.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

c. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.

2. Reports. All reports required by VPA permits and other information requested by the [ ~~director board~~ ] shall be signed by:

a. One of the persons described in subdivision 1 of this section; or

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b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 of this section; and

(2) 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, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) 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 [ director department ] prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 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."

[ §-2-3. 9 VAC 25-32-80. ] Conditions applicable to all VPA permits.

A. Duty to comply. The permittee shall comply with all conditions of the VPA permit. Any permit noncompliance is a violation of the law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

B. Duty to halt or reduce 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 permitted activity in order to maintain compliance with the conditions of [ this the ] VPA permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize, correct or prevent any pollutant management activity in violation of [ this the ] VPA permit which has a reasonable likelihood of adversely affecting human health or the environment.

D. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with permit conditions. Proper operation and maintenance includes effective plant performance, adequate funding, adequate licensed operator staffing, an adequate laboratory and

process control, including appropriate quality assurance procedures.

E. Permit action.

1. A VPA permit may be modified, revoked and reissued, or terminated as set forth in this [ regulation chapter].

2. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the [ director board ]. This provision shall not be used to extend the expiration date of the effective VPA permit.

3. VPA permits may be modified, revoked and reissued or terminated upon the request of the permittee or interested persons, or upon the [ director's board's ] initiative, to reflect the requirements of any changes in the statutes or regulations.

4. VPA permits continued under [ §-2-8. 9 VAC 25-32-130 ] remain effective and enforceable.

F. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the [ director board ] may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to records required by the VPA permit;

2. Have access to, inspect and copy any records that must be kept as part of VPA permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the VPA permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring VPA permit compliance or as otherwise authorized by law.

G. Duty to provide information.

1. The permittee shall furnish to the [ director department ], within a reasonable time, any information which the [ director board ] may request to determine whether cause exists for modifying, revoking and reissuing, terminating the VPA permit, or to determine compliance with the VPA permit. The permittee shall also furnish to the [ director department ], 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 requested by the [ director board ] prior to commencing construction.

H. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for

continuous monitoring instrumentation, copies of all reports required by the VPA permit, and records of all data used to complete the application for the VPA permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the [ *director board* ] at any time.

3. Records of monitoring information shall include:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individual or individuals who performed the sampling or measurements;
- c. The date or dates analyses were performed;
- d. The name of the individual or individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; and
- f. The results of such analyses.

4. Monitoring shall be conducted according to analytical methods promulgated pursuant to § 304(h) of the Clean Water Act (33 USC § 1251 et seq.) and listed in the Code of Federal Regulations at 40 CFR Part 136 ([ ~~1992~~ 1995 ] ). Any other [ *acceptable* ] test procedure not listed in 40 CFR Part 136 ( [ ~~1992~~ 1995 ] ) shall be specified in the VPA permit [ ~~as approved by the director~~ ].

I. Reporting requirements.

1. The permittee shall give prompt notice to the [ *director department* ] of any planned changes to the design or operation of the pollutant management activity.

2. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the [ *director department* ] by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the [ *director department* ] within five days of discovery of the discharge in accordance with subdivision 6 of this [ ~~section~~ subsection ]. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

- a. Unusual spillage of materials resulting directly or indirectly from processing operations;
- b. Breakdown of processing or accessory equipment;
- c. Failure or taking out of service of some or all of the treatment works; and
- d. Flooding or other acts of nature.

3. The permittee shall give at least 10 days advance notice to the [ *director department* ] of any planned changes to the facility or activity which may result in noncompliance.

4. Monitoring results shall be reported at the intervals specified in the applicable VPA permit.

a. Monitoring results shall be reported in a format acceptable to the [ *director board* ].

b. If a permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant more frequently than required by the VPA permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

c. If the permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant that is not required to be monitored by the VPA permit, and uses approved analytical methods the permittee shall report the results with the monitoring report.

d. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the VPA permit.

5. Reports of compliance or noncompliance with or any progress report on interim and final requirements contained in any compliance schedule in the VPA permit shall be submitted no later than 14 days following each scheduled date.

6. 24-hour reporting.

a. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health. An oral report must be provided as soon as possible, but in no case later than 24 hours from the time the permittee becomes aware of the circumstances. A written report shall be submitted within five days and shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and, if the noncompliance has not been corrected, how long it is expected to continue, steps planned or taken to reduce, eliminate and prevent a recurrence of the noncompliance. The [ *director board* ] may waive the written report requirements on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported. All other noncompliance reports which may not adversely [ ~~effect~~ affect ] state waters shall be submitted with the monitoring report. Reports shall include overflows.

b. The following shall be included as information which must be reported within 24 hours under this subdivision:

- (1) Any unanticipated bypass; and
- (2) Any upset which causes a discharge to surface waters.

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## J. Bypass.

1. A bypass of the treatment works is prohibited except as provided herein.

2. If the permittee knows in advance of the need for a bypass, he shall notify the [ director department ] promptly at least 10 days prior to the bypass. After considering its adverse effects [ , ] the [ director board ] may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage ("severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. If an unplanned bypass occurs, the permittee shall notify the [ director department ] as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision 2 of this subsection and in light of the information reasonably available to the owner at the time of the bypass.

K. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the [ director department ] were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the VPA permit.

L. Signature requirements. All applications, reports, or information submitted to the [ director department ] shall be signed and certified as required in [ § 2-2 9 VAC 25-32-70 ].

M. Transfers. [ This A ] VPA permit is not transferable to any person except after notice to the [ director, department ] according to [ § 5-4. 9 VAC 24-32-230 ]. The [ director board ] may require modification or revocation and reissuance of the VPA permit to change the name of the permittee and incorporate such other requirements as may be necessary.

[ § 2-4. 9 VAC 25-32-90. ] Conditions applicable to publicly or privately owned sewage treatment works.

[ A. ] Publicly or privately owned sewage treatment works shall provide adequate notice to the [ director department ] of [ -the following:

1. ~~Any new introduction of pollutants into a privately or publicly owned sewage treatment works from an indirect discharger which would be subject to limitations and standards for the pollutant management activity; and~~

2. ] any substantial change in quantity or quality of pollutants being introduced into the privately or publicly owned sewage treatment works and any anticipated impact the change may have on such treatment works.

[ B. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPA permit for each month of any consecutive three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the VPA permit.

1. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could reasonably be anticipated, resulting from high influent flows.

2. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

3. Failure to submit an adequate plan in a timely manner shall be deemed a violation of the VPA permit.

C. Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, § 62.1-44.23, or § 62.1-44.32 of the Code of Virginia. ]

[ § 2-5. 9 VAC 25-32-100. ] Establishing limitations and other VPA permit conditions.

In addition to the conditions established in [ §§ 2-3 and 2-4. 9 VAC 25-32-80 and 9 VAC 25-32-90 ], each VPA permit shall include conditions meeting the following requirements where applicable.

1. Determination of limitations. [ The director shall establish ] VPA permit limitations and conditions [ shall be established ] based on the nature of the pollutant management activity in order to ensure compliance with technology-based limitations, water quality standards,

the law and all regulations promulgated thereunder. These limitations and conditions may include, but are not limited to, duration of VPA permits, monitoring requirements, limitations to control toxic pollutants, [ BMPs best management practices ] and schedules of compliance.

2. Duration of VPA permits. VPA permits issued under this regulation shall have an effective date and an expiration date which will determine the life of the VPA permit. VPA permits shall be effective for a fixed term not to exceed 10 years as specified in the VPA permit [ , except that the VPA permits for concentrated animal feeding operations shall not exceed five years ]. The term of the VPA permits shall not be extended by modification beyond the maximum duration. The VPA permit shall expire at the end of the term unless an application for a new VPA permit has been timely filed as required by [ these regulations this chapter ] and the [ director board ] is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

### 3. Monitoring requirements.

#### a. All VPA permits may specify:

(1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods;

(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

(3) Applicable reporting requirements based upon the impact of the regulated activity on water quality.

b. VPA permits may include requirements to report monitoring results with a frequency dependent on the nature and effect of the pollutant management activity.

c. In addition, the following monitoring requirements may be included in the VPA permits:

(1) Mass or other measurements specified in the VPA permit for each pollutant of concern;

(2) The volume of waste, wastewater or sludge managed by the activity; and

(3) Other measurements as appropriate.

4. Best Management Practices (BMPs). [~~Where numeric limits are infeasible, or where BMPs are necessary to achieve limitations and standards or to carry out the purposes and intent of the law, the VPA permit may require the use of BMPs to control or abate the management of pollutants. The VPA permit shall require the use of BMPs to control or abate pollutants where numeric limits are infeasible, and the VPA permit may include BMPs in addition to numeric limits where BMPs are necessary to achieve limitations and standards or to carry out the purpose and intent of the law.~~]

5. Sludge disposal. The VPA permit shall include, where appropriate, specific requirements for disposal of all sludge.

6. Schedules of compliance. The VPA permit may specify a schedule, when appropriate, leading to compliance with the VPA permit as soon as possible. When schedules of compliance are applicable the following shall be incorporated:

a. Schedule or schedules of compliance shall require the permittee to take specific steps where necessary to achieve expeditious compliance with the VPA permit;

b. The schedule of compliance shall set forth interim time periods not more than one year apart for the submission of reports of progress toward completion of each requirement; and

c. Schedule or schedules of compliance may be modified by modification of the VPA permit for good cause beyond the control of the permittee (e.g., act of God, strike, flood, material shortage).

[ §2.6. 9 VAC 25-32-110. ] Draft VPA permit [ formulations formulation ].

A. Upon receipt of a complete application, the [ director board ] shall make a decision to tentatively issue the VPA permit or deny the application. If a tentative decision is to issue the VPA permit then a draft VPA permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VPA permit:

1. Conditions, limitations, standards and other requirements applicable to the VPA permit;

2. Compliance schedules where applicable; and

3. Monitoring requirements.

B. If the tentative decision is to deny the application, the [ director board ] shall [ se ] advise the owner of that decision and [ of ] the requirements necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or [ conditions satisfied for the modified to contain conditions necessary for ] tentative approval to issue, the [ director board ] shall provide public notice and opportunity for a public hearing prior to [ formal ] board action on [ a recommendation to deny ] the application.

C. This section does not apply [ where to requests for coverage under ] a general VPA permit [ is applicable ].

[ §2.7. 9 VAC 25-32-120. ] Fact sheet.

A. [ The director shall prepare ] A fact sheet [ shall be prepared ] to accompany all draft VPA permits. These fact sheets shall be made available to the public upon request.

B. The fact sheet shall include:

1. A brief description of the pollutant management activity to be permitted;

2. An explanation of the statutory [ or regulatory ] provisions on which the VPA permit requirements are based;

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3. Calculations or other necessary explanations of the derivation of the VPA permit conditions or limitations;
4. The location of each pollutant management activity;
5. The reasons for any requested modifications;
6. A description of the procedures and sequence of events for reaching the final decision; and
7. The name and telephone number of a person to contact for additional information.

[ ~~§ 2.8.~~ 9 VAC 25-32-130. ] Continuation of expiring VPA permits.

A. Expiring VPA permits are automatically continued pending issuance of a new VPA permit if:

1. The permittee has submitted a timely and complete application as required by [~~these regulations~~ this chapter ], unless the [ ~~director~~ board ] has given permission for a later submittal, which shall not extend beyond the expiration date of the original VPA permit; and
2. The [ ~~director~~ board ] is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

B. Continued VPA permits remain effective and enforceable against the permittee.

## PART III. PUBLIC INVOLVEMENT.

[ ~~§ 3.1.~~ 9 VAC 25-32-140. ] Public notice of VPA permit action and public comment period.

A. Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity.

B. [~~The director shall allow~~ Interested persons shall have ] a period of at least 30 days following the date of the initial newspaper public notice [~~for interested persons~~ ] to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a VPA permit shall include:

1. The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity [ including storage and land application sites ];
2. A brief description of the business or activity conducted at the facility;
3. A statement of the tentative determination to issue or deny a VPA permit;
4. A brief description of the final determination procedure;

5. The address and phone number of a specific person at the state office from whom further information may be obtained; and

6. A brief description [ ~~on of~~ ] how to submit comments and request a hearing.

D. 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. Upon receipt of an application for a permit or for a modification of a permit, the board shall cause to be notified, in writing, the locality wherein the pollutant management activity does or is proposed to take place. This notification shall, at a minimum, include:

1. The name of the applicant;
2. The nature of the application and proposed pollutant management activity; and
3. Upon request, any other information known to, or in the possession of, the board or the department regarding the application except as restricted by 9 VAC 25-32-150.

F. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities. ]

[ ~~§ 3.2.~~ 9 VAC 25-32-150. ] Public access to information.

[ Pursuant to ~~§ 62.1-44.21 of the Code of Virginia~~, all information pertaining to VPA permit processing or in reference to any source of any pollutant shall be available to the public, unless the information has been identified by the applicant as a trade secret. In any case, the VPA permit and the VPA permit application remain public information. All information claimed confidential must be identified as such at the time of submission to the director. Otherwise, all information will be made available to the public. Notwithstanding the foregoing, any supplemental information that the director may obtain from filings made under the Virginia Toxic Substances Information Act (TSIA), § 32.1-230

~~et seq. of the Code of Virginia, shall be subject to the confidentiality requirements of TSI.A.~~

A. Any secret formulae, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee; and
2. Permit applications, permits, and effluent data.

C. Information required by VPDES application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.]

[ § 3.3. 9 VAC 25-32-160. ] Conditions requested by other government agencies.

If during the comment period any other state agency with jurisdiction over fish, wildlife, or public health advises the [ director department ] in writing that the imposition of specified conditions upon the VPA permit is necessary to avoid substantial impairment of human health or of fish, shellfish, or wildlife resources, the [ director board ] shall consider the inclusion of the specified conditions in the VPA permit. If any conditions requested are not included in the VPA permit [ the director shall notify , ] the agency [ making the request shall be notified ] of the reasons for not including the conditions.

[ § 3.4. 9 VAC 25-32-170. ] Public comments and hearings.

A. A comment period of at least 30 days following the initial date of the newspaper public notice of the formulation of a draft VPA permit shall be provided. During this period any interested persons may submit written comments on the draft VPA permit and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised pursuant to the board's Procedural Rule No. 1, or its successor. All comments shall be considered by the [ director board ] in preparing the final VPA permit and shall be responded to in writing.

B. [ The board may hold a public hearing on any permit action. ] The board shall hold a public hearing where there is a significant degree of public interest relevant to a draft VPA permit. [ The board may hold a public hearing in any case. ] Public notice of that hearing shall be given as specified in [ § 3.5 9 VAC 25-32-180 ]. Nothing in this subsection shall

relieve the board of the requirement to hold a hearing where a hearing is required by applicable law or regulation.

C. Any hearing convened pursuant to this section will be held in the geographical area of the proposed pollutant management activity, or in another appropriate area. Related groups of VPA permit applications may be considered at any such hearing.

D. If changes are made to the VPA permit based on public comments, the permittee and all persons who commented will be notified of the changes [ ~~and given an opportunity to comment on them~~ and the reasons for the changes ]. No further public notice is required.

E. Any owner aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia.

F. Proceedings at, and the decision from, the public hearing will be governed by the board's Procedural Rule No. 1 or its successor.

[ § 3.5.9 VAC 25-32-180. ] Public notice of hearing.

A. Public notice of any hearing held pursuant to [ § 3.4 9 VAC 25-32-170 ] shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the pollutant management activity is to occur; and
2. Notice of the hearing shall be sent to all persons and government agencies which received a copy of the notice of the VPA permit application.

B. Notice shall be effected pursuant to subsection A of this section at least 30 days in advance of the hearing.

C. The content of the public notice of any hearing held pursuant to [ § 3.4. 9 VAC 25-32-170 ] shall include at least the following:

1. Name and address of each owner whose application will be considered at the hearing and a brief description of the owner's pollutant management activities or operations;
2. A brief reference to the public notice issued for the VPA permit application, including identification number and date of issuance unless the public notice includes the hearing notice;
3. Information regarding the time and location for the hearing;
4. The purpose of the hearing;
5. A concise statement of the issues raised by the persons requesting the hearing;
6. The name of a contact person and the address at which interested persons may obtain further information, request a copy of the draft VPA permit prepared pursuant to [ § 2.6 9 VAC 25-32-110 ], request a copy of the fact sheet prepared pursuant to [ § 2.7 9 VAC 25-32-120 ] and inspect or arrange for receipt of copies of forms and related documents; and

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7. A brief reference to the rules and procedures to be followed at the hearing.

## PART IV.

### [ SPECIAL PERMIT OPERATOR ] REQUIREMENTS.

[ § 4.1. Treatment plant loadings approaching capacity.

A. ~~When the monthly average flow influent to a POTW or PNOTW reaches 95% of the design capacity authorized by the VPA permit for each month of any three consecutive month period, the owner shall within 30 days notify the director in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the VPA permit.~~

B. ~~The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could reasonably be anticipated, resulting from high influent flows.~~

C. ~~Upon receipt of the owner's plan of action, the director shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.~~

D. ~~Failure to timely submit an adequate plan shall be deemed a violation of the VPA permit.~~

E. ~~Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, § 62.1-44.23, or § 62.1-44.32 of the Code of Virginia.~~

[ § 4.2. 9 VAC 25-32-190. ] Operator requirements.

A. The permittee shall employ or contract at least one operator who holds a current wastewater license appropriate for the permitted facility, if required by the VPA permit. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators ([ ~~VR 675-01-02~~ 18 VAC 160-20-10 et seq. ]). Notwithstanding the foregoing requirement, unless the pollutant management activity is determined by the [ director board ] on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

1. That have a design hydraulic capacity equal to or less than 0.04 million gallons per day;
2. That discharge industrial waste or other waste from coal mining operations; or
3. That do not utilize biological or physical/chemical treatment.

B. In making this case-by-case determination, the [ director following ] shall [ ~~consider the~~ be considered:

1. ] The location of the pollutant management activity with respect to state waters [ ; ; ]
- [ 2. ] The size of the pollutant management activity [ ; ; ]
- [ 3. ] The quantity and nature of pollutants reaching state waters [ ; ] and

[ 4. ] The treatment methods used at the treatment works.

C. The permittee shall notify the [ director department ] in writing whenever he is not complying, or has grounds for anticipating he will not comply, with the requirements of subsection A of this section. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

## PART V.

### PERMIT MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION.

[ § 5.1. 9 VAC 25-32-200. ] Modification, revocation and reissuance, and termination.

A. VPA permits shall be modified, revoked and reissued, or terminated only as authorized by this section.

B. A VPA permit may be modified in whole or in part, revoked and reissued, or terminated.

C. VPA permit modifications shall not be used to extend the term of a VPA permit.

D. Modification, revocation and reissuance, or termination of VPA permit may be initiated by the [ director board ], interested persons, or permittee under applicable provisions of this [ regulation chapter ].

E. [ ~~The director may require~~ ] An updated VPA permit application [ may be required ] in order to modify or revoke and reissue a VPA permit.

[ § 5.2. 9 VAC 25-32-210. ] Causes for termination.

A. The following are causes for terminating a VPA permit during its term, or for denying a VPA permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation or order of the board, any condition of a VPA permit, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;
2. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a VPA permit, or in any other report or document required under the law or [ ~~these regulations this chapter~~ ];
3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by VPA permit modification or termination; or
4. There exists a material change in the basis on which the VPA permit was issued that requires either a temporary or a permanent reduction or elimination of

any pollutant management activity controlled by the VPA permit necessary to protect human health or the environment.

B. A VPA permit may be terminated without public notice and opportunity for a hearing when the termination is mutually agreed to by the permittee and the [ ~~director~~ board ].

[ ~~§ 5.3. 9 VAC 25-32-220.~~ ] Causes for modification.

A VPA 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 which require the application of VPA permit conditions that differ from those of the existing VPA permit or are absent from it;

2. When new information becomes available about the operation or pollutant management activity covered by the VPA permit which was not available at VPA permit issuance and would have justified the application of different VPA permit conditions at the time of VPA permit issuance;

3. When a change is made in the promulgated standards or regulations on which the VPA permit was based; [ or ]

4. When it becomes necessary to change final dates in compliance schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. [ ; . ]

~~5. When changes occur which are subject to "reopener clauses" in the VPA permit;~~

~~6. When the permittee begins or expects to begin to use or manufacture any toxic pollutant not reported in the application; or~~

~~7. When other states were not notified of the change in the VPA permit and their waters may be affected by the pollutant management activity. ]~~

[ ~~§ 5.4. 9 VAC 25-32-230.~~ ] Transfer of VPA permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VPA permit shall be transferred only if the VPA permit has been modified to reflect the transfer or has been revoked and reissued to the new owner.

B. Automatic transfer. Any VPA permit shall be automatically transferred to a new owner if:

1. The current owner notifies the [ ~~director~~ department ] 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the [ ~~director~~ department ] includes a written agreement between the existing and proposed new owner containing a specific date of transfer of VPA permit responsibility, coverage and liability between them; and

3. The [ ~~director~~ board ] does not within the 30-day time period notify the existing owner and the proposed owner

of its intent to modify or revoke and reissue the VPA permit.

[ ~~§ 5.5. 9 VAC 25-32-240.~~ ] Minor modification.

A. Upon request of the permittee, or upon [ ~~director~~ board ] initiative with the consent of the permittee, minor modifications may be made in the VPA permit without following the public involvement procedures.

B. Minor modification may only:

1. Correct typographical errors;

2. Require reporting by the permittee at a frequency other than that required in the VPA permit;

3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in name, ownership or operational control when the [ ~~director~~ board ] determines that no other change in the VPA permit is necessary, provided that a written agreement containing a specific date for transfer of VPA permit responsibility, coverage and liability from the current to the new permittee has been submitted to the [ ~~director~~ department ];

5. Delete the listing of a land application site when the pollutant management activity is terminated and does not result in an increase of pollutants which would exceed VPA permit limitations;

6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such reduction results from a shutdown of processes or pollutant generating activities or from connection of the permitted activity to a POTW;

7. Change plans and specifications where no other changes in the VPA permit are required;

8. Authorize treatment facility expansions, production increases or process modifications which will not cause a significant change in the quantity of pollutants being managed or a significant change in the nature of the pollutant management activity; or

9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

PART VI.  
SPECIAL PROGRAMS.

[ ~~§ 6.1. 9 VAC 25-32-250.~~ Confined ] animal feeding operations.

A. All [ confined ] animal feeding operations shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. Concentrated [ ~~and intensified~~ confined ] animal feeding operations are pollutant management activities subject to the VPA permit program. Two or more [ confined ] animal feeding operations under common ownership are considered, for the purposes of this regulation, to be a single [ confined ] animal feeding operation if they

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adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designation of concentrated [~~or intensified confined~~] animal feeding operations.

1. The [director board] may designate any [confined] animal feeding operation which does not fall under the [definitions definition] of [“concentrated animal feeding operation” or “intensified animal feeding operation,” as defined in § 1.1, as a concentrated or intensified concentrated confined] animal feeding operation [as defined in 9 VAC 25-20-10] upon determining that it is a potential or actual contributor of pollution to state waters. In making this designation the [director shall consider the] following factors [shall be considered]:

- a. The size of the operation;
- b. The location of the operation relative to state waters;
- c. The means of conveyance of animal wastes and process waters into state waters;
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters;
- e. The means of storage, treatment, or disposal of animal wastes; and
- f. Other relevant factors.

2. A VPA permit application shall not be required for a concentrated [~~or intensified confined~~] animal feeding operation designated under subdivision 1 of this subsection until the [director board] has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program.

[§ 6.2. 9 VAC 25-32-260.] General VPA permits.

The [director board] may issue a general VPA permit in accordance with the following:

1. Sources. A general VPA permit may be written to regulate a category of pollutant management activities [within a geographic area] that:
  - a. Involve the same or similar types of operations;
  - b. Manage the same or similar types of wastes;
  - c. Require the same VPA permit limitations or operating conditions;
  - d. Require the same or similar monitoring; and
  - e. In the opinion of the [director board], are more appropriately controlled under a general VPA permit than under individual VPA permits.

2. Administration.

- a. General VPA permits will be issued, modified, revoked and reissued, or terminated pursuant to the

law and the board's Public Participation Guidelines ([~~VR 680-41-01-1 9 VAC 25-10-10 et seq.~~]).

b. The [director board] may require any person operating under a general VPA permit to apply for and obtain an individual VPA permit. Interested persons may petition the [director board] to take action under this subdivision. Cases where an individual VPA permit may be required include the following:

- (1) Where the pollutant management activity is a significant contributor of pollution;
- (2) Where the owner is not in compliance with the conditions of the general VPA permit;
- (3) When a water quality management plan containing requirements applicable to [such sources the pollutant management activity] is approved; or
- (4) When a permitted activity no longer meets [the] general VPA permit conditions.

c. Any owner operating under a general VPA permit may request to be excluded from the coverage of the general VPA permit by applying for an individual VPA permit.

d. When an individual VPA permit is issued to an owner the applicability of the general VPA permit to the individual permittee is automatically terminated on the effective date of the individual VPA permit.

e. When a general VPA permit is issued which applies to an owner already covered by an individual VPA permit, such owner may request exclusion from the provisions of the general VPA permit and subsequent coverage under an individual VPA permit.

f. A general VPA permit may be revoked as to an individual owner for any of the reasons set forth in [§ 5.2 9 VAC 25-32-210] or subdivision 2 b of this section subject to appropriate opportunity for a hearing.

[§ 6.3. 9 VAC 25-32-270.] Control of disposal of pollutants into wells.

A. No right to dispose of pollutants into wells shall exist under this regulation, except as authorized pursuant to a VPA permit issued by the [director board].

B. Whenever an applicant for a VPA permit proposes to dispose of pollutants into a well or wells, the [~~director shall prohibit the~~] proposed disposal [shall be prohibited], or [specify specific] terms and conditions [shall be included] in the VPA permit which shall control the proposed disposal in order to prevent the pollution of and protect all beneficial uses of state waters, protect the public health and welfare, and require compliance with all applicable water quality standards.

PART VII.  
ENFORCEMENT.

[ ~~§ 7.1~~ 9 VAC 25-32-280. ] Enforcement.

A. The board may enforce the provisions of this regulation by:

1. Issuing directives in accordance with the law;
2. Issuing special orders in accordance with the law;
3. Issuing emergency special orders in accordance with the law;
4. Seeking injunction, mandamus or other appropriate remedy as authorized by the law;
5. Seeking civil penalties under the law [ - ; ]
6. Seeking remedies under the law or under other laws including the Common Law.

B. The board encourages citizen participation in all its activities, including enforcement. In particular:

1. The [ ~~director board~~ ] will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the board's purview;
2. The board will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule, or in any administrative enforcement action when authorized by the board's Procedural Rule; and
3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the [ ~~director board~~ ] will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the pollutant management activity is located, and [ ~~at the state capitol in the Virginia Register of Regulations~~ ]. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. Appeals will be public noticed in accordance with Procedural Rule No. 1. A consent special order is [ ~~an order a special order~~ ] issued without a [ public ] hearing and with the written consent of the affected owner. For the purpose of this [ ~~regulation chapter~~ ], an emergency special order is not a consent special order. The board shall consider all comments received during the comment period before taking final action.

[ 4. C. ] When a VPA permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that at the time of VPA permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

- [ a. 1. ] The VPA permit amendment does not have to go to public notice, and
- [ b. 2. ] The terms of the new consent order are the same as issued to the previous owner.

[ ~~5. D.~~ ] Notwithstanding subdivision 3 of this subsection, a special order may be issued by agreement at a board meeting without further notice when a [ public ] hearing has been scheduled to issue a special order, to the affected owner, whether or not the [ public ] hearing is actually held.

PART VIII.  
DELEGATION OF AUTHORITY; TRANSITION.

[ ~~§ 8.1~~ 9 VAC 25-32-290. ] Delegation of authority.

The director [ ~~, or a designee acting for him,~~ ] may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

[ ~~§ 8.2~~ 9 VAC 25-32-300. ] Transition.

[ ~~Upon the~~ ] Effective [ ~~date of this regulation~~ July 24, 1996, ] the following will occur:

1. All VPA applications received after that date will be processed in accordance with this regulation.
2. Any owner holding a No-Discharge Certificate will be notified [ ~~by the director~~ ] of the deadline for applying for a VPA permit, unless this notification has already been made. All [ such ] notifications shall be completed by July 1, 1998. Upon notification [ ~~by the director~~ that a VPA permit is necessary for the pollutant management activity authorized by the No-Discharge Certificate ], the permittee shall have 180 days to apply for a VPA permit. [ If a VPA permit is required, ] the existing No-Discharge Certificate will remain in effect until the [ ~~new~~ ] VPA permit is issued. Concurrent with the issuance of the VPA permit, the No-Discharge Certificate will be revoked subject to appropriate notice and opportunity for public hearing. Notwithstanding the foregoing, all No-Discharge Certificates [ ~~, whether or not the certificate bears which do not bear~~ ] an expiration date, shall [ ~~expire terminate~~ ] no later than July 1, 1999.

[ 3. Existing VPA permits for sewage sludge use or disposal shall be terminated when the sewage sludge use or disposal is authorized by:

1. A permit issued by the Department of Health; or
2. A VPDES permit issued by the board. ]

VA.R. Doc. No. R96-409; Filed June 5, 1996, 10:58 a.m.

\*\*\*\*\*

Title of Regulation: [ ~~VR 680-14-10~~ 9 VAC 25-115-10 et seq. ] General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Effective Date: July 24, 1996.

Summary:

The State Water Control Board (board) has adopted a General Virginia Pollutant Discharge Elimination System (VPDES) permit for seafood processing facilities. This regulatory action sets forth guidelines for the permitting

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of discharge of process wastewaters and storm waters from businesses primarily engaged in processing seafood. Currently these facilities are covered by individual VPDES permits. Changes made to the regulation after it was published for public comment were (i) removal of coverage for mechanized clam processing facilities in Part I A of 9 VAC 25-115-50 due to the necessity for consideration of site specific water quality limits for such facilities; (ii) removal of the "Local Government Notification" requirement in 9 VAC 25-115-30 and 9 VAC 25-115-40 because the 1995 General Assembly amended State Water Control Law to exempt facilities applying for VPDES permits from this requirement; (iii) addition of a special condition defining the term "production" in 9 VAC 25-115-50, Part I B; and (iv) minor wording changes for clarification.

**Summary of Public Comment and Agency 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.

**Agency Contact:** Copies of the regulation may be obtained from Michael Gregory, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065.

## CHAPTER 115.

### GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR SEAFOOD PROCESSING FACILITIES.

#### 9 VAC 25-115-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9 VAC 25-30-10 et seq. (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Board" means the State Water Control Board.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality, or [ his designee an authorized representative ].

"Seafood processing facility" means any facility classified under Standard Industrial Classification (SIC) 2091, 2092, 5142 or 5146 (Office of Management and Budget (OMB) SIC Manual, 1987) [ , except mechanized clam facilities ] which processes or handles seafood intended for human consumption or as bait. Seafood includes but is not limited to crabs, oysters, [ hand-shucked ] clams, scallops, squid, eels, turtles, fish, conchs and crayfish.

"Industrial activity" means the facilities classified under SIC 2091 or 2092.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products;

raw materials used in food processing or production (except oyster, clam or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to EPCRA § 313 (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR [ Part ] 122 (1992). For the categories of industries identified in the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR [ Part ] 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct or waste product (except for oyster, clam or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

9 VAC 25-115-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the discharge of wastewater and storm water associated with industrial activity from seafood processing facilities. [ It does not cover discharges from mechanized clam processing facilities. ]

B. The director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on [ July 24 ] , 1996. This general permit will expire five years after the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9 VAC 25-115-30 and the receipt of this general permit.

9 VAC 25-115-30. Authorization to discharge.

Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner files and receives acceptance by the director of the registration statement of 9 VAC 25-115-40, files the required permit fee, complies with the effluent limitations and other requirements of 9 VAC 25-115-50, and provided that:

1. Individual permit. The owner shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation (9 VAC 25-30-10 et seq.).

2. Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge to state waters [ where specifically named in ] other board regulations or policies [ which ] prohibit such discharges.

[ ~~3. Local government notification. The owner shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.~~ ]

Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

9 VAC 25-115-40. Registration statement.

The owner shall file a complete general VPDES permit registration statement for seafood processors. Any owner of an existing seafood processing facility which is covered by this general permit, who wishes to add a process to the existing permit, shall file an amended registration statement at least 30 days prior to commencing operation of the new process. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the date planned for commencing construction or operation of the new discharge. Any owner of an existing seafood processing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 120 days prior to the expiration date of the individual VPDES permit. Any owner of an existing seafood processing facility not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM

GENERAL PERMIT REGISTRATION STATEMENT FOR SEAFOOD PROCESSING FACILITIES

1. APPLICANT INFORMATION

- A. Name of Facility: \_\_\_\_\_
- B. Facility Owner: \_\_\_\_\_
- C. Owner's Mailing Address
  - a. Street or P.O. Box \_\_\_\_\_
  - b. City or Town \_\_\_\_\_
  - c. State \_\_\_ d. Zip Code \_\_\_\_\_

e. Phone Number \_\_\_\_\_

D. Facility Location: \_\_\_\_\_  
Street No., Route No., or Other Identifier

E. Is the operator of the facility also the owner?  
\_\_\_ Yes \_\_\_ No

If No, complete F & G.

F. Name of Operator: \_\_\_\_\_

G. Operator's Mailing Address

- a. Street or P.O. Box \_\_\_\_\_
- b. City or Town \_\_\_\_\_
- c. State \_\_\_ d. Zip Code \_\_\_\_\_
- e. Phone Number \_\_\_\_\_

2. FACILITY INFORMATION

Will this facility discharge to surface waters?  
\_\_\_ Yes \_\_\_ No.

If yes, name of receiving stream \_\_\_\_\_

Does this facility currently have an existing VPDES Permit?

\_\_\_ Yes \_\_\_ No

If yes, what is the permit No. \_\_\_\_\_

Provide the original date of construction of the seafood processing facility building and dates and description of all subsequent facility construction.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. MAP

Attach a USGS topographic map extending to at least one mile beyond property boundary, indicate location of facility and name of topographical quadrangle.

4. SIC CODES (check all applicable categories)

- \_\_\_ 2091 Canning and Curing Fish and Seafood
- \_\_\_ 2092 Preparing Fresh or Frozen Fish and Seafood
- \_\_\_ 5142 Wholesale Distribution of Packaged Frozen Fish and Other Seafood
- \_\_\_ 5146 Wholesale Distribution of Fish and Seafood, Including Product Cured, Fresh or Frozen But Not Packaged or Canned

5. NATURE OF BUSINESS: (provide a brief description)

6. OUTFALL INFORMATION

List all wastewater discharge outfalls by a number that is the same as on the drawings required in Question 8. Identify the processes which discharge through each outfall. Give the name of the waterbody receiving the discharge.

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Outfall No.    Operation (Process)    Receiving Stream


7. MAXIMUM DAILY PRODUCTION (the highest production value on any one day during a calendar year) [ ; (use weight of raw product except for oyster or scallop processing for which final product weight should be reported) ]

Operation (Process)	Quantity Per Day	Unit of Measurement
------------------------	---------------------	------------------------


8. FACILITY DRAWING

A. Attach a line drawing for each process showing the source of the water and its flow through the facility. Show each step of the process, (i.e., what happens to the water from the time it arrives at the facility until the time it leaves showing all individual floor drains, where pipes run through the building and where they discharge in relation to the receiving waters.)

B. Will any of the above processes operate simultaneously and discharge to the same outfall(s)?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If so, please provide specific information regarding simultaneous discharges.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9. TREATMENT INFORMATION

A. If settling basins or screens are used in wastewater treatment, provide the dimensions and capacity of the settling basin(s) and/or screen mesh size and location.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. Describe the method and frequency of solid wastes disposal.

10. CHEMICALS

Are any chemicals other than cleaners and sanitizers approved by the U. S. Department of Agriculture for food plant applications used in such a way that they might be in the discharge?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide the name of the chemical(s) here and describe how it is used.

\_\_\_\_\_

\_\_\_\_\_

[ 11. LOCAL GOVERNMENT ORDINANCE COMPLIANCE

~~The owner of any proposed discharge into or adjacent to state waters or the owner of any discharge into or adjacent to state waters which has not previously been covered by a valid VPDES permit must attach to this registration statement notification from the governing body of the county, city or town in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (Section 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.~~

12. 11.] 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.

Signature(s): \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

Name of person(s) signing above: \_\_\_\_\_

(printed or typed)

\_\_\_\_\_ (printed or typed)

Title(s): \_\_\_\_\_

REQUIRED ATTACHMENTS

Facility Drawing

USGS Topographic Map

Local Government Ordinance Form (If needed, see No. 12)

For Department use only:

Accepted/Not Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

Basin \_\_\_\_\_ Stream Class \_\_\_\_\_ Section \_\_\_\_\_

Special Standards \_\_\_\_\_

9 VAC 25-115-50. General permit.

Any owner whose registration statement is accepted by the director will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the [ VPDES ] Permit Regulation.

General Permit No.: VAG52\*\*\*\*\*

Effective Date: \*\*\*\*\*, 199\*

Expiration Date: \*\*\*\*\*, 199\*

**GENERAL PERMIT FOR SEAFOOD PROCESSING  
FACILITY  
AUTHORIZATION TO DISCHARGE UNDER THE  
VIRGINIA POLLUTANT DISCHARGE ELIMINATION  
SYSTEM  
AND  
THE VIRGINIA STATE WATER CONTROL LAW**

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of seafood processing facilities [ , other than mechanized clam processing facilities, ] are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those [ where specifically named in ] board regulations or policies [ which ] prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Storm Water Pollution Prevention Plans, Part III - Monitoring and Reporting, and Part IV - Management Requirements, as set forth herein.

**PART I**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A. - ALL SOURCES**

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Comp
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by the end of the year and reported by the 10th of January of the following year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

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## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING - EXISTING SOURCES PROCESSING MORE THAN 3,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

2. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING - ALL NEW SOURCES

3. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	0.15	0.30	NA	1/3 Months	Comp
TSS	NL	NL	0.45	0.90	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED BLUE CRAB PROCESSING - ALL EXISTING SOURCES

4. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12.0	36.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	4.2	13.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED BLUE CRAB PROCESSING - ALL NEW SOURCES

5. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

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EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	2.5	5.0	NA	1/3 Months	Comp
TSS	NL	NL	6.3	13	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation; monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - NON-BREADED SHRIMP PROCESSING - EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

6. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	38.0	110	NA	1/3 Months	Comp
Oil and Grease	NL	NL	12.0	36.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation; monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

# Final Regulations

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - NON-BREADED SHRIMP PROCESSING - ALL NEW SOURCES

7. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	25.0	63.0	NA	1/3 Months	Comp
TSS	NL	NL	10.0	25.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - BREADED SHRIMP PROCESSING - EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

8. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93.0	280	NA	1/3 Months	Comp

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Oil and Grease	NL	NL	12.0	36.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - BREADED SHRIMP PROCESSING - ALL NEW SOURCES

9. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS		DISCHARGE LIMITATIONS			SAMPLE Frequency	SAMPLE Type
	kg/day	kg/day	kg/kkg	kg/kkg	kg/kkg		
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	40.0	100	NA	1/3 Months	Comp
TSS	NL	NL	22.0	55.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - TUNA PROCESSING - ALL EXISTING SOURCES

10. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

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EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - TUNA PROCESSING - ALL NEW SOURCES

11. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	8.1	20.0	NA	1/3 Months	Comp
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

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## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - CONVENTIONAL BOTTOM FISH PROCESSING - EXISTING SOURCES PROCESSING MORE THAN 4,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

12. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - CONVENTIONAL BOTTOM FISH PROCESSING - ALL NEW SOURCES

13. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	0.71	1.2	NA	1/3 Months	Comp
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED BOTTOM FISH PROCESSING - ALL EXISTING SOURCES

14. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12.0	22.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED BOTTOM FISH PROCESSING - ALL NEW SOURCES

15. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

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EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	7.5	13.0	NA	1/3 Months	Comp
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HAND-SHUCKED CLAM PROCESSING - EXISTING SOURCES WHICH PROCESS MORE THAN 4,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

16. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18.0	59.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

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Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HAND-SHUCKED CLAM PROCESSING - ALL NEW SOURCES

17. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17.0	55.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[Production - see Special Condition No. 7.]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## [ PART I ]

### A. ~~EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED CLAM PROCESSING - ALL EXISTING SOURCES~~

~~18. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized clam processing, from outfall(s)~~

~~Such discharges shall be limited and monitored by the permittee as specified below:~~

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	15.0	90.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.97	4.2	NA	1/3 Months	Grab

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Production                      NA                      NL                      NA                      NA                      NA                      1/3 Months                      Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. ~~EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED CLAM PROCESSING - ALL NEW SOURCES~~

~~19. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized clam processing, from outfall(s)~~

~~Such discharges shall be limited and monitored by the permittee as specified below:~~

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	5.7	15.0	NA	1/3 Months	Comp
TSS	NL	NL	4.4	26.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.092	0.40	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR. ]

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HAND-SHUCKED OYSTER PROCESSING - EXISTING SOURCES WHICH PROCESS MORE THAN 1,000 LBS OF PRODUCT PER DAY ON ANY DAY

[ 20. 18. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

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EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16.0	24.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.81	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HAND-SHUCKED OYSTER PROCESSING - ALL NEW SOURCES

[ ~~24~~ 19. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16.0	23.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

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## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - STEAMED AND CANNED OYSTER PROCESSING (Mechanized Shucking) - ALL EXISTING SOURCES

[ 22- 20. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - STEAMED AND CANNED OYSTER PROCESSING (Mechanized Shucking) - ALL NEW SOURCES

[ 23- 21. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	17.0	67.0	NA	1/3 Months	Comp
TSS	NL	NL	39.0	56.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - SCALLOP PROCESSING - ALL EXISTING SOURCES

[ 24. 22. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	6.6	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.24	7.7	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - SCALLOP PROCESSING - ALL NEW SOURCES

[ 25. 23. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate

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pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - FARM-RAISED CATFISH PROCESSING - EXISTING SOURCES WHICH PROCESS MORE THAN 3,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

[ 26. 24. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Comp
Oil and Grease	NL	NL	3.4	10.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - FARM-RAISED CATFISH PROCESSING - ALL NEW SOURCES

[ 27. 25. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	2.3	4.6	NA	1/3 Months	Comp
TSS	NL	NL	5.7	11.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HERRING PROCESSING - EXISTING SOURCES

[ 28. 26. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	Comp
Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

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Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HERRING PROCESSING - ALL NEW SOURCES

[ 29. 27. ] During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	15	16	NA	1/3 Months	Comp
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

[ Production - see Special Condition No. 7. ]

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

### B. Special Conditions

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.

2. There shall be no chemicals added to the water or waste which may be discharged, including sodium tripolyphosphate, other than those listed on the owner's accepted registration statement, unless prior approval of the chemical(s) is granted by the Regional Office Director.

3. Byproducts used in a value added process, such as seasonings or breeding, may be included in the discharge in incidental quantities.

4. Wastewater should be reused or recycled whenever feasible.

5. The permittee shall comply with the following solids management plan:

a. There shall be no discharge of floating solids or visible foam in other than trace amounts.

b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.

c. All settling basins shall be cleaned frequently in order to achieve effective settling.

d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam or scallop shells, shall be handled, stored and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.

e. The permittee shall install and properly maintain whatever wastewater treatment process is necessary in order to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.

f. All employees shall receive training relative to preventive measures taken to control the release of solids from the facility into surface waters.

6. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard, limitation or prohibition for a pollutant which is promulgated or approved under § 307 (a) (2) of the Clean Water Act [ (33 USC § 1317(a)(2) ], if the effluent standard, limitation or prohibition so promulgated or approved:

- a. Is more stringent than any effluent limitation on the pollutant already in the permit; or
- b. Controls any pollutant not limited in the permit.

[ 7. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms). ]

PART II.

STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit which falls under SIC 2091 or 2092. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

- 1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:
  - a. Shall be prepared within 180 days after the dated coverage under this permit; and
  - b. Shall provide for implementation and compliance with the terms of the plan within 365 days after the date of coverage under this permit.
- 2. The plan for any facility where industrial activity commences on or after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of

the plan and this permit on or before the date of submission of a registration statement to be covered under this permit.

3. Upon a showing of good cause, the director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity that submits a registration statement in accordance with the registration requirements.

B. Signature and plan review.

- 1. The plan shall be signed in accordance with Part III G (signatory requirements), and be retained on-site at the facility covered by this permit in accordance with Part III C (retention of records) of this permit.
- 2. The permittee shall make plans available to the department upon request.
- 3. The director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

C. Keeping plans current. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II D 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan. The plan shall include, at a minimum, the following items:

- 1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.
- 2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each

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plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part II D 2 c (spills and leaks) of this permit have occurred, and the locations of the following activities: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. In addition to or as part of the comprehensive site compliance evaluation required under Part II D 4 of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or follow up procedures shall be used to ensure that

appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. *Employee training.* Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. *Record keeping and internal reporting procedures.* A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. *Sediment and erosion control.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

h. *Management of runoff.* The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Part II D 2 (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative sales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. *Comprehensive site compliance evaluation.* Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly

implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part II D 2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part II D 3 (measures and controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Part II D 4 b of this permit shall be made and retained as part of the storm water pollution prevention plan as required in Part III C. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part III G (signatory requirements) of this permit and retained as required in Part III C.

5. *Consistency with other plans.* Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under § 311 of the Clean Water Act [ (33 USC § 1321) ] or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

## PART III.

### MONITORING AND REPORTING.

#### A. Sampling and analysis methods.

[ 1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity. ]

[ 4. 2. ] Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants promulgated at 40 CFR [ Part ] 136 [ (1992) ].

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[ 2. 3. ] The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

[ 3. 4. ] The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;
2. The person(s) who performed the sampling or measurements;
3. The dates analyses were performed;
4. The person(s) who performed each analysis;
5. The analytical techniques or methods used;
6. The results of such analyses and measurements;

C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for three years from the date of the sample, measurement or report or until at least one year after coverage under this general permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the [ director board ].

D. Additional monitoring by permittee. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring. The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia Clean Water Act (33 USC § 1251 et seq.) or the board's regulations.

The permittee shall obtain and report such information if requested by the [ director board ]. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by [ director board ].

F. Reporting requirements.

1. The discharge monitoring reports (DMR) shall be submitted to the appropriate DEQ regional office by

January 10, April 10, July 10 and October 10 of each year. Those facilities which require once per year monitoring shall submit the DMR for each monitoring year by the 10th of January of the following year. All laboratory results and calculations shall be submitted with the DMR.

2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department's regional office with the monitoring report at least the following information:

- a. A description and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and
- c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The department's regional office director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in Part III F 2 a through c regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations [ or pollutant management activities ], (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities [ or pollutant management activities ], or (vi) flooding or other acts of nature.

[ If the regional office cannot be reached, the department maintains a 24-hour telephone service in Richmond (804-527-5200) to which the report required above is to be made. The report shall be made to the regional office. For reports outside normal working hours, leaving a message shall fulfill the reporting requirements. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892. ]

G. Signatory requirements. Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivision G 1 a, b, or c of this part; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision G 1 a, b, or c of this part; and

(2) 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, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) 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 department prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision G 1 or 2 of this part 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."

PART IV.  
MANAGEMENT REQUIREMENTS.

A. Change in discharge of pollutants.

1. Any permittee proposing a new discharge shall submit a registration statement ~~{ for a permit }~~ at least 30 days prior to ~~{ the date planned for }~~ commencing erection, construction or expansion, or ~~{ the addition of new processes which will result in a new discharge employment of new processes at any facility }~~. There shall be no construction or operation of said facilities prior to the issuance of a permit.

2. The permittee shall submit a registration statement at least 30 days prior to any planned changes, including proposed facility alterations or additions, production increases, adding new processes or process modifications when:

a. The planned change to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

b. The planned change could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to the notification level requirements in subdivision A 3 of Part IV; or

c. The planned change may result in noncompliance with permit requirements.

3. The permittee shall promptly provide written notice of the following:

a. ~~[ Any new introduction of pollutant(s), into treatment works which represents a significant increase in the discharge which may interfere with, pass through, or otherwise be incompatible with such works, from an establishment, treatment works, or discharge(s), if such establishment, treatment works, or discharge(s) were discharging or has the potential to discharge pollutants to state waters; and Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":~~

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2-methyl -4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

# Final Regulations

(3) The level established in accordance with regulation under § 307(a) of the Act and accepted by the board. ]

b. [ ~~Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, or discharge(s) that was introducing pollutants into such treatment works at the time of issuance of the permit.~~ Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) The level established by the board. ]

Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works; and (iii) any additional information that may be required by the [ ~~director~~ board ].

## B. Treatment works operation and quality control.

1. Design and operation of facilities and/or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department and in conformity with the conceptual design, or the plans, specifications, and/or other supporting data accepted by the [ ~~director~~ board ]. The acceptance of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design and/or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

c. Maintenance of treatment facilities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected solids shall be stored and disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

C. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability. The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing. Any bypass ("bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited unless:

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the [ ~~department's regional office~~ department ] promptly at least 10 days prior to the bypass. After considering its adverse effects the [ ~~regional office~~ ~~director~~ board ] may approve an anticipated bypass if:

a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if a bypass occurs during normal periods of equipment downtime, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

2. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the [ ~~department's regional~~

office department ] as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision IV F 1 of this part and in light of the information reasonably available to the permittee at the time of the bypass.

G. Conditions necessary to demonstrate an upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance for only technology-based effluent limitations. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. The facility permitted herein was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. The permittee submitted a notification of noncompliance as required by subsection F of Part III; and
4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.

H. Compliance with state and federal law. Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under § 307(a) of the Clean Water Act (33 USC § 1317(a)).

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act (33 USC § 1370).

I. Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

J. Severability. The provisions of this permit are severable.

K. Duty to reregister. If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 120 days prior to the expiration date of this permit.

L. Right of entry. The permittee shall allow, or secure necessary authority to allow, authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, [ or discharges ] is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or byproduct; and

5. To inspect at reasonable times any collection, treatment or discharge facilities required under this permit.

For purposes of this part, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection time unreasonable during an emergency.

M. Transferability of permits. This permit may be transferred to another person by a permittee if:

1. The current owner notifies the [ department's regional office department ] 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the department includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The department does not within the 30-day time period notify the existing owner and the proposed owner of the board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

N. Public access to information. Any secret formulae, secret processes, or secret methods other than effluent data submitted to the department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;
2. Registration statements, permits, and effluent data.

Information required by the registration statement may not be claimed confidential. This includes information submitted

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on the forms themselves and any attachments used to supply information required by the forms.

O. Permit modification. The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;
2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act (33 USC § 1317 (a)); or
3. When the level of discharge of a pollutant not limited in the permit exceeds applicable water quality standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

P. Permit termination. After public notice and opportunity for a hearing, the general permit may be terminated for cause.

Q. When an individual permit may be required. The [ director board ] may require any permittee authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharger(s) is a significant contributor of pollution.
2. Conditions at the operating facility change altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for a general permit.
3. The discharge violates the terms or conditions of this permit.
4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.
5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.
6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

R. When an individual permit may be requested. Any [ owner permittee ] operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to a [ owner permittee ] the applicability of this general permit to the individual [ owner permittee ] is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an [ owner permittee ] already covered by an individual permit, such [ owner permittee ] may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

S. Civil and criminal liability. Except as provided in permit conditions on "bypassing" (Part IV F), and "upset" (Part IV G) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act (33 USC § 1321) or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state 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.

## Document Incorporated by Reference

Standard Industrial Classification (SIC) 2091, 2092, 5142 or 5046 (Office of Management and Budget (OMB) SIC Manual, 1987)

VA.R. Doc. No. R96-407; Filed June 5, 1996, 10:57 a.m.

# STATE CORPORATION COMMISSION

## BUREAU OF INSURANCE

May 29, 1996

Administrative Letter 1996-2

TO: All Insurers Licensed to Write Commercial Liability Insurance  
RE: Repeal of Virginia Code Section 38.2-2228.1 -- Annual Reports of Certain Liability Claims

Senate Bill 232, effective July 1, 1996, repealed § 38.2-2228.1 of the Code of Virginia. As a result, companies will no longer be required to file the reports of certain liability claims for commercial entities, due on September 1 of each year.

Section 38.2-2228.1 of the Code of Virginia required that all liability claims for personal injury or property damage covered under policies issued in Virginia and classified in § 38.2-117 or § 38.2-118, or Virginia policies containing as a part thereof insurance classified in such sections, insuring a commercial entity, be reported annually to the Commission.

Past instructions have been sent out annually by the Bureau of Insurance in administrative letters. This administrative letter will serve as notice that the report of certain liability claims as required by Virginia Code § 38.2-2228.1 will not be due in 1996 or subsequent years.

If you have any questions regarding this matter, please direct them to Eric C. Lowe, Senior Insurance Analyst, at (804) 371-9628.

/s/ Alfred W. Gross  
Acting Commissioner of Insurance

VA.R. Doc. No. R96-395; Filed June 4, 1996, 9:50 a.m.

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May 29, 1996

Administrative Letter 1996-5

TO: All Insurers Licensed to Write Commercial Liability Insurance  
RE: Repeal of Virginia Code Section 38.2-2228 -- Certain Medical Malpractice Claims to be Reported to Commissioner

Senate Bill 232, effective July 1, 1996, repealed § 38.2-2228 of the Code of Virginia. As a result, companies will no longer be required to file the reports of medical malpractice claims pursuant to the instructions contained in Administrative Letter 1989-11. By issuance of this letter, companies are hereby notified that Administrative Letter 1989-11 is withdrawn.

Section 38.2-2228 of the Code of Virginia required that all medical malpractice claims opened, settled or adjudicated to final judgment against a person, corporation, firm, or entity providing health care and any such claim closed without payment during each calendar year shall be reported annually to the Commissioner by the insurer of the health

care provider or, if there is no insurer, by the health care provider.

By Administrative Letter 1989-11 dated November 8, 1989, the Bureau of Insurance advised companies that the reports were due to the Commission no later than March 1, 1990, and that subsequent reports should be on a calendar year basis and received by the Bureau of Insurance no later than March 1 of each ensuing year.

If you have any questions regarding this matter, please direct them to Eric C. Lowe, Senior Insurance Analyst, at (804) 371-9628.

/s/ Alfred W. Gross  
Acting Commissioner of Insurance

VA.R. Doc. No. R96-396; Filed June 4, 1996, 9:50 a.m.

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May 13, 1996

Administrative Letter 1996-7

TO: All Companies Regulated by the Bureau of Insurance and Other Interested Parties  
RE: Change of Zip Code

Please be advised that the zip code for the post office box mailing address of the State Corporation Commission's Bureau of Insurance has been changed. The new zip code is 23218. Our post office box mailing address is now P.O. Box 1157, Richmond, Virginia 23218.

Each company is responsible for notifying its agents of this change and for making the necessary corrections to all policies, forms, endorsements, and notices to policyholders which contain the Bureau's mailing address. This change should not be filed with the Bureau of Insurance.

/s/ Alfred W. Gross  
Acting Commissioner of Insurance

VA.R. Doc. No. R96-390; Filed May 28, 1996, 10:46 a.m.

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# MARINE RESOURCES COMMISSION

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## MARINE RESOURCES COMMISSION

**REGISTRAR'S NOTICE:** The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

**Title of Regulation:** 4 VAC 20-910-10 et seq. **Pertaining to Scup (Porgy).**

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

**Effective Date:** June 30, 1996.

**Preamble:**

*This regulation establishes minimum size limits and gear restrictions for the harvest of scup (porgy). This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. The effective date of this regulation is June 30, 1996.*

**Agency Contact:** Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

CHAPTER 910.  
PERTAINING TO SCUP (PORGY).

4 VAC 20-910-10. *Purpose.*

*The purpose of this regulation is to (i) reduce fishing mortality and increase the size of the scup spawning stock; (ii) improve yield from the commercial and recreational fisheries; (iii) promote compatible measures between the states and federal fishery jurisdictions; and (iv) maintain compliance with the Interstate Fishery Management Plan for Scup as required by the Atlantic Coastal Fisheries Cooperative Management Act (16 USC § 5101 et seq.).*

4 VAC 20-910-20. *Definitions.*

*The following words and terms, when used in this regulation shall have the following meaning unless the context clearly indicates otherwise.*

*"Scup" means any fish of the species *Stenotomus chrysops*, commonly referred to as porgy.*

4 VAC 20-910-30. *Minimum size limits.*

A. *The minimum size of scup harvested by commercial fishing gear shall be nine inches total length.*

B. *The minimum size of scup harvested by recreational fishing gear including, but not limited to, hook-and-line, rod-and-reel, spear, and gig shall be seven inches total length.*

C. *Length shall be measured in a straight line from tip of nose to tip of tail.*

D. *It shall be unlawful for any person to catch and retain possession of scup smaller than the above designated minimum size.*

E. *It shall be unlawful for any person to sell, trade, barter, or offer to sell, trade or barter any scup less than nine inches total length.*

4 VAC 20-910-40. *Gear restrictions.*

*It shall be unlawful for any person to place, set, or fish any fish pot in Virginia tidal waters for the purposes of harvesting scup or to land in Virginia scup harvested by fish pots which are not constructed as follows:*

1. *With an escape vent of 2.25 inches square dimension or 3.1 inches diameter circular dimension, and*
2. *With hinges and fasteners on one panel or door made of the following materials:*
  - a. *Untreated hemp, jute, or cotton string of 3/16 inches diameter or smaller,*
  - b. *Magnesium alloy, timed float releases or similar magnesium alloy fasteners, or*
  - c. *Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.*

4 VAC 20-910-50. *Penalty.*

*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.*

/s/ William A. Pruitt  
Commissioner

VA.R. Doc. No. R96-389; Filed May 28, 1996, 10:47 a.m.

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# FORMS

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## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Board of Coal Mining Examiners

Title of Regulation: 4 VAC 25-20-10 et seq. Board of Examiners Certification Regulations.

The following forms used in administering the regulation, 4 VAC 25-20-10 et seq., are being replaced and added as follows:

~~Application for Certification Coal Mining, DM-BOE-1A (Revised 7/94)~~ *Application for Certification Examination DM-BCME-1 (Issued 2/1/96)*

~~Certificate of Work Experience Form Coal Mining, DM-BOE-2A (Rev. 7/94)~~ *Verification of Work Experience, DM-BCME-2 (Issued 2/1/96)*

*Verification of Training Completed for General Coal Miner Certification, DM-BCME-3 (Issued 2/1/96)*

Copies of the forms may be obtained from the Department of Mines, Minerals and Energy, Ninth Street Office Building, 8th Floor, 202 North Ninth Street, Richmond, VA 23219, telephone (804) 692-3200.



Board of Coal Mining Examiners  
 P. O. Drawer 900  
 Big Stone Gap, VA 24219  
 (540) 523-8149

**Application for Certification Examination**

Applicants for certification must complete this form and submit a \$10.00 fee for each exam. Type or print the application in ink and pay the fee with a certified check, cashier's check, or money order made payable to the **Treasurer of Virginia**. Cash will be accepted if paid in person. Submit the application and fee to the **Board of Coal Mining Examiners** at least **five working days** prior to the date of examination.

1. Full Name \_\_\_\_\_ S.S. # \_\_\_\_\_

2. Address \_\_\_\_\_  
 Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

3. Date of Birth \_\_\_\_\_ Home Phone No. (\_\_\_\_\_) \_\_\_\_\_  
 Month/Day/Year

4. Total years employed at a coal mine: \_\_\_\_\_  
 Underground \_\_\_\_\_ Surface \_\_\_\_\_

5. List your current (or most recent) mining experience:

Company Name \_\_\_\_\_

Address \_\_\_\_\_  
 Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Job Title \_\_\_\_\_ From \_\_\_\_\_ To \_\_\_\_\_  
 Month/Day/Year Month/Day/Year

6. Attach copies of the required documentation needed for each certification.

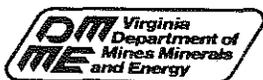
7. Examination Requested (Check One):

<input type="checkbox"/> Advanced first aid	<input type="checkbox"/> Automatic elevator operator	<input type="checkbox"/> Blaster endorsement (DMLR)
<input type="checkbox"/> Chief electrician (sur/UG or sur)	<input type="checkbox"/> Diesel engine mechanic instructor	<input type="checkbox"/> Dock foreman
<input type="checkbox"/> Electrical maintenance foreman (sur/UG or surface)	<input type="checkbox"/> First aid instructor	<input type="checkbox"/> First class mine foreman
<input type="checkbox"/> General coal miner	<input type="checkbox"/> First class shaft or slope foreman	<input type="checkbox"/> Gas detection qualification
<input type="checkbox"/> Mine inspector	<input type="checkbox"/> Hoisting engineer	<input type="checkbox"/> Instructor
<input type="checkbox"/> Surface blaster	<input type="checkbox"/> MSHA electrical reinstatement	<input type="checkbox"/> Preparation plant foreman
<input type="checkbox"/> Surface foreman	<input type="checkbox"/> Surface electrical repairman	<input type="checkbox"/> Surface facilities foreman for shops, labs, and warehouses
<input type="checkbox"/> Underground diesel engine mechanic	<input type="checkbox"/> Top person	<input type="checkbox"/> Underground shot firer
<input type="checkbox"/> Underground electrical repairman		

I hereby certify that the above answers are true to the best of my knowledge and belief.

Signed \_\_\_\_\_ Date \_\_\_\_\_

DM-BCME- 1 (Issued 2/1/96)



Board of Coal Mining Examiners  
 P. O. Drawer 900  
 Big Stone Gap, VA 24219  
 (540) 523-8149

### Verification of Work Experience

Complete this form for each employer to certify the experience requirements have been met and have it signed by a company official knowledgeable of your work history before a notary public. Type or print the information in ink and submit it to the BCME.

1. Full Name \_\_\_\_\_ S.S. # \_\_\_\_\_

2. Address \_\_\_\_\_  
Street or P.O. Box City State Zip Code

3. Employer/Company Name \_\_\_\_\_ Mine Name \_\_\_\_\_  
 Address \_\_\_\_\_  
Street or P.O. Box City State Zip Code

4. Job Title \_\_\_\_\_ From \_\_\_\_\_ To \_\_\_\_\_  
Month/Day/Year Month/Day/Year  
 Description of job duties which are **applicable** to certification requested: \_\_\_\_\_

Job Title \_\_\_\_\_ From \_\_\_\_\_ To \_\_\_\_\_  
Month/Day/Year Month/Day/Year  
 Description of job duties which are **applicable** to certification requested: \_\_\_\_\_

5. I hereby certify, under the penalties of perjury, that the information related to this applicant's experience as submitted on this form is correct.

Signature of Company Official \_\_\_\_\_ (Print or Type Name) \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

6. State of \_\_\_\_\_ county/city \_\_\_\_\_ of to wit:  
 I, \_\_\_\_\_ a notary public in and for the State and county/city  
 aforesaid, do certify that \_\_\_\_\_ whose name is signed to #5 above,  
Company Official  
 on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ has acknowledged the same before me in my county/city  
 aforesaid. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. SEAL

DM-BCME-2 (Issued 2/1/96)



Board of Coal Mining Examiners  
 P. O. Drawer 900  
 Big Stone Gap, VA 24219  
 (540) 523-8149

**Verification of Training Completed for General Coal Miner Certification**

Type or print this form in ink and submit it to the **Board of Coal Mining Examiners** with a \$10 processing fee in the form of a certified check, cashier's check, or money order made payable to the **Treasurer of Virginia**. Cash will be accepted if paid in person at a Division of Mines' (DM) office.

1. Full Name \_\_\_\_\_ S.S. # \_\_\_\_\_

2. Address \_\_\_\_\_  
 Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

3. Home Phone No. (\_\_\_\_) \_\_\_\_\_ Date of Employment \_\_\_\_\_

4. Employer Company Name \_\_\_\_\_ Mine Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Street or P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

5. Job title/description of job duties \_\_\_\_\_

6. I received training in first aid and Virginia's coal mining law and regulations on \_\_\_\_\_ or I have  
 attached a copy of my valid first aid card. \_\_\_\_\_  
 Date or Dates

**I hereby certify that the above answers are true to the best of my knowledge and belief.**

Signed \_\_\_\_\_ Date \_\_\_\_\_  
 Signature of applicant for certification

I hereby certify to the BCME that the training I provided to the applicant set forth above meets the requirements of Virginia Code §45.1-161.37 and the Virginia Administrative Code 4 VAC 25-20, and the applicant has satisfactorily demonstrated to me the required knowledge of first aid practices and the mine safety laws of Virginia.

Name printed and signed \_\_\_\_\_  
 Certified foreman or instructor approved by DM providing training

Cert. No. \_\_\_\_\_

Name printed and signed when the applicant is hired \_\_\_\_\_  
 Mine operator employing applicant

DM-BCME-3 (Issued 5/22/96)

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# GOVERNOR

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## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

### STATE LOTTERY BOARD

**Title of Regulation: 11 VAC 5-20-10 et seq. Administration Regulations.**

**Governor's Comment:**

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor

Date: February 22, 1996

VA.R. Doc. No. R96-394; Filed June 4, 1996, 9:50 a.m.

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**Title of Regulation: 11 VAC 5-30-10 et seq. Instant Game Regulations.**

**Governor's Comment:**

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor

Date: February 22, 1996

VA.R. Doc. No. R96-393; Filed June 4, 1996, 9:50 a.m.

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**Title of Regulation: 11 VAC 5-40-10 et seq. On-Line Game Regulations.**

**Governor's Comment:**

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor

Date: May 7, 1996

VA.R. Doc. No. R96-392; Filed June 4, 1996, 9:51 a.m.

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# GENERAL NOTICES/ERRATA

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## Symbol Key

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

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### DEPARTMENT OF CRIMINAL JUSTICE SERVICES

#### Notice of Application for Grant Funds: Prerelease and Post Incarceration Services for Adult Offenders

The Department of Criminal Justice Services is accepting applications for grant funds for prerelease and post incarceration services for adult offenders (generally known as Papis Funds). The deadline for application is 3 p.m., Wednesday, July 10, 1996. Program guides and applications may be obtained by contacting David Vest, Program Analyst, Department of Criminal Justice Services, telephone (804) 786-1138, or FAX (804) 786-9656. Any public or nonprofit private Papis Program provider is invited to make application.

### DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

#### Total Maximum Daily Load (TMDL) Priority List

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written comment from interested persons on Virginia's 1996 303(d) Total Maximum Daily Load (TMDL) Priority List. This report identifies rivers and streams that do not meet water quality standards, waters not expected to meet water quality standards after the implementation of technology-based controls, and tributaries to the Chesapeake Bay for which Virginia is developing nutrient reduction strategies. Pollutants responsible for the waters being on the list are identified and the waters have been given a priority ranking for the development of TMDLs.

DEQ monitored about 25,559 stream miles of Virginia's 49,220 perennial stream miles in 1993-95 to conduct this statewide assessment, which is required every two years by the federal Clean Water Act. Approximately 24,123 stream miles, or 95%, fully met all water quality standards. About 1,436 stream miles are identified as not meeting water quality standards because of point and nonpoint source pollutants.

Section 303(d) of the Clean Water Act and EPA's Water Quality Planning and Management Regulations (40 CFR Part 130) require the state to report and seek public comment on the waters on the list and to develop total maximum daily loads (TMDLs) for these waters. TMDLs establish allowable pollution loadings or other quantifiable parameters necessary to attain water quality standards. TMDLs will be developed in a separate process with public participation.

DEQ and DCR will hold three public meetings to answer questions about the list. They will be held on June 17, 1996, at the James City County Board of Supervisors Room at 1:30 p.m. for the Piedmont and Tidewater regions; June 20, 1996,

at the Prince William Board of Supervisors Meeting Room at 1:30 p.m. for the Northern Virginia region; and June 25, 1996, at the City of Salem's Civic Center in Meeting Room A at 2 p.m. for the Southwest, West Central, and Valley regions.

A copy of the 303(d) priority list report is available upon request. Questions or information requests should be addressed to Charles Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4462 or FAX (804) 698-4136. The public comment period will end on July 10, 1996. Written comments should include the name, address, and telephone number of the person presenting comments and should be sent to Charles Martin at the above address.

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### † Reimbursement Methodology for Inpatient Hospital Services

#### (Public Notice in Conformance to 42 CFR 447.205)

The Department of Medical Assistance Services (DMAS) is changing its reimbursement methodology for inpatient hospital services. Effective July 1, 1996, it will begin a transition to a methodology that will pay for most inpatient services under a per-case based Diagnosis Related Groups (DRG) methodology, and for some services under a revised per diem methodology.

This methodology change is not expected to result in any changes in anticipated annual expenditures. DMAS is changing its inpatient hospital methodology as the final step in the settlement of the case *Virginia Hospital Association v. Wilder, et.al.*, which was executed December 21, 1990.

Parties interested in viewing or obtaining copies of this new proposed methodology should contact the DMAS Regulatory Coordinators, Roberta J. Jonas at (804) 371-8854, or Victoria P. Simmons at (804) 786-7959. Written comments may be submitted to Scott Crawford, Manager, Division of Financial Operations, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219. DMAS will give prior notice of public hearings, if any are to be held, in the *Virginia Register of Regulations*.

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Mailing Address:** Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

### **Forms for Filing Material on Dates for Publication in *The Virginia Register of Regulations***

All agencies are required to use the appropriate forms when furnishing material and dates for publication in *The Virginia Register of Regulations*. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

#### **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

# CALENDAR OF EVENTS

## Symbol Key

- † Indicates entries since last publication of the *Virginia Register*
- ♿ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/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.

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) 786-6530.

VIRGINIA CODE COMMISSION

## EXECUTIVE

least five days before the meeting date so that suitable arrangements can be made.

### BOARD FOR ACCOUNTANCY

July 22, 1996 - 10 a.m. -- Open Meeting

July 23, 1996 - 8 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action. The meeting will include receipt of committee reports and discussion of disciplinary cases. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board 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, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia Marine Products Board

July 10, 1996 - 6 p.m. -- Open Meeting

Bill's Seafood House, Route 17 and Denbigh Boulevard, Grafton, Virginia.♿

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Shirley Estes at

**Contact:** Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23608, telephone (804) 874-3474 or FAX (804) 886-0671.

#### Pesticide Control Board

† July 11, 1996 - 9 a.m. -- Open Meeting

Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia.♿

Committee meetings and a general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda beginning at 9 a.m. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

**Contact:** Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558.

#### Virginia Small Grains Board

July 17, 1996 - 8:30 a.m. -- Open Meeting

Airport Hilton, 5501 Eubank Road, Sandston, Virginia.♿

The board will meet in regular session to discuss issues related to the small grains industry and to hear project reports and proposals. 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 accommodations in order to participate at the meeting should contact Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Phil Hickman, Program Director, Virginia Small Grains Board, 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

## Virginia Soybean Board

**August 2, 1996 - Noon** -- Open Meeting  
4899 White Marsh Road, Wakefield, Virginia. ☒

The board will meet in regular session to discuss issues related to the soybean industry and the status of the 1996 crop and how it will reflect checkoff collections for 1996. 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 accommodations in order to participate at the meeting should contact Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Phil Hickman, Program Director, Virginia Small Grains Board, 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

## Virginia Winegrowers Advisory Board

**July 25, 1996 - 10 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☒

An annual meeting to induct new board members and elect officers for the upcoming year. 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 accommodations in order to participate at the meeting should contact Mary E. Davis-Barton at least 10 days before the meeting date so that suitable arrangements can be made.

**Contact:** Mary E. Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, 1100 Bank St., Room 1010, Richmond, VA 23219, telephone (804) 786-0481.

## STATE AIR POLLUTION CONTROL BOARD

**June 28, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq. General Provisions; and 9 VAC 5-80-360 et seq. Article 3, Acid Rain Operating Permits (Rule 8-7)**. The proposed regulation establishes an acid rain operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

**Localities Affected:** There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

**Location of Proposal:** The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Office of Air Program Development, Department of Environmental Quality (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
Executive Office Park, Suite D  
5338 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 561-7000

Lynchburg Satellite Office  
Department of Environmental Quality  
7701-03 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
116 North Main Street  
Bridgewater, Virginia 22812  
Ph: (540) 828-2595

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Innsbrook Corporate Center  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
Old Greenbrier Village, Suite A  
2010 Old Greenbrier Road  
Chesapeake, Virginia  
Ph: (804) 424-6707

Springfield Satellite Office  
Department of Environmental Quality

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# Calendar of Events

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Springfield Corporate Center, Suite 310  
6225 Brandon Avenue  
Springfield, Virginia  
Ph: (703) 644-0311

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

**Contact:** Robert A. Mann, Office Director, Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4419.

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**July 23, 1996 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
First Floor, Training Room, Richmond, Virginia.

**August 9, 1996** -- Public comments may be submitted until  
4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq., General Provisions and 9 VAC 5-80-10 et seq., Permits for New and Modified Sources.** The amendments concern provisions covering prevention of significant deterioration and include: (i) revision of the maximum allowable increases for particulate matter from being based on total suspended particulate to being based on particulate with an aerodynamic diameter of less than or equal to 10 micrometers; (ii) revision of the "Guideline on Air Quality Models"; (iii) exclusion of certain pollutants when determining whether an emissions increase is considered significant; and (iv) updating the notification process to comply with the Code of Virginia and changing the regulation's internal numbering system to reflect requirements of the Registrar of Regulations.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street

Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
Executive Office Park, Suite D  
5338 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 561-7000

Lynchburg Satellite Office  
Department of Environmental Quality  
7701-03 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
116 North Main Street  
Bridgewater, Virginia 22812  
Ph: (540) 828-2595

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Innsbrook Corporate Center  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
Old Greenbrier Village, Suite A  
2010 Old Greenbrier Road  
Chesapeake, Virginia  
Ph: (804) 424-6707

Springfield Satellite Office  
Department of Environmental Quality  
Springfield Corporate Center, Suite 310  
6225 Brandon Avenue  
Springfield, Virginia  
Ph: (703) 644-0311

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

Public comments may be submitted until 4:30 p.m. August 9, 1996, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Karen Sabasteanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426.

**State Advisory Board on Air Pollution**

† July 10, 1996 - 9 a.m. -- Open Meeting  
Department of Motor Vehicles, Agecroft Room, 2300 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting.

**Contact:** Kathy Frahm, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4376.

**ALCOHOLIC BEVERAGE CONTROL BOARD**

June 24, 1996 - 9:30 a.m. -- Open Meeting  
July 29, 1996 - 9:30 a.m. -- Open Meeting  
August 12, 1996 - 9:30 a.m. -- Open Meeting  
August 26, 1996 - 9:30 a.m. -- Open Meeting  
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to receive and discuss reports from and activities of staff members. Other matters have not yet been determined.

**Contact:** W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

**BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION**

† July 18, 1996 - 10 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general board meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475, or (804) 367-9753/TDD

**BOARD FOR BARBERS**

† August 5, 1996 - 10 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**

June 24, 1996 - 10 a.m. -- Open Meeting  
KoKoamos, 2600 Marina Shores, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda will be available by June 7, 1996, from the Chesapeake Bay Local Assistance Department.

**Contact:** Florence E. J. Dickerson, Program Support Technician, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD

**CHILD DAY-CARE COUNCIL**

July 11, 1996 - 9:30 a.m. -- Open Meeting  
August 8, 1996 - 9:30 a.m. -- Open Meeting  
Department of Social Services, Theater Row Building, 730 East Broad Street, Lower Level Conference Room, Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school-age programs, and preschool/nursery schools. Public comment period will be at noon. Please call ahead of time for possible changes in meeting time.

**Contact:** Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1775.

**VIRGINIA STATE CHILD FATALITY REVIEW TEAM**

June 28, 1996 - 10 a.m. -- Open Meeting  
State Corporation Commission Building, 1300 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to (i) discuss the status of funding and recent legislative actions; (ii) update the status of educational endeavors; and (iii) receive preliminary data on one class of violent deaths of children that will be studied this year. The second part of this meeting will be closed for specific case discussion.

**Contact:** Marcella F. Fierro, M.D., Chief Medical Examiner, 9 N. 14th St., Richmond, VA 23219, telephone (804) 786-1033, FAX (804) 371-8595, or toll-free 1-800-447-1706.

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# Calendar of Events

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## STATE BOARD FOR COMMUNITY COLLEGES

**July 17, 1996 - 2:30 p.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 15th Floor,  
Richmond, Virginia.

State board committee meetings.

**Contact:** Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ☎

**July 18, 1996 - 8:30 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 15th Floor,  
Richmond, Virginia.

A regularly scheduled board meeting.

**Contact:** Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ☎

## COMPENSATION BOARD

† **June 27, 1996 - 11 a.m.** -- Open Meeting  
† **July 25, 1996 - 11 a.m.** -- Open Meeting  
† **August 29, 1996 - 11 a.m.** -- Open Meeting  
Ninth Street Office Building, 202 North Ninth Street, 9th Floor,  
Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the  
deaf provided upon request)

A routine business meeting.

**Contact:** Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23218-0710, telephone (804) 786-0786, FAX (804) 371-0235, or (804) 786-0786/TDD ☎

## COMPREHENSIVE SERVICES ACT FOR AT RISK YOUTH AND THEIR FAMILIES

### State Management Team

**July 11, 1996 - 10 a.m.** -- Open Meeting  
Galax, Virginia. ☎

A meeting to discuss policy and procedure to be recommended and discussed with the State Executive Council. Please contact Pamela Fitzgerald Cooper or Gloria Jarrell to be added to the agenda and for meeting location.

**Contact:** Gloria Jarrell or Pamela Fitzgerald Cooper, Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 109 Governor St., Richmond, VA 23219, telephone (804) 371-2177 or FAX (804) 371-0091.

## State Executive Council

**July 26, 1996 - 9 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, Lower Level, Room 2, Richmond, Virginia.

The council provides interagency programmatic and fiscal policies, oversees the administration of funds appropriated under the Comprehensive Services Act, and advises the Governor.

**Contact:** Alan G. Saunders, Director, State Executive Council, 730 E. Broad St., Richmond, VA 23219, telephone (804) 786-5382.

## DEPARTMENT OF CONSERVATION AND RECREATION

### Board of Conservation and Recreation

**June 25, 1996 - 2:30 p.m.** -- Open Meeting  
New River Trails State Park Office, New River Trail State Park, Wythe County, Virginia. ☎ (access by I-77 at Poplar Camp exit. Take Route 52 North and West to Route 608, turn north on Route 608 and follow to the Foster Falls Crossing of the New River Trail (as abandoned North and Western Railroad)).

A regular business meeting.

**Contact:** Leon E. App, Conservation and Development Programs, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

### Goose Creek Scenic River Advisory Board

† **July 18, 1996 - 1 p.m.** -- Open Meeting  
George Washington University, Loudoun Campus, Presidential Drive, off Route 7 on Ashburn Flats, Loudoun, Virginia.

A meeting to discuss river issues.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

## BOARD FOR CONTRACTORS

† **July 10, 1996 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A regularly scheduled quarterly meeting of the board to (i) address policy and procedural issues; (ii) review and render decisions on applications for contractor licenses/certificates; and (iii) review and render case decisions on matured complaints against licensees/certificants. The meeting is open to the public;

however, a portion of the board's business may be discussed in Executive Session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Geralde W. Morgan. The department fully complies with the Americans with Disabilities Act.

**Contact:** Geralde W. Morgan, Senior Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785 or (804) 367-9753/TDD ☎

## BOARD FOR COSMETOLOGY

† July 1, 1996 - 10 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

## DISABILITY SERVICES COUNCIL

† June 27, 1996 - 1 p.m. -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review Rehabilitative Services Incentive Fund grant applications.

**Contact:** Kathy Hayfield, Planner Senior, Disability Services Council, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7134 (Voice/TTY), toll-free 1-800-552-5019, or 1-800-464-9950/TDD ☎

## LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF BRISTOL

July 24, 1996 - 1 p.m. -- Open Meeting  
Main Fire Station, 211 Lee Street, Bristol, Virginia.

A meeting of local persons who have responsibilities under the emergency plan of the city. The meeting is open to other interested parties to exchange information about the needs of the city and to update the Emergency Operations Plan.

**Contact:** J. L. Myers, Lieutenant of Police, 415 Cumberland St., Bristol, VA 24201, telephone (804) 645-7407.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

† July 8, 1996 - 10 a.m. -- Public Hearing  
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing on proposed revisions to the Commonwealth of Virginia State Implementation Plan. The proposed revisions consist of (i) a plan to reduce and maintain volatile organic compound (VOC) and nitrogen oxide (No<sub>x</sub>) emissions in the Richmond Ozone Nonattainment Area through the year 2007, such that they do not exceed the 1993 attainment year level; and (ii) an adjustment to the mobile emissions budget established by the plan for the year 2016 and beyond. The hearing will also be used as a vehicle to receive comment on an operating permit for the Virginia Power Dutch Gap facility located in Chesterfield County in order to satisfy the requirements of 9 VAC 5-80-40.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

## Ground Water Protection Steering Committee

† July 16, 1996 - 9 a.m. -- Open Meeting  
State Corporation Commission, Tyler Building, 1300 East Main Street, 8th Floor Conference Room, Richmond, Virginia. ♿

A meeting to discuss ground water protection issues. Meeting minutes and agenda are available from Mary Anne Massie upon request.

**Contact:** Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

## BOARD OF FORESTRY

† July 15, 1996 - 8:30 a.m. -- Open Meeting  
Department of Forestry, Fontaine Research Park, 900 Natural Resources Drive, George W. Dean Board Room, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to provide a general overview of Department of Forestry programs to the board and to hold a general discussion of business. Any person requiring an interpreter for the deaf should notify the department at least five days prior to the meeting.

**Contact:** Barbara A. Worrell, Administrative Staff Specialist, P.O. Box 3758, Charlottesville, VA 22903-0758, telephone (804) 977-6555/TDD ☎

# Calendar of Events

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**July 1, 1996 - 9 a.m.** -- Open Meeting  
Williamsburg Lodge, Room B, Williamsburg, Virginia ☎

A general board meeting to discuss board business. Public comments will be received at the beginning of the meeting for 15 minutes. Formal hearings will follow the board meeting.

**Contact:** Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

## DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

**† July 2, 1996 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A meeting to receive public comments regarding season lengths and bag limits for the 1996-1997 hunting seasons for dove, rails, snipe, woodcock, and resident Canada geese. Wildlife Division staff will present recommendations for seasons based on frameworks provided by the U. S. Fish and Wildlife Service. The public's comments will be solicited. A summary of the results of this public input meeting will be presented to the Department of Game and Inland Fisheries Board of Directors at its scheduled July 18-19, 1996 meeting, at which the board will adopt 1996-1997 dove, rail, snipe, woodcock, and resident Canada goose hunting seasons.

**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427

**July 18, 1996 - 9 a.m.** -- Open Meeting

**July 19, 1996 - 8 a.m.** -- Open Meeting

Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

The board will meet and approve the department's 1996-1997 operating and capital budgets. The board will also adopt webless migratory game bird and September resident Canada goose seasons based on frameworks provided by the U.S. Fish and Wildlife Service. The board will also address amendments to regulations proposed at its April 25-26, 1996, board meeting pertaining to certain disabled hunters hunting with a crossbow during the special archery deer seasons on the private property of another with the written permission of the landowner, and will determine whether the proposed regulations will be adopted as final regulations. The board will solicit comments from the public during the public hearing portion of the meeting, at which time any interested citizen present shall be heard. The board reserves the right to expand or restrict the proposed regulation amendments, as necessary for the proper

management of fish and wildlife resources. These changes may be more liberal than, or more stringent than, the regulations currently in effect, or the regulation amendments proposed at the April 25-26, 1996, meeting.

The board will also propose rule changes to expand the use of captive reared mallard ducks allowed on licensed shooting preserves.

In addition, general and administrative issues may be discussed by the board. The board may hold an executive session beginning at 9 a.m. on July 18, 1996, and chairmen of various board committees may request committee meetings in conjunction with this meeting or thereafter. If the board completes its entire agenda on July 18, it may not convene on July 19.

**Contact:** Phil Smith, Policy Analyst Senior, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

## CHARITABLE GAMING COMMISSION

**† June 25, 1996 - 10:30 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia ☎

A regular meeting.

**Contact:** Kari Walter, Policy Analyst, Charitable Gaming Commission, 200 N. 9th St., Room 1030, Richmond, VA 23219, telephone (804) 786-0293 or FAX (804) 786-1079.

## DEPARTMENT OF HEALTH

### Virginia HIV Prevention Community Planning Committee

**July 19, 1996 - 8:30 a.m.** -- Open Meeting  
Sheraton Inn-Richmond Airport, 4700 South Laburnum Avenue, Richmond, Virginia ☎ (Interpreter for the deaf provided upon request)

A meeting to continue HIV prevention community planning.

**Contact:** Elaine G. Martin, Coordinator, STD/AIDS Education, Information and Training, Bureau of STD/AIDS, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 786-0877 or toll-free 1-800-533-4148.

## BOARD OF HEALTH PROFESSIONS

**† July 9, 1996 - 1 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

**† August 23, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health Professions

intends to adopt regulations entitled: **Regulations Governing Standards for Dietitians and Nutritionists.** The regulation establishes minimal standards for the use of the titles of dietitian or nutritionist in accordance with provisions of § 54.1-2731 of the Code of Virginia.

Statutory Authority: §§ 54.1-2400 and 54.1-2731 of the Code of Virginia.

**Contact:** Elaine J. Yeatts, Senior Regulatory Analyst, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9918.

### Ad Hoc Levels of Regulation Committee

† July 9, 1996 - 11 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review issues dealing with the regulation of health care professions. Brief public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

### Compliance and Discipline Committee

† July 9, 1996 - 10 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to receive a report on progress of study dealing with the disclosure of disciplinary information, and other business. Brief public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

### Practitioner Self-Referral Committee

† July 8, 1996 - 3 p.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to consider requests for an advisory opinion on referrals. Brief public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

### Regulatory Research Committee

† July 9, 1996 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review final reports on alternative and complementary medicine and pharmacy technicians, and to consider other studies. Public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

### VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

June 28, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **12 VAC 25-20-10 et seq. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed amendments is to eliminate requirements for nursing homes and hospitals to submit budget filings, for nursing homes to submit commercial diversification surveys, and for hospitals to submit quarterly filings to the Virginia Health Services Cost Review Council. A method for assessing fees, not related to budget filings, is provided.

Statutory Authority: §§ 9-158 and 9-160 of the Code of Virginia.

Public comments may be submitted until June 28, 1996, to Ann Y. McGee, Virginia Health Services Cost Review Council, 805 East Broad Street, Richmond, Virginia 23219.

**Contact:** Marsha Mucha, Executive Secretary Senior, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371 or FAX (804) 371-0284.

### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

July 15, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Council of Higher Education for Virginia intends to amend regulations entitled: **8 VAC 40-30-10 et seq. Regulations Governing the Approval of Certain Institutions to Confer Degrees, Diplomas and Certificates.** The purpose of the amendments is to address inefficiencies contained in current regulations, update regulations to reflect changing technologies, and address a gap in the

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state's quality assurance measures regarding the review and approval of certificate and diploma programs below the associate degree level. The proposed amendments will be beneficial to the public's welfare by reducing administrative burdens on institutions of higher education operating in Virginia while continuing to ensure that such institutions are offering quality degree programs.

Statutory Authority: § 23-268 of the Code of Virginia.

Public comments may be submitted until July 15, 1996, to M. Elizabeth Griffin, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

**Contact:** Frances C. Bradford, Regulatory Coordinator, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2137.

### VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

June 27, 1996 - 10 a.m. -- Open Meeting

July 25, 1996 - 10 a.m. -- Open Meeting

August 22, 1996 - 1 p.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia. ☎

A regular meeting.

**Contact:** Diana F. Cantor, Executive Director, Virginia Higher Education Tuition Trust Fund, James Monroe Building, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 746-3634.

### HOPEWELL INDUSTRIAL SAFETY COUNCIL

July 2, 1996 - 9 a.m. -- Open Meeting

† August 6, 1996 - 9 a.m. -- Open Meeting

† September 3, 1996 - 9 a.m. -- Open Meeting

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

### LIBRARY BOARD

#### State Networking Users Advisory Board

June 26, 1996 - 10 a.m. -- Open Meeting

Jefferson-Madison Regional Library, 201 East Market Street, Madison Room, 3rd Floor Conference Room, Charlottesville, Virginia. ☎

A meeting to discuss administrative matters.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

### COMMISSION ON LOCAL GOVERNMENT

July 8, 1996 - 10 a.m. -- Open Meeting

Richmond area; site to be determined.

A regular meeting of the commission to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., 805 E. Broad St., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999, or (804) 786-1860/TDD ☎

### MARINE RESOURCES COMMISSION

June 25, 1996 - 9:30 am. -- Open Meeting

Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☎ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** Sandra S. Schmidt, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD ☎

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 9, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-**

**50-95 through 12 VAC 30-80-310. Amount, Duration and Scope of Services, and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care.** The purpose of this proposal is to promulgate regulations which would allow DMAS to require the use of prescription orders for certain over-the-counter (OTC) therapeutic products as a first approach to drug therapy where these products may be used in place of a more expensive legend-only drug. Payment for the more expensive legend drug would be denied, except in a few specified conditions, unless initial treatment was initiated using these less costly OTC drugs and the results of the OTC therapy were found to be unsatisfactory.

DMAS must implement cost-saving measures in its covered pharmacy services. Among these, enhancements to the Point-of-Service (POS) automated system related to the Prospective Drug Utilization Review (ProDUR) program have been identified as a priority. Additionally, DMAS must develop a Prior Authorization (PA) program. The two initiatives, in tandem, are well suited to implementation in the interest of economy and patient safety. This OTC program will enable the partial fulfillment of the required budget reduction.

Historically, the Joint Legislative Audit and Review Commission recommended, in 1993, that Medicaid cover OTC drugs. Also, in 1994, the American Medical Association adopted a policy which recommended to physicians that they adopt the practice of prescribing OTC medications to their patients.

As a result of the increased movement of drug products from prescription only (legend) to OTC status during recent years, a large number of effective drug products are available to the public in dosage forms/strengths previously obtainable only on prescription. These have been reviewed extensively by expert panels at the U.S. Food and Drug Administration (FDA) and deemed safe and effective. The increased efficacy and cost savings of using these products justifies the initiation of a program to enhance the pharmacy services by providing certain CTC drugs as therapeutic alternatives to costly legend products.

DMAS expects this proposed policy to have a positive impact on families because it recommends the expansion of covered pharmacy services to include certain OTC drugs which, at least for the noninstitutionalized population, have heretofore not been covered. This will alleviate some of this financial burden which has been borne by families.

These savings are a part of the savings which are required in Chapter 853, Item (E)(8), the 1995 Appropriations Act. This initiative should produce cost saving in individual patient care in the proposed categories. The extent will vary with the product category. Overall, the initiative should result in cost savings. While individual patient costs may decrease, the population served is composed of those having high utilization problems, such as ulcer patients and patients suffering with inflammatory diseases such as arthritis. Therefore, early intervention with these products in a larger population may result in a smaller decrease in expenditures than might otherwise be anticipated. However, cost savings in the program as a whole may be significant if this early

intervention results in fewer serious complications and hospitalizations.

The numbers of prescribers and pharmacy providers should not be affected. The program will be implemented statewide and no negative impact is anticipated to providers. Recipients who may have been taking OTC products in the past with good success, will be allowed under this initiative to obtain those products by doctor's orders. This will result in a savings to the patient, who will now pay only the co-pay instead of full OTC price. Patient compliance should improve as a result, thereby decreasing the potential for additional, more costly therapies. The overall effect is expected to be cost savings to the public in the Medicaid program.

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

Public comments may be submitted until August 9, 1996, to David Shepherd, Pharmacy Services, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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† **August 23, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to **amend** regulations entitled: **12 VAC 30-10-10 et seq. State Plan for Medical Assistance Services: General Provisions** and **adopt** regulations entitled: **12 VAC 30-120-360 et seq. Part VI, Medallion II**. The proposed regulations govern mandatory HMO enrollment in accordance with the 1995 Appropriations Act. Several technical changes are also being made.

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

Public comments may be submitted until August 23, 1996, to Susan Prince, Program Delivery Systems, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

## BOARD OF MEDICINE

**June 28, 1996** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine**,

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**Osteopathy, Podiatry, and Chiropractic.** The proposed amendment to 18 VAC 85-20-90 B permits the use of Schedule III and IV drugs in the treatment of obesity under specified conditions and a treatment plan.

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

**Contact:** Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7423, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

### Informal Conference Committee

**June 26, 1996 - 10 a.m.** -- Open Meeting

Roanoke Airport Marriott Hotel, 2801 Hershberger Road, Roanoke Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

#### Office of Early Intervention for Infants and Toddlers with Disabilities and Their Families

**July 9, 1996 - 4 p.m.** -- Open Meeting

Henrico Area Mental Health and Mental Retardation Services, 10299 Woodman Road, Glen Allen, Virginia. ☎ (Interpreter for the deaf provided upon request)

The Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services announces public hearings and is accepting public comment on Virginia's Ninth Year Grant Application (3-year application) to the U. S. Department of Education, Office of Special Education, Part H Early Intervention for Infants and Toddlers with Disabilities Program. Call the department by June 28, 1996, if you wish to speak at the Richmond public hearing. Interpreters for persons with hearing impairments will be provided based on calls received by June 28, 1996. Written testimony will be accepted until August 15, 1996. Please submit to the Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218-1797. Copies of the application will be located at community services boards for review.

**Contact:** Richard Corbett, Part H Program Support, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3710 or FAX (804) 371-7959.

**July 9, 1996 - 4 p.m.** -- Open Meeting

New River Community College, Godbey Board Room, Dublin, Virginia. ☎ (Interpreter for the deaf provided upon request)

The Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services announces public hearings and is accepting public comment on Virginia's Ninth Year Grant Application (3-year application) to the U. S. Department of Education, Office of Special Education, Part H Early Intervention for Infants and Toddlers with Disabilities Program. Call Bev Crouse at (540) 231-6208 by June 28, 1996, if you wish to speak at the New River Valley public hearing. Interpreters for persons with hearing impairments will be provided based on calls received by June 28, 1996. Written testimony will be accepted until August 15, 1996. Please submit to the Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218-1797. Copies of the application will be located at community services boards for review.

**Contact:** Richard Corbett, Part H Program Support, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3710 or FAX (804) 371-7959.

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

NOTE: CHANGE IN MEETING LOCATION

**June 25, 1996 (time to be determined)** -- Open Meeting

**June 26, 1996 10 a.m.** -- Open Meeting

Department of Mental Health, Mental Retardation and Substance Abuse Services, Madison Building, 109 Governor Street, Richmond, Virginia. ☎

A regular meeting of the board to discuss business and promulgate policy and regulations. Committee meetings will be held at 8:30 a.m. on June 26. The agenda will include a public comment period at the beginning of the meeting. The agenda will be available one week in advance of the meeting.

**Contact:** Jane V. Helfrich, Board Administrator Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-7945 or toll-free 1-800-451-5544.

VIRGINIA MUSEUM OF FINE ARTS

VIRGINIA MILITARY INSTITUTE

Board of Visitors

- † July 12, 1996 - 8:30 a.m. -- Open Meeting
  - † July 13, 1996 - 8:30 a.m. -- Open Meeting
- Virginia Military Institute, Lejeune Hall, Lexington, Virginia. ☎

A special meeting for consultation with attorneys regarding actual litigation.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary, Board of Visitors, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

- † September 21, 1996 - 8:30 a.m. -- Open Meeting
- Virginia Military Institute, Smith Hall, Lexington, Virginia. ☎

A regular meeting. There will be an opportunity for public comment at approximately 9 a.m. immediately after the Superintendent's comments.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary, Board of Visitors, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Coal Surface Mining Reclamation Fund Advisory Board

- † July 11, 1996 - 10 a.m. -- Open Meeting
- Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Big Stone Gap, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review and discuss recent interstate mining compact commission issues with the coal industry.

**Contact:** Danny Brown, Director, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8152, FAX (540) 523-8163 or toll-free 1-800-828-1120 (VA Relay Center).

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

- † July 10, 1996 - 1 p.m. -- Open Meeting
- Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☎

A regular business meeting.

**Contact:** Millicent N. Ford, Program Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-6203.

Board of Trustees

- July 1, 1996 - 8 a.m. -- Open Meeting
- Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ☎

A meeting of the officers of the board to review with the director current and upcoming museum activities. Public comment will not be received at the meeting.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

BOARD OF NURSING

- June 26, 1996 - 9 a.m. -- Open Meeting
- Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A Special Conference Committee will conduct informal conferences with licensees and certificate holders to determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

- † June 27, 1996 - 9 a.m. -- Open Meeting
- VCU School of Business, 1015 Floyd Avenue, Room 4169, Richmond, Virginia.

A panel of the Board of Nursing will continue to hear testimony in a formal hearing via teleconference with a respondent, counsel and witnesses. The respondent's group will be in Radford, Virginia.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD OF OPTOMETRY

- † July 12, 1996 - 8 a.m. -- Open Meeting
  - † July 12, 1996 - 11:30 a.m. -- Open Meeting
- Department of Health Professions, 6606 West Broad Street, 4th Floor, Room 3, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the full board to conduct general regulatory review. Public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Optometry, Southern States Building, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

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# Calendar of Events

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† July 12, 1996 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A TPA Formulary Ad Hoc Committee meeting to review and employ the recommendations of the Treatment Guidelines Ad Hoc Committee for board review and approval. Public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Optometry, Southern States Building, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

† July 12, 1996 - 2 p.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. Public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Optometry, Southern States Building, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD

## VIRGINIA OUTDOORS FOUNDATION

### Board of Trustees

June 27, 1996 - 10 a.m. -- Open Meeting  
State Capitol, Capitol Square, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees to discuss business and acceptance of conservation easements. A public comment period will begin at 2:30 p.m. to discuss (i) commercial activities referenced in the standard easement document and (ii) the informed consent provision of easement procedure.

**Contact:** Tamara A. Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Room 420, Richmond, VA 23219, telephone (804) 225-2147 or FAX (804) 371-4810.

## BOARD OF PHARMACY

† July 1, 1996 - 9 a.m. -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A formal hearing before a panel of the board. Public comment will not be received.

**Contact:** Scotti Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

## POLYGRAPH EXAMINERS ADVISORY BOARD

June 25, 1996 - 10 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, and to administer the polygraph examiners licensing examination to eligible polygraph examiner interns and to consider other matters which may require board action. A public comment period will be scheduled 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 least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

## BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

† July 23, 1996 - 9 a.m. -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

† August 23, 1996 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to amend regulations entitled: **18 VAC 115-20-10 et seq. Regulations Governing the Practice of Professional Counseling.** The purpose of the proposed amendments is to reduce fees for application processing, registration of supervision, and renewal of license.

Statutory Authority: §§ 54.1-113, 54.1-2400, and 54.1-3503 of the Code of Virginia.

**Contact:** Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD

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† July 23, 1996 - 9 a.m. -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

† August 23, 1996 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional

Counselors and Marriage and Family Therapists intends to amend regulations entitled: **18 VAC 115-30-10 et seq. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed amendments is to reduce fees for application processing, registration of supervision, and renewal of certificate.

Statutory Authority: §§ 54.1-2400 and 54.1-3503 of the Code of Virginia.

**Contact:** Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

## REAL ESTATE APPRAISER BOARD

† **August 27, 1996 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

## REAL ESTATE BOARD

**June 27, 1996 - 9 a.m.** -- Open Meeting  
**August 8, 1996 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct regulatory review. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

## BOARD OF REHABILITATIVE SERVICES

† **July 25, 1996 - 10 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A quarterly meeting to conduct board business. Persons desiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting so that suitable arrangements can be made.

**Contact:** John R. Vaughn, Commissioner, Board of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice, or (804) 662-9040/TDD ☎

## Assistive Technology Loan Fund Authority Board

† **July 18, 1996 - 1 p.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A business meeting of the board. Persons desiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting so that suitable arrangements can be made.

**Contact:** Michael Scione, ATLFA Staff, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7606, toll-free 1-800-552-5019/TDD and Voice, or (804) 662-9040/TDD ☎

## VIRGINIA RESOURCES AUTHORITY

**July 9, 1996 - 9:30 a.m.** -- Open Meeting  
Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the meeting of the prior month, to review the authority's operations for the prior months, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

## RICHMOND HOSPITAL AUTHORITY

### Board of Commissioners

**June 27, 1996 - 5 p.m.** -- Open Meeting  
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. ☎

A monthly board meeting to discuss nursing home operations and related matters.

**Contact:** Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

# Calendar of Events

## SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

**July 17, 1996 - 10 a.m.** -- Open Meeting

**July 18, 1996 - 10 a.m.** -- Open Meeting

General Assembly Building, House Room D, Capitol Square,  
Ninth and Broad Streets, Richmond, Virginia. ♿

The board will hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia and VR 355-34-02.

**Contact:** Beth Bailey Dubis, Secretary to the Board, Sewage Handling and Disposal Appeals Review Board, 1500 E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

### Loan Committee

**June 25, 1996 - 10 a.m.** -- Open Meeting

Department of Economic Development, 901 East Byrd Street,  
19th Floor, Main Board Room, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval.

**Contact:** Cathleen Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., Suite 1800, Richmond, VA 23219, telephone (804) 371-8256, FAX (804) 225-3384, or (804) 371-0327/TDD ♿

## STATE BOARD OF SOCIAL SERVICES

**June 26, 1996 - 9 a.m.** -- Open Meeting

**June 27, 1996 - 9 a.m. (if necessary)** -- Open Meeting

Department of Social Services, Central Regional Office,  
Wythe Building, 1604 Santa Rosa Road, Richmond,  
Virginia. ♿

A work session and formal business meeting of the board.

**Contact:** Phyllis Sisk, Special Assistant to the Commissioner, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1506, FAX (804) 692-1949, toll-free 1-800-552-3431 or 1-800-552-7096/TDD ♿

## BOARD OF SOCIAL WORK

† **July 19, 1996 - 10 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street,  
4th Floor, Richmond, Virginia. ♿

An informal conference will be held pursuant to § 9-6.14:11 of the Code of Virginia. Public comment will not be heard.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9967 or (804) 662-7197/TDD ♿

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **July 9, 1996 - 10 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the board and exam writers in the soil profession or field to conduct an examination review.

**Contact:** George Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD ♿

## COMMONWEALTH TRANSPORTATION BOARD

† **July 17, 1996 - 2 p.m.** -- Open Meeting

Fredericksburg Sheraton, 2801 Plank Road, Fredericksburg,  
Virginia. ♿ (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **July 18, 1996 - 10 a.m.** -- Open Meeting

Fredericksburg Sheraton, 2801 Plank Road, Fredericksburg,  
Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting 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 are 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 Department of Transportation Public Affairs at (804) 786-2715 for schedule.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

## TREASURY BOARD

**July 17, 1996 - 9 a.m.** -- Open Meeting

**August 21, 1996 - 9 a.m.** -- Open Meeting

James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ♿

A regular meeting.

**Contact:** Gloria Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

### BOARD ON VETERANS' AFFAIRS

† **June 26, 1996 - 1 p.m.** -- Open Meeting  
Disabled American Veterans Chapter Home, 2381 Roanoke Boulevard, Salem, Virginia. ♿

A meeting to discuss the state veterans' cemetery and other items of interest to Virginia's veterans. The public is invited to speak on items of interest to the veteran community; however, presentations should be limited to 10 minutes. Speakers are requested to register with an aide present at the meeting and should leave a copy of their remarks for the record. Service organizations should designate one person to speak on behalf of the entire organization in order to allow ample time to accommodate all who may wish to speak.

**Contact:** Beth Tonn, Secretary for the Board, Department of Veterans' Affairs, 270 Franklin Rd., S.W., Room 1012, Roanoke, VA 24011-2215, telephone (540) 857-7104.

### BOARD OF VETERINARY MEDICINE

**August 10, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-20-10 et seq. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed amendments is to establish approved providers of continuing education requirements for retention of documents and conditions for waivers. This action will replace emergency regulations which became effective February 6, 1996.

Statutory Authority: §§ 54.1-2400 and 54.1-3805.2 of the Code of Virginia.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7691, FAX (804) 662-9943, or (804) 662-7197/TDD ♿

### BOARD FOR THE VISUALLY HANDICAPPED

**July 17, 1996 - 1:30 p.m.** -- Open Meeting  
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿

The Board for the Visually Handicapped is an advisory board responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the

department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

**Contact:** Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD ♿ or toll-free 1-800-622-2155.

### DEPARTMENT FOR THE VISUALLY HANDICAPPED

#### Advisory Committee on Services

**July 13, 1996 - 11 a.m.** -- Open Meeting  
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the Board for the Visually Handicapped on matters related to services for blind and visually handicapped citizens of the Commonwealth.

**Contact:** Barbara G. Tyson, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ♿

### VIRGINIA VOLUNTARY FORMULARY BOARD

**June 27, 1996 - 10:30 a.m.** -- Open Meeting  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to review product data for products being considered for inclusion in the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, James Monroe Bldg., 101 N. 14th St., S-45, Richmond, VA 23219, telephone (804) 786-4326.

### VIRGINIA WASTE MANAGEMENT BOARD

† **July 29, 1996 - 1 p.m.** -- Public Hearing  
Loudoun County Office Building, 1 Harrison Street, Southeast, Board of Supervisors Meeting Room, Leesburg, Virginia.

† **July 30, 1996 - 10 a.m.** -- Public Hearing  
James City County Government Center, 101 C Mounts Bay Road, Building C, Board of Supervisors Room, Williamsburg, Virginia.

† **August 1, 1996 - 10 a.m.** -- Public Hearing  
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Meeting Room, Roanoke, Virginia.

## Calendar of Events

† **August 23, 1996** -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to **repeal** regulations entitled: **9 VAC 20-100-10 et seq., Yard Waste Composting Facility Regulations** and **adopt** regulations entitled: **9 VAC 20-101-10 et seq., Vegetative Waste Management and Yard Waste Composting Regulations**. 9 VAC 20-100-10 et seq. is being simultaneously incorporated into the Vegetative Waste Management and Yard Waste Composting Regulations and are therefore redundant and unnecessary. 9 VAC 20-101-10 et seq. compiles, establishes, and provides requirements for certain facilities that may be exempted from some or all of the Solid Waste Management Regulations or subject to simplified procedures.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

**Contact:** Robert G. Wickline, P.E., Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4213.

### BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**July 11, 1996 - 10 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review, disciplinary cases, and other matters requiring board action. An examination workshop will begin at 1 p.m. and will be conducted in Executive Session. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board 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, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

### THE COLLEGE OF WILLIAM AND MARY

#### Board of Visitors

**June 27, 1996 - 10 a.m.** -- Open Meeting

Blow Memorial Hall, Richmond Road, Williamsburg, Virginia.

A called meeting to act on resolutions concerning faculty appointments for the 1996-97 academic year for the College of William and Mary and Richard Bland College.

An informational release will be available four days prior to the board meeting for those individuals and organizations who request it.

**Contact:** William T. Walker, Jr., Director, Office of University Relations, The College of William and Mary, 312 Jamestown Road, P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2624.

## INDEPENDENT

### STATE LOTTERY BOARD

**June 26, 1996 - 9:30 a.m.** -- Open Meeting

Lottery Richmond Regional Office, 1610 Ownby Lane, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. A period for public comment is scheduled.

**Contact:** Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774.

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**August 28, 1996 - 9:30 a.m.** -- Public Hearing

State Lottery Department, 900 East Main Street, Richmond, Virginia.

**July 26, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **11 VAC 5-20-10 et seq. Administration Regulations**. The purpose of the proposed amendments is to clarify procurement exemptions and restrictions, clarify board meeting requirements, remove sections that are duplicative of Code of Virginia provisions when practical, and incorporate housekeeping changes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

**Contact:** Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774.

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**August 28, 1996 - 9:30 a.m.** -- Public Hearing

State Lottery Department, 900 East Main Street, Richmond, Virginia.

**July 26, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends

to amend regulations entitled: **11 VAC 5-30-10 et seq. Instant Game Regulations.** The purpose of the proposed amendments is to clarify revocation or suspension of a lottery retailer's license, authorize cashing at lottery headquarters, eliminate claim form requirements, delete sections that are unnecessary or duplicative, and make housekeeping changes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

**Contact:** Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774.

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**August 28, 1996 - 9:30 a.m.** -- Public Hearing  
State Lottery Department, 900 East Main Street, Richmond, Virginia.

**July 26, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **11 VAC 5-40-10 et seq. On-Line Game Regulations.** The purpose of the proposed amendments is to clarify revocation or suspension of a lottery retailer's license, authorize cashing at lottery headquarters, eliminate claim form requirements, revise subscription plan, and make housekeeping changes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

**Contact:** Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774.

## JUDICIAL

### VIRGINIA CRIMINAL SENTENCING COMMISSION

**June 24, 1996 - 10 a.m.** -- Open Meeting  
Supreme Court Building, 100 North 9th Street, 3rd Floor, Judicial Conference Room, Richmond, Virginia. ☎

A regular quarterly meeting of the commission to review sentencing guidelines, compliance rates, and the work of commission subcommittees.

**Contact:** Dr. Richard Kern, Director, Virginia Criminal Sentencing Commission, 100 N. 9th St., 5th Floor, Richmond, VA 23219, telephone (804) 225-4565 or (804) 225-4398, or FAX (804) 786-3934.

## LEGISLATIVE

### VIRGINIA CODE COMMISSION

**July 10, 1996 - 10 a.m.** -- Open Meeting

**July 11, 1996 - 10 a.m.** -- Open Meeting

General Assembly Building, House Redistricting Conference Room, 2nd Floor, 910 Capitol Square, Richmond, Virginia. ☎

A regularly scheduled meeting to continue the recodification of Title 15.1.

**Contact:** E. M. Miller, Director, or Jane Chaffin, Deputy Registrar of Regulations, Division of Legislative Services, General Assembly Bldg., 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

### JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **July 8, 1996 - 9:30 a.m.** -- Open Meeting

General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☎

A meeting for the review of Virginia's magistrate system and magistrate video conference and the Department of Planning and Budget performance measures update.

**Contact:** Philip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol Square, Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

### COMMISSION ON YOUTH

† **June 25, 1996 - 10 a.m.** -- Open Meeting

General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss homeless children in Virginia.

**Contact:** Joyce Huey, General Assembly Bldg., 910 Capitol St., Suite 517B, Richmond, VA 23219-0406, telephone (804) 371-2481.

† **August 5, 1996 - 10 a.m.** -- Open Meeting

General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss youth gangs in Virginia.

**Contact:** Joyce Huey, General Assembly Bldg., 910 Capitol St., Suite 517B, Richmond, VA 23219-0406, telephone (804) 371-2481.

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# Calendar of Events

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## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### June 24

Alcoholic Beverage Control Board  
Chesapeake Bay Local Assistance Board  
Criminal Sentencing Commission, Virginia

#### June 25

Conservation and Recreation, Department of  
- Board of Conservation and Recreation  
† Gaming Commission, Charitable  
Marine Resources Commission  
Mental Health, Mental Retardation and Substance Abuse  
Services Board, State  
Polygraph Examiners Advisory Board  
Small Business Financing Authority, Virginia  
- Loan Committee  
† Youth, Commission on

#### June 26

Library of Virginia  
- State Networking Users Advisory Board  
Lottery Board, State  
Medicine, Board of  
Mental Health, Mental Retardation and Substance Abuse  
Services Board, State  
Nursing, Board of  
Social Services, State Board of  
† Veterans' Affairs, Virginia Board on

#### June 27

† Compensation Board  
† Disability Services Council  
Higher Education Tuition Trust Fund, Virginia  
† Nursing, Board of  
Outdoors Foundation, Virginia  
- Board of Trustees  
Real Estate Board  
Richmond Hospital Authority  
- Board of Commissioners  
Social Services, State Board of  
Voluntary Formulary Board, Virginia  
William and Mary, College of  
- Board of Visitors

#### June 28

Child Fatality Review Team, Virginia State

#### July 1

† Cosmetology, Board for  
Funeral Directors and Embalmers, Board of  
Museum of Fine Arts, Virginia  
- Board of Trustees  
† Pharmacy, Board of

#### July 2

† Game and Inland Fisheries, Department of  
Hopewell Industrial Safety Council

#### July 8

† Health Professions, Board of  
- Practitioner Self-Referral Committee

† Legislative Audit and Review Commission, Joint  
Local Government, Commission on

#### July 9

† Health Professions, Board of  
- Ad Hoc Levels of Regulation Committee  
- Compliance and Discipline Committee  
- Regulatory Research Committee  
Mental Health, Mental Retardation and Substance Abuse  
Services, Department of  
- Office of Early Intervention for Infants and Toddlers  
with Disabilities and Their Families  
Resources Authority, Virginia  
† Soil Scientists, Board for Professional

#### July 10

Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
† Air Pollution Control Board, State  
- State Advisory Board on Air Pollution  
Code Commission, Virginia  
† Contractors, Board for  
† Motor Vehicles, Department of  
- Medical Advisory Board

#### July 11

† Agriculture and Consumer Services, Department of  
- Pesticide Control Board  
Child Day-Care Council  
Code Commission, Virginia  
Comprehensive Services Act for At Risk Youth and Their  
Families  
- State Management Team  
† Mines, Minerals and Energy, Department of  
- Coal Surface Mining Reclamation Fund Advisory  
Board  
Waterworks and Wastewater Works Operators, Board  
for

#### July 12

† Military Institute, Virginia  
- Board of Visitors  
† Optometry, Board of

#### July 13

† Military Institute, Virginia  
- Board of Visitors  
Visually Handicapped, Department for the  
- Advisory Committee on Services

#### July 15

† Forestry, Board of

#### July 16

† Environmental Quality, Department of  
- Ground Water Protection Steering Committee

#### July 17

Agriculture and Consumer Services, Department of  
- Virginia Small Grains Board  
Community Colleges, State Board for  
Sewage Handling and Disposal Appeals Review Board  
† Transportation Board, Commonwealth  
Treasury Board  
Visually Handicapped, Board for the

**July 18**

- † Asbestos Licensing and Lead Certification, Board for Community Colleges, State Board for
- † Conservation and Recreation, Department of
  - Goose Creek Scenic River Advisory Board
- Game and Inland Fisheries, Board of
- † Rehabilitative Services, Department of
  - Assistive Technology Loan Fund Authority Board
- Sewage Handling and Disposal Appeals Review Board
- † Transportation Board, Commonwealth

**July 19**

- Game and Inland Fisheries, Board of
- HIV Community Planning Committee, Virginia
- † Social Work, Board of

**July 22**

- Accountancy, Board for

**July 23**

- Accountancy, Board for

**July 24**

- Emergency Planning Committee, Local - City of Bristol

**July 25**

- Agriculture and Consumer Services, Department of
  - Virginia Winegrowers Advisory Board
- † Compensation Board
- Higher Education Tuition Trust Fund, Virginia
- † Rehabilitative Services, Board of

**July 26**

- Comprehensive Services Act for At Risk Youth and Their Families
  - State Executive Council

**July 29**

- Alcoholic Beverage Control Board, Virginia

**August 2**

- Agriculture and Consumer Services, Department of
  - Virginia Soybean Board

**August 5**

- † Youth, Commission on
- † Barbers, Board for

**August 6**

- † Hopewell Industrial Safety Council

**August 8**

- Child Day-Care Council
- Real Estate Board

**August 12**

- Alcoholic Beverage Control Board

**August 21**

- Treasury Board

**August 22**

- Higher Education Tuition Trust Fund, Virginia

**August 26**

- Alcoholic Beverage Control Board

**August 27**

- † Real Estate Appraiser Board

**August 29**

- † Compensation Board

**September 3**

- † Hopewell Industrial Safety Council

**September 21**

- † Military Institute, Virginia
  - Board of Visitors

## PUBLIC HEARINGS

**July 8**

- † Environmental Quality, Department of

**July 9**

- † Health Professions, Board of

**July 23**

- Air Pollution Control Board, State
- † Professional Counselors and Marriage and Family Therapists, Board for

**July 29**

- † Waste Management Board, Virginia

**July 30**

- † Waste Management Board, Virginia

**August 1**

- † Waste Management Board, Virginia

**August 28**

- Lottery Board, State

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