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The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2002 VAC Supplement includes final regulations published through *Virginia Register* Volume 18, Issue 11, dated February 11, 2002). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-35-10 through 4 VAC 5-35-50	Repealed	18:14 VA.R. 1800	4/25/02
4 VAC 5-36-10 through 4 VAC 5-36-210	Added	18:14 VA.R. 1800-1827	4/25/02
4 VAC 20-270-30	Amended	18:14 VA.R. 1827	3/5/02
4 VAC 20-270-40	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-270-55	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-270-56	Added	18:14 VA.R. 1828	3/5/02
4 VAC 20-430-50	Amended	18:18 VA.R. 2287	5/1/02
4 VAC 20-430-60	Amended	18:18 VA.R. 2287	5/1/02
4 VAC 20-560-20	Erratum	18:14 VA.R. 1911	--
4 VAC 20-560-20 emer	Amended	18:14 VA.R. 1904	3/4/02-3/31/02
4 VAC 20-560-20	Amended	18:16 VA.R. 2054	4/1/02
4 VAC 20-560-50 emer	Amended	18:14 VA.R. 1905	3/4/02-3/31/02
4 VAC 20-560-50	Amended	18:16 VA.R. 2055	4/1/02
4 VAC 20-620-20	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-620-40	Amended	18:12 VA.R. 1646	1/31/02
4 VAC 20-620-50	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-620-60	Amended	18:14 VA.R. 1829	3/5/02
4 VAC 20-620-70	Amended	18:14 VA.R. 1829	3/5/02
4 VAC 20-720-47 emer	Added	18:12 VA.R. 1697	2/1/02-2/28/02
4 VAC 20-950-30	Amended	18:14 VA.R. 1829	3/4/02
4 VAC 20-950-40	Amended	18:14 VA.R. 1829	3/4/02
4 VAC 20-950-45	Amended	18:12 VA.R. 1647	1/31/02
4 VAC 20-950-45	Amended	18:14 VA.R. 1830	3/4/02
4 VAC 20-950-45	Amended	18:16 VA.R. 2055	4/1/02
4 VAC 50-20-30	Amended	18:14 VA.R. 1831	7/1/02
4 VAC 50-20-50	Amended	18:14 VA.R. 1832	7/1/02
4 VAC 50-20-50	Erratum	18:17 VA.R. 2183	--
4 VAC 50-20-70	Amended	18:14 VA.R. 1832	7/1/02
4 VAC 50-20-120	Amended	18:14 VA.R. 1834	7/1/02
4 VAC 50-20-220	Amended	18:14 VA.R. 1834	7/1/02
4 VAC 50-20-320	Amended	18:14 VA.R. 1835	7/1/02
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-40-10	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-40	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-90 through 6 VAC 15-40-130	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-150	Amended	18:20 VA.R. 2584	7/17/02
6 VAC 15-40-155	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-160	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-280	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-290	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-360 through 6 VAC 15-40-390	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-393	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-395	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-400	Amended	18:20 VA.R. 2583	7/17/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 15-40-410	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-450	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-460	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-470	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-490	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-520	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-540 through 6 VAC 15-40-580	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-620	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-640 through 6 VAC 15-40-670	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-690	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-740	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-800 through 6 VAC 15-40-830	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-833	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-835	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-840	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-870	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-900	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-910	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-920	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-940 through 6 VAC 15-40-970	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1020	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1030	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1040	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1070	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1080	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1100	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1110	Repealed	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1130	Repealed	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1190	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1193	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1195	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1200	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1330	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1350	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 20-171-10	Amended	18:15 VA.R. 1955	5/10/02
6 VAC 20-171-50	Amended	18:15 VA.R. 1957	5/10/02
6 VAC 20-171-120	Amended	18:15 VA.R. 1958	5/10/02
6 VAC 20-171-200	Amended	18:15 VA.R. 1958	5/10/02
6 VAC 20-171-220	Amended	18:15 VA.R. 1959	5/10/02
6 VAC 20-171-230	Amended	18:15 VA.R. 1960	5/10/02
6 VAC 20-171-240	Amended	18:15 VA.R. 1961	5/10/02
6 VAC 20-171-250	Amended	18:15 VA.R. 1961	5/10/02
6 VAC 20-171-260	Amended	18:15 VA.R. 1962	5/10/02
6 VAC 20-171-280	Amended	18:15 VA.R. 1963	5/10/02
6 VAC 20-171-310	Amended	18:15 VA.R. 1964	5/10/02
6 VAC 20-171-320	Amended	18:15 VA.R. 1964	5/10/02
6 VAC 20-171-330	Amended	18:15 VA.R. 1965	5/10/02
6 VAC 20-171-340	Amended	18:15 VA.R. 1965	5/10/02
6 VAC 20-171-350	Amended	18:15 VA.R. 1966	5/10/02
6 VAC 20-171-350	Erratum	18:20 VA.R. 2680	--
6 VAC 20-171-445	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-450	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-480	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-520	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 20-171-530	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 20-171-540	Amended	18:15 VA.R. 1969	5/10/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 8. Education</b>			
8 VAC 20-21-10	Amended	18:12 VA.R. 1648	3/28/02
8 VAC 20-21-40	Amended	18:12 VA.R. 1649	3/28/02
8 VAC 20-21-50	Amended	18:12 VA.R. 1650	3/28/02
8 VAC 20-21-90	Amended	18:12 VA.R. 1651	3/28/02
8 VAC 20-21-100	Amended	18:12 VA.R. 1651	3/28/02
8 VAC 20-21-120	Amended	18:12 VA.R. 1652	3/28/02
8 VAC 20-21-170	Amended	18:12 VA.R. 1653	3/28/02
8 VAC 20-21-590	Amended	18:12 VA.R. 1653	3/28/02
8 VAC 20-21-660	Amended	18:12 VA.R. 1655	3/28/02
8 VAC 20-21-680	Amended	18:12 VA.R. 1656	3/28/02
8 VAC 20-80-30	Amended	18:12 VA.R. 1657	3/27/02
8 VAC 20-80-40	Amended	18:12 VA.R. 1660	3/27/02
8 VAC 20-80-54	Amended	18:12 VA.R. 1661	3/27/02
8 VAC 20-80-56	Amended	18:12 VA.R. 1664	3/27/02
8 VAC 20-80-60	Amended	18:12 VA.R. 1666	3/27/02
8 VAC 20-80-66	Amended	18:12 VA.R. 1668	3/27/02
8 VAC 20-80-70	Amended	18:12 VA.R. 1671	3/27/02
8 VAC 20-80-76	Amended	18:12 VA.R. 1676	3/27/02
8 VAC 20-630-10 through 8 VAC 20-630-70	Added	18:12 VA.R. 1683-1684	3/28/02
<b>Title 9. Environment</b>			
9 VAC 5-40-160 through 9 VAC 5-40-230	Repealed	18:14 VA.R. 1836-1840	5/1/02
9 VAC 5-50-160 through 9 VAC 5-50-230	Repealed	18:14 VA.R. 1840-1844	5/1/02
9 VAC 5-50-240	Amended	18:20 VA.R. 2586	9/1/02
9 VAC 5-50-250	Amended	18:20 VA.R. 2586	9/1/02
9 VAC 5-50-260	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-50-320	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-50-390	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-60-200 through 9 VAC 5-60-270	Added	18:14 VA.R. 1836-1840	5/1/02
9 VAC 5-60-200	Erratum	18:17 VA.R. 2183	--
9 VAC 5-60-300 through 9 VAC 5-60-370	Added	18:14 VA.R. 1840-1844	5/1/02
9 VAC 5-60-300	Erratum	18:17 VA.R. 2183	--
9 VAC 5-80-10	Repealed	18:20 VA.R. 2587	9/1/02
9 VAC 5-80-11	Repealed	18:20 VA.R. 2608	9/1/02
9 VAC 5-80-1100 through 9 VAC 5-80-1320	Added	18:20 VA.R. 2587-2612	9/1/02
9 VAC 5-80-2000 through 9 VAC 5-80-2090	Amended	18:14 VA.R. 1845-1852	5/1/02
9 VAC 5-80-2100	Repealed	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2110	Amended	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2120	Amended	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2150	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2160	Repealed	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2180	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2190	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2200	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2210	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2220	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2230	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2240	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-91-20	Amended	18:20 VA.R. 2613	10/1/02
9 VAC 5-91-30	Amended	18:20 VA.R. 2619	10/1/02
9 VAC 5-91-41	Repealed	18:20 VA.R. 2621	10/1/02
9 VAC 5-91-50	Amended	18:20 VA.R. 2621	10/1/02
9 VAC 5-91-70	Amended	18:20 VA.R. 2622	10/1/02
9 VAC 5-91-120	Amended	18:20 VA.R. 2622	10/1/02
9 VAC 5-91-160 through 9 VAC 5-91-230	Amended	18:20 VA.R. 2622-2623	10/1/02
9 VAC 5-91-260	Amended	18:20 VA.R. 2623	10/1/02

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-91-270	Amended	18:20 VA.R. 2623	10/1/02
9 VAC 5-91-290 through 9 VAC 5-91-340	Amended	18:20 VA.R. 2623-2625	10/1/02
9 VAC 5-91-360	Amended	18:20 VA.R. 2625	10/1/02
9 VAC 5-91-370	Amended	18:20 VA.R. 2625	10/1/02
9 VAC 5-91-380	Amended	18:20 VA.R. 2626	10/1/02
9 VAC 5-91-410 through 9 VAC 5-91-450	Amended	18:20 VA.R. 2626-2636	10/1/02
9 VAC 5-91-460	Repealed	18:20 VA.R. 2636	10/1/02
9 VAC 5-91-470	Repealed	18:20 VA.R. 2636	10/1/02
9 VAC 5-91-480 through 9 VAC 5-91-620	Amended	18:20 VA.R. 2636-2639	10/1/02
9 VAC 5-91-650 through 9 VAC 5-91-720	Amended	18:20 VA.R. 2639-2641	10/1/02
9 VAC 5-91-740	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-750	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-770	Repealed	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-780	Repealed	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-790	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-800	Amended	18:20 VA.R. 2642	10/1/02
9 VAC 5-140-10 through 9 VAC 5-140-940	Added	18:20 VA.R. 2654-2657	7/17/02
9 VAC 10-20-40	Erratum	18:13 VA.R. 1763	--
9 VAC 10-20-130	Erratum	18:13 VA.R. 1764	--
9 VAC 10-20-181	Erratum	18:13 VA.R. 1764	--
9 VAC 10-20-191	Erratum	18:13 VA.R. 1764	--
9 VAC 20-60	Erratum	18:12 VA.R. 1714	--
9 VAC 20-120-10	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-20	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-40 through 9 VAC 20-120-100	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-120	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-130	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-150 through 9 VAC 20-120-180	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-200 through 9 VAC 20-120-310	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-330	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-340	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-360	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-370	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-380	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-390	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-410 through 9 VAC 20-120-480	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-500	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-530	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-540	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-560	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-590	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-640	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-680 through 9 VAC 20-120-760	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-770 through 9 VAC 20-120-800	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-810	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-835	Added	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-840	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-880	Amended	18:18 VA.R. 2287	6/19/02
Appendix 10.1	Repealed	18:18 VA.R. 2287	6/19/02
Appendix 10.4	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-160-10 through 9 VAC 20-160-40	Amended	18:18 VA.R. 2288-2290	7/1/02
9 VAC 20-160-50	Repealed	18:18 VA.R. 2290	7/1/02
9 VAC 20-160-60 through 9 VAC 20-160-120	Amended	18:18 VA.R. 2290-2292	7/1/02
9 VAC 20-160-130	Repealed	18:18 VA.R. 2292	7/1/02
9 VAC 25-60	Repealed	18:20 VA.R. 2657	7/17/02
9 VAC 25-194-10	Amended	18:19 VA.R. 2452	10/15/02

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-194-40 through 9 VAC 25-194-70	Amended	18:19 VA.R. 2452	10/15/02
9 VAC 25-194-80	Repealed	18:19 VA.R. 2452	10/15/02
9 VAC 25-260-5	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-50	Amended	17:16 VA.R. 2381	6/5/02**
9 VAC 25-260-55	Added	17:16 VA.R. 2381	6/5/02**
9 VAC 25-260-160	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-170	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-310	Amended	18:20 VA.R. 2659	*
9 VAC 25-260-390	Amended	18:20 VA.R. 2661	*
<b>Title 10. Gaming</b>			
10 VAC 5-160-50	Added	18:19 VA.R. 2453	5/15/02
<b>Title 11. Gaming</b>			
11 VAC 10-20-260 through 11 VAC 10-20-310	Amended	18:20 VA.R. 2661-2664	5/22/02
11 VAC 10-20-330	Amended	18:20 VA.R. 2664	5/22/02
11 VAC 10-20-340	Amended	18:20 VA.R. 2671	5/22/02
11 VAC 10-130-10	Amended	18:20 VA.R. 2672	5/22/02
11 VAC 10-130-20	Amended	18:20 VA.R. 2673	5/22/02
11 VAC 10-130-51	Amended	18:20 VA.R. 2674	5/22/02
11 VAC 10-130-52	Added	18:20 VA.R. 2674	5/22/02
11 VAC 10-130-60	Amended	18:20 VA.R. 2674	5/22/02
11 VAC 10-180-10	Amended	18:19 VA.R. 2453	5/10/02
11 VAC 10-180-20	Amended	18:19 VA.R. 2454	5/10/02
11 VAC 10-180-40 through 11 VAC 10-180-90	Amended	18:19 VA.R. 2455-2462	5/10/02
11 VAC 10-180-60	Erratum	18:20 VA.R. 2681	--
<b>Title 12. Health</b>			
12 VAC 5-65	Repealed	18:12 VA.R. 1685	3/27/02
12 VAC 5-66-10 through 12 VAC 5-66-80	Added	18:12 VA.R. 1685-1688	3/27/02
12 VAC 5-66-10 through 12 VAC 5-66-80	Erratum	18:13 VA.R. 1764	--
12 VAC 5-120-10 through 12 VAC 5-120-90	Added	18:16 VA.R. 2057-2058	5/22/02
12 VAC 5-475-10 through 12 VAC 5-475-90	Added	18:12 VA.R. 1691	3/27/02
12 VAC 5-520-10	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-20	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-30	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-30	Erratum	18:18 VA.R. 2369	--
12 VAC 5-520-40 through 12 VAC 5-520-70	Repealed	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-80	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-90 through 12 VAC 5-520-120	Repealed	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-130 through 12 VAC 5-520-210	Added	18:15 VA.R. 1969	5/8/02
12 VAC 5-590-10	Amended	18:19 VA.R. 2462	7/3/02
12 VAC 5-590-370	Amended	18:19 VA.R. 2468	7/3/02
12 VAC 5-590-410	Amended	18:19 VA.R. 2474	7/3/02
12 VAC 5-590-420	Amended	18:19 VA.R. 2477	7/3/02
12 VAC 5-590-440	Amended	18:19 VA.R. 2490	7/3/02
12 VAC 5-590-500	Amended	18:19 VA.R. 2496	7/3/02
12 VAC 5-590-530	Amended	18:19 VA.R. 2496	7/3/02
12 VAC 5-590-540	Amended	18:19 VA.R. 2502	7/3/02
12 VAC 5-590-550	Amended	18:19 VA.R. 2504	7/3/02
12 VAC 5-590 Appendix B	Amended	18:19 VA.R. 2505	7/3/02
12 VAC 5-590 Appendix F	Amended	18:19 VA.R. 2506	7/3/02
12 VAC 5-615-10 through 12 VAC 5-615-470	Added	18:18 VA.R. 2293-2300	7/1/02
12 VAC 30-40-220	Amended	18:18 VA.R. 2304	7/1/02

\* 30 days after notice in the *Virginia Register* of EPA approval.

\*\* Notice of effective date published in 18:17 VA.R. 2174

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-40-280	Amended	18:18 VA.R. 2307	7/1/02
12 VAC 30-40-290	Amended	18:18 VA.R. 2307	7/1/02
12 VAC 30-40-345	Amended	18:18 VA.R. 2308	7/1/02
12 VAC 30-50-190	Amended	18:18 VA.R. 2309	7/1/02
12 VAC 30-50-210	Amended	18:18 VA.R. 2310	7/1/02
12 VAC 30-60-300	Amended	18:18 VA.R. 2312	6/20/02
12 VAC 30-60-303	Added	18:18 VA.R. 2313	6/20/02
12 VAC 30-60-307	Added	18:18 VA.R. 2315	6/20/02
12 VAC 30-60-312	Added	18:18 VA.R. 2315	6/20/02
12 VAC 30-60-316	Added	18:18 VA.R. 2316	6/20/02
12 VAC 30-60-318	Added	18:18 VA.R. 2316	6/20/02
12 VAC 30-90-10	Amended	18:18 VA.R. 2319	7/1/02
12 VAC 30-90-20	Amended	18:18 VA.R. 2320	7/1/02
12 VAC 30-90-38	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-40	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-41	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-60	Amended	18:18 VA.R. 2324	7/1/02
12 VAC 30-90-271	Amended	18:18 VA.R. 2324	7/1/02
12 VAC 30-90-272	Amended	18:18 VA.R. 2325	7/1/02
12 VAC 30-90-280	Amended	18:18 VA.R. 2325	7/1/02
12 VAC 30-90-300	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-301	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-302	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-303	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-304	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-305	Added	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-306	Added	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-306	Erratum	18:20 VA.R. 2681	--
12 VAC 30-90-307	Added	18:18 VA.R. 2328	7/1/02
12 VAC 30-120-10 emer	Amended	18:12 VA.R. 1698	2/1/02-1/31/03
12 VAC 30-120-40 emer	Amended	18:12 VA.R. 1699	2/1/02-1/31/03
12 VAC 30-120-50 emer	Amended	18:12 VA.R. 1701	2/1/02-1/31/03
12 VAC 30-120-55 emer	Added	18:12 VA.R. 1702	2/1/02-1/31/03
12 VAC 30-120-60 emer	Amended	18:12 VA.R. 1704	2/1/02-1/31/03
12 VAC 30-141-90	Erratum	18:18 VA.R. 2369	--
12 VAC 30-150-10 through 12 VAC 30-150-100	Added	18:17 VA.R. 2174	6/6/02
12 VAC 30-150	Erratum	18:18 VA.R. 2370	--
12 VAC 35-20	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-102	Repealed	18:18 VA.R. 2330	9/19/02
12 VAC 35-105-10 through 12 VAC 35-105-1410	Added	18:18 VA.R. 2331-2365	9/19/02
12 VAC 35-140	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-150	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-160	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-170	Repealed	18:18 VA.R. 2330	9/19/02
12 VAC 35-200-10	Amended	18:16 VA.R. 2059	5/22/02
12 VAC 35-200-20	Amended	18:16 VA.R. 2060	5/22/02
12 VAC 35-200-30	Amended	18:16 VA.R. 2061	5/22/02
<b>Title 14. Insurance</b>			
14 VAC 5-80-160 through 14 VAC 5-80-190	Repealed	18:14 VA.R. 1896	3/31/02
14 VAC 5-390-20	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-390-30	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-390-40	Amended	18:12 VA.R. 1692	2/1/02
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 45-10-10	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-20	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-30	Amended	18:19 VA.R. 2508	7/8/02

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 45-10-50	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-90	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 90-30-20	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-100	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-105	Added	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-220	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-40-20	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-50	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-55	Added	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-60	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-130	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 110-20-20	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-270	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-280	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-285	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 110-20-430	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-10	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-20	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-30	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-40	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-60	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-70	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-80	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-100	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-30 (Forms)	Amended	18:15 VA.R. 1985	--
18 VAC 125-30-10 through 18 VAC 125-30-50	Amended	18:13 VA.R. 1753-1754	4/10/02
18 VAC 125-30-60	Repealed	18:13 VA.R. 1754	4/10/02
18 VAC 125-30-80	Amended	18:13 VA.R. 1755	4/10/02
18 VAC 125-30-90	Amended	18:13 VA.R. 1755	4/10/02
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-423-10 through 20 VAC 5-423-90	Added	18:14 VA.R. 1899-1902	3/6/02
<b>Title 22. Social Services</b>			
22 VAC 15-10-10	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-30	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-40	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-50	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-60	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-70	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 40-41-10	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-20	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-40	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-50	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-55	Added	18:12 VA.R. 1696	4/1/02
22 VAC 40-880-10	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-30	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-60	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-80	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-110	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-120	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-130	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-170	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-190	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-200 through 22 VAC 40-880-300	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-270	Erratum	18:17 VA.R. 2183	--
22 VAC 40-880-290	Erratum	18:17 VA.R. 2183	--
22 VAC 40-880-320	Amended	18:14 VA.R. 1903	4/24/02

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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-880-330	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-340	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-360	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-380	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-385	Added	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-410	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-430	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-440	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-480 through 22 VAC 40-880-520	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-550	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-560	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-650	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-670	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-680	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-700	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-720	Added	18:14 VA.R. 1903	4/24/02

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

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

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending regulations entitled: **6 VAC 20-171. Regulations Relating to Private Security Services.** While all areas of the regulations will be subject to review, the substance of this review will focus on improving the licensing, registration, certification, and training requirements and procedures. It will also identify possible areas of confusion or weakness that currently may not protect the health, safety, or welfare of the citizens of the Commonwealth. The department will have specific recommendations in the area of the fee schedule and the compulsory minimum training requirements.

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

Statutory Authority: § 9.1-141 of the Code of Virginia.

Public comments may be submitted until July 17, 2002, to Lisa Hahn, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219.

**Contact:** Judith Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410 or e-mail [jkirkendall@dcjs.state.va.us](mailto:jkirkendall@dcjs.state.va.us).

VA.R. Doc. No. R02-182; Filed May 16, 2002, 8:50 a.m.



## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-60. Virginia Hazardous Waste Regulations.** The purpose of the proposed action is to increase the permit application fees for transporters, new TSD facilities, permit modifications, minor permit modifications and emergency permits.

Purpose: The Virginia Hazardous Waste Management Regulations, 9 VAC 20-60, establish requirements for the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the

Commonwealth. The purpose of this action is to study, in collaboration with the regulated community and the public, appropriate changes to modernize the fee system and the financial assurance requirements. Any general improvements to the regulations, such as further incorporation of federal regulatory text and replacement of analogous Virginia regulations, and any changes to conform to statutory amendments will also be considered during the process. In addition, this action will replace emergency regulations authorized by the 2002 General Assembly.

Need: The Virginia Hazardous Waste Management Regulations protect the public health, safety and welfare from harmful results of the mismanagement of hazardous waste by establishing requirements for the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. The current regulations require a study of the fee system each year and revisions to correct for economic inflation of costs. However, the fees are unchanged since established in 1984. The structure of the fee system should be made clearer and easier to use to determine the appropriate fees. In addition, requirements for financial assurance may not properly address corrective action or provide sufficient regulatory structure for consistent application. While considering these issues, it is also appropriate to consider the clarity of the regulations as a whole, statutory changes, and appropriate improvements wherever possible.

Substance: The concept of this amendment is to study improvements to the regulations in collaboration with the regulated community and the public, focusing on a few important areas. Using the expertise of a technical advisory committee, several alternate approaches will be reviewed and the solutions that are chosen will be the subject of a public comment period and hearing. Key issues will be highlighted for which the public's opinion is specifically requested.

This action will consider if the fee system in the current regulations continues to be appropriate in its structure and amounts. Fees were last adjusted in 1984. Another area to be studied is the provision for providing financial assurance for closure and post-closure care costs, including provision of such assurance for corrective action units. Statutory changes adopted before the promulgation of proposed regulations will be studied, and, if needed, appropriate regulatory changes will be considered to coordinate with the amended statutes. Any other general improvements or clarifications of the regulatory text will be considered.

Alternatives: A technical advisory committee will advise the Department of Environmental Quality on what amended regulatory text to recommend to the board as proposed regulations. This panel will advise the department on less intrusive and less burdensome alternatives, where such exists, and during the public participation process, the public will be asked to suggest less intrusive and burdensome

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# Notices of Intended Regulatory Action

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alternatives. No action alternatives have been considered or rejected.

**Public Participation:** The board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) impacts of the regulation on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to Robert G. Wickline, Department of Environmental Quality, 629 East Main Street, Post Office Box 10009, Richmond, Virginia 23240-0009, (804) 698-4213, rgwickline@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Participatory Approach:** The board is using the participatory approach to develop a proposal.

**Statutory Authority:** §§ 10.1-1402 and 10.1-1426 et seq. of the Code of Virginia.

Public comments may be submitted until 5 p.m., August 2, 2002.

**Contact:** Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213 or e-mail rgwickline@deq.state.va.us.

VA.R. Doc. No. R02-206; Filed June 10, 2002, 10:38 a.m.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-90. Solid Waste Management Facility Permit Application Fees.** The purpose of the proposed action is to increase fees for solid waste management facilities.

**Purpose:** The Virginia Waste Management Board's Solid Waste Management Facility Permit Application Fee Regulation, 9 VAC 20-90, establishes procedures pertaining to the payment and collection of and the amount of fees from any applicant seeking a new permit or seeking a modification to an existing permit for the construction and operation of a solid or regulated medical waste management facility. The purpose of this action is to study, in collaboration with the regulated community and the public, appropriate changes to provide clarification to the regulations, to consolidate the regulations and to update the permit fee system. In addition, this action will replace emergency regulations authorized by the 2002 General Assembly.

**Need:** The current permit fee schedule has not been updated since June 8, 1992. In accordance with the requirements of the regulations, the fee schedule is to be evaluated annually (9 VAC 20-90-70 B) and results of the evaluations provided to the Waste Management Board, with recommendations for adjustments to the fee.

The percentage of the permit program supported by fees has steadily decreased since the program's inception. Modification of the fee schedule is needed to restore consistency in the percentage of funds from permit fees supporting the solid waste program thereby ensuring appropriate funding for the program.

While considering these issues it is appropriate to also consider the clarity of the regulations as a whole, statutory changes, and appropriate improvements wherever possible.

**Substance:** The concept of the amendment is to study appropriate changes to provide clarification to the regulation, to consolidate the regulations and to update the permit fee system. Developing the amendment in collaboration with the regulated community and the public through a technical advisory committee will provide the opportunity to draw on the expertise of these groups. Alternative approaches will be discussed during the development of the regulation, and the alternative chosen will be subject to public comment during the public comment period and public hearings. Key issues will be highlighted and the public's opinion is specifically requested.

This action will consider if the fee system in the regulations continues to be appropriate in its structure and amounts. Fees were last adjusted in 1992.

**Alternatives:** A technical advisory committee will advise the Department of Environmental Quality on what amended regulatory text to recommend to the board as proposed regulations. This panel will advise the department on less intrusive and less burdensome alternatives, where such exists, and during the public participation process the public will be asked to suggest less intrusive and burdensome alternatives. No action alternatives have been considered or rejected.

**Public Participation:** The board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives, and (iii) impacts of the regulation on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, mjdieter@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Participatory Approach:** The board is using the participatory approach to develop a proposal.

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

Public comments may be submitted until 5 p.m., August 2, 2002.

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# Notices of Intended Regulatory Action

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**Contact:** Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146 or e-mail [mjdieter@deq.state.va.us](mailto:mjdieter@deq.state.va.us).

VA.R. Doc. No. R02-207; Filed June 10, 2002, 10:38 a.m.

## STATE WATER CONTROL BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-20. Fees for Permits and Certificates.** The purpose of the proposed action is to increase the fees charged for processing applications for permits and certificates issued by the State Water Control Board.

**Purpose:** Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the direct and indirect costs incurred by the State Water Control Board, Department of Game and Inland Fisheries and Department of Conservation and Recreation that are associated with the processing of an application to issue, reissue, or modify any permit or certificate that the State Water Control Board has the authority to issue from the applicant for such permit or certificate. These regulations establish the required fee assessment and collection system. The General Assembly of Virginia amended and enacted revisions to § 62.1-44.15:6 of the Code of Virginia increasing the maximum allowable amounts for processing each type of permit/certificate category. The proposed amendment will revise the fee schedules in 9 VAC 25-20 to reflect the revisions in § 62.1-44.15:6 of the Code of Virginia.

**Need:** Fees for permits and certificates are authorized to recover, up to the maximums specified in statute, the direct and indirect costs associated with application review and permit or certificate issuance. The required January 2002 Permit Fee Program Evaluation Report to the General Assembly indicates that in fiscal year 2001 actual water permit program costs exceeded \$10.6 million, whereas permit fee revenues were only slightly above \$1 million.

One issue that will need to be addressed as the regulation is developed is that the Acts of Assembly include a clause that the provisions of the act shall expire on July 1, 2004.

**Substance:** The regulation would be revised to reflect the changes in maximum amounts as specified in § 62.1-44.15:6 of the Code of Virginia. In addition, changes may be considered based on public comment in response to this NOIRA.

**Alternatives:** The fee structure recovers a portion of the agencies' costs associated with the permit programs. The board has not identified alternative regulations that would accomplish the mandate. Because the legislation specified only the maximum allowable fees, alternatives that the agency will consider in developing the regulation will focus on the specific amount that existing fees should be increased.

**Public Participation:** The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations.

**Participatory Approach:** The board is using the participatory approach to develop the proposed amendments to the regulation. Anyone interested in assisting the board during development of a proposal should notify the contact person.

**Statutory Authority:** § 62.1-44.15:6 of the Code of Virginia.

Public comments may be submitted until 5 p.m., August 2, 2002.

**Contact:** Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117 or e-mail [jvansoest@deq.state.va.us](mailto:jvansoest@deq.state.va.us).

VA.R. Doc. No. R02-208; Filed June 10, 2002, 10:38 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Ready-Mixed Concrete Plants.** The purpose of the proposed action is to reissue the existing general permit that expires on September 30, 2003. The general permit will establish limitations and monitoring requirements for point source discharge of storm water and process wastewater from ready-mixed concrete plants.

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

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123 and 124.

Public comments may be submitted until July 17, 2002.

**Contact:** Lily Choi, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23219, telephone (804) 698-4054, FAX (804) 698-4032 or e-mail [ychoi@deq.state.va.us](mailto:ychoi@deq.state.va.us).

VA.R. Doc. No. R02-183; Filed May 17, 2002, 1:56 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF SOCIAL WORK

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Social Work intends to consider amending regulations entitled: **18 VAC 140-20.**

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## Notices of Intended Regulatory Action

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**Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to eliminate inconsistencies in the ethical standards among behavior science boards and clarify certain language in the regulation.

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

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

Public comments may be submitted until July 17, 2002.

**Contact:** Ben Foster, Deputy Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-9943 or e-mail [ben.foster@dhp.state.va.us](mailto:ben.foster@dhp.state.va.us).

VA.R. Doc. No. R02-184; Filed May 16, 2002, 3:36 p.m.

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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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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

Title of Regulation: **8 VAC 20-440. Regulations Governing the Employment of Professional Personnel (amending 8 VAC 20-440-10, 8 VAC 20-440-90, 8 VAC 20-440-110, 8 VAC 20-440-120, 8 VAC 20-440-140, 8 VAC 20-440-150, and 8 VAC 20-440-160).**

Statutory Authority: §§ 22.1-16 and 22.1-302 of the Code of Virginia.

Public Hearing Date: July 25, 2002 - 2 p.m.

Public comments may be submitted until September 2, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Dr. Thomas Elliott, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2924, FAX (804) 225-2524 or e-mail telliott@mail.vak12ed.edu.

Basis: Section 22.1-16 of the Code of Virginia authorizes the Board of Education to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia.

Section 22.1-302 of the Code of Virginia authorizes the board to prescribe forms for written contracts with teachers.

Purpose: The primary purpose of the proposed amendments is to ensure that the provisions of the regulation are consistent with §§ 22.1-302 through 22.1-305 of the Code of Virginia and to provide clarifying language that will assist local school divisions in establishing consequences for breach of contract. Therefore, the proposed amendments will have a positive impact on the welfare of teachers and on the local divisions that employ them.

Under current regulations, the primary action that a school board may take against a teacher for breach of contract is to appeal to the Board of Education for a suspension of the teacher's license, which in effect denies the teacher the ability to teach in a public school anywhere in Virginia - a serious impact on the teacher's welfare (e.g., employment status). The proposed amendments, in giving more flexibility to local boards in handling personnel matters, provide protections to the local board that wishes to develop and implement such policies that do not involve the serious action of suspending the teacher's license. The proposed revisions do not eliminate the local board's ability to appeal to the Board of Education for a suspension (as provided in the current regulation). In addition, the proposed revision gives the Board of Education the important option, in its view, of requiring a written report and/or a representative when that division is requesting action on the teacher's license. This option ensures that the board

will have the information it needs to make a fair decision on the disposition of the license and thereby protects the board from any appearance of giving unequal treatment.

Substance: The proposed amendments incorporate language to reflect amendments to the Code of Virginia, amend the language to assist school boards in establishing consequences for breach of contract, and add language allowing the Board of Education to require a written report or an appearance of an appropriate representative when a petition for breach is filed.

Issues: Recruiting and retaining a high quality teaching force is essential to high student achievement. Department of Education surveys during the past few years have shown that the majority of teachers leaving a school division (turnover rate) do so to accept employment in another school division in the state. While the majority of the moving teachers do not break their contracts in order to accept employment in another division, local officials are experiencing increasing problems with breach of contract. Appropriate and quick action on the part of the school division is in the best interest of the community and in the stability of the educational program.

The advantage of the proposed amendments is to provide flexibility to local divisions in handling breach of contract matters. In instances where teachers break their contracts, the division will be able to issue a sanction (or reprimand, as deemed appropriate) at the local level, if that is the way the division wishes to handle the matter. However, the proposed provisions do not prohibit a division from appealing to the Board of Education for a suspension of the teacher's license.

There are no advantages or disadvantages to the general public or to the agency.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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.

Summary of the proposed regulation. The Board of Education (state board) proposes several amendments for clarification and to conform these regulations with changes to the Code of Virginia. In addition, the state board proposes to allow itself to require a written report and/or request a representative from the hiring school board to appear when the state board

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# Proposed Regulations

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receives a petition from a local school board for action on the license of a teacher who has breached his present contract by accepting a contract with another school board.

Estimated economic impact. Pursuant to § 22.1-304 of the Code of Virginia and these regulations, the state board may choose to suspend a teacher's license if that teacher has breached his contract without good cause. According to the Department of Education, this is a relatively rare occurrence; in a typical year the state board suspends no licenses due to breach of contract. If the state board receives a petition from a local school board for action on the license of a teacher who has breached his present contract by accepting a contract with another school board within the Commonwealth, under the proposed language the state board may require a written report and/or request an appropriate representative from the hiring school board to appear before the state board to explain the circumstances that led to the hiring decision before the state board considers any petition action on the license of such teacher. Since the board may already request information from local school boards, the proposed language will not likely significantly affect the rare occurrences when a teacher's license is suspended due to breach of contract.

Businesses and entities affected. The proposed amendments potentially affect the approximately 175,000<sup>1</sup> classroom teachers, guidance counselors, principals, assistant principals, school psychologists, and central office staff in Virginia's public school divisions.

Localities particularly affected. The proposed amendments affect all localities in the Commonwealth.

Projected impact on employment. The proposed amendments are unlikely to have a significant impact on employment.

Effects on the use and value of private property. The proposed amendments are unlikely to significantly affect the use and value of private property.

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

## Summary:

*The proposed amendments (i) conform the regulation with provisions in § 22.1-302 that require school boards to provide separate written contracts for teachers responsible for an extracurricular activity sponsorships; (ii) conform the regulation with amendments to § 22.1-303 that require teachers hired after July 1, 2001, to successfully complete training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments; (iii) clarify beginning and ending dates for each phase of the three-phase employment process for any school division permitted by § 22.1-304 of the Code of Virginia to extend the written notice of noncontinuation of contract to May 15; (iv) allow school boards to take actions for breach of contract other than requesting a suspension of license; and*

*(v) provide that the board may require a written report or an appearance of an appropriate representative when a petition for breach is filed, or both.*

## **8 VAC 20-440-10. Definitions.**

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

"*Annual contract*" means a contract between the employee and the local school board which sets forth the terms and conditions of employment for one school year.

"*Board*" means the Virginia Board of Education which has general supervision of the public school system.

"*Breach of contract*" means, for the purpose of ~~Phase Three~~ this chapter, a teacher failing to honor a contract for the *current or next* school year without formal release from that contract from the local board. It does not include dismissal for cause.

"*Coaching contract*" means a separate contract between the employee and the local school board which includes responsibilities for an athletic coaching assignment.

"*Continuing contract*" means a contract between the employee who has satisfied the probationary term of service and the local school board.

"*Current employer*" means the local school board with ~~whom~~ which the teacher is currently under contract.

"*Extracurricular activity sponsorship contract*" means a separate contract between the employee and the local school board that includes responsibilities, for which a monetary supplement is received, for sponsorship of any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

"*Next school year*" means the school year immediately following the current contract year.

"*Principal*" means a person (i) who is regularly employed full time as a principal or assistant principal, and (ii) who holds a valid teaching license issued by the board.

"*Prospective employer*" means the division in which application for employment is made.

"*Supervisor*" means a person (i) who is regularly employed full time in a supervisory capacity, and (ii) who is required by the board to hold a license to be employed in that position.

"*Teacher*" means a person (i) who is regularly employed full time as a teacher, visiting teacher/school social worker, guidance counselor, or librarian, and (ii) who holds a valid teaching license.

## **8 VAC 20-440-90. Eligibility for continuing contract.**

Only persons regularly employed full time by a school board who hold a valid license as teachers, principals, or supervisors shall be eligible for continuing contract status.

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<sup>1</sup> Source: Department of Education

Any teacher hired on or after July 1, 2001, shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments. Local school divisions shall be required to provide said training at no cost to teachers employed in their division. In the event a local school division fails to offer said training in a timely manner, no teacher will be denied continuing contract status for failure to obtain such training.

## Article 5.

### Coaching and Extracurricular Activity Sponsorship Contracts.

#### **8 VAC 20-440-110. Contract to be separate and apart from annual or continuing contract.**

The coaching contract or extracurricular activity sponsorship contract shall be separate and apart from the annual or continuing contract and termination of the contract shall not constitute cause for the termination of the annual or continuing contract.

#### **8 VAC 20-440-120. Termination notice required.**

The coaching contract or extracurricular activity sponsorship contract shall require the party intending to terminate the contract to give reasonable notice to the other party prior to the effective date of the termination.

#### **8 VAC 20-440-140. Phase One of the three-phase employment process.**

A. Phase One covers employment sought for the next school year and covers the period from the beginning of the current school year to the close of business on April 14 of the current school year. The end of the phase on April 14 corresponds to the provisions of § 22.1-304 of the Code of Virginia allowing written notice of noncontinuation of contract by April 15. If April 14 ends on a Saturday, Sunday, or legal holiday, the end of Phase One will be the last administrative working day prior to the Saturday, Sunday, or legal holiday. *For any school division permitted by § 22.1-304 of the Code of Virginia to extend the written notice of noncontinuation of contract to May 15, the end of Phase One is May 14, or if May 14 is on a Saturday, Sunday, or legal holiday, the last administrative working day prior to May 14.*

B. During Phase One, a teacher may apply and be interviewed for employment for the next school year in other school divisions without notice to or permission from the division where he is currently employed.

C. During Phase One, a teacher accepting employment in another division for the next school year must resign by giving written notice to the current employer. The notice should specify that the resignation is applicable for the next school year only.

#### **8 VAC 20-440-150. Phase Two of the three-phase employment process.**

A. Phase Two begins on April 15 and ends on May 31 or the date the teacher contract is final, whichever is later. *For any school division permitted by § 22.1-304 of the Code of Virginia to extend the written notice of noncontinuation of contract to*

*May 15, Phase Two begins on May 15 and ends on June 30 or the date the teacher contract is final, whichever is later. The contract is final when the date of signature and, at a minimum, the salary terms are finally known.*

B. During Phase Two, teachers, whether probationary or continuing contract, may seek employment and file applications for the next school year with other school divisions. Teachers may seek employment during this phase without notification to the current employer.

C. During Phase Two, the prospective employer may offer a contract without proof of release from contract from the current employer. The teacher must obtain a written release from the contract with the current employer prior to signing a contract with the prospective employer. Releases should be liberally granted during this phase.

#### **8 VAC 20-440-160. Phase Three of the three-phase employment process.**

A. Phase Three begins on June 1 or the date the salary is finally set by the local school board, whichever occurs later. *For any school division permitted by § 22.1-304 of the Code of Virginia to extend the written notice of noncontinuation of contract to May 15, Phase Three begins on July 1 or the date the salary is finally set by the local school board, whichever occurs later.* In Phase Three, the contract is a firm and binding obligation on the teacher and the school division.

B. During Phase Three, teachers may seek employment and file applications for the next school year with other school divisions; however, a prospective employer should not offer a contract to any teacher during Phase Three until the teacher has secured a written release from the contract with the current employer, and a teacher should not accept a contract until a written release has been secured.

C. A current employer, at its discretion, may release a teacher from the contract. The employer should release teachers for good cause.

D. Good cause is determined by the local school board. It should reflect a consideration of all the factors affecting both the employee and the school board. Factors in determining good cause may include the employee's reason for leaving, contractual terms and agreements, and the overall effect of the resignation on the employee and the school division.

E. In the event that a local board declines to grant a request for release from a contract on the grounds of insufficient or unjustifiable cause, and the teacher breaches or expresses an intent to breach the contract, the current employer may, ~~within 30 days of the breach, file~~ *pursue remedies prescribed by the Board of Education or other remedies consistent with law or contract. Such remedies could include filing a petition with the Board of Education setting forth all the facts in the case and requesting that the teacher's license be suspended for the next school year or apply applying other remedies appropriate under law or contract.*

F. *If the Board of Education receives a petition from a local school board for action on the license of a teacher who has breached the present contract by accepting a contract with another school board within the Commonwealth, the Board of Education may require a full written report or request an*

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# Proposed Regulations

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*appropriate representative from the hiring school board to appear before the Board of Education to explain the circumstances that led to the hiring decision, or both, before the Board considers any petition for action on the license of such teacher.*

VA.R. Doc. No. R01-254; Filed June 11, 2002, 1:39 p.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

**REGISTRAR'S NOTICE:** The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007 B; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007 F; and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation:** **9 VAC 25-195. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concentrated Aquatic Animal Production Facilities (amending 9 VAC 25-195-10 through 9 VAC 25-195-50; repealing 9 VAC 25-195-60).**

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia and § 402 of the Clean Water Act, 40 CFR Parts 122, 123 and 124.

**Public Hearing Date:** August 7, 2002 - 2 p.m.

Public comments may be submitted until 5 p.m. on August 30, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** Michael Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

**Basis:** Section 62.1-44.15(5) of the Code of Virginia authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the board to establish requirements for the

treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters. Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

**Purpose:** This regulatory action is proposed in order to reissue the existing general permit, which expires on March 5, 2003.

**Substance:** The general permit will establish limitations and monitoring requirements for point source discharges from fish farms and other aquatic animal production facilities. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharges. No significant changes to the existing general permit have been identified at this time.

**Issues:** The primary advantage of this regulatory action to the public and to the agency is the continuation of a general permit, which provides a simpler option for obtaining VPDES permit coverage where appropriate. There are no disadvantages to the public or to the Commonwealth.

**Summary:**

*The purpose of the proposed amendments is to reissue the general permit for another five-year term. The reissued general permit will replace current General Permit VAG13, which will expire on March 5, 2003. The existing regulation sets forth guidelines for the permitting of wastewater discharges from fish farms and hatcheries and establishes limitations and monitoring requirements for flow, total suspended solids and settleable solids. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit. No significant changes to the existing regulation are proposed in this regulatory action.*

**9 VAC 25-195-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, *Chapter 3.1* (§ 62.1-44.2 et seq.) of *Title 62.1* of the Code of Virginia, and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25-31-40 ~~et seq.~~) unless the context clearly indicates otherwise, ~~except that~~. *Additionally*, for the purposes of this chapter:

*"Aquatic animals"* means *freshwater or saltwater* finfish or shellfish.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or facility classified under Standard Industrial Classification (SIC) Codes 0273 or 0921 (Office of Management and Budget SIC Manual, 1987) or other facility which meets any of the following criteria:

1. Facilities that contain, grow, or hold cold water ~~fish species or other cold water~~ aquatic animals *including, but not limited to, the Salmonidae family of fish, e.g., trout and salmon*, in ponds, raceways, or other similar structures which discharge at least 30 days per year, and produce 20,000 pounds (9,090 kilograms) or more harvest weight of cold water aquatic animals per year, or feed 5,000 pounds (2,272 kilograms) or more of food during the calendar month of maximum feeding;
2. Facilities, other than closed ponds which discharge only during periods of excess runoff, that contain, grow, or hold warm water ~~fish species or other warm water~~ aquatic animals *including, but not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish, e.g., respectively, catfish, sunfish and minnows*, in ponds, raceways, or other similar structures which discharge at least 30 days per year, and produce 100,000 pounds (45,454 kilograms) or more harvest weight of warm water aquatic animals per year; or
3. ~~Cold water or warm water~~ Facilities that the board designates as concentrated aquatic animal production facilities upon determining that they are significant contributors of pollution to state waters.

"Cold water aquatic animals" includes, but is not limited to, the Salmonidae family of fish, e.g., trout and salmon.

~~"Department" means the Virginia Department of Environmental Quality.~~

~~"Director" means the Director of the Virginia Department of Environmental Quality or an authorized representative.~~

"Fish farm" means an establishment primarily engaged in the production of aquatic animals within a confined space and under controlled feeding, sanitation and harvesting procedures.

"Hatchery" means an establishment that occupies the majority of its facilities with holding aquatic animal brood stock, taking or incubating eggs, or raising hatched larvae to juveniles.

"Processing wastewater" means wastewater generated from aquatic animal processing operations, including but not limited to butchering or cleaning, washing, packing and processing related cleaning of facilities or equipment.

~~"Warm water aquatic animals" includes, but is not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish, e.g., respectively, catfish, sunfish and minnows.~~

"Wastewater" means the flow-through ~~discharge~~ discharges of water in which the animals are held, the intermittent ~~discharge~~ discharges from ponds or structures in which the animals are held, and the discharges from in-line or off-line settling or other solids collection or treatment units. It does not include processing wastewater as defined above.

## 9 VAC 25-195-20. Purpose; delegation of authority; effective date of permit.

- A. This general permit regulation governs the discharge of wastewater from concentrated aquatic animal production facilities.
- B. The director, or an authorized representative, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.
- C. This general permit will become effective on March 5, ~~1998~~ 2003, and will expire five years after the effective date. For any covered owner, this general permit is effective upon compliance with all the provisions of 9 VAC 25-195-30 and the receipt of this general permit.

## 9 VAC 25-195-30. Authorization to discharge.

A. 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 board of the registration statement of 9 VAC 25-195-40, complies with the effluent limitations and other requirements of 9 VAC 25-195-50, and complies with the following restrictions:

1. The owner shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation (9 VAC 25-31-40 ~~et seq.~~);
2. This general permit does not ~~cover~~ authorize processing wastewater discharges;
3. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies which prohibit such discharges; ~~and~~
4. *The owner shall not be authorized by this general permit to discharge to state waters that are listed as impaired in the current Total Maximum Daily Load Priority List and Report (§ 303(d) list) unless it is determined that the proposed effluent does not cause or contribute to the listed impairment; and*
- 4- 5. The owner shall install, operate and maintain treatment works, or take control measures necessary to comply with the conditions and limitations of this general permit.

B. 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 25-195-40. Registration statement.

The owner shall file a complete general VPDES permit registration statement, which will serve as a notice of intent for coverage under the general permit for concentrated aquatic animal production facilities. *Any owner of an existing facility covered by the general VPDES permit for concentrated aquatic animal production facilities that became effective on March 5, 1998, who wishes to remain covered by this general permit shall file a new registration statement in accordance with the general permit requirements in order to avoid a lapse in coverage.* Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the date

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planned for commencing operation of the new discharge. Any owner of an existing concentrated aquatic animal production facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing concentrated aquatic animal production 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 contain the following information:

## ~~VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM~~

### ~~GENERAL PERMIT REGISTRATION STATEMENT FOR CONCENTRATED AQUATIC ANIMAL PRODUCTION 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

County: \_\_\_\_\_

E. Is the operator of the facility also the owner?  Yes  No

If No, complete F. & G.

F. Name of Operator or Facility Contact: \_\_\_\_\_

G. Operator or Facility Contact Mailing Address

a. Street or P.O. Box \_\_\_\_\_

b. City or Town \_\_\_\_\_ c. State \_\_\_\_\_ d. Zip Code \_\_\_\_\_

e. Phone Number \_\_\_\_\_

#### 2. FACILITY INFORMATION

A. NATURE OF BUSINESS: (provide a brief description)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Indicate if any processing activities occur on site (e.g., fish cleaning, etc.) and if so, how wastewater from the processing is handled.

\_\_\_\_\_  
\_\_\_\_\_

~~C. Is there or will there be discharge from the facility into surface receiving waters at least 30 days per year?~~

~~Yes  No~~

~~D. Does this facility currently have an existing VPDES Permit?~~

~~Yes  No If yes, what is the permit No.? \_\_\_\_\_~~

#### 3. SIC CODES (check all applicable codes)

~~0273 Animal Aquaculture, Production of Finfish and Shellfish~~

~~0921 Fish Hatcheries~~

~~\_\_\_\_\_ Other (indicate code): \_\_\_\_\_~~

#### 4. MAP

~~Attach a topographic map extending to at least one mile beyond the property boundaries in all directions indicating location of the facility, location of intake and discharge points and other surface water bodies and, if a USGS map, the name of the topographical quadrangle.~~

#### 5. FACILITY DRAWING

~~Attach a line drawing or schematic of the facility showing water flow through the facility. Show what happens to the water from the time it arrives at the facility until the time it leaves and discharges to the receiving waters. Indicate the name of the source of intake water and the name of the receiving waters. Show all wastewater discharges and provide the maximum daily and average monthly flow from each outfall. Include the number of ponds, raceways and similar structures.~~

#### 6. MAXIMUM ANNUAL PRODUCTION

~~Indicate the species of fish or aquatic animals held and fed at your facility, and the total weight produced by your facility per year in pounds of harvestable weight and the maximum harvestable weight present at any one time. The weight values must be representative of your normal operation.~~

##### A. Cold Water Species

Species	Total Yearly	Maximum
	Harvestable Weight	Present

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

##### B. Warm Water Species

Species	Total Yearly	Maximum
	Harvestable Weight	Present

_____	_____	_____
_____	_____	_____

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G. Indicate the total pounds of food fed during the calendar month of maximum feeding.

Month	Pounds of Food
_____	_____

## 7. TREATMENT INFORMATION

A. Describe the methods of cleaning raceways, ponds or other structures at the facility.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Describe the solids management and treatment methods, and any treatment units such as settling basins or screens, used to prevent solids from discharging into the receiving stream. Describe the disposal of the solids. If solids are land-applied, please include information on the disposal site and practices, including location, number of acres, crops grown and the volume and frequency of land application.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 8. CHEMICALS

Are any chemicals used to treat the food, water or aquatic animals or otherwise used at the plant 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, and how frequently it is used.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 9. 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: \_\_\_\_\_

Date: \_\_\_\_\_

Name of person signing above: \_\_\_\_\_

(printed or typed)

Title: \_\_\_\_\_

## REQUIRED ATTACHMENTS

Facility Drawing

Topographic Map

For department use only:

Accepted/Not Accepted by: \_\_\_\_\_

Date: \_\_\_\_\_

Basin \_\_\_\_\_ Stream Class \_\_\_\_\_

Section \_\_\_\_\_

Special Standards \_\_\_\_\_

1. Facility name, owner, mailing address and telephone number;

2. Facility location;

3. Facility operator name, address and telephone number if different than owner;

4. Nature of business;

5. Listing of any aquatic animal processing activities, such as fish cleaning, that occur on site and of how processing wastewater from these activities are handled;

6. Is there or will there be a discharge from the facility into state waters at least 30 days per year?

7. Does the facility have a current VPDES Permit? Permit Number, if yes;

8. Facility SIC Code(s);

9. Topographic map showing the facility location and the intake and discharge points;

10. Facility line drawing or schematic of the facility showing ponds, raceways or similar structures and water flow through the facility, including the water body name for intake points and all discharge outfalls and the maximum daily and average monthly flow from each outfall;

11. Maximum annual production at the facility including the species held and fed, the total weight produced at the facility per year in pounds of harvestable weight and the maximum harvestable weight present at any one time;

12. Total pounds of food fed during the calendar month of maximum feeding;

13. Description of the methods of cleaning raceways, ponds or other structures at the facility;

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14. *Solids Management Plan (attachment) including a description of the management and treatment of solid wastes produced by the facility; identifying any treatment units such as settling basins or screens used to prevent solids from discharging into the receiving stream; and describing the final disposal of accumulated solid waste from the treatment units; if solids are land applied, information in the Solids Management Plan should also include an analysis of the solids applied and information on the land application practices including disposal site location, number of acres used, crops grown and the volume and frequency of land application;*

15. *Chemicals used at the facility to treat food, water or aquatic animals, or otherwise used at the facility in such a way that they can enter the receiving stream; amount and frequency of chemical use;*

16. *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."*

The registration statement shall be signed in accordance with 9 VAC 25-31-110.

## 9 VAC 25-195-50. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation (9 VAC 25-31-10 et seq.).

General Permit No.: VAG13

Effective Date: March 5, 1998 2003

Expiration Date: March 5, 2003 2008

### GENERAL PERMIT FOR CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

### 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 to it, owners of concentrated aquatic animal production facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those 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 and Part II--Conditions Applicable to all VPDES Permits, as set forth herein.

## PART I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

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 outfall(s).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Monthly Average	Daily Maximum	Sample Frequency	Sample Type
Flow (MGD) <sup>2</sup>	NA	NL	1/Quarter	Estimate
Total Suspended Solids (mg/l)	10	15	1/Quarter	Composite <sup>3</sup>
Settleable Solids (ml/l)	0.1	3.3	1/Quarter	Composite <sup>3</sup>

<sup>2</sup>Flow monitoring shall be performed at the time of Total Suspended Solids and Settleable Solids sampling.

<sup>3</sup>Composite means hourly grab samples, not to exceed eight grab samples, taken over the duration of an operating day during periods of representative discharges, including fish harvesting and/or unit cleaning or solids removal operations, and combined to form one representative sample.

NL = No Limitation, monitoring required

NA = Not Applicable

### B. Special conditions.

1. No sewage shall be discharged from this facility to surface waters except under the provisions of another VPDES permit specifically issued for that purpose.

2. There shall be no discharge of processing wastewater from aquatic animal processing operations, including but not limited to butchering or cleaning, washing, packing and processing related cleaning of facilities or equipment.

3. There shall be no chemicals added to the water or waste which may be discharged other than those listed on the owner's accepted registration statement, ~~unless prior approval of the chemical(s) is granted by the department.~~ Wastewater discharges shall not contain chemicals in amounts that are toxic to aquatic life and shall not have detectable levels of chlorine.

4. There shall be no discharge of fish offal, dead fish, floating solids or visible foam in other than trace amounts.

5. Organic solids shall not be discharged in amounts which cause stream bed accumulations or degradation of state waters as determined in accordance with standard procedures.

6. The permittee shall ~~develop, maintain on site, and implement a the solids management plan, including recordkeeping of solids handling and disposal activities,~~

submitted with the registration statement in order to comply with the requirements of the performance criterion specified in subdivision 5 of this subsection. ~~The plan and records~~ A record of solids handling and disposal activities shall be ~~provided maintained on site and made available~~ for inspection upon request by department personnel.

7. The permittee shall notify the department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur that would result in the discharge on a routine or frequent basis of any toxic pollutant that 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 µg/l);

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

b. That any activity has occurred or will occur that would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant that 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 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

## PART II

### CONDITIONS APPLICABLE TO ALL VPDES PERMITS.

#### A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

#### B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, 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 this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. 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 board.

#### C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also

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furnish to the department upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person 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, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee 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 Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location 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 this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. 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 permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce

the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I 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 all instances of noncompliance not reported under Parts II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office. Reports may be made by telephone or by FAX. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

### K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer 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-making 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 million (in second quarter 1980 dollars), if, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;~~

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief

executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts II K 1 or 2 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."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use

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or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. 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 invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. 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. Except as provided in permit conditions on bypass (Part II U) and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. 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 §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. 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.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, 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 unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not

received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable. If any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

**9 VAC 25-195-60. Evaluation of chapter and petitions for reconsideration or revision. (Repealed.)**

~~A. Within three years after March 5, 1998, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

~~B. The board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this chapter.~~

VA.R. Doc. No. R01-272; Filed June 10, 2002, 10:38 a.m.



**TITLE 11. GAMING**

**VIRGINIA RACING COMMISSION**

**REGISTRAR'S NOTICE:** The following regulations filed by the Virginia Racing Commission are exempt from the Administrative Process Act pursuant to subdivision A 20 of § 2.2-4002 of the Code of Virginia, which exempts the commission (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the commission.

**Title of Regulation: 11 VAC 10-100. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Horses (amending 11 VAC 10-100-80, 11 VAC 10-100-100, 11 VAC 10-100-150, 11 VAC 10-100-170, and 11 VAC 10-100-190; adding 11 VAC 10-100-151 and 11 VAC 10-100-152; repealing 11 VAC 10-100-110 and 11 VAC 10-100-140).**

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

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# Proposed Regulations

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## Summary:

The amendments (i) require that the Certificate of Veterinary Inspection be attached to the health certificate or other registration document; (ii) clarify that published workouts are required for Thoroughbreds, but not for steeplechase or other categories that may be specifically exempted by the commission; (iii) specifically limit the scope of the horses placed on the Stewards' List; (iv) specify the circumstances under which the commission veterinarian can place horses on the Veterinarian's List and the starter can place horses on the Starter's List, and the conditions under which they would be removed; (v) require the trainer to obtain the permission of the paddock judge instead of the steward to change the equipment on a racehorse; (vi) remove language concerning the use of nasal strips; and (vii) reflect that the commission veterinarian or his assistant veterinarians conduct the pre-race examinations and not a veterinarian employed by the licensee.

In addition, the sections regarding time trials and qualifying races are repealed and will be placed in regulations pertaining to Standardbred racing.

Agency Contact: William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail Anderson@vrc.state.va.us.

### 11 VAC 10-100-80. Certificate of veterinary inspection.

An official test for equine infectious anemia is required and must be conducted by a laboratory approved by the United States Department of Agriculture for each horse within the enclosure. The following provisions shall apply:

1. Horses entering the Commonwealth of Virginia must be accompanied by an official Certificate of Veterinary Inspection signed by an accredited veterinarian. This certificate shall give an accurate description of each horse;
2. The Certificate of Veterinary Inspection shall indicate that each horse has been officially tested and found negative for equine infectious anemia within the past 12 months. The test must be valid to cover the time the horse is expected to be within the enclosure;
3. Horses originating in the Commonwealth of Virginia must be accompanied by a report of an official negative test for equine infectious anemia conducted within the past 12 months. The test must be valid to cover the time the horse is expected to be within the enclosure;
4. For the purposes of this regulation, an "approved laboratory" means a laboratory approved by the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture;
5. For the purposes of this regulation, an "accredited veterinarian" means a veterinarian approved by the Deputy Administrator to perform functions required by cooperative state-federal disease control and eradication programs;
6. The Certificate of Veterinary Inspection or report of an official negative test shall be attached to the *health*

*certificate*, certificate of foal registration, eligibility certificate or other registration document; and

7. The primary responsibility for the presentation of the foregoing documents shall rest with the owner of the horse or his trainer or authorized agent.

### 11 VAC 10-100-100. Published workouts for Thoroughbreds.

Except as in steeplechase or as otherwise may be specifically exempted by the commission, no horse Thoroughbred may be entered or raced unless its most recent workouts have been recorded and made generally available to the public by being prominently displayed in the grandstand and clubhouse or, published in periodicals of general circulation, *announced to the public or included in the closed-circuit broadcast*. The following provisions shall apply to published workouts:

1. No horse may be entered to race for the first time in its life unless it has a minimum of two published workouts;
2. No horse may start in a race unless it has a published workout within the past 30 days or has raced within the past 30 days; and
3. No horse may start in a race unless the stewards, in their discretion, determine that the horse's published past performances, whether in races or workouts, are sufficient to enable the public to make a reasonable assessment of its capabilities.

### 11 VAC 10-100-110. Qualifying races. (Repealed.)

~~No Standardbred may be raced unless it has a race at the chosen gait, with a charted line in qualifying time, within 30 days of its last race. If a Standardbred does not have a charted line within 30 days of its last race, then the horse must race in a qualifying race under the supervision of the stewards to determine its fitness for racing. The following provisions shall apply to qualifying races:~~

- ~~1. The licensee shall provide appropriate personnel for qualifying races to keep a charted line for each Standardbred in each qualifying race, an electronic timing device shall be in operation, and a photo-finish camera shall be in operation;~~
- ~~2. The licensee shall schedule as many qualifying races on as many days as is deemed appropriate for the horse supply, and the licensee shall maintain the racing surface in condition so that all Standardbreds have a reasonable opportunity to meet the qualifying time;~~
- ~~3. A Standardbred must race in a qualifying race if it has two consecutive races over a fast track which are not in the qualifying time as agreed upon by the licensee and the representative of the horsemen;~~
- ~~4. A Standardbred coming off the stewards' list must race in a qualifying race, and the stewards, in their discretion, may require the horse to race in one or more qualifying races to establish its fitness for racing; and~~
- ~~5. The stewards, in their discretion, may authorize the collecting of blood, urine or other samples of body~~

~~substances from Standardbreds after competing in qualifying races.~~

## **11 VAC 10-100-140. Time trials. (Repealed.)**

~~For Standardbreds, time trials are permitted with the permission of the licensee and the commission providing (i) the horse is subject to post-race testing, (ii) an electronic timing device is utilized, (iii) if the horse is accompanied by prompters, the prompters shall not precede the horse, and (iv) the stewards are present.~~

## **11 VAC 10-100-150. Stewards' List.**

~~A horse may be placed on the Stewards' List if it is unfit to race because of illness or lameness, unmanageable at the starting gate, dangerous or not competitive. Entries for horses on the Stewards' List shall be refused. The following provisions shall apply to the Stewards' List:~~

- ~~1. The stewards shall consult with the commission veterinarian before removing from the list any horse originally placed on the list for illness or lameness;~~
- ~~2. The stewards shall consult with the starter before removing a horse placed on the list by a starter for being unmanageable at the starting gate; and~~
- ~~3. The trainer of a horse on the Stewards' List or on a starter's, veterinarian's or similar list in another jurisdiction shall be responsible for reporting this fact to the stewards.~~

~~A. The stewards shall maintain a Stewards' List of the horses that are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that endangers the health or safety of other participants in racing.~~

~~B. The stewards may place a horse on the Stewards' List when there exists a question as to the exact identification or ownership of said horse.~~

~~C. A horse that has been placed on the Stewards' List because of inconsistent performance or behavior may be removed from the Stewards' List when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing.~~

~~4. A horse that has been placed on the Stewards' List because of questions as to the exact identification or ownership of said horse may be removed from the Stewards' List when, in the opinion of the stewards, proof of exact identification or ownership, or both, has been established.~~

## **11 VAC 10-100-151. Veterinarian's List.**

~~The commission veterinarian shall maintain a Veterinarian's List of those horses determined to be unfit to compete in a race due to physical distress, unsoundness or infirmity. A horse placed on the Veterinarian's List shall be removed from the list only after being demonstrated to the satisfaction of the commission veterinarian that the horse is then raceably sound and in fit physical condition to exert its best effort in a race. A horse may be required to perform satisfactorily in a workout or qualifying race to demonstrate its physical fitness, and if so a blood or urine, or both, post-work test sample may be taken from the horse.~~

## **11 VAC 10-100-152. Starter's List.**

~~No horse shall be permitted to start in a race unless approval is given by the starter. The starter may maintain a Starter's List of all horses that are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the Starter's List. Schooling shall be under the direct supervision of the starter.~~

## **11 VAC 10-100-170. Equipment.**

~~Equipment must be used consistently on a horse, and a trainer must obtain permission from the stewards paddock judge to change the use of any equipment on a horse from its last previous start. The paddock judge shall maintain a list of the equipment worn by each horse and inform the stewards immediately of any change in its equipment. The following provisions shall apply to equipment:~~

- ~~1. A horse's tongue may be tied down with a clean bandage or gauze;~~
- ~~2. No Thoroughbred may race shod in anything other than ordinary racing plates, e.g., bar shoe, mud calks, without the permission of the stewards and the public being informed through appropriate means;~~
- ~~3. No Thoroughbred may race in a bridle weighing more than two pounds;~~
- ~~4. Use on a horse of other than an ordinary whip either in a race or workout including any goading device, chain, spurs, electrical or mechanical device, appliance or any means which could be used to alter the speed of the horse is prohibited, except spurs may be used in steeplechase races pursuant to 11 VAC 10-160-150; and~~
- ~~5. For Thoroughbreds, Quarter Horses and Arabians, an ordinary whip shall weigh one pound or less, be 30 inches long or less and have not more than one popper. No stingers or projections extending through the hole of a popper or metal part on a whip shall be permitted; and .~~
- ~~6. The use of nasal strips on horses shall be considered part of the horse's equipment and the public shall be informed of their use on a horse through appropriate means.~~

## **11 VAC 10-100-190. Racing soundness examination.**

~~All horses racing on the flat or over jumps that are entered to race must be examined by the commission veterinarian or the licensee's veterinarian his assistant veterinarians prior to racing to determine the horse's fitness for racing. The trainer of each horse shall promptly identify the horse to be examined, and the examination is to take place outside of the horse's stall. The horse may be led at a walk or trot as requested by the examining veterinarian. For Standardbreds, the racing soundness examination shall consist of the commission veterinarian observing the horse during its warmups prior to racing.~~

VA.R. Doc. No. R02-192; Filed May 29, 2002, 3:04 p.m.

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# Proposed Regulations

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**Title of Regulation:** 11 VAC 10-110. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Entries (amending 11 VAC 10-110-10, 11 VAC 10-110-20, 11 VAC 10-110-40, 11 VAC 10-110-60, 11 VAC 10-110-80, 11 VAC 10-110-90, 11 VAC 10-110-150 and 11 VAC 10-110-180).

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

**Summary:**

*The amendments (i) modify the definitions of "overnight race" and "stakes"; (ii) prohibit a horse from being entered in two different races on any given racing day; (iii) add an exception for steeplechase races in the limit of the number of starters to the number of stalls in the starting gate; (iv) replace the term "infield results board" with "totalizator system"; (v) permit the stewards to designate a representative during the draw for post positions; and (vi) prohibit a horse scratched or excused from a race from being entered again until three days after the race from which it was scratched.*

**Agency Contact:** William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail Anderson@vrc.state.va.us.

**11 VAC 10-110-10. Definitions.**

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

*"Added money"* means money added by the licensee to the stakes fees paid by subscribers to form the total purse for a stakes race.

*"Allowance"* means a concession in the amount of weight that may be carried by a horse as specified in the conditions of the race.

*"Closing"* means the time specified by the racing secretary after which entries for a race will not be accepted.

*"Condition book"* means a book, published by the licensee, setting forth the conditions for each race for a specified period of time during a race meeting.

*"Condition sheet"* means a sheet, published by the licensee, setting forth the conditions for a specified period of time usually during a Standardbred race meeting.

*"Conditions"* means the terms of eligibility and entry, including the amount and deadlines for the payment of any fees.

*"Declaration"* means the withdrawal of a horse entered in a race before the time of closing of entries.

*"Entry"* means the act of naming a specific horse to run in a specific race.

*"Free handicap"* means a handicap for which no fee is required to be weighted, but an entrance or starting fee may be required for starting.

*"Futurity"* means a stakes race in which the horse is nominated either during the year of foaling or when the foal is in utero.

*"Handicap"* means a race in which the weights assigned to the horses are done so by the racing secretary with the intent of equalizing the chance for each horse to win.

*"Overnight race"* means any race for which ~~entries close 72 hours or less before the running of the race and for which the owners of the horses running in the race are not required to pay any fee.~~

*"Penalty"* means the amount of weight a horse is obligated to carry in a race as specified in the conditions for the race.

*"Purse"* means the total money for which a race is run.

*"Race"* means a contest among horses for a purse, prize or other reward and is contested at a race meeting licensed by the commission as well as in the presence of the stewards.

*"Scratch"* means the withdrawal of a horse entered for a race after the time of closing of entries.

*"Scratch time"* means the time specified by the racing secretary as a deadline to scratch a horse out of a race.

*"Stakes"* means all fees paid by subscribers to a stakes race for nominating, sustaining, entrance or starting fees as required by the conditions ~~and all fees shall be included in the purse.~~

*"Stakes race"* means a race that closes more than 72 hours before its running and for which the subscribers contribute fees toward the purse.

**11 VAC 10-110-20. Horses ineligible to be entered.**

A horse is ineligible to be entered in a race when:

1. The horse is not identified by name, color, sex and age and the names of its sire and dam;
2. The horse has been raced under an identity other than its own for fraudulent purposes;
3. The horse's name and identity have been utilized for fraudulent purposes;
4. The horse is wholly or partially owned by a person who is under suspension, has been ruled off or whose permit or license has been revoked by the commission or by a similar regulatory body in another jurisdiction;
5. The horse is under the care and supervision of or being trained by, a person who is under suspension, has been ruled off or whose permit or license has been revoked by the commission or a similar regulatory body in another jurisdiction;
6. The horse does not have a report of an official negative test for equine infectious anemia conducted within the past 12 months and the test must be valid to cover the time the horse is expected to be within the enclosure;
7. The horse appears on the ~~stewards' list or on a stewards', veterinarian's, starter's or similar list in this or another jurisdiction;~~

8. The horse is a first-time starter that has not been approved for racing by the starter;
9. The horse has a tracheal tube inserted to assist artificially its breathing;
10. The horse has been "high nerved" or its nerves have been desensitized by any means at or above the fetlock, including volar, palmar or plantar nerves;
11. The horse has impaired vision in both eyes; or
12. The horse is not eligible under the conditions specified for the race as published in the condition book or on the condition sheet.

## 11 VAC 10-110-40. Filing.

The licensee shall provide forms on which entries may be filed with the racing secretary. All entries shall be in writing and any entries made by telephone or telegraph must be confirmed in writing upon the request of the racing secretary. The following provisions shall apply to the filing of entries:

1. No entry shall be considered filed until received by the racing secretary;
2. Every entry must be in the name of the horse's owner as completely disclosed and registered with the racing secretary and the appropriate breed registry;
3. Every entry must designate the horse's name as spelled on its certificate of registration, eligibility certificate or other registration document;
4. Every entry must designate the horse's owner, trainer, racing colors, jockey or driver, weight claimed where appropriate, color, sex, age, sire and dam, any penalties and allowances claimed, and where appropriate, claiming price;
5. Every entry must be signed and dated by the person making the entry;
6. No alteration may be made in any entry after the closing of entries. However, an error may be corrected with the permission of the stewards; *and*
- ~~7. A horse may be entered in two races for the same day, only if one of the races is a stakes race, futurity or other special event; and~~
- ~~8.~~ 7. The following additional provisions shall apply to Standardbred races:
  - a. The licensee shall provide a locked entry box in which entries shall be deposited;
  - b. The entry box shall be opened by a steward at the time designated; and
  - c. All entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn under the supervision of a steward.

## 11 VAC 10-110-60. Closing of entries.

Entries for overnight races shall close at a time prescribed by the licensee and approved by the stewards. Entries for stakes races, futurities and other special events shall close at the

time specified in the conditions. The following provisions shall apply to the closing of entries:

1. The racing secretary shall be responsible for the securing and safekeeping of all entries once they are filed ~~with him~~ and he shall be responsible for denying access to the entries by other permit holders;
2. No entry shall be accepted after the prescribed time for the closing of entries; and
3. In the event of an emergency or if an overnight race fails to fill, then the racing secretary, with the approval of the stewards, may extend the prescribed time for the closing of entries.

## 11 VAC 10-110-80. Number of starters.

*Except for steeplechase races*, the maximum number of starters in any race shall be limited to the number of starting positions afforded by the licensee's starting gate and any extensions to the starting gate approved by the stewards. The stewards also shall consider any guidelines promulgated by the associations appropriate to the breed of horses racing, the distance from the start to the first turn, any other conditions affecting the safety and fairness of the start.

## 11 VAC 10-110-90. Coupling.

All horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and shall be a single wagering interest. All horses entered in the same race and owned wholly or partially by the same owner or spouse or other common ties, shall be joined as a mutuel entry and shall constitute a single wagering interest, except that in stakes races, futurities or other events, the stewards, in their discretion, may permit horses having common trainers but different owners to run as separate wagering interests. The following provisions shall apply to mutuel entries:

1. The racing secretary shall be responsible for coupling entries for wagering purposes whether based on common owners or trainers;
2. No more than two horses having common ties through ownership or training, which would result in a mutuel entry and a single wagering interest, may be entered in an overnight race;
3. When two horses having common ties through ownership or training are entered in an overnight race, then the nominator shall indicate a preference for one of the two horses to start, in Standardbred races, the determination will be based on the preference date;
4. Two horses having common ties through ownership or training shall not start as a mutuel entry in an overnight race to the exclusion of another horse; and
5. The racing secretary shall be responsible for assigning horses to the mutuel field when the number of wagering interests exceeds the numbering capacity of the ~~infield results board~~ *totalizator system*.

## 11 VAC 10-110-150. Post positions.

Post positions for all races shall be determined by lot, drawn in the presence of persons filing the entries and supervised by

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# Proposed Regulations

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a steward or his representative. The racing secretary shall be responsible for assigning pari-mutuel numbers for each starter to conform with the post position draw, except where the race includes two or more horses joined as a single wagering interest.

## 11 VAC 10-110-180. Scratches.

For flat racing, a horse may be withdrawn from or "scratched out" of a race after the closing of entries under the following conditions:

1. Scratches shall be made in a manner prescribed by the racing secretary;
2. Scratches are subject to the approval of the stewards;
3. A horse may be scratched from a stakes race, futurity or other special event until 45 minutes before post time for the race for any reason;
4. No horse may be scratched from an overnight race without the approval of the stewards;
5. In making a determination on whether to permit a horse to be scratched from an overnight race, the stewards may require a report from a veterinarian, who possesses a permit issued by the commission, attesting to the physical condition of the horse; ~~and~~
6. Scratches, once approved by the stewards, are irrevocable; ~~and~~
7. *Entry of any horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall not be accepted until the expiration of three racing days after such horse was scratched or excused and the horse has been removed from the Veterinarian's List by the commission veterinarian.*

VA.R. Doc. No. R02-193; Filed May 29, 2002, 3:05 p.m.

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**Title of Regulation:** 11 VAC 10-120. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Claiming Races (amending 11 VAC 10-120-20, 11 VAC 10-120-40, 11 VAC 10-120-50, 11 VAC 10-120-80 and 11 VAC 10-120-100; repealing 11 VAC 10-120-90).

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

### Summary:

*The amendments (i) reduce the period of validity for a claiming certificate from the end of the calendar year to the ending of the race meeting at which it was issued, (ii) prohibit an owner or trainer from filing a claim on a horse in which he has an interest, (iii) clarify the requirements for a properly completed claim slip, (iv) provide that the stewards may designate a person to represent them during a draw on multiple claims, (v) eliminate the phrase "with its halter" because the successful claimant must supply the halter, (vi) prohibit racing officials and employees of the licensee from providing information prior to the running of the race, (vii) provide an exception to the restriction on a claimed horse for horses claimed in steeplechase races, (viii) in harness racing, allow a claimed horse to start for "any price" after*

*being claimed, (ix) provide that all horses claimed in other jurisdictions and racing in Virginia will be subject to the restrictions in the jurisdiction in which they were claimed, (x) repeal a section on steeplechase races, and (xi) clarify that a claimed horse is to be turned over to the successful claimant.*

**Agency Contact:** William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail Anderson@vrc.state.va.us.

## 11 VAC 10-120-20. Claiming certificate.

A person, who does not hold a *currently valid permit in Virginia or any other jurisdiction* as an owner, may apply for a claiming certificate. The following provisions shall apply to applicants for claiming certificates:

1. The applicant shall submit an application for a permit as an owner, pay the applicable fee, be photographed and fingerprinted as set forth in 11 VAC 10-60-~~40 et seq;~~
2. The applicant also shall submit a statement designating the trainer who will assume care and responsibility for the horse claimed;
3. The trainer named in the statement must be the holder of a currently valid permit issued by the commission;
4. The claiming certificate may be issued to the applicant which will be valid ~~for one calendar year~~ until the end of the race meeting during which it was approved, but it may be canceled by the stewards for cause; and
5. The applicant shall file the claiming certificate with the racing secretary indicating his eligibility to claim a horse.

## 11 VAC 10-120-40. Eligibility to claim.

Only a holder of a permit as an owner, or his authorized agent, or the holder of a claiming certificate may file a claim on a horse programmed to race in a claiming race. The following provisions shall apply to the eligibility of persons filing claims:

1. An authorized agent may only file a claim for an owner for whom he is authorized to act as an agent;
2. A person holding a permit solely as an authorized agent may not file a claim for himself or for any other person for whom he is not authorized to act as agent;
3. An owner, authorized agent or holder of a claiming certificate may file only one claim for any race;
4. An owner may not file a claim for his horse *in which the owner or trainer has a financial or beneficial interest*, or cause his horse to be claimed, directly or indirectly, for his account; and
5. A partnership, stable name or any other joint venture, despite the number of individual owners comprising such a venture, may file no more than one claim for any race.

## 11 VAC 10-120-50. Claiming procedure.

A claim may be filed on a horse programmed to race by properly completing a claim slip, *including but not limited to*

*the correct spelling of the horse's name, the date and the race number, sealing the claim slip in an envelope and depositing the envelope in a locked claims box. The following provisions shall apply to the claiming of a horse:*

1. The licensee shall provide claim slips, claim envelopes and a locked claim box to secure filed claims;
2. The claim slip, enclosed in a sealed envelope, must be deposited in a locked claim box at least 15 minutes before post time of the race for which the claim is filed;
3. The licensee shall provide a clock, and before the sealed envelope is deposited in the locked claim box, the time of day shall be stamped upon the envelope;
4. No money or its equivalent shall be put in the claim box;
5. The person filing the claim must have sufficient funds on deposit with the horsemen's bookkeeper or licensee in not less than the amount of the designated price and applicable sales taxes;
- ~~6. The claims clerk shall open the claim box when the horses enter the racing surface on their way from the paddock to the post;~~
- ~~7.~~ 6. The claims clerk shall inform the stewards of a claim filed for a horse and of multiple claims on a horse;
- ~~8.~~ 7. The claims clerk shall ascertain that the claim slip and envelope are properly complete;
- ~~9.~~ 8. The claims clerk shall ascertain that the person is eligible to claim a horse and inform the stewards immediately of any doubts of the person's eligibility;
- ~~10.~~ 9. The claims clerk shall ascertain that there are sufficient funds on deposit with the horsemen's bookkeeper or licensee of not less than the amount of the claim and applicable sales taxes;
- ~~11.~~ 10. If more than one valid claim is filed for a horse, then title to the horse shall be determined by lot under the supervision of the stewards *or their representative*;
- ~~12.~~ 11. A claimed horse shall race in the interest of and for the account of the owner from whom the horse was claimed;
- ~~13.~~ 12. The original trainer shall remain the absolute insurer of the condition of the horse until any post-race testing is completed;
- ~~14.~~ 13. Title to a claimed horse shall be transferred to the new owner at the time the horse is deemed a starter whether the horse is dead or alive, sound or unsound, or injured in the race or after the race;
- ~~15. A horse is deemed a starter when it obtains a fair start;~~
- ~~16.~~ 14. In harness racing, the successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his option by 9 a.m. of the day following the claiming race to which the horse programmed and scratched. No horse may

be claimed from a claiming race unless the race is contested;

~~17.~~ 15. A horse that has been claimed shall be delivered to the new owner, ~~with its halter,~~ at the conclusion of the race either at the paddock or at the detention barn, after the completion of any post-race testing;

~~18.~~ 16. The claimant shall present the former owner with written authorization of the claim from the racing secretary;

~~19.~~ 17. A positive test result for any prohibited drug is grounds for voiding the claim;

~~20.~~ 18. The new owner may request that the horse be tested for equine infectious anemia, by taking the horse immediately following the race to the detention barn where a blood sample will be drawn;

~~21.~~ 19. A positive test result for equine infectious anemia is grounds for voiding a claim;

~~22.~~ 20. The certificate of registration, eligibility certificate or registration document shall be retained by the racing secretary until the results of the post-race testing are known;

~~23.~~ 21. The funds for the claim shall be retained by the horsemen's bookkeeper or licensee until the results of the post-race testing are known;

~~24.~~ 22. When it is determined that the claim is valid and that there are no grounds for voiding the claim, the certificate of registration shall be delivered by the racing secretary to the claimant and the funds for the claim shall be paid to the former owner;

~~25.~~ 23. The new owner shall be responsible for filing the change of ownership with the appropriate breed registry; ~~and~~

~~26.~~ 24. Despite any designation of sex or age of a horse appearing in the daily program or other publication, the person making the claim shall be solely responsible for determining the sex or age of the horse before filing a claim for the horse; ~~and~~

~~25.~~ *Officials and employees of the licensee shall not provide any information as to the filing of the claim until after the race has been run, except as necessary for processing of the claim.*

## **11 VAC 10-120-80. Restrictions on a claimed horse.**

When a horse is claimed out of a claiming race *other than steeplechase races*, the following restrictions shall apply to the horse for 30 calendar days after the day that the horse was claimed:

1. The horse may only start in claiming races for a designated price of 25% more than the amount for which the horse was claimed, except ~~for~~ *in harness racing*, a horse may start in claiming races for ~~a designated~~ *any price equal to or less* other than the amount for which the horse was claimed;

2. The horse may not be sold or transferred wholly or in part to another person, except in another claiming race;

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# Proposed Regulations

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3. The horse may not remain in the same stable or under the control or supervision of its former owner or trainer, unless reclaimed; ~~and~~

4. The horse may not race elsewhere until after the close of the meeting at which it was claimed or 30 calendar days, whichever occurs first, except with the permission of the stewards; ~~and~~

5. All horses claimed in other jurisdictions and racing in Virginia shall be subject to the conditions of the claiming regulation in the jurisdiction where the claim was made.

## 11 VAC 10-120-90. Steeplechase races. (Repealed.)

~~For the purposes of races sanctioned by the National Steeplechase Association (NSA), any racing conducted from January 1 through June 30 shall be considered "one meeting" and any racing conducted from July 1 through December 31 shall be considered "one meeting." Any horse claimed may only race at meetings sanctioned by the NSA until the close of the meeting during which it was claimed or for 30 days, whichever comes first.~~

## 11 VAC 10-120-100. Disciplinary action.

Failure to comply with the regulations pertaining to claiming of horses or failure to deliver a horse that has been claimed to the successful claimant may subject the permit holder or holder of a claiming certificate to disciplinary action by the stewards.

VA.R. Doc. No. R02-198; Filed May 31, 2002, 2:36 p.m.

\* \* \* \* \*

**Title of Regulation: 11 VAC 10-140. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Flat Racing (amending 11 VAC 10-140-10, 11 VAC 10-140-30, 11 VAC 10-140-40, 11 VAC 10-140-60, 11 VAC 10-140-130, 11 VAC 10-140-140, 11 VAC 10-140-170, 11 VAC 10-180-180, and 11 VAC 10-140-310).**

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

### Summary:

*The amendments (i) bring the procedures regarding equipment included in the weight carried by the jockey during a race into conformity with procedures followed in the mid-Atlantic region, (ii) add a definition of "nonstarter," (iii) add "pony rider" to the list of personnel who may not touch a racehorse while it is in the paddock, (iv) provide that the use or discontinued use of a tongue tie no longer requires the permission of the stewards, (v) require the prominent display of post time on the closed-circuit television system, (vi) give discretion to the starter to lead horses into the starting gate by sections rather than in strict order by post position, (vii) give discretion to the stewards to order refunds in any pools on a horse that does not obtain a fair start, and (viii) clarify several provisions regarding jockeys.*

**Agency Contact:** William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail Anderson@vrc.state.va.us.

## CHAPTER 140.

REGULATIONS PERTAINING TO HORSE RACING WITH PARI-MUTUEL WAGERING: ~~CONDUCT OF FLAT RACING.~~

### 11 VAC 10-140-10. Definitions.

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

"Assigned weight" means the weight carried by a horse specified in the conditions of the race or by the racing secretary and printed in the daily racing program.

"Dead heat" means the finish of a race by two horses or more at the same time.

"Finish wire" means a real or imaginary line from the position of the photo-finish camera to a point immediately across and at right angles to the racing surface.

"Flat racing" means horse racing conducted over a surface without obstacles and includes racing with mounted riders for Arabians, Quarter Horses and Thoroughbreds.

"Highweight handicap" means a handicap race in which the weight assigned to the top horse is not less than 140 pounds.

"Match race" means a race between two horses.

"Nonstarter" means a horse that fails to obtain a fair opportunity to start, as determined by the stewards, when the starter dispatches the horses.

"Official time" means the period from the time the first horse crosses the starting post until the first horse crosses under the finish wire.

"Overweight" means any weight of one pound or more over the assigned weight carried by a horse in a race.

"Place" means to finish second in a race.

"Post position" means the relative position assigned to each horse numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

"Post time" means the advertised moment scheduled for the arrival of all horses at the starting post for a race.

"Produce race" means a race to be run by the produce of horses named or described in the conditions of the race at the time of entry.

"Purse race" means a race for money or other prize to which the owners of horses entered do not contribute a fee of more than \$100.

"Race" means a contest among horses for a purse, prize or other reward, run at a race meeting licensed by the commission and in the presence of the stewards.

"Show" means to finish third in a race.

"Starter" means a horse that obtains a fair opportunity to start when the starter dispatches the horses.

"Starting post" means the starting point of a race.

"Underweight" means any weight less than the assigned weight carried by a horse in a race.

"Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

"Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

"Win" means to finish first in a race.

"Winner" means the horse whose nose reaches the finish wire first.

## 11 VAC 10-140-30. Weighing out.

A jockey shall be weighed out by the clerk of scales no later than 15 minutes before post time. The following provisions shall apply to the weighing out of jockeys:

1. His clothing, saddle, girth, pad and saddle cloth shall be included in a jockey's weight;
2. ~~Number cloth, whip, head number, bridle, Bit, reins, blinkers, bridle, chamois, goggles, number cloth, overgirth, reins, safety helmet, tongue strap, tongue tie, muzzle, hood, noseband, shadow roll, bandages, boots and racing plates or shoes safety vest, and whip~~ shall not be included in a jockey's weight;
3. When a substitute jockey is required, he shall be weighed out promptly, and the name of the substitute jockey and weight announced to the public;
4. No jockey may carry overweight in excess of two pounds, without the permission of the owner or trainer;
5. If the overweight is more than one pound but less than five pounds, the jockey shall declare the amount of the overweight to the clerk of scales no later than 45 minutes before post time;
6. All overweights must be announced to the public;
7. A substitute jockey must be named, if the overweight exceeds five pounds;
8. If an underweight is discovered after wagering has commenced but before the start, the horse shall be returned to the paddock and the weight corrected;
9. A jockey shall not be weighed out unless the prescribed fee has been deposited with the horsemen's bookkeeper; and
10. Failure to have the prescribed fee on deposit with the horsemen's bookkeeper may be cause for the stewards to excuse the horse from racing.

## 11 VAC 10-140-40. Prohibitions.

No person other than the horse's owner, trainer, employees of the owner or trainer, paddock judge, horse identifier, assigned valet, steward, farrier, *pony rider*, or outrider shall touch a horse while it is in the paddock. The material used as a tongue tie shall be supplied by the horse's trainer, who shall affix the tongue tie in the paddock.

## 11 VAC 10-140-60. Changing equipment.

Permission must be obtained from the stewards for the following changes of a horse's equipment from that which the horse used in its last previous start:

1. To add blinkers to a horse's equipment or to discontinue the use of blinkers;
2. To use or discontinue use of a bar plate;
- ~~3. To use or discontinue the use of a tongue tie;~~
4. 3. To race a horse without shoes or with a type of shoes not generally used for racing; and
- ~~5. 4. To race a horse without the jockey carrying a whip.~~

*Changes of equipment shall be noted in the daily program. In the absence of such notation, the change of equipment shall be announced to the public and noted on the closed-circuit television system.* The stewards shall cause an appropriate public announcement or a display to be made in the paddock or elsewhere at the discretion of the stewards for the aforementioned changes of equipment.

## 11 VAC 10-140-130. Post time.

Post time shall be prominently displayed *on the closed-circuit television system and, if available, on the infield results board.* The starter shall endeavor to get the horses and jockeys at the starting post at post time so as to avoid any delay in effecting the start of the race.

## 11 VAC 10-140-140. Starter.

The horses and jockeys, lead ponies and riders, and outriders shall be under the supervision of the starter from the time the horses enter the racing surface until the race is started. While the horses, jockeys, lead ponies and pony riders are under his supervision, the starter shall:

1. Grant a delay to allow for the substitution of an injured jockey or for the repairing of broken equipment;
2. Load the horses into the starting gate in the order of their post position *or, with the approval of the stewards, load the horses into the starting gate by dividing the field and loading the horses from each section simultaneously;*
3. Report to the stewards any delay in the start; and
4. Recall the horses from a false start where a starting gate is not used.

However, the starter, in his discretion, may:

1. Allow other jockeys to dismount during any delay;
2. Unload the horses from the starting gate, if there is a lengthy delay in the start of a race; and
3. Load a fractious horse out of post position order.

## 11 VAC 10-140-170. Fair start.

If a door on the starting gate fails to open, a horse is inadvertently loaded into an incorrect post position, or otherwise fails to obtain a fair start, then the starter shall immediately report the circumstances to the stewards. In these circumstances, the stewards shall:

1. Post the "inquiry" sign on the infield results board;
2. Advise the public through the public address system and any other appropriate means to hold all mutuel tickets; ~~and~~

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# Proposed Regulations

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3. Make a determination of whether the horse obtained a fair start after consulting with the starter, other appropriate persons and reviewing the video tape recordings of the race; ; and

4. If the stewards determine that a horse did not obtain a fair start, they may order a refund on any or all of the portions wagered upon the horse; however, the horse shall be entitled to any purse money earned by its finish in the race.

## 11 VAC 10-140-180. Nonstarter.

~~If the stewards determine that the horse did not receive a fair start, then they shall declare the horse a nonstarter and follow the provisions of 11 VAC 10-20-340 B, C and D. If the horse is declared a nonstarter in a stakes race, futurity or other special event, then any entrance or starting fees shall be refunded.~~

## 11 VAC 10-140-310. Weighing in.

After a race has been run, a jockey shall pull up his horse, ride promptly to the clerk of scales, dismount ~~after obtaining the permission of the stewards~~, and be weighed in by the clerk of scales. The following provisions shall apply to the weighing in of jockeys:

1. The winning horse may be accompanied by an outrider after the horse has been pulled up and is returned to the clerk of scales;
2. If a jockey is prevented from returning to the clerk of scales because of an accident or injury to either horse or rider, the jockey may be conveyed to the winners' circle by other means or excused by the stewards from weighing in;
3. A jockey must, upon returning to the clerk of scales, unsaddle the horse he has ridden and no other person shall touch the horse except by its bridle;
4. No person shall help a jockey in removing from the horse the equipment that is to be included in the jockey's weight;
5. No person shall throw any covering over any horse at the place of dismounting until the jockey has removed all the equipment that is to be included in his weight;
6. A jockey shall carry over to the scales all pieces of equipment carried when weighing out, but after weighing in, the equipment may be handed to a valet;
7. A jockey shall ~~generally weigh out and weigh in at the same weight~~ *not weigh in at less weight than he weighed out*, and the stewards shall be informed of any underweight or overweight carried by the jockey; *and*
8. If a jockey weighs in two or more pounds less than the weight at which he weighed out, the horse shall be disqualified; ~~and~~ .
9. ~~A jockey shall not weigh in at more than two pounds over the weight at which he weighed out, unless affected by weather or track conditions, and the stewards shall be notified immediately by the clerk of scales.~~

VA.R. Doc. No. R02-199; Filed May 31, 2002, 2:37 p.m.

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**Title of Regulation: 11 VAC 10-150. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Harness Racing (amending 11 VAC 10-150-130 and 11 VAC 10-150-140; adding 11 VAC 10-150-190 and 11 VAC 10-150-200).**

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

### Summary:

*The amendments (i) eliminate the mandatory disciplinary action for kicking a horse, (ii) provide procedures for racing around pylons, such as at Oak Ridge in Nelson County, where there is no inner hub rail for harness racing, (iii) clarify the procedure for a driver to lodge an objection, and (iv) transfer the procedures for qualifying races and time trials for Standardbreds from 11 VAC 10-100.*

**Agency Contact:** William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail Anderson@vrc.state.va.us.

## CHAPTER 150.

### REGULATIONS PERTAINING TO HORSE RACING WITH PARI-MUTUEL WAGERING: ~~STANDARD BRED~~ HARNESS RACING.

## 11 VAC 10-150-130. Racing.

A. Although a leading horse is entitled to any part of the racing surface, except after selecting his position in the home stretch, the driver of the leading horse and any other driver committing any of the following acts shall be subject to disciplinary action:

1. Changing either to the right or left during any part of the race when another horse is so near him that it causes the other horse to shorten its stride or make a break;
2. Jostling, striking, hooking wheels or interfering with another horse or driver;
3. Crossing sharply in front of a horse or crossing over in front of a field of horses in a reckless manner, endangering other drivers;
4. Swerving in and out or pulling up quickly;
5. Crowding a horse or driver;
6. Carrying a horse out;
7. Causing confusion or interference among trailing horses;
8. Letting a horse pass inside needlessly or otherwise helping another horse to improve his position in the race;
9. Committing any act which shall impede the progress of another horse or causing him to break;
10. Changing course after selecting a position in the home stretch;
11. Swerving in and out, or bearing in and out, in a manner so as to interfere with another horse, cause another driver to change course or take back;
12. Driving in a careless or reckless manner;
13. Loud shouting or other improper conduct; and

14. Kicking a horse, which shall be defined as a blow or thrust with the foot against any part of the horse's body or to impel by striking with the foot. Removal of a foot from the stirrups in and of itself shall not constitute the offense of kicking. ~~The disciplinary action for kicking a horse shall not be less than a nine day suspension.~~

B. If at a racetrack that does not have a continuous solid inside hub rail a horse or part of the horse's sulky leaves the course by going inside the hub rail or other demarcation that constitutes the inside limits of the course, the offending horse shall be placed one or more positions where, in the opinion of the stewards, the action gave the horse an unfair advantage over other horses in the race or the action helped the horse improve its position in the race. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

**11 VAC 10-150-140. Objections.**

A driver ~~may~~ shall lodge an objection by promptly informing the patrol judge of his intention to lodge an objection ~~upon~~ prior to pulling up his horse after the race and dismounting. ~~Once the driver has dismounted,~~ He shall proceed immediately to the designated telephone in the paddock to ~~enter~~ explain his objection.

**11 VAC 10-150-190. Qualifying races.**

No Standardbred may be raced unless it has a race at the chosen gait, with a charted line in qualifying time, within 30 days of its last race. If a Standardbred does not have a charted line within 30 days of its race, then the horse must race in a qualifying race under the supervision of the stewards to determine its fitness for racing. The following provisions shall apply to qualifying races:

1. The licensee shall provide appropriate personnel for qualifying races to keep a charted line for each Standardbred in each qualifying race, an electronic timing device shall be in operation, and a photo-finish camera shall be in operation;
2. The licensee shall schedule as many qualifying races on as many days as is deemed appropriate for the horse supply, and the licensee shall maintain the racing surface in condition so that all Standardbreds have a reasonable opportunity to meet the qualifying time;
3. A Standardbred must race in a qualifying race if it has one race over a fast track that is not in the qualifying time as agreed upon by the licensee and the representative of the horsemen or on gait;
4. A Standardbred coming off the Veterinarian's List must race in a qualifying race, and the stewards, in their discretion, may require the horse to race in one or more qualifying races to establish its fitness for racing; and
5. The stewards, in their discretion, may authorize the collection of blood, urine or other samples of body substances from Standardbreds after competing in qualifying races.

**11 VAC 10-150-200. Time trials.**

For Standardbreds, time trials are permitted with the permission of the licensee and the commission provided that (i) the horse is subject to post-race testing; (ii) an electronic timing device is utilized; (iii) if the horse is accompanied by prompters, the prompters shall not precede the horse; and (iv) the stewards are present.

VA.R. Doc. No. R02-196; Filed May 31, 2002, 2:37 p.m.

\* \* \* \* \*

Title of Regulation: **11 VAC 10-160. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Steeplechase Racing (amending 11 VAC 10-160-10, 11 VAC 10-160-20, and 11 VAC 10-160-120 through 11 VAC 10-160-150; repealing 11 VAC 10-160-90).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Summary:

The amendments prohibit assistance at the start and substitute the preferred term "steeplechase" for "jump."

Agency Contact: William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail Anderson@vrc.state.va.us.

CHAPTER 160.

REGULATIONS PERTAINING TO HORSE RACING WITH PARI-MUTUEL WAGERING: ~~CONDUCT OF JUMP~~ STEEPLCHASE RACING.

**11 VAC 10-160-10. Definitions.**

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

"Field" means the spaces between the fences, the space between the starting point and the first fence, and the space between the last fence and the finish.

"~~Jump~~ Steeplechase racing" means horse racing conducted over a surface including obstacles.

**11 VAC 10-160-20. Generally.**

The provisions of 11 VAC 10-140-40 ~~et seq.~~, ~~Conduct of Flat Racing~~, shall apply equally to the conduct of ~~jump~~ steeplechase racing, except where this chapter specifies otherwise.

**11 VAC 10-160-90. Assistance at the start. (Repealed.)**

~~A trainer or assistant trainer, with the permission of the stewards, may "get behind" a horse at the start for the purpose of encouraging it to break.~~

**11 VAC 10-160-120. Fences.**

Any course and obstacles over which ~~jump~~ steeplechase races are to be conducted must conform to the standards established by the National Steeplechase Association. The following shall be a general guideline, when conditions permit:

1. There shall be at least five fences in every mile;

# Proposed Regulations

- Wings shall be a minimum of 20 feet long and a minimum of 6 feet at their highest point; and
- Beacons shall be a minimum of 4 feet in height.

## 11 VAC 10-160-130. NSA (National Steeplechase Association) licenses.

A trainer shall not be permitted to train horses for jump steeplechase races unless he possesses the appropriate permit from the commission and a trainer's license from the National Steeplechase Association. A jockey shall not be permitted to ride horses in jump steeplechase races unless possessing he possesses the appropriate permit from the commission and a jockey's license from the National Steeplechase Association.

## 11 VAC 10-160-140. Minimum age.

No horse shall be entered or shall start in a jump steeplechase race unless it is at least three years old.

## 11 VAC 10-160-150. Use of spurs.

Spurs may be used in jump steeplechase races, provided that they are of a type that will prod but not cut. All spurs must be approved by the stewards.

VA.R. Doc. No. R02-197; Filed May 31, 2002, 2:38 p.m.

## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

#### Bureau of Insurance

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

The distribution list that is referenced as "the attached list" in the following order is not being published. However, the list is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1<sup>st</sup> Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or may be viewed at the Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

**Title of Regulation:** 14 VAC 5-385. Rules Governing Aboveground Storage Tank and Pipeline Operators Group Self-Insurance Pools (INS-2002-00120) (adding 14 VAC 5-385-10 through 14 VAC 5-385-150).

**Statutory Authority:** §§ 12.1-13, 38.2-223, and 62.1-44.34:12 of the Code of Virginia.

**Public Hearing Date:** Hearing will be scheduled if requested.

Public comments may be submitted until September 3, 2002.

**Agency Contact:** Raquel Pino-Moreno, Senior Research Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, toll-free 1-800-552-7945 or e-mail rpinomoreno@scc.state.va.us.

#### Summary:

*The proposed regulations set forth the requirements for the approval and monitoring of aboveground storage tank and pipeline operators group self-insurance pools pursuant to §§ 62.1-44.34:12 and 62.1-44.34:16 of the Code of Virginia. This statute falls under the State Water Control Law, which is administered by the Virginia Department of Environmental Quality.*

AT RICHMOND, JUNE 7, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-00120

**Ex Parte:** In the matter of Adopting Rules Governing Aboveground Storage Tank and Pipeline Operators Group Self-Insurance Pools

#### ORDER TO TAKE NOTICE

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

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

WHEREAS, the Bureau of Insurance has submitted to the Commission proposed rules to be designated Chapter 385 of Title 14 of the Virginia Administrative Code and entitled "Rules Governing Aboveground Storage Tank and Pipeline Operators Group Self-Insurance Pools," and which include the rules at 14 VAC 5-385-10 through 14 VAC 5-385-150;

WHEREAS, the proposed rules set forth the requirements for the approval and monitoring of aboveground storage tank and pipeline operators group self-insurance pools pursuant to §§ 62.1-44.34:12 and 62.1-44.34:16 of the Code of Virginia; and

WHEREAS, the Commission is of the opinion that the proposed rules should be considered for adoption with an effective date of October 1, 2002;

THEREFORE, IT IS ORDERED THAT:

(1) The proposed rules to be designated Chapter 385 of Title 14 of the Virginia Administrative Code and entitled "Rules Governing Aboveground Storage Tank and Pipeline Operators Group Self-Insurance Pools," and which include the rules at 14 VAC 5-385-10 through 14 VAC 5-385-150, be attached hereto and made a part hereof;

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed rules shall file such comments or hearing request on or before September 3, 2002, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2002-00120;

(3) If no written request for a hearing on the proposed rules is filed on or before September 3, 2002, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed rules, may adopt the rules proposed by the Bureau of Insurance;

(4) AN ATTESTED COPY hereof, together with a copy of the proposed rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the rules by mailing a copy of this Order, together with a draft of the proposed rules, to all persons on the attached list; and by forwarding a copy of this Order, together with a draft of the proposed rules, to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations; and

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

CHAPTER 385.

RULES GOVERNING ABOVEGROUND STORAGE TANK AND PIPELINE OPERATORS GROUP SELF-INSURANCE POOLS.

**14 VAC 5-385-10. Purpose.**

*The purpose of this chapter is to set forth rules, forms, and procedural requirements that the commission deems necessary for the approval and monitoring of pools created pursuant to §§ 62.1-44.34:12 and 62.1-44.34:16 of the Code of Virginia. The pools are to assist operators of facilities in establishing proof of financial responsibility in connection with the Virginia Petroleum Storage Tank Fund (§ 62.1-44.34:11 of the Code of Virginia).*

**14 VAC 5-385-20. Definitions.**

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

*"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).*

*"Administrator" means the individual, partnership, corporation or other entity authorized to serve as a representative of a pool and its members in carrying out the policies of the board and managing the pool's activities.*

*"Commission" means the State Corporation Commission.*

*"Contribution" means the amount of payments required of each member in order to fund the pool's obligations under the pool plan.*

*"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes an aboveground storage tank or pipeline.*

*"Group self-insurance pool" or "pool" means a pool organized by two or more operators of facilities for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by § 62.1-44.34:16 of the Code of Virginia.*

*"Insolvent" means (i) the condition of a pool that has liabilities in excess of assets; or (ii) the inability of a pool to pay its obligations as they become due in the usual course of business.*

*"Member" means an operator of a facility that has entered into a member agreement and thereby becomes a member of a group self-insurance pool.*

*"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.*

*"Members' supervisory board" or "board" means the governing authority of the pool selected by the members to be responsible for determining contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency.*

*"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.*

*"Service agent" means any individual, partnership, corporation or other entity that may provide any or all of the insurance services including, but not limited to, claim adjustment, safety engineering, compilation of statistics, the preparation of contribution payments, loss reports, and other required self-insurance reports, and the administration of a claims fund. A service agent may invest contributions for the benefit of members as directed by the board.*

*"Service agreement" means the written agreement executed between the pool and a service agent, which sets forth the terms of the insurance services to be provided by a service agent to the pool.*

**14 VAC 5-385-30. Application for license as group self-insurance pool; requirements; approval; review.**

*A. Two or more operators of facilities may be licensed by the commission as a group self-insurance pool for the purpose of entering into agreements to pool their liabilities pursuant to*

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# Proposed Regulations

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§§ 62.1-44.34:12 and 62.1-44.34:16 of the Code of Virginia. The application for a license shall be made on a form prescribed by the commission and shall contain answers to all questions and shall be verified by the oath or affidavit of at least one member of the board of the pool and the administrator.

The license may be suspended, revoked or nonrenewed if the pool fails to comply with the conditions and requirements set forth in § 62.1-44.34:12 of the Code of Virginia and 14 VAC 5-385-40.

B. If after the review of the pool's application and other additional information required by the commission, the commission is satisfied that the pool's financial condition and method of operation are such that the pool reasonably may be expected to meet the obligations that it has undertaken, and has fully disclosed to its members or potential members the coverages and obligations of membership in the pool plan, the commission shall issue a license to the pool. The commission shall act on the application as promptly as practicable.

C. If the commission rejects the pool's application, notice shall be served by mail upon all interested parties stating the reason for the rejection. The pool shall be provided an opportunity to introduce evidence and be heard in a hearing convened within a timely manner. Such hearing may be formal or informal.

## **14 VAC 5-385-40. Application for license; additional requirements.**

A. An application submitted by a pool shall be accompanied by the following items, which shall be subject to the approval of the commission:

1. A copy of the articles of incorporation, constitution, or other instrument, which sets forth the powers of the pool.
2. A copy of the bylaws or the governing rules of the proposed pool, which may be included as part of the documents provided pursuant to subdivision 1 of this subsection.
3. A copy of the forms to be used for the member agreement and power of attorney, if any.
4. A copy of a financial plan, which sets forth in specific terms:
  - a. The insurance coverages to be offered by the group self-insurance pool, applicable deductible levels, and the maximum level of claims that the pool will self-insure;
  - b. The amount of reserves to be set aside for the payment of claims and the methods used to determine their sufficiency; funds and reserves should be identified by exposure areas;
  - c. A confirmation of excess insurance, if any, issued by a licensed insurer in an amount acceptable to the commission. However, the commission at its discretion may allow this insurance to be placed with an approved surplus lines insurer; and
  - d. A confirmation of aggregate excess insurance, if any, issued by a licensed insurer in an amount acceptable to

the commission. However, the commission at its discretion may allow this insurance to be placed with an approved surplus lines insurer.

5. A copy of a plan of management, which provides for all of the following:

- a. The means of establishing the governing authority of the pool;
- b. The responsibility of the governing authority for determining and collecting contributions to the pool, holding and investing assets, maintaining reserves, paying claims, levying and collecting assessments for deficiencies, disposing of surpluses, and the administration of the pool in the event of termination or insolvency;
- c. The basis upon which new members may be admitted to, and existing members may leave, the pool. This shall include the requirement that each member, as a condition for initial and continued coverage, submit a financial statement in a form acceptable to the commission, which demonstrates the solvency of the prospective member and its ability to meet its financial obligations; and
- d. Such other items as are necessary or desirable for the operation of the pool.

6. Designation of the initial or interim board and the administrator, together with pertinent biographical information for each member of the board and for the administrator or the principal officer or officers of the corporation serving as administrator. This information is to be submitted in a form acceptable to the commission.

7. The address in this Commonwealth where the books and records of the pool will be maintained at all times.

8. Information showing that the pool has, within its own organization or by contract with an approved service agent, sufficient facilities and competent personnel to service its program with respect to underwriting matters, compilation of statistics, loss prevention, safety engineering, and claims adjusting. Copies of all executed service agreements shall be filed with the commission.

9. A confirmation of a fidelity bond covering the administrator and its employees in a form and amount acceptable to the commission.

10. A projection of administrative expenses for the first year of operation as a total dollar amount and as a percentage of the estimated annual contributions.

11. Proof of net worth of the pool of at least \$100,000.

B. An application submitted by a group self-insurance pool shall be accompanied by a composite listing of the estimated annual gross contributions of each organizing member of the pool individually and in the aggregate for the pool, which, in the aggregate, shall be not less than 10 times the largest deductible being covered. The pool shall maintain a net worth in an amount equal to not less than 20% of the annual aggregate contributions for contracts currently in force; however, the minimum required net worth shall at no time be less than \$100,000.

C. Any subsequent revisions to items submitted under the provisions of 14 VAC 5-385-30 and this section shall be filed with the commission within 30 days of such revision and shall be subject to approval by the commission.

**14 VAC 5-385-50. Security deposit.**

A. Except as provided in subsection B of this section, each group self-insurance pool licensed by the commission shall maintain with the State Treasurer a security deposit of acceptable securities in an amount equal to 20% of the annual aggregate contributions or \$100,000, whichever is greater, for each pool plan year. The commission may, from time to time, release or reduce the security deposit requirement. The security deposit shall be held by the State Treasurer and shall be subject to the provisions of Article 7 (§ 38.2-1045 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

For the purposes of this chapter, acceptable securities shall be (i) investments allowed by §§ 2.2-4500 (legal investments for public sinking funds) and 2.2-4501 of the Code of Virginia (legal investments for other public funds); (ii) securities issued by other states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc.; (iii) revenue bonds rated Aa (AA) or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc. that are bonds issued by municipalities or political subdivisions of this Commonwealth or any other state; (iv) securities issued by the Federal Home Loan Bank; and (v) securities issued by the Federal Intermediate Credit Banks.

In addition to the minimum security deposit required by this section, the commission may require additional securities it considers appropriate after giving consideration to such factors as excess insurance and the financial ability of the group to meet its obligations under § 62.1-44.34:16 of the Code of Virginia.

B. As an alternative to the security deposit required by subsection A of this section, a group self-insurance pool may have an appropriate endorsement attached to its contracts for excess insurance. The endorsement shall provide that in the event the group self-insurance pool fails to pay its liabilities under § 62.1-44.34:18 of the Code of Virginia, the excess coverage insurer shall become liable immediately for 100% of the total liability and shall make payment as directed by the commission.

**14 VAC 5-385-60. Filing of reports; examination by the commission.**

A. Each pool shall file annually with the commission on or before each March 1, an annual statement showing its financial operations and condition for the preceding calendar year. The commission, for good cause, may extend the time for filing the annual statement by not more than 60 days. A copy of the pool's annual statement also shall be provided to each pool member at the same time it is filed with the commission. In addition, each pool shall file a copy of an audited statement of its financial operations and condition prepared by an independent certified public accountant within six months of the end of the pool's fiscal period.

1. The annual statement shall contain a report in detail of the pool's assets, outstanding liabilities, including the amount of claims paid to date and current reserves for losses, revenues and disbursements during the year, the investments of the pool's assets and all other information that the commission may deem necessary to secure a full and accurate knowledge of the financial affairs and condition of the pool.

2. In addition to the annual statement and audited financial statement, the commission may require any pool to file additional financial information, including interim financial reports and additional reports, exhibits or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions or affairs of the pool. The commission shall establish reasonable deadlines for filing these additional reports, exhibits or statements and may require verification as the commission may designate.

3. The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial statements may be reviewed by the commission.

B. The pool shall retain and have available for examination by the commission all executed copies of the application of each operator for membership in the pool.

C. Any person who knowingly or willfully makes or files any false or fraudulent statement, report or other instrument shall be charged with a Class 5 felony. If convicted, such person shall be guilty of a Class 5 felony.

D. The commission may examine the affairs, transactions, accounts, records, and assets of the pool as often as it deems necessary. The manner and frequency in which the examination of financial condition shall be conducted and the release of any reports of financial condition shall be as provided in Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

**14 VAC 5-385-70. Reserves.**

A. Each pool shall calculate the amount reasonably determined to be sufficient to provide for the payment of every loss or claim whether reported or unreported, arising on or prior to the date of any annual or other statement and it shall maintain a reserve liability in an amount estimated in the aggregate to provide for the payment of all such losses or claims and any expenses related thereto.

B. Each pool shall maintain reserves equal to the unearned portion of the gross contribution or assessment, if any, on unexpired or unexpired risks.

C. Each pool may receive credit for insurance or reinsurance recoverable from an insurance company licensed to transact such insurance in this Commonwealth, or any state of the United States or the District of Columbia and meeting the standards of solvency at least equal to those required in this Commonwealth. A pool may receive credit for insurance or reinsurance with any other insurer to the extent that funds are withheld as security for the payment of obligations thereunder if such funds are held subject to withdrawal by and are under the control of the pool. Such funds may include letters of credit subject to the approval of the commission. Credit may be

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received for insurance or reinsurance recoverable on the basis of an agreement entered into with incorporated and individual unincorporated underwriters having a trusteed surplus of at least \$100,000,000.

D. Credit may be received for insurance or reinsurance when the contract is:

1. Not cancelable or terminable for any reason except upon not less than 60 days written notice sent by registered or certified mail to (i) the pool and (ii) the commission; and
2. Automatically renewable at the expiration of the policy period except upon 60 days written notice sent by registered or certified mail to (i) the pool, and (ii) the commission.

E. No more than one pool, which shall be defined as the named insured, shall be covered by any contract or policy of excess liability insurance. Any contract of insurance or reinsurance shall be payable by the assuming insurer on the basis of the liability of the pool under the contract or contracts assumed without diminution because of the insolvency of the pool.

F. Copies of the complete contracts or policies of insurance or reinsurance, with all endorsements thereto, entered into by the pool for the benefit of the pool, shall be filed with the commission.

G. No pool shall expose itself to a net retained liability for any loss on any one risk or hazard in an amount exceeding 10% of the aggregate annual contribution, unless authorized by the commission.

## **14 VAC 5-385-80. Responsibilities of members' supervisory board.**

A. The members' supervisory board shall be responsible for holding and managing the assets of and directing the affairs of the pool and shall be elected in the manner prescribed by the pool's governing instruments. At least 75% of the board must be members of the pool, but a board member shall not be an owner, officer or employee of a service agent, its parent or any of its affiliated companies.

B. The board shall determine members' contributions to the pool and supervise the finances of the pool and the pool's operations to the extent necessary to assure conformity with law, this chapter, the member agreement, and the pool's governing instruments.

C. The board shall take all necessary precautions to safeguard the assets of the pool, including, but not limited to, the following:

1. Doing all acts necessary to assure that each member continues to be able to fulfill the obligations of membership, and reporting promptly to the commission any grounds or change in circumstances that may affect the pool's ability to meet its obligations such as withdrawal of a member;
2. Designating an administrator, or establishing alternative procedures acceptable to the commission, to administer the affairs of the pool, to carry out the policies established by the board, and to provide day-to-day management of the pool. The administrator shall furnish a fidelity bond in an

amount sufficient to protect the pool against the misappropriation or misuse of any monies or securities. Evidence of the bond shall be filed with the commission as a condition for licensing the pool. The administrator shall not be an owner, officer or employee of a service agent, its parent or any of its affiliated companies.

3. Retaining control of all moneys collected for the pool and the disbursement of such moneys by the pool. All assets of the pool shall remain in the custody of the board or the administrator. However, a claims fund for payment of benefits due and other related expenses may be established for the use of a service agent; and

4. Actively collecting delinquent accounts resulting from any past due contributions by members. Any member of a pool who fails to make the required contributions after due notice may be declared ineligible for the self-insurance privilege until this past due account, including cost of collection, has been paid or adequately provided for.

D. Neither the board nor the administrator shall use any of the moneys collected for any purpose unrelated to securing the members' liability or other rights and obligations under the member agreement and any administrative or other necessary expenses of the pool. Further, the board shall be prohibited from borrowing any moneys from the pool or in the name of the pool without first advising the commission of the nature and purpose of the loan and obtaining the commission's approval.

E. The board may dispose of any surplus as provided in 14 VAC 5-385-90.

F. The board shall assure that the office of the administrator and service agent of the pool and all pertinent records necessary to verify the accuracy and completeness of all reports submitted to the commission are maintained within this Commonwealth.

G. The board may adopt its own rules and procedures as considered necessary for the operation of the pool provided these rules and procedures are not inconsistent with § 62.1-44.34:12 of the Code of Virginia and this chapter.

H. The board may designate a service agent or agents.

## **14 VAC 5-385-90. Contribution requirements and distribution of surplus funds.**

A. For the purpose of funding the liability of a pool the members shall make contributions to the pool in the manner prescribed in the member agreement.

B. At the effective date of the license of the pool and for each subsequent year of operation, at least 25% of the estimated annual contribution payable by each member of the pool shall have been paid into a designated depository. The balance of the annual contribution shall be paid no later than the end of the ninth month of the pool year. At no time shall each member's combined payments be less than the total earned estimated annual contribution due at that time.

Any surplus assets (i.e., those assets in excess of the amount necessary to fulfill all obligations under § 62.1-44.34:16 of the Code of Virginia and this chapter) accumulated within a pool

year may be declared refundable by the board. The board shall establish the plan and the dates for payment of these excess assets. Payment of this surplus shall not be made until approved by the commission. Surplus assets accumulated within a pool year shall be used exclusively for the benefit of those members belonging to the pool during that pool year. The accounting of the surplus for each pool year shall provide for a separate itemization of the surplus for each pool year. The surplus assets of one pool year shall not be used to offset the deficiencies of other pool years.

However, the commission shall require that 3.0% or more of a pool's earned contributions for each fiscal accounting period be allocated to a contingency reserve. The contingency reserve shall be used at the direction of the pool's board subject to the approval of the commission. When the commission is satisfied that the contingency reserve is adequate for the needs of the pool, adjustments may be made by the commission as necessary to the contingency reserve or to contributions to the contingency reserve to maintain it at an established amount.

C. At the time of application each pool shall file with the commission the basis for establishing the annual contribution of its members. Such contributions shall be based on reasonable assumptions and certified by an actuary or other person satisfactory to the commission as to the sufficiency of such contributions. Any changes in annual contribution shall be filed in accordance with 14 VAC 5-385-40 C.

D. Each pool may levy upon its members an additional assessment whenever necessary to supplement the pool's surplus to assure payment of its obligations. A member may be assessed for any fiscal year during which the member participated in the pool. Such assessment may be made after the end of the pool's fiscal year and after the member has discontinued membership in the pool.

E. The board shall submit to the commission a report of the causes of the pool's surplus insufficiency, the assessments necessary to replenish it, and the steps taken to prevent a recurrence of such circumstances. The report shall be submitted within 30 days of any assessment of pool members under subsection D of this section.

#### **14 VAC 5-385-100. Member agreement.**

A. Every member of a group self-insurance pool shall execute a member agreement, which shall set forth the rights, privileges and obligations of the member, and the terms, coverages, limits, and deductible of the pool plan. The member agreement shall be subject to the approval of the commission and shall provide for, in substance, the following:

1. Election by pool members of a governing authority for the pool, a majority of whom shall be pool members;
2. A requirement that the members' supervisory board designate and appoint an administrator empowered to accept service of process on behalf of the pool and authorized to act for and bind the pool and its members in all transactions relating to or arising out of the operation of the pool;
3. The right of substitution of the administrator and revocation of the power of attorney and rights thereunder;

4. A financial plan, which is described in 14 VAC 5-385-40 A 4;

5. A management plan, which is described in 14 VAC 5-385-40 A 5; and

6. A requirement that the pool, at the request of a member, provide without unreasonable delay, to any person designated by the member, proof of the coverages provided by the pool, including insurance or reinsurance, applicable deductible levels, and the maximum liability that the pool will retain.

Such member agreement may also contain such other provisions not inconsistent with law or this chapter.

B. The first page of the member agreement shall include a summary that shall disclose:

1. In regard to coverage:
  - a. The coverages provided;
  - b. The period of the coverage;
  - c. The amount of the deductible, if any, per claim or in the aggregate; and
  - d. For each coverage, the maximum amount of coverage to be borne by the pool.
2. In regard to the contribution:
  - a. The contribution and dates payments are due;
  - b. The basis upon which each member's contribution is determined; and
  - c. Whether any additional assessments of the members may be made.
3. In regard to excess coverage of the pool:
  - a. A description of the excess coverage for the pool as to its coverage per occurrence, coverage per occurrence per person, if appropriate, and in the aggregate for each coverage offered; and
  - b. A statement that there is no excess coverage for the pool if the pool has not obtained such coverage.

C. The member agreement shall include a prominent disclosure notice that must be signed by the member or a duly authorized officer or representative of the member. The disclosure notice shall use the following or substantially similar language:

A group self-insurance pool for operators of facilities is not protected by any Virginia insurance guaranty association against default due to insolvency. In the event of insolvency, members and persons filing claims against members may be unable to collect any amount owed to them by the pool regardless of the terms of the member agreement. In the event the pool is unable to pay, a member may be liable for any and all unpaid claims against such member.

#### **14 VAC 5-385-110. Servicing of pool.**

A. A service agent for the pool shall apply for and shall be subject to the approval of the commission before entering into

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a contract with a pool and shall satisfy the commission that it has adequate facilities and competent personnel to fulfill its obligations to the pool and comply with this chapter.

B. A service agent shall maintain a resident agent in this Commonwealth and that agent shall be authorized to act for a service agent on any and all matters covered by the service agreement.

C. A service agent shall file with the commission copies of all contracts entered into with the pool as they relate to the services to be performed. The service contract shall state that a service agent agrees to handle all claims covered by the service agreement incurred during the contract period to their conclusions without additional compensation unless approval to transfer them is obtained from the commission prior to such transfer.

D. A service agent shall furnish a fidelity bond covering its employees in an amount sufficient to protect all moneys for which he has a fiduciary responsibility.

E. Upon satisfactory compliance with the above provisions, a certificate of approval as a recognized and authorized service agent shall be issued to a service agent. Failure to comply with any of the provisions of this chapter or any order of the commission within the time prescribed shall be considered justification for withdrawing the certificate of approval.

The commission shall give 10 days prior notice of such withdrawal. The notice shall be served personally, or by certified or registered mail, upon all interested parties setting forth the reason for withdrawal, and providing a service agent an opportunity to introduce evidence and be heard. If, after a hearing, which may be formal or informal, a service agent's certificate of approval is withdrawn, this withdrawal shall become effective 30 days after issuance of the commission's order or within such shorter or longer period as the commission may consider necessary to protect the interests of the pool, its members, and their employees.

F. Each individual, partnership, corporation or other entity approved to act as a service agent for a pool may be required to file with the commission an annual statement of financial condition within four months of the completion of its fiscal year.

G. The pool, through its own personnel, may provide the services performed by a service agent upon approval by the commission.

## **14 VAC 5-385-120. Termination of pool members.**

A. Membership in a pool may be terminated for nonpayment of premium or misrepresentation by the member after 15 days written notice has been given to the member, the commission, and the Department of Environmental Quality. A member may be terminated without cause after 60 days written notice has been given to the member, the commission, and the Department of Environmental Quality.

B. The pool shall remain liable for all claims applicable to the period during which an operator was a member of the pool, including the period required for termination of membership.

## **14 VAC 5-385-130. Revocation of license; voluntary dissolution of pool; merger of pools.**

A. The commission may suspend, revoke or fail to renew a pool's license as provided in 14 VAC 5-385-30.

The commission shall give 10 days prior notice to a pool of the proposed suspension, revocation or nonrenewal. The notice shall be served personally, or by certified or registered mail, upon all interested parties and shall state the reasons for the proposed suspension, revocation or nonrenewal and provide the pool with an opportunity to introduce evidence and be heard. If, after a hearing, which may be formal or informal, the pool's license is suspended, revoked or nonrenewed, such action shall become effective 30 days after the commission's order is issued.

Any suspension may be terminated by the commission upon proof by the pool that the original reasons for suspension have been satisfactorily corrected, and that the pool continues to meet all other requirements for a license.

B. Before a pool may voluntarily dissolve, it shall present a plan of dissolution to the commission for approval. Such a plan shall provide for the payment of all incurred losses and expenses of the pool and its members, including all incurred but not reported losses, as certified by an actuary, to the extent of the pool's assets. No assets of the pool may be used for any other purpose until payment of all such losses and expenses is provided for.

C. Subject to the approval of the commission, a pool may merge with another group self-insurance pool for operators of facilities if the resulting pool assumes, in full, all obligations of the merging pools. The commission may hold a hearing on the merger and shall do so if any party, including a member of either pool, so requests.

## **14 VAC 5-385-140. Penalties.**

Penalties for failure to comply with this chapter shall be as set forth in § 12.1-13 of the Code of Virginia.

## **14 VAC 5-385-150. Severability.**

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R02-212; Filed June 11, 2002, 9:01 a.m.

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## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD FOR CONTRACTORS**

Title of Regulation: **18 VAC 50-22. Board for Contractors Regulations** (amending **18 VAC 50-22-100, 18 VAC 50-22-140, 18 VAC 50-22-170, and 18 VAC 50-22-250**).

## **18 VAC 50-30. Tradesman Rules and Regulations (amending 18 VAC 50-30-90 through 18 VAC 50-30-130 and 18 VAC 50-30-150).**

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Public Hearing Date: August 21, 2002 - 2 p.m.

Public comments may be submitted until August 30, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Eric L. Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, (804) 367-2785, FAX (804) 367-2474 or e-mail [olson@dpor.state.va.us](mailto:olson@dpor.state.va.us).

Basis: Section 54.1-113 of the Code of Virginia authorizes the board to revise fees for certification or licensure and renewal so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 of the Code of Virginia describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department..."

Purpose: The purpose of the proposed changes is to increase licensing fees for regulants of the Board for Contractors. The board must establish fees adequate to support the costs of board operations and a proportionate share of the department's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation receives no general fund money, but instead is funded almost entirely from revenue collected for license applications, renewals, examination fees, and other licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The proposed increase in fees is necessary in order to maintain the level of protection currently provided by the Board for Contractors. The enforcement of the statutes and regulations increases the level of public safety and welfare by ensuring that fraudulent and unscrupulous contractors are disciplined quickly and efficiently. The ability of the board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted licenses.

Substance: The existing regulations are amended to increase fees associated with the licensing and certification of regulants of the Board of Contractors.

Issues: The Callahan Act requires DPOR to review each board's expenditures at the close of each biennium and to

adjust fees if necessary. The Board for Contractors closed the 1998-00 biennium with a Callahan Act percentage of 18.2% and a cash balance of \$1,096,718. However, by the close of the 2000-02 biennium, the board is expected to incur a deficit of \$571,582 and a Callahan Act percentage of -8%.

Once the board exhausts its cash balance and begins fully using its current revenues, there will be no additional source of revenue to pay its ongoing operating expenses other than to borrow from the cash balances of other boards. Because the Board for Contractors is the department's largest board, those cash balances could not support its operations for more than a few months, and would only delay the need for fee increases briefly. Any amounts borrowed from other boards would have to be repaid and would result in even larger increases in proposed fees in order to repay the deficit.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit is actually incurred. To avoid the upcoming deficit and the need to increase fees to more than needed for ongoing operations, the new fees will need to become effective by the beginning of the 2002-04 biennium. Otherwise, the board's deficit will increase and the new fees may be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to level of income.

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

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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.

Summary of the proposed regulation. The Board of Contractors proposes to raise licensing fees.

Estimated economic impact. The Board of Contractors (board) attempts to approximately match revenues from fee collection with expenses. The Department of Professional and Occupational Regulation (DPOR) expects that the board's revenues for the 2000-02 biennium will finish at 8.0 percent less than expenses. The board proposes to raise fees for licenses under the Board for Contractors Rules and Regulations and the Board for Contractors – Tradesman Rules and Regulations in order to approximately match their

# Proposed Regulations

expenses. The board proposes to raise fees by the following amounts:

## Contractors

- Class C Initial License: increase from \$65 to \$125
- Class C License Renewal: increase from \$50 to \$100
- Class C License Reinstatement: increase from \$140 to \$225
- Class B Initial License: increase from \$85 to \$150
- Class B License Renewal: increase from \$70 to \$135
- Class B License Reinstatement: increase from \$170 to \$285
- Class A Initial License: increase from \$100 to \$175
- Class A License Renewal: increase from \$90 to \$150
- Class A License Reinstatement: increase from \$190 to \$325
- Change a Designated Employee or Qualified Individual: increase from \$25 to \$30
- Additional Classification or Specialty Designation: increase from \$25 to \$30

## Tradesmen

- Tradesman Initial License: increase from \$40 to \$75
- Tradesman License Renewal: increase from \$25 to \$35
- Tradesman License Reinstatement: \$50 to \$75
- Tradesman Card Exchange Application and Processing: increase from \$10 to \$20
- Backflow Prevention Device Worker Certification Card Exchange Application and Processing: increase from \$10 to \$20
- Backflow Prevention Device Worker Certification Card Renewal: increase from \$25 to \$35
- Backflow Prevention Device Worker Certification Card Reinstatement: increase from \$50 to \$75
- Duplicate Card, First Request: increase from \$10 to \$30
- Duplicate Card, Second Request: increase from \$20 to \$30
- Duplicate Card, First Request: increase from \$40 to \$45
- Additional Trade Designation: increase from \$25 to \$30

A major factor in the increase in expenses relative to fees collected is a projected 31% increase in enforcement costs from the 1998-00 biennium to the 2000-02 biennium. DPOR attributes much of this increase to improved public awareness of the agency's enforcement role, leading to increased reporting of unscrupulous behavior by contractors and tradesmen. Increased enforcement can increase public welfare by reducing the incidence of fraud and substandard workmanship encountered by the public. Unscrupulous contractors and tradesmen may lose their licenses and as the increase in enforcement becomes better known, some potentially unscrupulous contractors or tradesmen may refrain from unscrupulous behavior because of increased fear of

being caught. If customers of contractors and tradesmen become significantly less likely to encounter substandard work or fraudulent financial practices due to the increased enforcement, then perhaps the benefit of increased enforcement will exceed the cost of higher licensing fees for contractors and tradesmen.

Businesses and entities affected. The proposed regulations affect the 47,475<sup>1</sup> contractors and 29,900<sup>2</sup> tradesmen licensed in Virginia.

Localities particularly affected. The proposed increase licensing fees affect contractors and tradesmen throughout the Commonwealth.

Projected impact on employment. The proposed rise in licensing fees increases the cost of doing business. The increased cost of doing business may make a small number of potential projects no longer profitable. Thus, the increase in fees may have a small negative impact on employment.

Effects on the use and value of private property. The proposed fee increases will slightly decrease the value of contractors and tradesmen's businesses.

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

## Summary:

*The proposed amendments increase licensing and certification fees for regulants of the Board for Contractors.*

## **18 VAC 50-22-100. Fees.**

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge specified below:

Fee Type	When Due	Amount Due
Class C Initial License	with license application	<del>\$65</del> \$125
Class B Initial License	with license application	<del>\$85</del> \$150
Class A Initial License	with license application	<del>\$100</del> \$175
Declaration of Designated Employee	with license application	\$25 \$30
Qualified Individual Exam Fee	with exam application	\$20
Class B Exam Fee	with exam application (\$20 per section)	\$40
Class A Exam Fee	with exam application (\$20 per section)	\$60
Water Well Exam	with exam application	\$40
Dishonored Check Fee	with replacement check	\$25

Note: A \$25 Recovery Fund assessment is also required with each initial license application. If the applicant does not meet all requirements and does not become licensed, this

<sup>1</sup> Source: DPOR

<sup>2</sup> Ibid.

assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.

**18 VAC 50-22-140. Renewal fees.**

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

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

Fee Type	When Due	Amount Due
Class C Renewal	with renewal application	<del>\$50</del> \$100
Class B Renewal	with renewal application	<del>\$70</del> \$135
Class A Renewal	with renewal application	<del>\$90</del> \$150
Dishonored Check Fee	with replacement check	\$25

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

**18 VAC 50-22-170. Reinstatement fees.**

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge specified below:

Fee Type	When Due	Amount Due
Class C Reinstatement	with reinstatement application	<del>\$140</del> \$225*
Class B Reinstatement	with reinstatement application	<del>\$170</del> \$285*
Class A Reinstatement	with reinstatement application	<del>\$190</del> \$325*
Dishonored Check Fee	with replacement check	\$25

\* Includes renewal fee listed in 18 VAC 50-22-140.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once six months from the expiration date of the license has passed.

**18 VAC 50-22-250. Fees.**

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or

regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge specified below:

Fee Type	When Due	Amount Due
Change of Designated Employee	with change form	<del>\$25</del> \$30
Change of Qualified Individual	with change form	<del>\$25</del> \$30
Addition of Classification or Specialty	with addition application	<del>\$25</del> \$30
Dishonored Check Fee	with replacement check	\$25

**NOTICE:** The forms used in administering 18 VAC 50-22, Board for Contractors Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Board for Contractors, 3600 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

- Introduction, 27INTRO (6/00).
- Trade-Related Examinations and Qualifications Information, 27EXINFO (6/00).
- License Application, 27LIC (~~6/00~~ rev. 5/02).
- Sample.
- Sample Guidelines.
- ~~Financial Statement, 27FINST (6/00).~~
- Additional License Classification/Specialty Designation Application, 27ADDCL (~~6/00~~ rev. 5/02).
- Change of Qualified Individual Application, 27CHQI (~~6/00~~ rev. 5/02).
- Change of Designated Employee Application, 27CHDE (~~6/00~~ rev. 5/02).
- Change of Corporate Officers Form, 27CHCO (6/00).
- Experience Reference, 27EP (6/00).
- ~~Candidate Information Bulletin, P:\...CIB\VA\Contractor CIB.doc (2/00).~~
- ~~Contractor Examination Application.~~
- Contractor Examination Candidate Information Bulletin, copyright 2002 by PSI Corporation.*
- Virginia Contractors Registration Form (7/02).*
- Building Technical Examination Requirements (4/00).
- Certificate of License Termination, 27TERM (6/00).

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

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and the date of receipt by the department or its

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# Proposed Regulations

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agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge of \$25.

C. Tradesman license - original fee - by examination. The fee for an initial tradesman license shall be ~~\$40~~ \$75.

D. Tradesman license - original fee - without an examination, through successful completion of an appropriate apprenticeship program offered through the Virginia Voluntary Apprenticeship Act. The fee for an initial tradesman license shall be ~~\$40~~ \$75.

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

In order to obtain the tradesman card issued by the Board for Contractors, the individual must use the current application form provided by the Department of Professional and Occupational Regulation. The fee for card exchange application and processing is ~~\$40~~ \$20. As a matter of administrative necessity, the department will assign expiration dates in a manner that will stagger renewals for these applicants. Once the initial period ends, all renewals will be for a period of 24 months.

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

In order to obtain the backflow prevention device worker certification card issued by the board, the individual must use the current application form provided by the department. The fee for the card exchange application and processing is ~~\$40~~ \$20. The term of certification will be for a period of 24 months.

G. Backflow prevention device worker certification through the "grandfather" clause of § 54.1-1131 B 2 of the Code of Virginia expired on July 1, 1999. ~~The fee for an initial certification shall be \$40.~~

H. Commencing on November 1, 2001, the Department of Professional and Occupational Regulation will add the trades of liquefied petroleum gas fitter and natural gas fitter provider to the trades regulated by the Board for Contractors. The fee for the initial licensure shall be ~~\$40~~ \$75.

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

The examination fee shall consist of the administration expenses of the department resulting from the board's examination procedures and contract charges. Exam service contracts shall be established through competitive negotiation, in compliance with the Virginia Public Procurement Act (§ ~~44-35~~ 2.2-4300 et seq. of the Code of Virginia). The current examination shall not exceed a cost of \$100 for the journeyman exam, \$125 for the master exam for any of the trades, or \$100 for the backflow prevention device worker exam.

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

The fee for a duplicate card shall be as follows:

First request	<del>\$40</del> \$30
Second request	<del>\$20</del> \$30
Third request	<del>\$40</del> \$45 and a report sent to the Enforcement Section.

Any request for the issuance of such a card must be in writing to the board.

## 18 VAC 50-30-120. Renewal.

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

B. The fee for renewal of a tradesman license is ~~\$25~~ \$35. The fee for renewal of a backflow prevention device worker certification card is ~~\$25~~ \$35. All fees required by the board are nonrefundable and shall not be prorated.

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

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

The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ ~~9-6.14.1~~ 2.2-4000 et seq. of the Code of Virginia).

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

## 18 VAC 50-30-130. Reinstatement.

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

B. The fee for reinstatement of a tradesman license (all designations) is ~~\$50~~ \$75 (this is in addition to the ~~\$25~~ \$35 renewal fee, which makes the total fee for reinstatement ~~\$75~~ \$110). The reinstatement fee for a backflow prevention device worker certification card is ~~\$50~~ \$75 (this is in addition to the ~~\$25~~ \$35 renewal fee, which makes the total reinstatement fee ~~\$75~~ \$110). All fees required by the board are nonrefundable and shall not be prorated.

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

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

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

Any tradesman activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia.

C. The board may deny reinstatement of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ ~~9-6.14:4~~ 2.2-4000 et seq. of the Code of Virginia).

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

## 18 VAC 50-30-150. Changes, additions, or deletions to trade designations.

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

The fee for each change or addition is ~~\$25~~ \$30. All fees required by the board are nonrefundable.

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

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

**NOTICE:** The forms used in administering 18 VAC 50-30, Tradesman Rules and Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Board for Contractors, 3600 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

### FORMS

Tradesman License Application, 2710LIC (rev. ~~9/04~~ 12/01).

Backflow Prevention Device Worker Certification Application, 2710BPD (rev. ~~9/04~~ 11/01).

~~Complaint Form (rev. 8/00).~~

Liquefied Petroleum/Natural Gas Fitting Tradesman License Application, 2710LNG (eff. 12/01).

VA.R. Doc. No. R01-221; Filed June 5, 2002, 12:34 p.m.

### BOARD OF NURSING

**Title of Regulation:** 18 VAC 90-50. Regulations Governing the Certification of Massage Therapists (amending 18 VAC 90-50-10, 18 VAC 90-50-40, 18 VAC 90-50-50, 18 VAC 90-50-70, 18 VAC 90-50-80, and 18 VAC 90-50-90; adding 18 VAC 90-50-75; repealing 18 VAC 90-50-60).

**Statutory Authority:** §§ 54.1-2400, 54.1-103 and 54.1-3005 of the Code of Virginia.

**Public Hearing Date:** July 16, 2002 - 1:45 p.m.

Public comments may be submitted until August 31, 2002.

(See Calendar of Events section for additional information)

**Agency Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

**Basis:** Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

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Section 54.1-103 of the Code of Virginia authorizes health regulatory boards to impose additional requirements on certificate holders seeking renewal.

Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia authorizes the Board of Nursing to regulate massage therapists.

**Purpose:** The purpose of the amended regulation is to clearly state in regulation the qualifications necessary for a person to become certified as a massage therapist and the requirements necessary to demonstrate continuing competency. The qualifications for initial certification are set forth in the Code of Virginia, but the board determined that persons practicing massage therapy are still uncertain or unaware of the need to be certified. Therefore, it is proposed that the requirements be specified in regulation and that the provisions for "grandfathering" be deleted since those avenues to certification expired in June of 1998. It has not been required for certification by endorsement that applicants have credentials substantially equivalent to those required in Virginia. Without such a regulation, the board had no criteria on which to base a decision on endorsement, so it was possible for less qualified individuals to become certified in Virginia. To assure the public that massage therapy is being delivered ethically and competently by persons certified by the board, regulations must consistently provide minimal education and examination standards.

As an emerging profession, massage therapy is being utilized more and more for therapeutic purposes to alleviate the symptoms of disease or injury. Patients are seeking relief from symptoms of fibromyalgia, cancer, arthritis and other conditions. It is essential for public safety for massage therapists to remain current in their knowledge and technique to appropriately treat consumers and to be able to recognize the indications that a person should be referred to a health care practitioner. Virginia requires only 500 hours of education for certification whereas some states have adopted 1,000 hours as the minimum requirement. In addition, many massage therapists were initially certified under a "grandfather" provision that required only 200 hours of training and practice or 20 hours of training and at least 10 years of practice prior to July 1, 1997. Since the initial education of a certified massage therapist may have been minimal, the Massage Therapy Advisory Committee with the board's concurrence recommended some evidence of continuing competency for renewal of certification as means of protecting the public health and safety.

**Substance:** Amendments specify in regulation the qualifications for certification that are currently in the Code of Virginia and delete the provisions for "grandfathering" that are no longer applicable. The amendments clarify that to be certified by endorsement, a massage therapist must have met requirements substantially equivalent to those in Virginia. An unnecessary section on provisional certification is repealed. If a person practices massage therapy without using the designation of "massage therapist" or "certified massage therapist," he may do so without certification by the board; so there is no need for provisional certification.

The board proposes as a condition of renewal that massage therapists demonstrate evidence of continuing competency by

holding current certification from the National Certification Board for Therapeutic Massage and Bodywork, the credentialing body for the profession, or complete at least 25 hours of continuing education or learning activities within the biennium. Finally, the Standards of Practice and the Code of Ethics of the NCBTMB are incorporated by reference into this chapter.

**Issues:** Issues in the regulation of massage therapists and the alternatives to dealing with those issues were addressed by the Massage Therapy Advisory Committee and the board as follows:

1. Limitations of certification. The major issue for massage therapy in Virginia involves the potential risk to the public of massage therapy services being delivered by persons with little or no training and no regulatory oversight. Legislation passed in 1997 instituted a certification program with title protection for "massage therapist" or "certified massage therapist." Certification does not ensure that an insufficiently trained person cannot perform the service; it only protects the use of certain titles. Therefore, experience has shown that persons with considerably less training have adopted other titles, such as "massage therapy practitioner" and are engaged in practicing massage therapy on the public.

There were a number of alternatives discussed by the committee, none of which involve a change in regulations since this is primarily a statutory issue. Without a change in the Code, the board has no authority to restrict the practice of massage therapy to only those persons it certifies. The Code would need to be amended to provide for licensure or mandatory certification for the practice of massage therapy, as it is currently defined in § 54.1-3000 of the Code of Virginia. A legislative initiative is not being recommended by the Board of Nursing at this time, but may be undertaken by other interested parties. In addition, massage therapists are working with the localities to restrict the practice of massage therapy to those persons who hold certification from the Board of Nursing. That has already occurred in the City of Richmond, and the effort to expand those restrictions is underway.

2. Continuing competency requirements. Comments received on the periodic review raised the issue of continuing competency for practitioners. Massage therapists, as with other health care practitioners, need to learn new information and techniques in order to remain minimally competent to treat the public. Massage therapists benefit from learning experiences that improve their skills, further their knowledge about the clinical indicators that suggest a referral to a physician, and remind them of ethical dilemmas. In the opinion of the advisory committee and others in the profession, the basic 500-hour course required for certification is not adequate to ensure that a practitioner continues to be competent throughout his profession.

Alternatives discussed include:

- a. Continued certification or recertification by the national certifying body, the National Certification Board for Therapeutic Massage and Bodywork. Continued certification requires 50 hours of continuing education,

both approved and nonapproved courses, over a four-year period.

b. Hours of continuing education similar to that required by the certifying agency or 25 hours for each biennial renewal cycle. A further issue with this alternative would be the determination of approved courses. To avoid having the board become the accrediting body for all continuing education in massage therapy, regulations would need drafted to recognize the NCBTMB or other credentialing bodies.

c. Other types of learning experiences or requirements that would provide some assurance that certified massage therapists continue to be minimally competent. That could include practical experience, re-examination, or self-directed learning.

It was suggested that NCBMTB recertification be the standard for demonstrating continuing competency, but the board determined that other alternatives must be available for those who had allowed their national certification to lapse or had been initially certified by the board without NCBMTB certification. Based on review of the requirements of NCBMTB, the board determined that a combination of the alternatives was the most reasonable and least burdensome approach. Regulations offer the massage therapist a variety of options including recertification by either retesting or acquiring continuing education or participation in approved and nonapproved CE courses or activities.

3. Type and amount of continuing competency requirements. It was suggested during comment on the regulations that the board adopt one standard for demonstrating continuing competency for those who held NCBMTB certification and another standard for those who were certified with lesser credentials during the "grandfathering" period prior to 1998. Such a differential standard would be impossible to enforce without tagging the records of all certified therapists with some indication of their credentials for certification. That methodology has never been adopted by the board and would discriminate against those who are legitimately certified, albeit by a less stringent standard. Therefore, the board chose to offer options for recertification or CE, based on what the practitioner determines is the most advantageous method for maintaining his skills and competencies.

The massage therapist who holds national certification by NCBTMB may choose to maintain that certification that would suffice to demonstrate continued competency for renewal of a Virginia certificate. He may do so by acquiring 50 hours of CE over a four-year period - half in Category A from approved sponsors and half in Category B from nonapproved sponsors. He also has the option of being recertified by NCBTMB by retesting to determine currency in massage technique and knowledge.

For those who do not want to recertify with NCBTMB, the board requires 25 hours divided into two types: (i) in Category A continuing learning activities, the 12.5 hours required biennially must be offered by a sponsor or organization that is sanctioned by the NCBTMB and that

provides documentation of hours to the practitioner; and (ii) in Category B continuing learning activities, a maximum of 12.5 hours earned biennially may or may not be offered by an approved sponsor or organization but must be activities that expand the skills and knowledge related to the clinical practice of massage therapy; certificate holders document and record their own participation. Examples of Category A activities would be conferences, workshops, home study, video or computer programs with a required examination. Category B activities may include formal programs by nonapproved sponsors, teaching or authoring an article.

The NCBTMB requires two hours of professional ethics during each four-year certification period. The board believes that ethical principles are essential for public health and safety in the practice of massage therapy. Topics such as boundary issues, client confidentiality, and legal guidelines are accepted for hours in ethics and may be incorporated into other courses, provided there is documentation from the provider stating the amount of time that was devoted to the topic.

Advantages to massage therapists. The proposed continuing competency requirements are intended to provide some assurance to the public that certified massage therapists are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to certificate holders. Massage therapists believe that many of their colleagues are currently certified by NCBTMB or already engage in enough learning activities to meet the requirements and should only have to maintain documentation of those activities and hours. Half of the 25 hours may be earned by the practitioner on his own time and schedule and may be hours that are useful to the therapist but not accredited or documented by an organization. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

Disadvantages to massage therapists. For those practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. While opportunities for obtaining continued competencies exist that are at a minimal cost, there will be some additional expense associated with renewal of a certificate. However, it was determined by enactment of the statute and by the board's concurrence that those practitioners and their patients would greatly benefit from continuing learning requirements, and that the public is better protected if there is some assurance of that effort.

Advantages or disadvantages to the public. There are definite advantages of the proposed amended regulations to the public, who will have greater assurance that the massage therapists certified by the board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients. There are also definite advantages to the public that at least one hour in ethics is required as a part of the continuing education. That requirement coupled with the Standards of Practice and Code of Ethics incorporated by reference will give the public assurance that persons who hold the title of certified massage therapist have a high standard by which they should conduct their practice.

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## Proposed Regulations

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Advantages or disadvantages to the agency. As with the regulation of other health professions, there is some additional burden for the department in administering a continuing education requirement. After each renewal cycle, there may be an audit of a percentage of the certificate holders, who will be required to submit documentation of compliance. Those documents (NCBTMB certification, certificate of completion from a provider, or transcript from a massage therapy education program) must be reviewed to determine hours of completion in each category. For those who are found out of compliance or who have not indicated compliance on their renewal form, some remedial action will be required. If the practitioner fails to comply with requirements within a given time frame, a disciplinary action will begin.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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.

Summary of the proposed regulation. The Board of Nursing is proposing to (i) incorporate in the regulation the statutory requirements on initial certification for massage therapists and delete the obsolete "grandfathering" rule currently included in the regulations, (ii) establish continuing education requirements for certification renewal, (iii) change requirements for licensure by endorsement, and (iv) delete the provisional certification requirements.

Estimated economic impact. The qualifications for initial certification for massage therapy are established in § 54.1-3029 of the Code of Virginia. The code specifies two ways for certification. The first way is obtaining at least 500 hours of training from an approved program and passing the national certification exam. In addition to that, the Board of Nursing (the board) may have certified an applicant before July 1998, (a) who had completed 200 hours of training and had been practicing massage therapy prior to July 1, 1997, (b) who had completed 20 hours of training and had had at least 10 years of practice prior to July 1, 1997. The second way, known as the "grandfathering" rule, expired in June 1998. Although expired, the current regulations still contain a list of the requirements in the regulation for certification through this rule. Also, the current regulations do not list the original qualifications for certification, but only reference the Code of Virginia. According to the Department of Health Professions (the agency), this has been creating some confusion among the applicants. Although the qualifications for certification are included in the Code of Virginia, some of the applicants have been falsely assuming that the current certification requirements were those listed in the regulations for certification under the obsolete grandfathering rule.

The proposed amendments will add in the regulations the qualifications for certification that are in the Code of Virginia and delete the provisions for the grandfathering rule that are no longer valid. Also, new language is added to clarify that those persons who had fulfilled the criteria for certification under the grandfathering rule must have submitted an application to the board prior to June 30, 1998. These proposed changes will likely improve the clarity of the regulation and reduce the confusion on the eligibility criteria.

Another proposal will establish continuing education requirements for certification renewal. According to the agency, massage therapy is an emerging profession and being utilized more and more for therapeutic purposes to alleviate the symptoms of disease or injury. Massage therapy is known to provide relief from symptoms of fibromyalgia, cancer, arthritis, and other health conditions.<sup>1</sup> Because of its widespread use and the potential effects on customer's health, the board believes that it is important for massage therapists to remain current in their knowledge and techniques to appropriately treat consumers and to be able to recognize the indications that a person should be referred to a health care practitioner. Additionally, current initial certification requirements and the requirements for certification under the grandfathering rule are believed to be significantly less than what may be appropriate. For example, the agency indicates that Virginia requires only 500 hours of education for certification whereas some states have adopted 1,000 hours as the minimum requirement. The requirements for certification under the grandfathering rule were even lower. The advisory committee that suggested the proposed changes determined that qualifications for initial certification are not adequate to ensure continuous competency throughout a therapist's practice.

Since the initial education of a certified massage therapist is believed to have been minimal, the board is proposing to establish new continuing education requirements to keep the massage therapists updated in their professional knowledge. The proposed amendments will offer two options to satisfy the continuing education requirements, which will allow the practitioner to choose the preferred method for maintaining his skills and competencies. The board is proposing as a condition of renewal that massage therapists demonstrate evidence of continuing competency by holding a current certification from the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), the credentialing body for the profession, or complete at least 25 hours of continuing education or learning activities within the biennium. According to the agency, the combination of these two alternatives was the most reasonable alternative.

As mentioned, one way to satisfy the proposed continuing education requirements is to hold a current certification from NCBTMB. This certification is maintained current if a therapist obtains 50 hours of continuing education over a four-year period, which means 25 credit hours for each biennium on average. Maintaining NCBTMB certification does not require an overall exam, but there may be a post-test following a continuing education course on the material covered in the

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<sup>1</sup> Source: The agency.

class. This option is likely to be used by those who already hold NCBTMB certification. Maintaining the national certification will suffice to demonstrate continued competency for renewal of a Virginia certificate. Under this option, therapists may satisfy the proposed requirement by taking half of the required 25 hours of credits from approved sponsors and the other half from nonapproved sponsors. The therapist also has the option of being recertified by NCBTMB through retesting to determine adequacy of current knowledge in massage techniques and knowledge.

Another way to fulfill the continuing education requirement is to obtain 25 hours of education every biennial renewal cycle from other providers. This option is likely to be chosen by those who do not want to be certified by NCBTMB. This may include therapists who were initially "grandfathered" without national certification, or those who have allowed the national certification to lapse. Similar to the first option, half of the required hours can be completed at an approved institution and the other half can be fulfilled by various other ways that does not require approval. The credits offered primarily for NCBTMB certification may also be used under this option. At least 12.5 hours must be offered by a sponsor or an organization approved by NCBTMB and documentation of hours must be provided to the practitioner. Examples of activities for the first half of the required credits are conferences, workshops, home study, video, or computer programs with a required examination. For the remaining part, up to 12.5 hours can be earned in a variety of different ways. These credits may or may not be taken from an approved sponsor or organization, but must be activities that expand the skills and knowledge related to the clinical practice of massage therapy, and the certificate holder must document and record their own participation. Examples of the activities in this category include formal programs by nonapproved sponsors, teaching or authoring an article, practical experience, or self-directed learning. These activities promote learning in the profession but may not be accredited. The board is also proposing to accept credit for the courses on ethics and incorporate the regulations on ethical standards by reference. Topics such as boundary issues, client confidentiality, and legal guidelines will be accepted for hours in ethics and may be incorporated into other courses provided there is documentation from the provider stating the amount of time devoted. The main difference between the two options is that courses are offered as a package for NCBTMB certification whereas the therapists are responsible for making the arrangements for each credit to renew their certification through the second method.

The proposed continuing education requirements will impose additional costs on some massage therapists. These courses may be offered by Virginia chapters of the American Massage Therapy Association, NCBTMB, and other professional organizations. There will be dollar costs associated with acquiring the required credits. For example, an all-day ethics workshop and a workshop on arms, hands, and carpal tunnel were offered at an average cost of about \$13 per credit hour.<sup>2</sup> This suggests that fulfilling the continuing education requirement may cost up to \$325 for an individual therapist

and \$824,200 for all of the therapists in Virginia every two years.

Another and more significant cost of the proposed continuing education requirements is the opportunity cost of the therapist's time devoted to take the credits. The opportunity cost concept may not be as obvious as the other types of costs at first; nonetheless, it must be accounted for. In simple terms, the opportunity cost of something is the next best thing given up for it. Just like everyone else, the therapists make decisions on how many hours to work and how many hours to reserve as leisure time. The opportunity cost of an hour of leisure is one hour of work, or equally one hour of wages given up. Since the proposed regulations will reduce the amount of therapists' work or leisure hours by an amount equal to fulfill the required continuing education credits, these work or leisure hours given up must be counted as additional costs and can be valued at the therapist's wage rate.

The proposed amendments will require that each therapist devote 25 hours to continuing education every biennium, which add up to 63,400 hours of therapy time in the state. The therapists will have to either give up an equal amount of work hours, leisure time, or a combination of both. The ongoing rate for an hour of massage therapy is about \$45 to \$50 in less populated areas and may be about \$70 to \$80 in cities.<sup>3</sup> Since both work hours and leisure time can be valued in terms of lost wages, the opportunity cost of the proposed requirement for massage therapists is estimated to be between \$3 million and \$4.7 million per biennium.

However, these estimates are likely to significantly overstate the additional costs to therapists and should be regarded only as potentially the highest costs because many therapists have already been continuously involved in a variety of activities as a part of their profession and will likely get credits for those activities. The agency believes that many therapists already engage in enough learning activities to meet the requirements and should only have to maintain documentation of those activities and hours. Half of the required hours may be earned by the practitioner on his own time and schedule and may be hours that are useful to the therapist but not accredited or documented by an organization. The agency believes that the resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia. Thus, the proposed regulations will impose additional costs on only those practitioners who do not currently engage in enough continuing learning in their profession. Since the number of therapists who do not engage in activities that may be counted as credit is not known, the amount of actual costs to therapists cannot be determined. In short, while some of the current activities of a large number of therapists may be counted toward the required continuing education credits at minimal or no additional cost, there will be additional expenses associated with renewal of a certificate for some therapists.

Furthermore, therapists who choose to keep NCBTMB certification current will incur an additional \$50 for each biennium in recertification fees. This is in addition to the costs

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<sup>2</sup> Source: Ibid.

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<sup>3</sup> Conversations with certified massage therapists.

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of obtaining credits. Since it is not known how many therapists will utilize this option, the total costs to some regulants in NCBTMB recertification fees cannot be determined.

There will also be recordkeeping requirements. With the promulgation of these regulations, the board will send each certificate holder the required form for maintenance of records. The form is a checklist for the agency and the massage therapist to indicate completion of the required hours. It is a chart showing the type of activity or class, whether it is earned toward the first or the second category of the continuing education requirements, and the number of hours obtained. Since a certificate is unlikely to be issued for some credits, the form will be a way to document those credits. The form will be available on the board's website and may be downloaded into the individual's personal computer. The massage therapist will have to maintain that form and the documentation of continuing learning activities for a period of four years. Thus, some very minimal costs involved with maintaining records of continuing education credits are expected, but the form will also facilitate documenting the credits that may not otherwise be documented.

There will be some additional costs for the agency in administering the continuing education requirement. After each renewal cycle, about 1% to 2% of the certificate holders will be audited. An audit procedure is needed to enforce compliance because the agency uses an electronic system to issue renewals without receiving any physical documents. The applicant only has to claim that he/she completed the continuing education requirements. The audits will be done at the agency without any travel because each practitioner selected for the audit will be required to submit the required documentation of continuing learning activities. Those documents including NCBTMB certification, certificate of completion from a provider, or transcript from a massage therapy education program will be reviewed to determine hours of completion in each category. There will be some staff time involved in review of the documentation and in communicating with certified massage therapists about their deficiencies. A random audit can be completed in approximately 15 minutes. Current personnel will absorb the staff time required to conduct about 25 to 50 random audits every two years.

For those who are found out of compliance or who have not indicated compliance on their renewal form, some remedial action will be required. If the practitioner fails to comply with requirements within a given time frame, a disciplinary action will be initiated. It is expected that a small percentage of massage therapists selected for audit will result in a disciplinary case being opened. Cost estimates for disciplinary cases related to the failure to comply with continuing competency regulations range from \$100 for a case resulting in pre-hearing consent orders to \$500 per case for those that result in an informal conference committee. These costs are mainly in terms of travel expenses and per diem for the board members and the costs for the services provided by the agency to administer proceedings. The experience with similar programs at the agency indicates that about five to 10 cases per biennium will probably be settled with a pre-hearing consent order costing about \$500-\$1,000 to the agency. It is estimated that about one or two cases would result in an

informal conference committee proceeding. This is expected to cost the agency an additional \$500 to \$1,000 per biennium.

On the benefits side, the proposed continuing competency requirements will provide some assurance that certified massage therapists are acquiring the most recent knowledge and skills, are updated about the clinical indicators that suggest a referral to a physician, and are aware of ethical considerations. Improved knowledge and skills may slightly reduce potential health risks to the customers seeking relief from various symptoms. For instance, therapists' knowledge and their ability to identify certain diseases such as blood clots may be improved and appropriate therapy can be provided. The education requirements may also improve the service provided and reduce the number of customer complaints by a small margin. The agency received 8 complaints in 1999 and 17 complaints in 2000 that were related to practice of massage therapists. Furthermore, these education requirements may also help slightly reduce the number of cases that would otherwise occur. For example, some of the cases the agency investigated were related to sexual misconduct, unlicensed practice as a midwife, drugs, and indecent exposure.

Finally, it should be noted that "massage therapist" or "certified massage therapist" titles identify the therapists with and without a certification, and may signal the quality of service that will be provided. Given that the massage therapy can be practiced by anyone in Virginia as long as the reserved titles are not used, the option to signal the quality of service has an economic value. If everyone could use these titles, there would be no chance to differentiate between the two groups of therapists, and there would be no financial benefits from certification for massage therapists. This expected benefit is the main reason that some therapists choose to be certified even if the certification introduces additional costs. The proposed regulations will increase the costs for those therapists who wish to differentiate themselves from other therapists without a certification and likely increase the value of signaling. For those therapists who choose to incur additional costs to maintain their certification, the value of the option to signal the quality of their services must exceed the costs of obtaining continuing education credits.

With another amendment, the board is proposing to clarify that an applicant who is licensed or certified in another state or country must have met qualifications substantially equivalent to those currently required in Virginia. Currently, there is no such requirement. The board has no criteria on which to base a decision on endorsement. Consequently, it is currently possible for less qualified individuals to become certified in Virginia.

The proposed substantial equivalency requirement may introduce additional burden on some therapists moving to Virginia while making sure that more competent professionals are delivering massage therapy.

The last proposed amendment will remove the provisional certification. Under the current regulations, eligible candidates are allowed to practice provisional message therapy on a temporary basis. For example, an applicant may practice massage therapy for up to 90 days between completion of an education program and the receipt of the certification exam

result. The current regulations also specify that massage therapist or certified massage therapist titles shall not be used during provisional certification. In practice, the provisional certification has never been used because anyone in Virginia can practice massage therapy as long as they do not use "massage therapist" or "certified massage therapist" titles. The statutory requirements protect these titles, but do not prohibit the massage practices under other titles. Since the massage therapist or certified massage therapist designation cannot be used during provisional certification anyway, there was no interest in obtaining a provisional certification. Since provisional certification has not been used in practice, the proposed elimination of provisional certification is not expected to have any significant economic impact.

Businesses and entities affected. The entities that are likely to be affected by the proposed regulations are 2,536 certified massage therapists.

Localities particularly affected. The proposed changes apply throughout the Commonwealth.

Projected impact on employment. Some of the therapists may not or may not be able to satisfy the proposed continuing education requirements due to additional costs and/or various other reasons. These therapists will not be able to renew their certification and practice massage therapy under the designated titles. Although most therapists may depend on being able to present themselves as a "certified massage therapist" as indicated by the agency, some of those who are not able to renew their certification can continue to practice massage therapy under other titles that are not designated. They may also seek employment and get jobs elsewhere. Furthermore, any potential negative impact on employment will likely be balanced by the increase in additional demand for continuing education providers.

Effects on the use and value of private property. To the extent that the proposed regulations introduce additional costs on massage therapy businesses and reduce their profitability, the value of their businesses may decline. However, the decline in value of massage therapy businesses is likely to be very minor as most of the therapists are believed to be currently involved in sufficient continuing education activities and are not expected to incur large costs to comply with the proposed requirements. On the other hand, providers of continuing education for massage therapists may see a small increase in their profits and, consequently, an increase in the value of their businesses to the extent the proposed regulations increase the demand for their services.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget for 18 VAC 90-50.

### Summary:

*The proposed amendments address concerns about the competency of certificate holders by requiring recertification by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the obtaining of at least 25 hours of continuing education in the biennium before renewal. The amendments further specify the requirements for licensure by endorsement, delete outdated*

*"grandfathering" provisions and unnecessary rules for provisional certification, and incorporate by reference the code of ethics and standards of practice of the NCBTMB.*

### **18 VAC 90-50-10. Definitions.**

The following words and terms "~~board,~~" "~~certified massage therapist~~" and "~~massage therapy,~~" when used in this chapter, shall have the following meanings ascribed to them in ~~§ 54.1-3000 of the Code of Virginia.~~ unless the context clearly indicates otherwise:

"Board" means the Board of Nursing.

"Category A" means continuing education courses or programs offered by an organization or individual approved as a provider by the NCBTMB.

"Category B" means continuing education courses, programs or experiences that are related to the clinical practice of massage therapy but which may not be offered by a provider approved by the NCBTMB.

"Certified massage therapist" means a person who meets the qualifications specified in this chapter and who is currently certified by the board. Only someone who is certified by the board as a massage therapist may use any designation tending to imply that he is a certified massage therapist or massage therapist.

"Massage therapy" means the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. The terms "massage therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

### **18 VAC 90-50-40. Initial certification.**

A. An applicant seeking initial certification shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A ~~or B~~ of the Code of Virginia as follows:

1. Is at least 18 years old;
2. Has successfully completed a minimum of 500 hours of training from a massage therapy program, having received programmatic approval from the Virginia Board of Education, Division of Proprietary Schools, or been certified or approved by the Virginia Board of Education, Division of Proprietary Schools; the State Council of Higher Education; or an agency in another state, the District of Columbia or a United States territory that approves educational programs, notwithstanding the provisions of § 22.1-320 of the Code of Virginia;
3. Has passed the National Certification Exam for Therapeutic Massage and Bodywork or an exam deemed acceptable to the board leading to national certification; and

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4. ~~Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18 VAC 90-50-90.~~

~~B. An applicant who does not meet the education and examination requirements of § 54.1-3029 A of the Code of Virginia shall provide satisfactory evidence that the applicant:~~

~~1. Is at least 18 years old;~~

~~2. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in this chapter; and~~

~~3. Has completed at least 200 hours of training in a massage therapy education program as provided in § 54.1-3029 B of the Code of Virginia and has been practicing massage therapy prior to July 1, 1997, or has completed 20 hours of such training and has at least 10 years of practice in massage therapy, or has passed the National Certification Exam for Therapeutic Massage and Bodywork prior to 1994.~~

~~Applicants for certification under the provisions of § 54.1-3029 B of the Code of Virginia shall have met all requirements and paid the required fee prior to July 1, 1998. A completed application shall be postmarked on or before June 30, 1998.~~

~~B. No application for certification under provisions of § 54.1-3029 B of the Code of Virginia shall be considered unless submitted prior to July 1, 1998.~~

~~C. An applicant who has been licensed or certified in another country and who, in the opinion of the board, meets the educational requirements shall take and pass the national certifying examination as required in subsection A of this section in order to become certified.~~

## **18 VAC 90-50-50. Certification by endorsement.**

A. A massage therapist who has been licensed or certified in another U.S. jurisdiction *with requirements substantially equivalent to those stated in 18 VAC 90-50-40*, and who is in good standing or is eligible for reinstatement, if lapsed, shall be eligible to *apply* for certification by endorsement in Virginia.

B. An applicant for certification by endorsement shall submit a completed application and required fee to the board and shall submit the required form to the appropriate credentialing agency in the state of original licensure or certification for verification. ~~Applicants will be notified by the board after 30 days if the completed verification form has not been received from that state.~~

~~C. An applicant who has been licensed or certified in another country shall take a national certifying examination and become nationally certified as required by § 54.1-3029 of the Code of Virginia.~~

## **18 VAC 90-50-60. Provisional certification. (Repealed.)**

~~A. An eligible candidate who has filed an application for certification in Virginia may practice massage therapy in Virginia for a period not to exceed 90 days between completion of the education program and the receipt of the results of the candidate's first certifying examination.~~

~~B. The designation of "massage therapist" or "certified massage therapist" shall not be used by the applicant during the 90 days of provisional certification.~~

~~C. An applicant who fails the certifying examination shall have his provisional certification withdrawn upon the receipt of the examination results and shall not be eligible for certification until he passes such examination and becomes nationally certified.~~

## **18 VAC 90-50-70. Renewal of certification.**

A. Certificate holders born in even-numbered years shall renew their certificates by the last day of the birth month in even-numbered years. Certificate holders born in odd-numbered years shall renew their certificates by the last day of the birth month in odd-numbered years.

B. The certificate holder shall complete the application and return it with the required fee *and attest that he has complied with continuing competency requirements of 18 VAC 90-50-75.*

C. Failure to receive the application for renewal shall not relieve the certified massage therapist of the responsibility for renewing the certificate by the expiration date.

D. The certificate shall automatically lapse by the last day of the birth month if not renewed; and use of the title "massage therapist" or "certified massage therapist" is prohibited.

## **18 VAC 90-50-75. Continuing competency requirements.**

A. *In order to renew a certificate biennially on and after (insert date that is two years after the effective date of regulation), a certified massage therapist shall:*

*1. Hold current certification by the NCBTMB; or*

*2. Complete at least 25 hours of continuing education or learning activities with at least one hour in professional ethics. Hours chosen shall be those that enhance and expand the skills and knowledge related to the clinical practice of massage therapy and may be distributed as follows:*

*a. A minimum of 12.5 of the 25 hours shall be in Category A activities or courses provided by an NCBTMB-approved provider and may include seminars, workshops, home study courses, and continuing education courses.*

*b. No more than 12.5 of the 25 hours may be Category B activities or courses that may include consultation, independent reading or research, preparation for a presentation or other such experiences that promote continued learning.*

*B. A massage therapist shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial certification in Virginia.*

*C. The massage therapist shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active certificate.*

*D. The board shall periodically conduct a random audit of certificate holders to determine compliance. The persons selected for the audit shall provide evidence of current NCBTMB certification or the completed continued competency*

form provided by the board and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the massage therapist to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the certificate holder prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the certificate holder, such as temporary disability, mandatory military service, or officially declared disasters.

### **18 VAC 90-50-80. Reinstatement of lapsed certificates.**

A. A massage therapist whose certificate has lapsed may reinstate his certification within one renewal period by *attesting to completion of continuing competency requirements for the period and* payment of the current renewal fee and the late renewal fee.

B. A massage therapist whose certificate has lapsed for more than one renewal period shall file a reinstatement application, *attest to completion of continuing competency requirements for the period in which the certificate has been lapsed, not to exceed four years*, and pay the reinstatement fee.

C. A massage therapist whose certificate has been suspended or revoked may apply for reinstatement by filing a reinstatement application and paying the fee for reinstatement after suspension or revocation.

D. The board may require evidence that the massage therapist is prepared to resume practice in a competent manner.

### **18 VAC 90-50-90. Disciplinary provisions.**

The board has the authority to deny, revoke or suspend a certificate issued by it or to otherwise discipline a certificate holder upon proof that the practitioner has violated any of the provisions of § 54.1-3007 of the Code of Virginia or of this chapter or has engaged in the following:

1. Fraud or deceit which shall mean, but shall not be limited to:
  - a. Filing false credentials;
  - b. Falsely representing facts on an application for initial certification, or reinstatement or renewal of a certificate; or
  - c. Misrepresenting one's qualifications including scope of practice.
2. Unprofessional conduct which shall mean, but shall not be limited to:
  - a. Performing acts which constitute the practice of any other health care profession for which a license or a certificate is required or acts which are beyond the limits of the practice of massage therapy as defined in § 54.1-3000 of the Code of Virginia;

b. Assuming duties and responsibilities within the practice of massage therapy without adequate training or when competency has not been maintained;

c. Failing to acknowledge the limitations of and contraindications for massage and bodywork or failing to refer patients to appropriate health care professionals when indicated;

d. Initiating or engaging in any sexual conduct involving a patient;

e. Falsifying or otherwise altering patient or employer records;

f. Violating the privacy of patients or the confidentiality of patient information unless required to do so by law;

g. Employing or assigning unqualified persons to practice under the title of "massage therapist" or "certified massage therapist"; or

h. Engaging in any material misrepresentation in the course of one's practice as a massage therapist; or

i. *Failing to practice in a manner consistent with the standards of practice and the code of ethics of the NCBTMB, as incorporated by reference into this chapter.*

### DOCUMENT INCORPORATED BY REFERENCE

*NCBTMB National Certification Examination Candidate Handbook (eff. 8/00).*

**NOTICE:** The forms used in administering 18 VAC 90-50, Regulations Governing the Certification of Massage Therapists, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

### FORMS

Instructions for Filing Application for Certification as a Massage Therapist (rev. 10/00).

Application for Certification -- Massage Therapist (rev. ~~40/00~~ 4/01).

Instructions for Filing Application for Certification as a Massage Therapist by Endorsement (rev. 10/00).

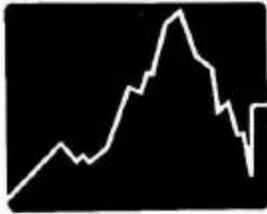
Application for Certification by Endorsement -- Massage Therapist (rev. 10/00).

Massage Therapist Certification/Licensure Verification Form (rev. 10/00).

Application for Reinstatement of Certificate as a Massage Therapist (rev. ~~4/99~~ 4/01).

Renewal Notice and Application (rev. ~~40/00~~ 6/02).

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**COMMONWEALTH OF VIRGINIA**  
 Board of Nursing  
 Department of Health Professions  
 6606 West Broad Street, 4<sup>th</sup> Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9909  
 (804) 662-9512 - FAX

FOR OFFICE USE ONLY						
Class	File #	Suffix	Program Code #	Fee	Transcript Filed	National Cert. Filed
0019 -		P				
Acknowledgment Sent		Approved	Certificate Number		Date Issued	Provisional #
			0019-			

## APPLICATION FOR CERTIFICATION MESSAGE THERAPIST

I hereby make application for certification as a **massage therapist** in the Commonwealth of Virginia. The following evidence of my qualifications is submitted with a **check or money order** in the amount of **\$105** made payable to the *Treasurer of Virginia*. **The application fee is non-refundable.**

### Disclosure of Addresses

Some licensees have expressed concern that their residence address is accessible. Consistent with Virginia law and the mission of the Department of Health Professions addresses of licensees are made available to the public. This has been the policy and the practice of the Commonwealth for many years. However, the application of new technology makes such information more accessible.

In most cases it is permissible for an individual to provide an address of record other than a residence, such as a Post Office Box or a practice location. Changes of address may be made at the time of renewal or at anytime by written notification to the appropriate health regulatory board. Please be advised that all notices from the board, to include renewal notices, licenses, and other legal documents, will be mailed to the address provided.

### 1. Identifying Information

APPLICANT - Please provide the information requested below and on the next two pages. (Print or Type) <b>Use full name, not initials.</b>					
Name:	Last	Suffix	First	Middle	Maiden
Street Address					
City		State		Zip Code	
Date of Birth (M/D/Y)	Social Security Number or Virginia DMV Control Number			Area Code & Telephone Number	
Print your name as you wish it to appear on your certificate:					

**2. Education Information**

Name and address of Education Program:	
Date Program Completed:	Length of Program in Hours:
Program accredited/approved by: (Accrediting Authority)	

**3. Examination and Certification Information**

Title of Examination:	Date Passed:
Name of Certifying Organization:	Expiration Date:

**4. PLEASE RESPOND TO THE FOLLOWING QUESTIONS:**

- a. Have you ever *applied* for licensure or certification as a health care provider in Virginia? Yes \_\_\_ No \_\_\_  
If yes: Year \_\_\_\_\_ Type of license/certificate \_\_\_\_\_
- b. Have you ever *applied* for licensure or certification as a health care provider in another state? Yes \_\_\_ No \_\_\_  
If yes: State \_\_\_\_\_ Year Certified/Licensed \_\_\_\_\_ Type of License/Certificate \_\_\_\_\_
- c. (1) Have you ever been certified or licensed as a massage therapist in any jurisdiction? Yes \_\_\_ No \_\_\_  
If yes: State of original licensure/certification \_\_\_\_\_ Year licensed/certified \_\_\_\_\_  
License/Certificate number \_\_\_\_\_
- (2) In what other states have you been licensed or certified as a massage therapist?  
State \_\_\_\_\_ Year licensed/certified \_\_\_\_\_ License/Certificate number \_\_\_\_\_
- d. Please answer YES or NO to EACH of the following:
  - Have you ever been denied a license or certificate in a health related field or jurisdiction? YES \_\_\_ NO \_\_\_
  - Has any license or certificate issued to you been voluntarily surrendered? YES \_\_\_ NO \_\_\_
  - Have you ever had any of the following disciplinary actions taken against your license or certificate by any licensing/certifying authority in any jurisdiction: placed on probation, suspended, revoked or otherwise disciplined? YES \_\_\_ NO \_\_\_
  - Has your practice ever been the subject of an investigation by any licensing/certifying authority? YES \_\_\_ NO \_\_\_

*If you answered yes to any of the above questions, please explain in detail below and have certified copies of any applicable orders sent directly to this office.*

5. Have you ever been convicted, pled guilty to or pled Nolo Contendere to the violation of any federal, state or other statute or ordinance constituting a felony or misdemeanor? (Including convictions for driving under the influence, but excluding traffic violations)? YES \_\_\_ NO \_\_\_. If yes, explain below and have a **certified copy** of the court order sent directly to the Board of Nursing.
6. Do you have a mental, physical or chemical dependency condition which could interfere with your current ability to practice as a massage therapist? YES \_\_\_ NO \_\_\_. If yes, explain below and have a letter from your treating licensed professional summarizing diagnosis, treatment and prognosis sent directly to the Board of Nursing.

**PLEASE BE SURE THAT YOU HAVE ANSWERED EACH OF THE ABOVE QUESTIONS.**

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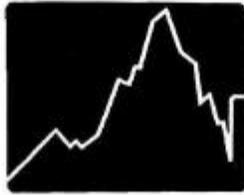
# Proposed Regulations

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EXPLANATIONS:

<b>AFFIDAVIT</b> (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 certification as a massage therapist 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 the affidavit.	
	_____ Signature of Applicant
Subscribed to and sworn to before me this _____ day of _____,	
My commission expires on _____.	
<b>SEAL</b>	_____ Signature of Notary Public

REVISED 4/01



**COMMONWEALTH OF VIRGINIA**  
 Board of Nursing  
 Department of Health Professions  
 6606 West Broad Street, 4<sup>th</sup> Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9909  
 (804) 662-9512 - FAX

FOR OFFICE USE ONLY			
Fee Amount	Code	Approved	Date of Reinstatement

**APPLICATION FOR REINSTATEMENT OF  
 CERTIFICATE AS A MASSAGE THERAPIST**

I hereby make application to reinstate my certificate as a **Massage Therapist** in the Commonwealth of Virginia. The following information in support of my application is submitted with a **check or money order** made payable to the *Treasurer of Virginia* in the amount of **\$120.00**. The fees are non-refundable.

**Disclosure of Addresses**

Some licensees have expressed concern that their residence address is accessible. Consistent with Virginia law and the mission of the Department of Health Professions addresses of licensees are made available to the public. This has been the policy and the practice of the Commonwealth for many years. However, the application of new technology makes such information more accessible.

In most cases it is permissible for an individual to provide an address of record other than a residence, such as a Post Office Box or a practice location. Changes of address may be made at the time of renewal or at anytime by written notification to the appropriate health regulatory board. Please be advised that all notices from the board, to include renewal notices, licenses, and other legal documents, will be mailed to the address provided.

APPLICANT - Please provide the information requested below and on the back of this page. (Print or Type)					
Name:	Last	Suffix	First	Middle	Maiden
Street Address				Area Code & Telephone Number	
City		State		Zip Code	
Date of Birth (M/D/Y)		Social Security Number or Virginia DMV Control Number*		Virginia Certificate Number CMT #0019- _____	
School of Massage Therapy		Location		Date of Graduation	
Date First Certificate Issued		Name at Time of Original Certification			
		Last	First	Middle	Maiden
If proof of name change to current name has not been filed with this office, submit a copy of marriage certificate or court order authorizing the change.					
Reinstatement due to lapse of certificate			or suspension or revocation of certificate		

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## Proposed Regulations

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\* In accordance with §54.1-116 of the *Code of Virginia*, you are required to submit your Social Security Number or your Control Number issued by the *Virginia* Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.

This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.

1. This question applies to any license or certificate as a health care provider that may have been issued to you. Please answer YES or NO to *EACH* of the following: *(If you answer yes to any of the questions, please explain in detail below and have certified copies of any applicable orders sent directly to this office.)*
  - Has any license or certificate issued to you ever been voluntarily surrendered? YES \_\_\_\_ NO \_\_\_\_
  - Have you ever had any of the following disciplinary actions taken against your license or certificate by any licensing authority in any jurisdiction: placed on probation, suspended, revoked or otherwise disciplined? YES \_\_\_\_ NO \_\_\_\_
  - Has your practice ever been the subject of an investigation by any licensing authority? YES \_\_\_\_ NO \_\_\_\_
  - Have you ever been denied a license or certification in a health-related field or jurisdiction? YES \_\_\_\_ NO \_\_\_\_
2. Is your license or certificate in good standing in all jurisdictions where licensed or certified? YES \_\_\_\_ NO \_\_\_\_
3. Please respond in full to the following questions. *You will need to provide documentation only if the response is different from that on your last application with this office.* Please answer YES or NO to each question.
  - Have you ever been convicted, pled guilty to or pled Nolo Contendere to the violation of any federal, state or other statute or ordinance constituting a felony or misdemeanor? (Including convictions for driving under the influence, but excluding traffic violations)? Yes \_\_\_\_ No \_\_\_\_ **If yes, explain below** and have a certified copy of the court order sent directly to the Board of Nursing.
  - Do you have a mental, physical or chemical dependency condition which could interfere with your current ability to practice massage? Yes \_\_\_\_ No \_\_\_\_ **If yes, explain below** and have a letter from your treating licensed professional summarizing diagnosis, treatment and prognosis sent directly to the Board of Nursing.

### EXPLANATIONS:

**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 certification as a massage therapist 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 the affidavit.

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

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

**SEAL** \_\_\_\_\_  
Signature of Notary Public

Revised 04/01

# Proposed Regulations

**RECEIPT—KEEP THIS PORTION FOR YOUR RECORDS—DO NOT RETURN**

«First_Name» «Last_Name»	Renewal Fee—Amount \$70.00
«License_Status» «License_Type» «License_No»	
Renewal Period: «begin_period» to «end_period»	Current Expiration Date: «L_Expiration_Date»

1. For name changes, cross out any incorrect information on the front of the renewal form, write the correct name and check the box on return envelope. Enclose a copy of your marriage license or court order for name changes.
2. Address changes, cross out any incorrect information on the front of the renewal form, write the correct address and check the box on return envelope.
3. Detach "renewal form" portion and return completed form with your check in attached return envelope.
4. Make checks payable to "Treasurer of Virginia." Visit our website at [www.dhp.state.va.us](http://www.dhp.state.va.us)

Please fold and tear on perforated line

Renewal Form for «License_Status» «License_Type»	Amount Due:
«License_No» Renewal Period: «begin_period» to «end_period»	\$70.00
«First_Name» «Middle_Name» «Last_Name»	
«L_Address_Line_1», «L_Address_Line_2», «L_Address_Line_3»	

I wish to renew and enclose a fee of \$70.00, and attest to completion of at least 25 hours of continuing education activities within the two years immediately preceding this renewal cycle.

**NOTE: Renewal fee is nonrefundable. Renewed Certificate Should Be Received in 14-21 Days**

**If Payment is Received by Board After «L\_Expiration\_Date», Amount Due \$95.00**

**Do not staple check to renewal form or fold renewal form.**

«Scan\_Line»

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**Disclosure of Addresses**

Some licensees have expressed concern that their residence address is accessible. Consistent with Virginia law and the mission of the Department of Health Professions addresses of licensees are made available to the public. This has been the policy and the practice of the Commonwealth for many years. However, the application of new technology makes such information more accessible.

In most cases it is permissible for an individual to provide an address of record other than a residence, such as a Post Office Box or a practice location. Changes of address may be made at the time of renewal or at anytime by written notification to the appropriate health regulatory board. Please be advised that all notices from the board, to include renewal notices, licenses, and other legal documents, will be mailed to the address provided.

**Detach Along Perforation  
MOISTEN AND FOLD TO SEAL**



VA.R. Doc. No. R01-188; Filed June 11, 2002, 1:37 p.m.

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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

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## TITLE 2. AGRICULTURE

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

**Title of Regulation:** 2 VAC 5-400. Rules and Regulations for the Enforcement of the Virginia Fertilizer Law (amending 2 VAC 5-400-10, 2 VAC 5-400-20, 2 VAC 5-400-30, 2 VAC 5-400-50, and 2 VAC 5-400-80; adding 2 VAC 5-400-90).

**Statutory Authority:** § 3.1-106.4 of the Code of Virginia.

**Effective Date:** August 1, 2002.

**Summary:**

*The amendments update the following areas of the regulation: (i) definitions; (ii) plant nutrients; (iii) labels; (iv) investigational allowances and penalties; (v) minimum plant food allowed; and (vi) sampling and analysis procedures. The amendments include changes needed to make the regulation compatible with the 1994 changes to the Virginia Fertilizer Act (§ 3.1-106.1 et seq. of the Code of Virginia).*

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

**Agency Contact:** J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2476, FAX (804) 786-1571, 1-800-828-1120/TTY, or e-mail jrogers@vdacs.state.va.us.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:3 VA.R. 250-256 October 22, 2001, without change. Therefore, pursuant to § 2.2-4031 of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-275; Filed June 4, 2002, 2:11 p.m.

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**Title of Regulation:** 2 VAC 5-610. Rules Governing the Solicitation of Contributions (amending 2 VAC 5-610-10 through 2 VAC 5-610-80).

**Statutory Authority:** § 57-66 of the Code of Virginia.

**Effective Date:** August 1, 2002.

**Summary:**

*The amendments conform the regulation with statutory amendments to the Virginia Solicitation of Contributions law (§ 57-48 et seq. of the Code of Virginia) relating to (i) the annual registration process and exemption to such*

*registration; (ii) rules governing a professional solicitor; and (iii) general provisions relating to disclosure requirements by for-profit organizations and the use of private mailboxes by the regulated entities.*

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

**Agency Contact:** Andres "Andy" Alvarez, Program Manager, Office of Consumer Affairs, Department of Agriculture and Consumer Services, 1100 Bank Street, Suite 1101, Richmond, VA 23219, telephone (804) 786-1381, FAX (804) 786-5112, toll-free 1-800-552-9963 or 1-800-828-1120/TTY.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:3 VA.R. 257-270 October 22, 2001, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R00-273; Filed June 5, 2002, 1:03 p.m.

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## TITLE 4. CONSERVATION AND RECREATION

### MARINE RESOURCES COMMISSION

**REGISTRAR'S NOTICE:** The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4 VAC 20-752. Pertaining to Blue Crab Sanctuaries (amending 4 VAC 20-752-10, 4 VAC 20-752-20, and 4 VAC 20-752-30).

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

**Effective Date:** June 1, 2002.

**Summary:**

*The amendment expands the borders of the Virginia Blue Crab Sanctuary from approximately the 35-foot depth contour to the 30-foot depth contour and closes the crabbing in an additional area at the mouth of the Chesapeake Bay.*

**Agency Contact:** Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail dcawthon@mrc.state.va.us.

CHAPTER 752.  
 PERTAINING TO THE HAMPTON ROADS AND BAYSIDE  
 EASTERN SHORE BLUE CRAB MANAGEMENT AREAS  
 SANCTUARIES.

**4 VAC 20-752-10. Purpose.**

The provisions of this chapter are in response to reduced abundance in the blue crab stock and increased fishing pressure on over-exploitation of this resource. This chapter promotes conservation of the blue crab resource within the below designated areas of the Chesapeake Bay system.

**4 VAC 20-752-20. Blue crab management areas Definitions.**

The following management areas are established:

1. The "Hampton Roads Blue Crab Management Area shall consist Sanctuary" means that area consisting of all tidal waters inshore and upstream of a line formed by the extreme south and north ends of the westbound span of the Hampton Roads Bridge Tunnel.

2. The Virginia Baywide Blue Crab Spawning Sanctuary shall consist of all tidal waters that are bounded by a line that begins at 37°05'40.03" and 75°59'42.03" near the north end of the old span of the Chesapeake Bay Bridge Tunnel; continuing southwest to 37°03'49.26" and 76°05'21.88" in the Chesapeake Channel; thence continuing southwest to 37°00'52.49" and 76°14'27.31" at Thimble Shoals Light; thence continuing in a northerly direction to 37°24'24.87" and 76°09'30.78" off of Wolf Trap Light; thence continuing northwest to 37°39'21.01" and 76°14'00.83", east of Fleets Bay; thence continuing north to 37°54'05.43" and 76°11'44.09" on the Virginia-Maryland state line; thence continuing east along the state line to 37°55'44.37" and 76°07'14.62"; thence continuing due south to 37°40'45.64" and 76°06'05.81"; thence continuing northeast to 37°44'59.39" and 76°01'35.53"; thence continuing southeast to 37°42'23.27" and 75°58'02.59"; thence continuing in a southerly direction to 37°16'25.90" and 76°04'37.50" off of Cape Charles; thence continuing southeast to 37°10'29.44 and 76°01'54.50"; thence continuing southeast back towards the north end of the old span of the Chesapeake Bay Bridge Tunnel to the point of beginning.

"Virginia Blue Crab Sanctuary" means two distinct sanctuary areas, with one area consisting of all tidal waters that are bounded by a line beginning at a point, near the western shore of Fisherman's Island, being on a line from the Cape Charles Lighthouse to the Thimble Shoal Light, having NAD83 geographic coordinates of 37° 05' 58.00" N, 75° 58' 45.95" W; thence southwesterly to Thimble Shoal Light, 37° 00' 52.19" N, 76° 14' 24.63" W; thence southwesterly to the offshore end of Harrison's Fishing Pier, 36° 57' 44.98" N, 76° 15' 31.76" W; thence north to Flashing Green Buoy "9" on the York River Entrance Channel, 37° 11' 30.99" N, 76° 15' 16.85" W; thence northeasterly to Wolf Trap Light, 37° 23' 27.15" N, 76° 11' 46.01" W; thence northwesterly to a point, northeast of Windmill Point, 37° 38' 23.13" N, 76° 15' 59.54" W; thence north to Flashing Red Light "2", east of Smith Point, 37° 53'20.25" N, 76° 13'48.61" W; thence northeasterly to a point

on the Virginia-Maryland state line, 37° 55' 44.82" N, 76° 07' 13.41" W; thence southeasterly to a point, southwest of Tangier Island, 37° 44' 59.85" N, 76° 01' 34.31" W; thence southeasterly to a point, southeast of Tangier Island, 37° 43' 41.05" N, 76° 57' 51.84" W; thence northeasterly to a point, south of Watts Island, 37° 45' 36.95" N, 75° 52' 53.87" W; thence southeasterly to a point, 37° 44' 56.15" N, 75° 51' 33.18" W; thence southwesterly to a point, west of Parkers Marsh, 37° 42' 41.49" N, 75° 55' 06.31" W; thence southwesterly to a point, west of Cape Charles Harbor, 37° 15' 37.23" N, 76° 04' 13.79" W; thence southeasterly to a point near the western shore of Fisherman's Island, on the line from Cape Charles Lighthouse to Thimble Shoal Light, said point being the point of beginning, and a second area consisting of all tidal waters that are bounded by a line beginning at Cape Charles Lighthouse, having NAD83 geographic coordinates of 37° 07' 31.63" N, 75° 53' 58.36" W; thence southwesterly to Cape Henry Lighthouse, 36° 55' 42.02" N, 76° 00' 18.44" W; thence southeasterly to a point, 36° 54' 42.39" N, 75° 56' 44.23" W; thence northeasterly to a point, east of Cape Charles Lighthouse 37° 06' 45" N, 75° 52' 05" W; thence westerly to the Cape Charles Lighthouse, said point being the point of beginning.

**4 VAC 20-752-30. Harvest restrictions.**

A. It shall be unlawful for any person to dredge for crabs within the Hampton Roads Blue Crab Management Area Sanctuary at any time.

B. It shall be unlawful for any person to conduct commercial or recreational crabbing within the Virginia Baywide Blue Crab Spawning Sanctuary from June 1 through September 15.

VA.R. Doc. No. R02-195; Filed May 29, 2002, 2:49 p.m.

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Title of Regulation: **4 VAC 20-910. Pertaining to Scup (Porgy) (amending 4 VAC 20-910-45).**

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

Effective Date: June 1, 2002.

Summary:

*The amendment increases the commercial harvest quota for the summer period (May 1 through October 31) from 2,774 pounds to 4,987 pounds.*

Agency Contact: Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail dcawthon@mrc.state.va.us.

**4 VAC 20-910-45. Possession limits and harvest quotas.**

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 10,000 pounds of scup; except when it is projected and announced that 85% of the coastwide quota for this period has been landed, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 1,000 pounds of scup.

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# Final Regulations

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B. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 2,000 pounds of scup; except when it is announced that 70% of the coastwide quota for this period has been taken, it shall be unlawful for any person to possess aboard any vessel or land in Virginia more than 500 pounds of scup, until such time that the coastwide quota for this period has been reached.

C. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to ~~2,774~~ 4,987 pounds.

D. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

E. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

F. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R02-201; Filed May 31, 2002, 7:46 a.m.

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## TITLE 8. EDUCATION

### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**REGISTRAR'S NOTICE:** The State Council of Higher Education for Virginia is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts agency actions relating to grants of state or federal funds or property.

**Title of Regulation:** 8 VAC 40-70. Tuition Assistance Grant Program Regulations (amending 8 VAC 40-70-10 through 8 VAC 40-70-50).

**Statutory Authority:** § 23-38.13 of the Code of Virginia.

**Effective Date:** July 1, 2002.

**Summary:**

*These regulations provide guidance to SCHEV and the private not-for-profit colleges and universities in Virginia for*

*the administration of the Tuition Assistance Grant (TAG) Program (§ 23-38.11 et seq. of the Code of Virginia). The TAG program provides eligible Virginia residents attending eligible private not-for-profit institutions with a non-need based grant to be used for college expenses. Changes made to the appropriation act (Chapter 899) during the 2002 Session of the General Assembly necessitated amendments to these regulations. These legislative actions include a change to the timing of the notification of students regarding TAG awards and a change to the accreditation requirement for participating institutions. Additionally, the amendments change the definitions of "eligible institution" and "eligible program" to allow participation in TAG by graduate programs at institutions chartered by an Act of Congress, implement a deadline for domicile appeals, and provide guidance on how to treat students in a consortium agreement between two eligible institutions.*

**Agency Contact:** Frances C. Bradford, Regulatory Coordinator, State Council of Higher Education, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2636, FAX (804) 225-2638 or e-mail bradford@schev.edu.

#### 8 VAC 40-70-10. Definitions.

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

"Academic year" means the enrollment period which normally extends from late August to May or early June and which is normally comprised of two semesters 15 to 16 weeks in length or three quarters 10 to 11 weeks in length. ~~The semesters and quarters do not include intersessions or short terms that precede or follow the regular semesters or quarters.~~

"Accredited" means an institution approved to confer degrees pursuant to the provisions of § 23-265 et seq. of the Code of Virginia and the requirements of the Appropriation Act, as the same are now constituted or hereafter amended. *In addition, an institution must be accredited by a nationally recognized regional accrediting agency, prior to participation in the program.*

"Award" means a grant of Tuition Assistance Grant Program funds given during fall and spring terms at semester institutions and fall, winter, and spring terms at quarter institutions.

"Census date" means the time during an academic year when a count of enrolled students is made for reporting purposes. For ~~semester all standard~~ terms, the census date shall be ~~no sooner than the end of the fourteenth calendar day from the beginning of the term and no later than the end of the program add/drop period.~~ For quarter terms, the census date shall be ~~no sooner than the end of the tenth calendar day from the beginning of the term and no later than the end of the add/drop period.~~ For nonstandard terms, the census date shall be ~~no sooner than the end of the class session that represents the completion of 15% of the class days and no later than the established reporting date determined by council staff on a program by program basis.~~

"Cost of attendance" means the sum of tuition, fees, room, board, books, supplies, and other education-related expenses,

as determined by an eligible institution for purposes of calculating a student's financial need and awarding federal student aid funds.

"*Council*" means the State Council of Higher Education for Virginia.

"*Domiciliary resident*" means a student who is determined by the enrolling institution to be a domiciliary resident of Virginia, as specified by § 23-7.4 of the Code of Virginia and the council's guidelines for domiciliary status determinations. In cases where there are disputes between students and the enrolling institutions, council staff shall make the final determinations (see 8 VAC 40-70-40 C).

"*Eligible institution*" means a private, accredited, nonprofit, degree-granting institution of higher education that (i) is formed, chartered, or established within Virginia ~~whose~~ or (ii) was chartered by an Act of Congress and has owned and operated for a continuous period of not less than 10 years a campus with a significant presence of at least 75,000 square feet including buildings, housing office, classroom, and administrative space located in the Commonwealth, which institution's primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education.

"*Eligible program*" means a curriculum of courses at the undergraduate, graduate, or first professional level for those institutions eligible under clause (i) in the definition of "eligible institution." For those institutions eligible under clause (ii), only a curriculum of courses at the graduate level offered at a campus located in the Commonwealth shall be eligible. Undergraduate programs are those programs that lead to an associate's or bachelor's degree and which require at least two academic years (60 semester hours or its equivalent in quarter hours) to complete. Graduate programs are those programs leading to a degree higher in level than the baccalaureate degree and which require at least one academic year (30 semester hours or its equivalent in quarter hours) to complete. First-professional programs are those programs leading to a degree in dentistry, medicine, veterinary medicine, law, or pharmacy. Programs that provide religious training or theological education are not eligible courses of study under the Tuition Assistance Grant Program. Programs in the 39.xxxx series, as classified in the National Education Center for Educational Statistics' Classification of Instructional Programs (CIP), are not eligible programs.

"*First-professional student*" means a student enrolled and program placed in any of the following programs: dentistry, medicine, veterinary medicine, law, or pharmacy.

"*Fiscal year*" means the period extending from July 1 to June 30.

"*Full-time student*" means a student who is enrolled for at least 12 credit hours per semester or its equivalent in quarter hours at the undergraduate level or nine credit hours per semester or its equivalent in quarter hours at the graduate or first professional level. For students enrolled in nontraditional or nonstandard terms, the full-time enrollment requirement will vary based on the length of the terms, the number of contact hours, ~~and~~ or other measures of comparability with the institution's normal academic year. The total hours counted

will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a degree at the institution.

"*Graduate student*" means a student enrolled and program-placed in a master's or doctoral program.

"*Nonprofit institution*" means an educational institution operated by one or more nonprofit corporations, and said institution's earnings are applied solely to the support of said institution and its educational programs and activities.

"*Nontraditional or nonstandard program*" means a degree program where the terms of the program do not conform to the standard terms of the institution's academic year. Nontraditional or nonstandard programs must be approved by council before students enrolled in the programs can receive awards.

"*Program*" means the Tuition Assistance Grant Program (TAGP).

"*Undergraduate student*" means a student in a program leading to an associate's or bachelor's degree who has not earned a bachelor's or higher degree.

## **8 VAC 40-70-20. Institutional participation in the program: application procedures.**

In order to participate in the program, eligible institutions not previously approved by the council to participate must file formal application with the council no later than January 31 of the calendar year preceding the calendar year in which fall term grants would first be available to students.

Applications shall be addressed to the council and shall include:

1. Estimates of the number of students who would be eligible to receive grants under the program in the first and second years of participation;
2. A copy of the Fiscal Operations Report and Application to Participate in Federal Student Financial Aid Programs (FISAP); and
3. Certifications from the institution's chief executive officer that the institution:
  - a. Meets eligibility requirements for participation, namely, that it is an accredited, nonprofit, Virginia degree-granting institution of higher education whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education;
  - b. Will furnish whatever data the council may request in order to verify its institutional eligibility claims;
  - c. Will promptly notify the council within 30 days following any change in governance or mission that may affect the institution's status as an eligible institution; and
  - d. By its governing body, has authorized its adherence to the requirements of this chapter, as the same are now constituted or hereafter amended, until such time as the institution may withdraw from participation in the program.

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Applications must be approved and all documents must be on file before any funds are disbursed.

*All subsequent new programs or site locations must be reported to the council by no later than August 1 of the calendar year preceding the calendar year in which fall term grants would first be available to students in the program or at the new site location.*

## **8 VAC 40-70-30. Disbursement of funds.**

A. Advancement of funds. A percentage of an institution's estimated allocation of funds for a term will be forwarded to the institution at the beginning of the term. The percentage will be based on each institution's prior year's performance and will be established by the council no later than September 1. After the census date for each term, the institution will certify that recipients are enrolled as full time students and are meeting other eligibility requirements established for the program. After enrollment is verified, additional funds, if needed, may be disbursed to the institution. Funds for recipients reported as not enrolled full-time or not meeting other eligibility requirements shall not be disbursed to students, and funds for these students, if already received by the institution in its capacity as the student's fiscal agent, shall be returned to the council upon request.

B. Fund usage. Awards shall be used only for payment of tuition at the institution in the academic year for which the award has been made. A student who has received a full tuition waiver shall not receive an award under the program. An institution shall not declare as unused funds the funds it has previously credited to a student's account without first notifying the student of its intention to do so, in writing, at least 20 working days prior to taking such action. All unused funds shall be returned to the council no later than the end of the fiscal year or 20 working days after receiving written request from the council, whichever is sooner.

C. Notification to students. *The private institutions that participate in this program shall, during the spring semester previous to the commencement of a new academic year or as soon as a student is admitted for that year, whichever is later, notify their enrolled and newly admitted Virginia students about the availability of tuition assistance awards under the program. The information provided to students and their parents must include information about the eligibility requirements, the application procedures, and the fact that the amount of the award is an estimate and is not guaranteed. The number of students applying for participation and the funds appropriated for the program determine the amount of the award. Conditions for reduction of award amount and award eligibility are described in these regulations. The institutions shall certify to the council that such notification has been completed and shall indicate the method by which it was carried out.*

*Further, the institutions shall make students aware that the award is state-funded. Evidence of such notification may include (i) the dates on receipts signed by award recipients, (ii) formal procedures for providing to recipients written notification of the crediting of student accounts or the availability of checks after such funds are received by the institution, or (iii) institutional records which verify the dates*

~~that checks were disbursed to students~~ *award letters or other formal procedures used by the institution for student notification of financial aid awards.*

D. Restriction on use of funds. An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. Program funds shall be deposited in a noninterest-bearing account established and maintained exclusively for that purpose. Funds shall be disbursed only to student accounts receivable or to the council. The institution shall not hold program funds in the account for more than 20 working days before transferring funds to student accounts.

Funds received by the institutions under the program shall be used only to pay awards to students. The funds are held in trust on behalf of the Commonwealth of Virginia by the institutions for the intended student beneficiaries and shall not be used for any other purpose.

## **8 VAC 40-70-40. Student eligibility.**

A. Eligibility criteria. In order to be eligible to receive an award, the student must:

1. Be a domiciliary resident of Virginia, as defined by § 23-7.4 of the Code of Virginia, for at least one year .

2. Enroll in the academic year for which the award is to be received as a full-time student in an eligible program at an eligible institution.

a. A student's enrollment status shall be determined at the census date. If a student withdraws after the census date, he shall receive a prorated award based on the tuition refund policy in effect at the institution.

b. A graduating student in his final ~~term~~ year may be certified full-time and eligible to receive ~~a prorated award~~ *an award prorated based on the student's actual tuition charges and tuition charged a full-time student*, if (i) the student was enrolled full-time and accepted for or received an award, or both, in the immediately preceding term, (ii) the course credits *available in the term* needed to complete degree requirements total less than a full-time course load, and (iii) the maximum number of years of eligibility has not been exceeded.

3. ~~Not Have been convicted for failure to comply~~ *complied* with federal selective service registration requirements, *unless the following apply:*

a. *The requirement to register has terminated or become inapplicable; and*

b. *The person shows by preponderance of the evidence that failure to register was not a knowing and willful failure to register.*

4. Complete and submit by the published deadline an application for an award.

B. Limitations on awards.

1. If a student receives a partial payment for a semester or quarter, the student's total term of eligibility shall be reduced by one semester or quarter.

2. Preference for awards shall be given to eligible students who ~~will enroll for the fall semester or quarter of any given academic year. Awards to students enrolling subsequent to the fall semester or quarter will be limited to funds available through attrition and other nonuse of authorized funds received the award in the previous award year provided they continue to satisfy the requirements for eligibility and notify the institution of their intent to return.~~

3. Awards for students pursuing associate's degrees shall initially be made for one academic year but may be renewed for no more than one additional academic year. Students pursuing associate's degrees shall be limited to a cumulative total of two academic years of eligibility for tuition assistance for each associate degree, and a cumulative total of four years of undergraduate assistance.

4. Awards for baccalaureate students shall initially be made for one academic year, but may be renewed for no more than three additional academic years of undergraduate study.

5. Baccalaureate degree-holders enrolled in *undergraduate* teacher certification programs may receive awards if the student has not exceeded undergraduate eligibility and if the student ~~was is~~ enrolled full time ~~and accepted for or received an award, or both, in the immediately preceding term.~~

6. Students pursuing degrees at the graduate level shall be limited to *a combined maximum of* three years of support or the number of years of *the individual* degree program, whichever is shorter.

7. Students pursuing degrees at the first-professional level shall be limited to:

- a. Four years of support for medical school;
- b. Three years of support for law school;
- c. Three years of support for dental school;
- d. Three years of support for veterinary medical school; ~~and or~~
- e. ~~Three~~ Four years of support for pharmacy school.

~~8. Students enrolled in programs leading to a second baccalaureate or graduate degree shall not be eligible to receive awards.~~

~~9. Students pursuing a degree lower in level than one they have already attained shall not be eligible to receive awards.~~

*8. In no case can a student's eligibility exceed four years combined for graduate or first-professional degree programs.*

*9. Students may receive TAG under a consortium agreement only if both institutions participate in TAG and a formal consortium agreement is in place that verifies combined full-time enrollment.*

C. Appeals process. Council staff shall make final decisions on eligibility disputes between students and the enrolling institutions. A student whose eligibility for an award has been denied may appeal the institution's ~~initial~~ determination by filing a written statement with the council by ~~an annually established deadline~~ *May 1 of the respective award year for the appeal.*

The appeal process for resolving eligibility disputes shall consist of a review of the institution's initial determination by a council staff member ~~and~~ . ~~Further student appeals are subject to a final administrative review by a committee comprised of three council staff members. No person who serves at one level of the appeals process shall be eligible to serve at any other level of review.~~

In order to provide for the orderly and timely resolution of all disputes, the appeals process shall be in writing and state time limitations for the reviews. The council shall distribute the written appeals procedure to participating institutions, and students may request a copy of the written appeals procedure from the enrolling institution or the council.

## **8 VAC 40-70-50. Award amount.**

A. Section 23-38.14 of the Code of Virginia specifies that no award shall exceed the annual average appropriation per full-time equivalent student for the previous year from the general fund for operating costs at two-year and four-year public institutions of collegiate education in Virginia. The amount of the award shall be determined by the number of eligible students and funds available. In no event shall the award amount exceed the limit set forth in the Appropriation Act.

B. An award received by a student under the program *is applied to the student's tuition and* shall not be reduced ~~by the student's receipt of other financial aid from any source unless the award, when added to combined with all other financial aid, would enable the student to receive total assistance in excess of assistance, exceeds~~ the estimated cost of attendance at the institution the student attends. *In such circumstances, the student may receive a reduced award.*

C. *In addition, an award received by a student under the program shall not be reduced by the student's receipt of other tuition-only assistance such as A student who receives a tuition waiver, scholarship, employer reimbursement, or grant restricted to payment of tuition, shall not receive a full award if unless the sum of the tuition waiver assistance and the award exceeds total tuition charges. However In such circumstances, the student may receive an a reduced award in the amount of the difference between tuition charges and the tuition waiver.*

~~A student who falls under the full-time requirement exception shall receive a partial award that is prorated based on the student's actual tuition charges and tuition charged a full-time student. (See 8 VAC 40-70-40 A 2.)~~

VA.R. Doc. No. R02-204; Filed June 11, 2002, 12:01 p.m.

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**EXEMPTION NOTICE:** Section 23-7.4:3 B of the Code of Virginia exempts the State Council of Higher Education for Virginia from the provisions of the Administrative Process Act when issuing or revising guidelines for determining domicile and eligibility for in-state tuition.

**Title of Regulation:** 8 VAC 40-120. **Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates (amending 8 VAC 40-120-10 through 8 VAC 40-120-140, 8 VAC 40-120-190, 8 VAC 40-120-210 through 8 VAC 40-120-230, 8 VAC 40-120-250, 8 VAC 40-120-270, and 8 VAC 40-120-280; adding 8 VAC 40-120-55).**

**Statutory Authority:** § 23-7.4:3 of the Code of Virginia.

**Effective Date:** July 31, 2002.

**Summary:**

*The amendments add definitions of "legal guardian," "parent," and "active duty military"; update the section on "aliens" to correspond with changes to federal definition; add language about incarcerated students and cooperative education students; and modify requirements for reciprocal community college tuition arrangements.*

**Agency Contact:** Frances C. Bradford, Regulatory Coordinator, State Council of Higher Education, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2636, FAX (804) 225-2638 or e-mail bradford@schev.edu.

**8 VAC 40-120-10. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:<sup>1</sup>

*"Active-duty military" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Such term includes the Air Force, Army, Coast Guard, Marines, Navy, and National Guard members operating under Title 10 of the United States Code but does not include full-time National Guard duty operating under Title 32 of the United States Code.*

*"Date of alleged entitlement" means the first official day of class within the semester or term of the program for the institution in which the student is enrolled. For special classes, short courses, intensive courses, or courses not otherwise following the normal calendar schedule, the date of alleged entitlement refers to the starting date of the nontraditional course in which the student is enrolled.*

*"Dependent student" means one who is listed as a dependent on the federal or state income tax return of his parents or legal*

*guardian or who receives substantial financial support from his spouse, parents or legal guardian. It shall be presumed that a student under the age of 24 on the date of the alleged entitlement receives substantial financial support from his parents or legal guardian, and therefore is dependent on his parents or legal guardian, unless the student (i) is a veteran or an active duty member of the U.S. armed forces; (ii) is a graduate or professional student; (iii) is married; (iv) is a ward of the court or was a ward of the court until age 18; (v) has no adoptive or legal guardian when both parents are deceased; (vi) has legal dependents other than a spouse; or (vii) is able to present clear and convincing evidence that he is financially self-sufficient.*

*"Domicile" means the present, fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely. No individual may have more than one domicile at a time. Domicile, once established, shall not be affected by mere transient or temporary physical presence in another jurisdiction.*

*"Domiciliary intent" means present intent to remain indefinitely.*

*"Emancipated minor" means a student under the age of 18 on the date of the alleged entitlement whose parents or guardians have surrendered the right to his care, custody and earnings, and who no longer claim him as a dependent for tax purposes.*

*"FTE" means a full-time equivalent student. FTE is a statistic derived from the student-credit hour productivity of an institution. ~~The number of FTE students in the term is obtained by dividing the total number of undergraduate, first professional, and graduate credit hours per term by 15, 15, and 12 respectively.~~*

*"Full-time employment" means employment resulting in at least an annual earned income reported for tax purposes equivalent to 50 work weeks of 40 hours at the federal minimum wage. ~~This means that a person must earn the equivalent amount of 50 weeks of work, for 40 hours, at minimum wage; it does not require that the person work full time for all 50 weeks each year. Currently, the federal minimum wage is \$4.25 per hour. Therefore, the person must have earned income of at least \$8,500 to be considered as a full-time employee (50 X 40 X \$4.25 current minimum wage).~~ The person may have earned this money in less than 50 weeks, but the time period in which the money is earned (up to one year) is irrelevant. The individual must also report these wages for income tax purposes.*

*"Independent student" means one whose parents have surrendered the right to his care, custody and earnings, do not claim him as a dependent on federal or state income tax returns, and have ceased to provide him substantial financial support. (See also, "Dependent student," above.)*

*"Legal guardian" means a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities.*

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<sup>1</sup> Nothing herein is intended, nor shall be construed, to repeal or modify any provision of law.

"Parent" applies to the biological parents of the student except in cases of adoption, where it applies to the adoptive parent or parents.

"*Rebuttable Presumption*" means that a student is presumed, or assumed, to have the fact (or domicile) in question a certain status, unless the student can show the contrary by clear and convincing evidence. The student should be given the chance to rebut the presumed fact by clear and convincing evidence.

"*Special arrangement contract*" means a written contract between a Virginia employer or the authorities controlling a federal installation or agency located in Virginia and a public institution of higher education for reduced tuition charges.

"*Substantial financial support*" means the amount of support which equals or exceeds the amount necessary to qualify the individual to be listed as a dependent on federal and state income tax returns.

"*Unemancipated minor*" means a student under the age of 18 on the date of the alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian, or other person having legal custody.

"*Virginia employer*" means entities, including corporations, partnerships, or sole proprietorships, organized under the laws of Virginia, or having income from Virginia sources. Also included are public or nonprofit organizations authorized to operate in Virginia.

<sup>1</sup>Nothing herein is intended, nor shall be construed, to repeal or modify any provision of law.

## 8 VAC 40-120-20. Determining eligibility for in-state tuition.

A. The institution shall first determine from the information furnished by the applicant whether the applicant is a dependent or independent student, emancipated or unemancipated minor.

B. The institution shall then determine, on the basis of the information furnished by the applicant, whether the student has clearly and convincingly established Virginia domicile for the requisite one-year period. If the date of the alleged entitlement is, for example, September 1, 1996 2001, then the student must have established Virginia domicile ~~must have been established~~ no later than September 1, 1995 2000, and continued it for the entire year.

1. An independent student or emancipated minor must establish by clear and convincing evidence that for a period of at least one year immediately prior to the date of alleged entitlement, the student was domiciled in Virginia and had abandoned any previous domicile.

2. A dependent student or unemancipated minor must establish by clear and convincing evidence that for a period of at least one year immediately prior to the date of alleged entitlement, the parent or legal guardian through whom the student claims eligibility was domiciled in Virginia and had abandoned any previous domicile.

3. A dependent student is ~~rebutably~~ presumed to have the domicile of the parent or legal guardian listing the student as an exemption for tax purposes or providing substantial

financial support. A dependent student 18 or over may seek to show a domicile independent of such parent or legal guardian regardless of financial dependency; however, the student is presumed to have the same domicile as his parents or legal guardian unless he can show to the contrary by clear and convincing evidence.

4. The one-year of domicile period applies to all classifications and is waived only for two groups of persons students except for: (i) active-duty military personnel residing in the Commonwealth who voluntarily elect to establish Virginia as their permanent residence for domiciliary purposes, and (ii) dependent spouses or children claiming eligibility through an active-duty military member residing in Virginia who voluntarily elects to establish Virginia as his permanent residence for domiciliary purposes.

## 8 VAC 40-120-30. Domicile: residence requirement.

A. Domicile is defined in the law as "the present fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely." No person may have more than one domicile.

1. Domicile cannot be initially established in Virginia unless one actually resides, in the sense of being physically present, in Virginia with domiciliary intent.

2. Domiciliary intent means present intent to remain indefinitely, that is, the individual has no plans or expectation to move from Virginia. Residence in Virginia for a temporary purpose or stay, even if that stay is lengthy, with present intent to return to a former state or country upon completion of such purpose does not constitute domicile.

B. Once a person has established domicile in Virginia, actual residence here is no longer necessarily required.

1. Temporary absence from the state does not negate a claim of Virginia domicile unless the person does something incompatible with ~~that claim~~ domiciliary intent, such as, but not limited to, registering to vote in the new state, indicating an intent to establish domicile in another state.

2. A person who has established Virginia domicile but resides in another state may be required by laws of the host state to fulfill certain obligations of the host state. Performing acts in the host state required by law of all residents, irrespective of domicile, does not automatically constitute an abandonment of Virginia domicile. However, such acts will need to be examined to determine if they were voluntary.

3. The question is whether ~~the~~ an individual's acts, especially voluntary acts, show the ~~formation~~ establishment of a new domicile in the host state and abandonment of Virginia domicile.

C. The physical presence requirement means that a person who has never resided in Virginia, or who was not residing here at the time he formed the intent to make Virginia his home, cannot be domiciled here until actually moving to Virginia and taking the appropriate steps to establish domicile. Additionally, the physical presence cannot be temporary in

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~~nature, such as a visit or vacation. For example, a New York resident who has resolved to move to Virginia and to remain indefinitely in Virginia is still domiciled in New York for tuition eligibility purposes. The New York resident cannot establish Virginia domicile until actually moving to Virginia and taking the appropriate steps.~~

## 8 VAC 40-120-40. Domicile: intent requirement.

A. Where a person resides is relatively easy to determine. It can be difficult to ascertain whether a person has resided in Virginia with domiciliary intent. *A person may have more than one residence but only one domicile.*

1. Domiciliary intent is normally determined from the affirmative declaration and objective conduct of the person. Intent is necessarily a subjective element; however, a person demonstrates his intent through objective conduct. When evidence is conflicting, the opposing facts must be balanced against each other.

2. The burden is ~~on~~ upon the applicant to demonstrate by clear and convincing evidence that his domicile is Virginia and that he has abandoned any prior domicile.

3. The law also requires that a person claiming eligibility for in-state tuition through Virginia domicile (or the person through whom eligibility is being claimed) shall have demonstrated Virginia domicile for at least one year immediately prior to the date of the alleged entitlement.

4. *Mere residence due to incarceration in Virginia does not necessarily mean that Virginia domicile has been established. Domicile, by definition, is based upon voluntary actions.*

B. Prior determination of a student's domiciliary status by one institution is not conclusive or binding when subsequently considered by another institution; however, assuming no change of facts, the prior judgment should be considered.

C. Each case presents a unique combination of factors, and the institution must determine from among them those core factors which clearly and convincingly demonstrate the person's domiciliary intent.

1. Having isolated the core factors in a given case, the institution must look at the date on which the last of these essential acts was performed. It is at that point that domiciliary intent is established, and the clock starts running for purposes of the one-year domicile requirement.

2. In complex cases, it might be helpful to chart on a timeline the steps taken to establish domicile. After establishing domicile, an individual must continue to meet the factors demonstrating domiciliary intent throughout the one-year period prior to the date of alleged entitlement.

D. It is important to reiterate the reference to clear and convincing evidence. A student who claims ~~domiciliary residence~~ *Virginia residency* must support that claim by clear and convincing evidence. Clear and convincing evidence is not as stringent a standard as proof beyond a reasonable doubt, as required in the criminal context, but is a degree of proof higher than a mere preponderance of the evidence. Clear and convincing evidence is that degree of proof that will

produce a firm conviction or a firm belief as to the facts sought to be established. The evidence must justify the claim both clearly and convincingly.

E. Section 23-7.4 of the Code of Virginia includes a list of objective conduct that ~~may be relevant~~ *must be considered, if applicable*, in evaluating a claim of domiciliary intent. Necessarily, each of the objective criteria will not carry the same weight or importance in an individual case. No one factor is necessarily determinative but should be considered as part of the totality of evidence presented. The objective criteria that may be relevant include the following:

1. Continuous residence for at least one year immediately prior to the date of alleged entitlement. Continuous residence may be evidence supporting that the person intends to make Virginia his home indefinitely. As noted previously, once a person has affirmatively established Virginia domicile, actual residence in Virginia is not required in order to retain it. However, residence in another state or country is still relevant because it may be that the person has established a new domicile in the foreign jurisdiction, *or never intended to remain indefinitely in Virginia.*

2. State to which income taxes are filed or paid.

a. Failure to file a tax return in Virginia ~~when one is required to~~ is evidence that one is not a Virginia domicile. Domiciliaries, *who have taxable income*, are required to file returns regardless of the fact that they may reside elsewhere.

(1) The general rule is that Virginia domiciliaries residing temporarily outside the Commonwealth must file *Virginia* resident income tax returns if they wish to maintain their Virginia domicile.

(2) Persons claiming that they are exempt from this requirement, such as those who reside overseas and are employed by certain non-U.S. companies, have the burden of clearly identifying the exemption and demonstrating their entitlement to it.

b. Considering payment or nonpayment of income tax as a factor assumes that the individual had taxable income. Moreover, under ~~1996~~ *Virginia* tax law, a Virginia domiciliary is not required to file a Virginia return if the person's *Virginia* adjusted gross income was less than ~~\$5,000~~ *minimum levels*. Thus, failure to file a return by someone who had no income in Virginia or ~~whose adjusted gross income was less than \$5,000~~ *who was not otherwise required to file a state income tax form*, is not determinative of domiciliary status.

c. A member of the armed forces who does not claim Virginia as his tax situs for military income ~~generally~~ cannot qualify as a Virginia domiciliary.

d. The filing of an income tax return in Virginia or the paying of income taxes to Virginia is supporting evidence, but not conclusive evidence, that a person is domiciled in Virginia. For example, a student with a part-time job may be required to pay income tax to Virginia on wages earned in the state, even though he is a temporary resident or residing outside of Virginia.

- e. Paying income taxes to another state or country is also not automatically determinative of domiciliary status; a Virginia domiciliary may be required by another state to pay income taxes on income earned in that state irrespective of ties to the state. However, such payment may be considered, along with all of the other evidence, in evaluating a claim of Virginia domicile.
3. Driver's license.
- a. Possession of a Virginia driver's license may be evidence of intent to establish domicile in Virginia.
- b. Possession of a driver's license from another state may be evidence of intent to retain domicile in that state.
4. Motor vehicle registration.
- a. Registration of a motor vehicle in Virginia may be evidence of intent to establish domicile in Virginia.
- b. Registration of a motor vehicle in another state may be evidence of intent to be domiciled in that state.
- c. Virginia law permits, but does not require, registration by a nonresident student. Thus, a student-owner who does register in Virginia, when not required to by law, has shown some evidence of Virginia domicile. However, vehicle registration alone is not determinative.
5. Voter registration.
- a. Actual voting.
- (1) Voting in person or by absentee ballot in another state or country during the year immediately prior to the date of the alleged entitlement is strong evidence that the individual has not established domicile in Virginia.
- (2) Voting in Virginia in local or state elections is evidence of domicile, but it is not determinative.
- (3) Failing to vote in state or local elections is also evidence that the person is not a domiciliary; however, it is not determinative in all cases since the individual may forget to vote, choose not to, or in the case of certain aliens, may not be entitled to vote.
- b. ~~Voter~~ *Actual* registration.
- (1) Registering to vote in Virginia within the past year is evidence of domiciliary intent, but it is not determinative. The institution is not bound by the voter registrar's determination; however, it should be considered.
- (2) The fact that a person is still registered in another state, but has not voted there in the past year, does not conclusively mean that the person is not domiciled in Virginia; however, it should be considered.
- (3) Failure to register to vote by a person who, on principle, has never registered to vote anywhere should not be taken as conclusive evidence that the person lacks domiciliary intent.
6. Employment.
- a. ~~Employment in Virginia is not required for establishing domicile.~~ If a person has otherwise shown residence in the state with domiciliary intent, unemployment does not preclude a finding that the person is a Virginia domiciliary.
- b. Fulfillment of state licensing requirements in order to be certified to practice a profession in Virginia (e.g., attorney, clinical psychologist, nursing), is evidence of domiciliary intent; however, it is not determinative.
- c. Summer employment.
- (1) Employment in Virginia during the summer may be ~~evidence~~ *one indicator* of domiciliary intent, ~~albeit~~ *but* not conclusive evidence.
- (2) A student returning *for extended periods* each summer to his parents' domicile outside Virginia may be evidence of retaining that domicile.
- d. *Employment that is part of an educational program, such as a cooperative education program, shall not confer domiciliary status.*
7. Ownership of real property.
- a. Ownership of real property (e.g., land, house, cottage, etc.) in Virginia may be evidence of domiciliary intent.
- b. Payment of real property taxes to Virginia in the absence of other supportive evidence is insufficient to establish that a person is domiciled in Virginia. Owners of real property in Virginia are required to pay real estate taxes irrespective of their domicile.
- c. A person who may have purchased real property in Virginia while domiciled here, but who subsequently left to take up residence in another state, cannot ~~establish~~ *demonstrate continued* domicile solely ~~through~~ *by presenting evidence of* continued ownership of Virginia property. Even though the person still has taxable real property in Virginia, the individual's actions may show that Virginia domicile has been abandoned.
8. Sources of financial support.
- a. Acceptance of financial assistance from public agencies or private institutions located in another state likely precludes establishing Virginia domicile when such financial assistance is offered only to domiciliaries of the other state.
- b. Acceptance of such assistance would not prohibit a student, at a later time, from showing a change of intent or that the student did not know that he was representing domicile of another state. Such claims are suspect and must be proven by clear and convincing evidence.
- c. Institutions shall also consider financial support obtained from parents or other relatives. Substantial financial support from a parent or relative in another state could be evidence of continuing ties to that state.

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## 9. Military records.

a. In order to establish domicile, a military member must pay Virginia taxes on all military income.

b. A student should submit *copies of military documents* such as the ~~Home of Record DD2058 "State of Legal Residence Certificate" that is part of the student's official military records~~ and the Leave and Earnings Statement as evidence of Virginia domicile. ~~It is more important that the military member currently reports residence or domicile in Virginia for the purpose of paying Virginia taxes than that he reported Virginia as his home of record when entering the military.~~

## 10. Employment in Virginia post-graduation.

a. Accepting a formal offer of permanent employment with a Virginia employer following graduation from the institution is strong evidence of domiciliary intent. Evidence of employment in Virginia following graduation without other indications of domiciliary intent is not determinative.

b. The burden is on the student to demonstrate that such employment exists, for example, through a written commitment between the student and the prospective employer.

c. Students nearing graduation and seeking reclassification provide strong evidence of domiciliary intent with proof of likely employment in Virginia following graduation. Such students not providing for employment, or actively soliciting employment, in Virginia following graduation is evidence disfavoring reclassification.

## 11. Social and economic relationships.

a. The fact that a person has immediate family ties to Virginia may be offered to support a claim of domiciliary intent.

b. Other social and economic ties to Virginia that may be presented include membership in religious organizations, community organizations, ~~and~~ social clubs, *bank accounts, and business ties.*

### 8 VAC 40-120-50. Residence for educational purposes.

A. Mere physical presence or residence primarily for educational purposes ~~does will~~ not confer domiciliary status. For example, a student who moves to Virginia for the primary purposes of becoming a full-time student is not a Virginia domicile domiciliary, even if the student has been in Virginia for the required one-year period.

B. A person shall not ordinarily be able to establish domicile by performing acts which are auxiliary to fulfilling educational objectives or which are required or routinely performed by temporary residents of the Commonwealth.

C. The issue is whether the individual has moved to Virginia with the primary purpose of becoming a full-time student or with the primary purpose of establishing indefinitely his home in Virginia. In questionable cases, the institution should closely scrutinize acts, *aside from those that are auxiliary to fulfilling*

*the student's educational objective, performed by the individual which indicate an intent to become a Virginian.*

D. Students often attempt to reclassify as a Virginia domiciliary after completing a few semesters at the institution. Institutions should examine the number of credits taken by the student in past semesters in determining if the student came to Virginia with the primary purpose of attending school. ~~For example, a student who has enrolled for at least six credits during at least one semester in the 12 months prior to applying for reclassification may have come to Virginia for educational purposes.~~

E. *If the initial and continuing purpose of moving to Virginia was for educational purposes for one spouse, this may be evidence that neither spouse has domiciliary intent.*

F. *Employment as part of a cooperative education program does not confer domiciliary status. Some institutions consider students participating in cooperative education programs to be enrolled full time at the college or university during periods of cooperative education employment. Institutions should examine the student's enrollment history, and other factors, in determining if the student's primary purpose for living in Virginia is for educational purposes.*

### Article 2.

#### Special Rules for Determining Domiciliary Residence.

### 8 VAC 40-120-55. Extended Eligibility for in-state tuition rates.

*If the person through whom the dependent student or unemancipated minor established such domicile and eligibility for in-state tuition abandons his Virginia domicile, the dependent student or unemancipated minor shall be entitled to such in-state tuition for one year from the date of such abandonment. To qualify:*

1. *The parent, legal guardian, or spouse must have been domiciled in Virginia for at least one full year prior to abandoning his Virginia domicile.*

2. *The student must have been eligible for in-state tuition rates vis-à-vis the above mentioned person at the time of abandonment.*

### 8 VAC 40-120-60. Unemancipated minors.

A. An unemancipated minor automatically takes the domicile of his parents *or legal guardian.*

B. If the unemancipated minor is in the care of a legal guardian, the minor takes the domicile of the legal guardian unless there are circumstances indicating that the guardianship was created primarily for the purpose of conferring a Virginia domicile on the minor. With parents surviving, the guardianship must have been created by law, such as *through* a court order. A copy of the court decree should routinely be required as proof of legal guardianship.

C. ~~In most cases, the domicile of the parents will be the same; however, it is possible for the parents to have different domiciles. When the domicile and residence of the student's parents differ, the domicile of the unemancipated minor may be either:~~

~~1. Where the parents have not been divorced or legally separated by court order, the unemancipated minor may claim the domicile of either parent.~~

~~2. Parents legally separated or divorced.~~

~~a. The unemancipated minor is not automatically assigned the domicile of the custodial parent. Rather, the domicile of the unemancipated minor may be either (i)~~

~~1. The domicile of the parent with whom he resides,;~~

~~(ii) 2. The domicile of the parent who claims the minor as a dependent for federal and Virginia income tax purposes, currently and for the tax year prior to the date of alleged entitlement,; or~~

~~(iii) 3. The domicile of the parent who provides substantial financial support. This derives from the definition of unemancipated minor and dependent student.~~

~~b.~~ For example, if a minor lives with the mother, but the father, who is a Virginia domiciliary, claims the minor as a dependent on his federal and Virginia income tax returns, the minor may claim Virginia domicile through the father.

## 8 VAC 40-120-70. Dependent children.

A. A dependent child is a student who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his parents or legal guardian.

1. A dependent child is not required to live with a parent or legal guardian.

2. A dependent child does not have to be a full-time student.

*B. When the domicile and residence of the student's parents differ, the domicile of the unemancipated minor may be either:*

*1. The domicile of the parent with whom he resides;*

*2. The domicile of the parent who claims the minor as a dependent for federal and Virginia income tax purposes currently and for the tax year prior to the date of alleged substantial financial support; or*

*3. The presumption is that the student has the domicile of the parent described in either 8 VAC 40-120-60 C 2 or 3.*

*For example, if a minor lives with his mother, but the father, who is a Virginia domiciliary, claims the minor as a dependent on his federal and Virginia income tax returns, the minor is rebuttably presumed to have Virginia domicile through his father.*

~~B.~~ C. Presumption of dependency for students under 24.

1. A student under age 24 on the date of the alleged entitlement shall be rebuttably presumed to receive substantial financial support from his parents or legal guardian and therefore is presumed to be a dependent child, unless the student:

a. Is a veteran or an active duty member of the U.S. Armed Forces;

b. Is a graduate school or professional school student;

c. Is married;

d. Is a ward of the court or was a ward of the court until age 18;

e. Has no adoptive or legal guardian when both parents are deceased;

f. Has legal dependents other than a spouse; or

g. Is able to present clear and convincing evidence of financial self-sufficiency.

~~2. If the student is under 24, the student is presumed to have the domicile of his parents because he is presumed to be financially dependent on his parents, unless the student is able to meet one of the seven exceptions.~~ Institutions should examine the student's application carefully to determine if the student meets one of exceptions (a) through (f). The burden is on the student to provide clear and convincing evidence of financial self-sufficiency under exception (g).

3. The presumption of dependency closely follows the federal financial aid definition of dependent student.

4. If the student is 24 or older, there is no presumption of dependency on parents nor is there a presumption of independence. The student may be classified as an independent student unless the student presents evidence of financial dependency on his parents, legal guardian, or spouse, that is, the student receives substantial financial support from parents, legal guardian, or spouse *or is listed on a parent's or legal guardian's federal or state income tax returns as a dependent.*

~~C.~~ D. Tax dependency and substantial financial support. A student who does not qualify as a dependent child under the dependency presumption 24 years old or older may still be a dependent student if the amount of support ~~a student~~ he receives from a parent or legal guardian would qualify ~~the student~~ him to be claimed as a tax dependent and the student is listed as a dependent on the federal or state income tax returns of his parents or legal guardian.

1. Normally, a student will be classified as a dependent of the parent or legal guardian who provides more than one half of the student's expenses for food, shelter, clothing, medical and dental expenses, transportation, and education.

2. Only financial support provided by the parent or legal guardian is considered. Earned income of the student paid by parent or legal guardian for bona fide employment is not counted as part of the parental or guardian support; however, gifts of money, or other things of value, from the parent or legal guardian to the student are counted toward the parental legal or guardian support to the extent that the student relies upon it for support.

~~D.~~ E. A student who is financially dependent ~~on~~ upon one or both parents may rebut the presumption that the student's domicile is the same as the ~~parent's~~ parent claiming him as an exemption on federal or state income tax returns currently and for the tax year preceding the date of alleged entitlement or who provides him with substantial financial support.

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1. When *domiciles* of the parents are ~~separated or divorced~~ *different*, and the parent claiming the student as a dependent for income tax purposes is domiciled in another state, the student may rebut this presumption by showing residence with the other parent, who is a Virginia domiciliary.

2. A dependent student 18 years of age or older may also rebut the presumption that the student has the domicile of the parent claiming the student as a dependent for income tax purposes by showing that Virginia domicile was established independent of the parents. The burden is on the student to show by clear and convincing evidence that he has established a Virginia domicile independent of the out-of-state parents despite the fact that the parents are claiming the student as a dependent for income tax purposes or providing substantial financial support.

3. Finally, a student may rebut the presumption that the student has the same domicile as an out-of-state parent by offering clear and convincing evidence that the parent misreported the student as a dependent for tax purposes. ~~In this case the institution should evaluate the student as an independent student and consider informing the relevant tax authority.~~

## ~~E.~~ F. Military dependent children.

1. When determining the domiciliary status of a student whose parent is a member of the military, the institution should always first determine if the military parent or the nonmilitary parent is a Virginia domiciliary. A military parent may reside in Virginia but choose not to claim Virginia as his domicile and has the right to choose another state as his home state for taxation of military income purposes.

a. Paying taxes to Virginia on all military income is evidence that the military parent is a Virginia domiciliary *resident* and should be evaluated with all of the ~~other pertinent information~~ *applicable factors to determine domiciliary intent*. To pay taxes to Virginia on military income, the military member must change the Leave and Earnings Statement to authorize the withholding of Virginia income tax. ~~A military member becomes a Virginia domiciliary once the military member declares Virginia domicile and takes the appropriate steps to satisfy some of the factors for establishing domicile as set forth in 8 VAC 40-110-40 E.~~

b. *Active-duty* military members do not have to satisfy the one-year ~~residence~~ *requirement for the existence of the factors showing domiciliary intent*, nor do dependent children claiming Virginia domicile through them. A dependent child of a military member claiming domicile through the military member becomes eligible for in-state tuition immediately after the military member has taken actions to establish domicile in Virginia, ~~including paying Virginia income taxes.~~

c. If the military parent claims another state as his income tax situs while stationed in Virginia, ~~the rebuttable presumption is that the parent is not a Virginia domiciliary.~~

2. If the student's nonmilitary parent is a Virginia domiciliary and the requisite one-year period is met, the dependent

child may claim domicile through the nonmilitary parent and receive in-state rates if the student is claimed as a dependent of the nonmilitary parent.

a. As with anyone else, the strength of the nonmilitary parent's ties to Virginia should withstand scrutiny. ~~Spouses of military members do not have to be employed to establish domicile in Virginia.~~

b. In addition to the factors listed in 8 VAC 40-110-40 E, the institution should consider the duration of residence in Virginia and the nonmilitary parent's domiciliary history. Evidence that the nonmilitary parent has accompanied the military parent on each tour of duty outside Virginia and taken steps to establish domicile in other states may show that the nonmilitary parent has not established a Virginia domicile independent of the military parent.

3. a. If one of the parents is a Virginia domiciliary, the student may claim eligibility through that parent, provided that the student is a dependent of that parent (see subsection A of this section).

b. The institution should consider the requirements of the military exception (see Part III) only if the student is not eligible under this section as a dependent of a parent (military or nonmilitary) who is a domiciliary of Virginia.

## 8 VAC 40-120-80. Independent students.

A. An independent student is one whose parents have surrendered the right to his care, custody and earnings, do not claim him as a dependent on federal or state income tax returns, and have ceased to provide him substantial financial support.

B. Students under age 24 ~~must be able to demonstrate financial self-sufficiency or meet one of the exception requirements to be classified as an independent student~~ *are presumed to be financially supported by their parents or legal guardians unless the student rebuts the presumption through one of the seven factors mentioned under 8 VAC 40-120-70 C 1.*

C. ~~Unless the student rebuts the presumption of dependency through one of the seven factors mentioned in 8 VAC 40-120-70 C 1, or is an emancipated minor then, due to the one-year requirement, the earliest an independent student would be could become eligible for in-state rates by virtue of having established an independent domicile in Virginia would be on the student's 19th birthday.~~

## 8 VAC 40-120-90. Emancipated minors.

A. By virtue of having been emancipated prior to reaching age 18, an emancipated minor becomes eligible to establish a domicile independent of *his* parents ~~as of the date of emancipation~~. ~~If positive steps are necessary in order to establish a Virginia domicile,~~ The earliest an emancipated minor ~~may could~~ become eligible for in-state tuition is one year after the date of emancipation. A student who establishes *Virginia domicile through his parents or legal guardians* prior to emancipation is eligible for in-state tuition upon emancipation.

B. Emancipation requires that the parents or legal guardian ~~regard the child as emancipated~~ *surrender the right to the child's care, custody, and earnings and no longer claim him as a dependent for income tax purposes*; that is, the child is not financially supported by his parents or legal guardian or other person ~~having legal control~~ and is not under or subject to the control or direction of his parents, legal guardian, or other person ~~with custody~~ *custodian*.

1. A minor's declaration of emancipation is not conclusive. For example, a minor who runs away from home is not necessarily emancipated, even though the minor may not desire any further contacts with the parents or legal guardian.

2. The parents or legal guardian must no longer support the minor, and they must recognize the minor's right to retain earned wages and to live independently of them beyond their direction or control.

3. If the parents or legal guardian list the minor as a dependent on income tax returns, he ~~cannot be~~ *is not* emancipated. A student who claims emancipation from ~~the~~ *his* parents or legal guardian must provide evidence of *emancipation, either* that the parents or legal guardian consider the student emancipated and do not claim the student as a tax dependent. The institution may require a copy of the tax returns if needed to substantiate the claimed emancipation.

## 8 VAC 40-120-100. Married persons.

A. The domicile of a married person ~~shall~~ *may* be determined in the same manner as the domicile of an unmarried person. A person's domicile is not automatically altered by marriage. Institutions should never presume that an individual is financially dependent on a spouse.

B. Marriage may be a factor in determining whether or not an individual under age 18 is emancipated from the parents, but it is not conclusive. A person under age 24 who is married is presumed to be independent *of his parents*.

C. Dependent spouses.

1. ~~A married person~~ *An employed spouse* may choose to claim dependency on and, therefore, domicile through a spouse if the individual receives substantial financial support from the spouse.

2. Substantial financial support is at least one-half of the total financial support required for that person.

3. The dependent spouse "stands in the shoes" of the person providing the support. Therefore, the dependent spouse's actions in establishing or not establishing domicile in Virginia are irrelevant. The institution should only consider whether the person through whom the applicant is claiming dependency has met the requirements for establishing domicile.

D. Military dependent spouses.

1. A dependent spouse may claim Virginia domicile through a military member after the military member has taken actions to establish domicile in Virginia, including paying Virginia *state income* taxes.

2. Since the dependent spouse is standing in the shoes of the military member, there is no one-year domicile requirement.

3. An institution should only apply the requirements of the military exception (see Part III) if the spouse has not established eligibility as a Virginia domiciliary for the required one-year period prior to the date of alleged entitlement.

4. *Spouses of military members do not have to be employed to establish domicile in Virginia. All individual ties to Virginia should be considered.*

*E. The domicile of a dependent spouse is generally considered to be that of the supporting spouse. However, the dependent spouse retains the right to provide evidence demonstrating his own unique ties to Virginia thus establishing a separate domicile.*

## 8 VAC 40-120-110. Aliens.

A. The mere fact that a person is a citizen of another country does not automatically disqualify the person from establishing domicile in Virginia. When a foreign national claims Virginia domicile, the institution must initially examine the federal immigration documents controlling the alien's purpose and length of stay in the United States. (For immigrants, this is usually Form I-551, "*the Green Card*"; for nonimmigrants, it is Form I-94, "*the Arrival/Departure Card*".)

1. The purpose of examining immigration documents is to determine whether the alien is required to maintain a foreign domicile, as well as the terms and conditions governing the alien's presence in the United States relevant to evaluating the claim of Virginia domicile for the requisite one-year period.

2. If the immigration documents indicate that a person cannot establish domicile then the student is not eligible for in-state tuition rates.

3. Federal immigration laws are complex and ever evolving. Treaties may also be controlling. The burden is upon the student claiming Virginia domicile to bring pertinent information to the attention of the institution.

B. An institution should preliminarily determine under which alien category the student falls and then proceed with the evaluation of domicile in accordance with this chapter.

1. Immigrants are admitted for permanent residence.

2. Nonimmigrants are admitted for specific time periods and for particular purposes (e.g., tourism, study, or temporary employment).<sup>2</sup>

3. The remainder may be persons who are on a paroled status or granted asylum.

C. In reviewing the domiciliary intent factors, keep in mind that there may be factors, such as voter registration, which are inapplicable to foreign nationals by law.

<sup>2</sup>8 USC 1101 (a) 15; 8 CFR 214 et seq.; 22 CFR 40-42.

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1. Aliens cannot register to vote.

2. Salaries paid by ~~many international organizations to some non-U.S. citizens are exempt from federal and state taxation by treaty or international agreement (i.e., the International Bank for Reconstruction and Development, also known as the World Bank).~~

3. In such instances, a record of nonvoting or nonpayment of taxes is immaterial to the domicile consideration. Unless the institution is aware of the inapplicability of any evidentiary factor, the responsibility and burden is always on the student to bring such information to the attention of the institution.

D. An alien may claim eligibility for in-state tuition through the Virginia domicile of the student's parent, like any other student. An alien may claim eligibility for in-state tuition through the Virginia domicile of the student's spouse if the student demonstrates dependency on that spouse.

E. Aliens holding Form I-551 (green cards) are lawfully admitted as immigrants for permanent residence in the United States.<sup>3</sup> Such individuals are not prohibited from forming domicile in this country. Thus, immigrants may claim, and seek to show, eligibility for in-state tuition rates as Virginia domiciles as any citizen of the United States. The burden is on the student to establish, clearly and convincingly, domicile in Virginia for the requisite one-year period.

F. Conditional permanent resident aliens.

1. A person, and that person's children, may acquire permanent resident status through marriage to a United States citizen or lawful permanent resident. In order to discourage fraudulent applications based on sham marriages, the Immigration and Naturalization Service, pursuant to the Immigration and Nationality Act, is now issuing two-year "conditional" Alien Registration Receipt Cards (Form I-551) to such persons. These differ from the regular Form I-551 only insofar as there is an expiration date on the back. During the last 90 days of the two-year period, the couple must appear before the INS and file a petition to remove the condition, swearing under oath that the marriage was and is valid, and that it was not entered into for the purpose of procuring an alien's entry as an immigrant.

2. In these cases, the institution should assume that the conditional basis will be removed and analyze the alien as a lawful permanent resident; however, the institution should verify at the appropriate time that the conditional basis of the alien's permanent resident status has in fact been removed. If permanent residence status is terminated by Immigration (*which will occur if the Immigration and Naturalization Service (INS) finds that the marriage was fraudulent, among other reasons*), the institution may, in accordance with the policies concerning falsification of information (see 8 VAC 40-120-130), reconsider the

student's application for in-state status to determine whether it was fraudulent. If so, the institution may change the student's status retroactive to the term for which the fraudulent application was made.

G. Legalization (amnesty) program.

1. The Immigration Reform and Control Act provides for the legalization of aliens who establish that they were in the United States illegally as of January 1, 1982, and maintained continuous residence thereafter.

~~2. Several of the usual exclusion grounds have been waived for the purposes of the legalization program, and the United States Attorney General has discretion to waive most of the others. However, an alien who has been convicted of a felony or three misdemeanors is currently ineligible.~~

~~3. An applicant for legalization must go through several stages to receive permanent resident status.~~

4. 2. Holders of Form I-688A or I-688 are eligible to receive in-state tuition rates upon the requisite showing of Virginia domicile for the one-year period.

~~5.~~ 3. The standards for adjustment to permanent resident status for a special group of agricultural workers (SAWs) who worked in seasonal agricultural services between May 1, 1985, and May 1, 1986, are even more liberal than for the main legalization program. Applications for in-state status from SAWs who have been issued Form I-688 should be analyzed in the same manner as legalized immigrants.

H. Political refugees/asylees and parolees.

1. Political refugees/asylees are generally admitted into the United States for an indefinite period of time without domiciliary restriction. They usually carry Form I-94 endorsed to show either refugee or asylee status. Although some of the I-94s may have an expiration date, e.g., one year, they are usually renewed indefinitely until the person adjusts to permanent resident status. Like immigrants, such political refugees and asylees are eligible for in-state tuition rates upon clear and convincing evidence that for the period of at least one year prior to the date of alleged entitlement, they were domiciled in Virginia and abandoned any previous domicile.

2. *A parolee is an alien, appearing to be inadmissible to the inspecting officer, allowed into the United States for urgent humanitarian reasons or when that alien's entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States. It confers temporary status only and requires parolees to leave when the conditions supporting their parole cease to exist. Types of parolees include deferred inspection, advance parole, port-of-entry parole, humanitarian parole, public interest parole, and overseas parole. Due to the temporary nature of the admission in the United States, parolees are not eligible to establish Virginia domicile.*

I. Undocumented and illegal aliens. ~~When faced with determining the eligibility for in-state tuition for undocumented aliens, the institution:~~ *Students unable to present valid, current INS documentation of their alien status are not eligible for in-state tuition.*

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<sup>3</sup> The front side of the card contains the photograph and fingerprints of the alien and an eight-digit number preceded by the letter "A". The reverse side of the card states that "the person identified by this card is entitled to reside permanently and work in the United States."

~~1. May contact the U.S. Immigration and Naturalization Service (INS) to seek clarification on the immigration status of the individual. There may be one or more explanations for an alien not having current documentation. It may be that the documentation or visa has lapsed in oversight, the matter is being processed by INS, or some special treaty, policy, or INS decision applies to the student.~~

~~2. Shall presume inability of undocumented aliens to establish domicile in the United States. Lack of legal status with INS is a strong indicator of lack of intent to remain in the state indefinitely. The burden is on the student to produce clear and convincing evidence to show eligibility.~~

~~For example, a student could live in Virginia for 10 years under an eligible nonimmigrant visa category, pay taxes to Virginia, obtain a driver's license and vehicle registration in Virginia, own property in Virginia, graduate from a Virginia high school, and establish other social and economic ties to the Commonwealth. If the student allows the visa to expire without renewing it, he would then be an undocumented alien. However, the student may meet the intent requirement, rebutting the presumption that undocumented aliens cannot establish domicile in Virginia.~~

## J. Nonimmigrants.

1. Unlike immigrants, nonimmigrants are authorized entry into the United States temporarily for specific purposes.

2. a. The document showing their admission status is the Arrival-Departure Record (Form I-94), which is usually stapled into the passport. This form normally contains the nonimmigrant visa category under which the alien is admitted and an expiration date.

b. The nonimmigrant visa is a stamp placed on one of the pages of the alien's passport. It is useful to distinguish between the nonimmigrant visa and Form I-94. A visa does not guarantee entry, it merely allows a person to board a plane whose destination is the United States and to apply for admission at the border. Form I-94 determines whether the alien will be admitted and how long he will be permitted to stay. When the expiration dates of the visa and the I-94 are different, the I-94 controls.

c. Institutions should also examine a nonimmigrant's Employment Authorization Document for evidence of permission to work in the United States.

### 3. Eligibility to establish domicile.

a. Several of the categories listed below indicate that holders of these visas are eligible to establish domicile in Virginia. This does not mean that the individual should be conferred domiciliary status, but merely that the student be allowed to present evidence of domiciliary intent as would be presented by a U.S. citizen attempting to establish domicile. A visa holder must present clear and convincing evidence of domiciliary intent and satisfy the one-year durational requirement to receive in-state tuition.

b. Aliens who enter the United States under those categories indicated as ineligible are prohibited by federal and state law to form domicile in the United States. As a

condition of entry, such aliens have pledged, and are required, to retain their foreign residence while living temporarily in this country.

c. Minor children or dependent children of aliens who enter the United States under any of the ineligible visa categories are similarly ineligible to establish Virginia domicile. However, they may be eligible for in-state status through the natural or adoptive parent or legal guardian. As with anyone else, the person through whom eligibility is claimed must have been a Virginia domiciliary for the requisite one year.

4. The present nonimmigrant visa categories are described below. The function of the institution is not to judge the appropriateness of the alien's classification but to analyze the claim of domicile, taking into account the terms and conditions of the classification and the expiration date as it appears on the I-94.

a. (1) A-1: Ambassador, public minister, career diplomat, or consular officer accredited by a foreign government and recognized by the Secretary of State, and immediate family.

(2) A-2: Other foreign government official or employee accepted by Secretary of State, and immediate family.

(3) A-3: Attendant, servant, or personal employee of A-1 or A-2, and immediate family.

(4) A-1, A-2, and A-3 visa holders are eligible to establish domicile.

b. (1) B-1: Temporary visitor for business having residence in a foreign country which he has no intention of abandoning.

(2) B-2: Temporary visitor for pleasure having residence in a foreign country which he has no intention of abandoning.

(3) B-1/B-2: Temporary visitor for pleasure and business having residence in a foreign country which he has no intention of abandoning.

(4) B-1, B-2, and B-1/B-2 visa holders are ineligible to establish domicile.

c. (1) C-1: Alien in immediate and continuous transit through the United States.

(2) C-2: Alien in transit to United Nations headquarters.

(3) C-3: Foreign government official, members of immediate family, attendant, or servant, who is in transit through the United States.

(4) C-1, C-2, and C-3 visa holders are ineligible to establish domicile.

d. D: Alien crewman serving on board a vessel or aircraft, who intends to land temporarily and solely in pursuit of his duties and to depart with the vessel on which he arrived or on another vessel. D visa holders are ineligible to establish domicile.

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- e. (1) E-1: Alien and immediate family permitted to enter the United States under treaty to engage in substantial ~~business trade~~. Allowed to remain in the United States as long as business requires.
- (2) E-2: Alien and immediate family permitted to enter United States under treaty for investment purposes. Allowed to remain in the United States as long as investment purposes require.
- (3) E-1 and E-2 visa holders are eligible to establish domicile.
- f. (1) F-1: Bona fide student permitted entry solely for purpose of pursuing a full course of study, having a residence in a foreign country which he has no intention of abandoning.
- (2) F-2: Spouse or child of F-1, having a residence in a foreign country which he has no intention of abandoning.
- (3) F-1 and F-2 visa holders are ineligible to establish domicile.
- g. (1) G-1: Principal resident representative of recognized foreign member government to international organization, staff, and members of immediate family.
- (2) G-2: Other representative of recognized foreign member government to international organization and immediate family.
- (3) G-3: Representative of nonrecognized or nonmember foreign government to international organization and members of immediate family.
- (4) G-4: *Officer or employee of an* international organization, ~~officer or employee thereof~~, and members of immediate family.
- (5) G-5: Attendant, servant, or personal employee of G-1, G-2, G-3, and G-4 classes and members of immediate family.
- (6) G-1, G-2, G-3, G-4, and G-5 visa holders are eligible to establish domicile.
- h. (1)(a) H-1A: Alien coming to the United States to perform services ~~other than services~~ as a registered nurse.
- (1)(b) H-1B: ~~Temporary worker of distinguished merit and ability~~ *Specialty occupation workers*.
- (2)(a) H-2A: Alien temporarily in the United States to perform agricultural labor or services and who has residence in a foreign country which he has no intention of abandoning.
- (2)(b) H-2B: Alien temporarily in United States to perform nonagricultural labor or services and who has a residence in a foreign country which he has no intention of abandoning.
- (3) H-3: Trainee having a residence in a foreign country which he has no intention of abandoning.
- (4) H-4: Spouse or child of alien classified as H-1, H-2, or H-3; if spouse or parent is *holds* a H-2 or H-3, has a residence in a foreign country which he has no intention of abandoning.
- (5) H-1 and H-4 accompanying H-1 visa holders are eligible to establish domicile; H-2, H-3, and H-4 accompanying H-2 or H-3 visa holders are ineligible to *establish domicile*.
- i. I: Representative of foreign information media, spouse, and children. I visa holders are eligible to establish domicile.
- j. (1) J-1: Exchange visitor under educational program designated by Secretary of State and having a residence in a foreign country which he has no intention of abandoning.
- (2) J-2: Spouse or child of exchange visitor and having a residence in a foreign country which he has no intention of abandoning.
- (3) J-1 and J-2 visa holders are ineligible to *establish domicile*.
- k. (1) K-1: Fiance or fiancée of United States citizen who seeks to enter *the* United States solely to conclude a valid marriage in 90 days.
- (2) K-2: Minor child of K-1 visa holder.
- (3) K-1 and K-2 visa holders are eligible to establish domicile.
- l. (1) L-1: Intra-company transferee (executive, managerial, specialized personnel) continuing employment with international firm or corporation.
- (2) L-2: Spouse or minor child of alien classified as L-1.
- ~~(3) L visa holders are granted initial admission for up to three years; one two-year renewal may be obtained for a maximum stay of five years, except for registered nurses who may be granted up to six years. While their authorized stay is presently fixed in time by law, it is not clear whether Congress has thereby required such aliens to maintain their foreign domicile or prohibited domiciliary residence in the United States during their stay in the United States. L-1 and L-2 visa holders are eligible to establish domicile.~~
- (4) ~~Until officially clarified, the institutions should give such applicants the benefit of the doubt and give them the opportunity to claim and show, by clear and convincing evidence, that they have abandoned their former domicile and that Virginia is their domiciliary residence and has been for the requisite one year.~~
- m. (1) M-1: Vocational or other recognized nonacademic student having residence in a foreign country which he has no intention of abandoning.
- (2) M-2: Spouse or minor child of M-1, having residence in a foreign country which he has no intention of abandoning.

- (3) M-1 and M-2 visa holders are ineligible *to establish domicile*.
- n. (1) N-8: The parent of an alien who has been accorded the status of special immigrant, but only if and while the alien is a child; or the child of such a parent accorded the status of special immigrant.
- (2) N-9: Minor child of N-8.
- (3) N-8: and N-9: Visa holders are eligible to establish domicile.
- o. (1) O-1: An alien with extraordinary ability in the sciences, arts, education, business, or athletics who is in the United States to continue work in this area, and immediate family, having a foreign residence which he does not intend to abandon.
- (2) O-2: An alien entering the United States solely to assist in the artistic or athletic performance by an alien who is admitted under an O-1 visa, and immediate family, having a foreign residence which he does not intend to abandon.
- (3) O-3: Minor child of O-1 or O-2.
- (4) O-1, O-2, and O-3 visa holders are ineligible *to establish domicile*.
- p. (1) P-1: An alien who is an athlete or entertainer of international reputation and is in the United States temporarily and solely for the purpose of performing, or the spouse or child of such an alien, who has a foreign residence which he does not intend to abandon. P visa holders are ineligible.
- (2) P-2: Artist or entertainer in reciprocal exchange program.
- (3) P-3: Artist or entertainer in a culturally unique program.
- (4) P-4: Spouse or child of P-1, P-2, or P-3.
- (5) P visa holders are ineligible *to establish domicile*.
- q. Q: An alien having a foreign residence that he has no intention of abandoning who is in the United States for a period not to exceed 15 months as a participant in an international cultural exchange program designated by the U.S. Attorney General. Q visa holders are ineligible *to establish domicile*.
- r. (1) R-1: An alien, ~~and the spouse and children of that alien, if accompanying or following to join the alien,~~ who for the two years immediately preceding the time of application for admission to the country has been a member of a religious denomination having a bona fide, nonprofit religious organization in the United States, *coming into the U.S. to carry on activities of a religious worker*.
- (2) R-2: Spouse or child of R-1.
- (3) ~~Until officially clarified, the institutions should give such applicants the benefit of the doubt and give them the opportunity to claim and show, by clear and~~ convincing evidence, that they have abandoned their former domicile and that Virginia is their domiciliary residence and has been for the requisite one year R-1 visas have a maximum duration of five years. R-1 visa holders, and their dependents are, therefore, ineligible for in-state tuition benefits.
- s. (1) S-5: An alien ~~witness or informant~~ who ~~the U.S. Attorney General~~ the Immigration and Naturalization Service (INS) determines is in possession of information concerning a criminal organization or enterprise and where presence in the U.S. is essential to the success of an authorized criminal investigation.
- (2) S-6: An alien ~~witness or informant~~ who the Secretary of State and ~~U.S. Attorney General~~ INS jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation.
- (3) S-7: Spouse, children, and parents following to join an S-5 or S-6 visa holder.
- (4) S-5, S-6, and S-7 visa holders are ineligible *to establish domicile*.
- t. (1) TN: NAFTA professional. *A Canadian or Mexican citizen admitted temporarily to perform specific professional functions as outlined in the North American Free Trade Agreement.*
- (2) TD: Spouse or child of NAFTA professional.
- (3) TN and TD visa holders are ineligible *to establish domicile*.
- u. (1) NATO-1: Principal permanent representative of member of state to NATO, and resident staff and immediate family.
- (2) NATO-2: Other representative to NATO, including dependents of member of force entering U.S. in accordance with the NATO Status of Forces Agreement.
- (3) NATO-3: Official clerical staff and immediate family accompanying NATO-1 or NATO-2 holder.
- (4) NATO-4: Official of NATO (other than NATO-1) and immediate family.
- (5) NATO-5: Expert, other than NATO officials classifiable under NATO-4, employed on mission on behalf of NATO and dependents.
- (6) NATO-6: Member of civilian component accompanying a force entering U.S. in accordance with the NATO Status of Forces Agreement; member of civilian components employed by Allied Headquarters; and dependents.
- (7) NATO-7: Attendant or servant of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6.
- (8) Aliens admitted into the United States, pursuant to the NATO Status of Forces Agreement, who are members of the armed forces, are not eligible under terms of this agreement to establish domicile in the

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United States.<sup>4</sup> Since the domicile prohibition of the NATO agreement does not apply to civilians accompanying members of the armed forces, these individuals may be able to establish domicile as any other person. The alien must demonstrate the inapplicability of the treaty agreement and provide clear and convincing evidence that he is eligible to establish domicile.

## 5. Pending status changes.

a. ~~If a student who has petitioned is in a visa category that is ineligible to establish domicile and the student petitions the federal government to reclassify his restricted status to immigrant status, or some other eligible nonimmigrant status, the student will continue to be ineligible despite the petition for reclassification.~~

b. When such petition is acted favorably upon by the federal government, the student may seek to prove Virginia domicile as anyone else and may, in the interest of fairness, claim that such domicile existed back to the date of the filing of the petition, not necessarily from the date of reclassification by the federal government. An institution may require evidence of the date that the reclassification was approved or petition filed, or both.

c. For example, an alien here under a restricted visa may be permitted by the U.S. Attorney General to remain indefinitely, and not be deported, because of racial, religious, or political persecution in the home country. The student should be prepared to submit evidence of the U.S. Attorney General's decision.

d. ~~Merely receiving approval of a petition for an accelerated preference in a category with quotas does not constitute a reclassification for domicile purposes.~~

e. *In addition, an alien in the United States in an ineligible visa category (O or R, for example) may become the beneficiary of an approved I-140 or I-130 immigrant petition. If so, the alien may be eligible for in-state tuition benefits, even while the alien's adjustment application is pending, upon providing clear and convincing evidence of domicile.*

## 8 VAC 40-120-120. Reclassification.

### A. Changes from out-of-state to in-state classification.

1. If a student is classified initially as out-of-state, it is the responsibility of the student thereafter to petition the responsible official for reclassification to in-state status if the student believes that subsequent changes in facts justify such a reclassification. The institution will not assume responsibility for initiating such an inquiry independently.

2. It is presumed that a matriculating student who enters an institution classified as an out-of-state student remains in the Commonwealth for the purpose of attending school and not as a bona fide domiciliary. The student seeking status reclassification is required to rebut this presumption by clear and convincing evidence.

3. The change in classification, if deemed to be warranted, shall be effective for the next academic semester or term following the date of the application for reclassification. No change to in-state status may be obtained by a student for an academic term that has begun before the date of the application for reclassification.

### B. Changes from in-state to out-of-state classification.

1. If a student is classified initially as in-state, either the student or the institution thereafter may initiate a reclassification inquiry. It is the duty of the student to notify the institution of any changes of address or domiciliary status.

2. The institution may initiate the reclassification inquiry independently at any time after the occurrence of events or changes in facts which give rise to a reasonable doubt about the validity of the existing ~~residential~~ domiciliary classification.

3. A student who is eligible for in-state tuition as of the date of entitlement is eligible for in-state rates throughout that term. Therefore, a student whose classification changes from in-state to out-of-state during a semester has a grace period that lasts until the end of that semester.

### C. Changes due to administrative errors.

1. Administrative errors may include letters announcing an incorrect domicile, actual misclassification, or incorrect tuition billing notices.

2. In the absence of fraud or knowingly providing false information, where a student receives an erroneous notice announcing the student to be, or treating the student as, eligible for in-state tuition, the student shall not be responsible for paying the out-of-state tuition differential for any enrolled semester or term commencing before the classifying institution gives to the student written notice of the administrative error.

## 8 VAC 40-120-130. Falsification of information.

A. ~~Where a student an institution has been~~ erroneously classified a student as a Virginia domicile for tuition purposes ~~due to~~ resulting from the student's knowingly providing erroneous information in an attempt to evade payment of out-of-state fees, the application of the student is fraudulent.

B. An institution shall re-examine an application suspected as being fraudulent and redetermine domicile status. If warranted, the institution may change the student's status retroactively to the beginning of the term for which a fraudulent application was filed. Such a retroactive change will make the student responsible for the out-of-state tuition differential for the enrolled term or terms intervening between the fraudulent application and its discovery.

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<sup>4</sup> NATO Statute of Forces Agreement, June 19, 1951, 4 U.S.T., 1793, T.I.A.S. 2846. Article III thereof provides that the NATO force "shall not be considered as acquiring any right to permanent residence or domicile in the territories of the receiving State." It has also been held that a member of the Royal Air Force of the United Kingdom stationed to a U.S. Naval aircraft base in Virginia Beach, pursuant to a NATO visa, cannot be a Virginia domicile for purposes of initiating a divorce suit in Virginia's state courts. See official opinion of the Attorney General to delegate Howard E. Copeland, dated May 16, 1983.

C. The student may also be subject to dismissal from the institution or such other action as the institution deems proper. ~~Institutional~~ *Due process* procedures, as provided in 8 VAC 40-120-270 and 8 VAC 40-120-280, must be followed to dismiss the student and, if the student chooses, to appeal such action.

**8 VAC 40-120-140. Student responsibility to register under proper classification; responsibility for supplying information.**

A. It is the student's responsibility to register under proper domicile classification.

B. If the student questions the right to classification as a Virginia domiciliary it is the student's obligation, prior to or at the time of registration, to raise the question with the administrative officials of the institution and have such classification officially verified.

C. An applicant or enrolled student subject to either a classification or reclassification inquiry is responsible for supplying all pertinent information requested by the institution in connection with the classification process. Failure to comply with such requests may result in one of the following consequences:

1. Where the initial classification inquiry affects a prospective enrollee, the student shall be classified out-of-state for tuition purposes;
2. Where the reclassification petition is initiated by the student to acquire a change from out-of-state to in-state status, the student shall continue to be classified as out-of-state for tuition purposes; or
3. Where the reclassification inquiry anticipates a change from in-state to out-of-state status for tuition purposes, the student may be subjected to retroactive reclassification.

~~D. A student who knowingly provides erroneous information in an attempt to evade payment of out-of-state tuition fees may be subject to dismissal or other disciplinary action by the institution.~~ Each institution should provide in their student catalogues, handbooks, etc., the standards of conduct and the procedures it follows when dismissing a student or cancelling enrollment.

**8 VAC 40-120-190. Grace period tuition.**

(Note: § 23-7.4:2(A)(iii) of the Code of Virginia which grants one year of in-state tuition to the spouse and children of military personnel has been suspended ~~for~~ *since* the 1996-1998 1994-1996 biennium by § 4-2.01(b)(4) of Chapter 912 of the 1996 of the appropriation act. ~~Until funding is restored,~~ Military members are not able to receive any benefit outlined in this section *until the suspension period ends.*)

A. The spouse and dependent children of active duty military personnel who reside in Virginia pursuant to military orders may be eligible for in-state tuition rates for a one-year period anytime during the period that the military parent or spouse is residing in Virginia. ~~The one-year grace period gives spouses and dependent children of military members time to take the necessary steps to establish domicile.~~

1. The dependent child or spouse may take advantage of the entitlement at any time during the period that the military person is residing in Virginia.

2. Section 23-7.4:2(A)(iii) of the Code of Virginia refers to the spouse and dependent children of military personnel and not the military personnel themselves.

B. Requirements for one year of in-state tuition.

1. The military parent or spouse must reside in Virginia.
2. A student must be eligible to take advantage of this benefit on the first official day of class.
3. The burden is on the student to provide copies of military documents establishing his entitlement.

C. Institutions of higher education must identify and report to the Council of Higher Education the number of students who are eligible for in-state rates *under this provision*. A report form will be distributed with the annual reports calendar.

D. Military personnel should be advised not only of the temporary nature of the grace period, but also of the inherent limitations of § 23-7.4:2(A)(iii) of the Code of Virginia: the privileges are forfeited when the military member is assigned to a new duty station away from Virginia.

**8 VAC 40-120-210. Eligibility for in-state rates for nonresidents employed in Virginia.**

A. A nondomiciliary student who physically lives outside Virginia but who works full time in the Commonwealth may be eligible for in-state tuition provided that the student:

1. Lives outside Virginia; meaning, the student commutes from a residence outside Virginia to a work-site in Virginia;
2. Has been employed full time in Virginia for at least one year immediately prior to the ~~term or semester~~ *date of enrollment* for which reduced tuition is sought; and
3. Has paid Virginia income taxes on all taxable income earned in the Commonwealth of Virginia for the tax year prior to the date of alleged entitlement.

B. Students claimed as dependents for federal and Virginia income tax purposes who live outside of Virginia will be eligible under this exception if the nonresident parent claiming him as a dependent:

1. Lives outside Virginia; meaning, the parent commutes from a residence outside Virginia to a work-site in Virginia;
2. Has been employed full-time in Virginia for at least one year immediately prior to the date of alleged entitlement; and
3. Has paid Virginia income taxes on all taxable income earned in Virginia for the tax year prior to the date of the alleged entitlement.

(Note: Students may claim eligibility for in-state tuition under this section only through dependency on parents. A nonresident dependent spouse is not eligible for in-state tuition under this section through the individual's spouse.)

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C. Such *dependent* students shall continue to be eligible for in-state tuition charges so long as they or their qualifying parent are employed full time in Virginia, paying Virginia income taxes on all taxable income earned in this Commonwealth, and claiming the student as a dependent for Virginia and federal income tax purposes. It is incumbent upon the student to provide to the institution current information concerning classification under this category.

## 8 VAC 40-120-220. Application of provision.

This part does not apply to individuals who reside in a state with which Virginia has income tax reciprocity.<sup>5</sup> Students who reside in reciprocity states cannot qualify under this section for in-state tuition rates; however, keep in mind that such students have the right to claim in-state rates as Virginia domiciles or under the military spouse or dependent provisions.

## 8 VAC 40-120-230. Reduced tuition under Special Arrangement Contracts.

A. Nondomiciliaries employed by a Virginia employer, including federal agencies located in Virginia, may qualify for reduced tuition rates if the employer assumes the total liability of paying the tuition of these employees to the legal limit allowable ~~and if the employer has entered into~~ through a Special Arrangement Contract with the institution.

B. Instruction may be provided in groups or on an individual basis on or off campus. (Group instruction is a collection of individuals enrolled for a given course.)

C. This chapter applies to all instruction which is reported to the Council of Higher Education for FTE purposes.

## 8 VAC 40-120-250. In-state tuition eligibility.

A. The Code of Virginia provides in § 23-7.4:2(D) that the governing boards of any state institution may charge in-state tuition to (i) persons enrolled in programs designated by the State Council of Higher Education for Virginia who are from states which are a party to the Southern Regional Education Compact and provide reciprocity to Virginians; (ii) foreign nationals in foreign exchange programs *approved by the state institution during the same period that an exchange student from the same state institution, who is entitled to in-state tuition pursuant to § 23-7.4 of the Code of Virginia, is attending the foreign institution*; and (iii) high school or magnet school students under a dual enrollment agreement with a community college where early *college* credit may be earned. In such circumstances, governing board policy should be consulted and the provisions of the cited statute reviewed.

B. Pursuant to § 23-7.4:2(E) of the Code of Virginia, the governing board of the Virginia Community College System may charge reduced tuition to any person *who lives within a 30-mile radius of a Virginia institution and is enrolled in one of the system's institutions who is domiciled in, and is entitled to in-state charges in, the institutions of higher learning in any*

state which is contiguous to Virginia and which has similar reciprocal provisions for persons domiciled in Virginia.

C. Pursuant to § 23-7.4:2(F) of the Code of Virginia, the advisory board of ~~Clinch Valley~~ *the University of Virginia's College at Wise* and the Board of Visitors of the University of Virginia may charge reduced tuition to any person enrolled in ~~Clinch Valley~~ *the University of Virginia's College at Wise* who lives within a 50-mile radius of the college, is domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in Kentucky, if Kentucky has similar provisions for persons domiciled in Virginia.

## 8 VAC 40-120-270. Institutional appeals process.

A. Public institutions of higher education in Virginia are required to establish an appeals process for applicants denied in-state tuition. Each institution is required to have in place such an appeals process which includes the following:

1. An intermediate review of the initial determination; and
2. A final administrative review including a decision in writing, clearly stated with explanation, and reached in accordance with the statute and this chapter. *The letter should also clearly explain that the decision is final unless the student appeals it to the circuit court within 30 days after receiving the decision.* The institution shall ~~send~~ *provide* a copy of the decision to the student *and obtain a legal signature confirming receipt of the decision.*

B. A student seeking reclassification ~~should begin at the intermediate level of review. The institution does not have to make another initial determination for enrolled students based on activities that have taken place since the last domicile determination must begin at the initial level with the right to a subsequent intermediate and final review.~~

C. Either the intermediate review or the final administrative review shall be conducted by an appeals committee consisting of an odd number of members.

D. No person who ~~decides~~ *serves on a committee* at one level of the appeals process shall be eligible to ~~decide~~ *serve on a committee* at any other level of this review.

E. In order to provide for the orderly and timely resolution of all disputes, the appellate procedure of the institution must be in writing and must state time limitations in which decisions will be made.

## 8 VAC 40-120-280. Appeal to circuit court.

A. An applicant who is denied in-state tuition privileges by a final administrative decision may have the decision reviewed by the circuit court for the jurisdiction where the public institution is located. The student must file the petition for review of the final administrative decision within 30 days of receipt of the final decision. ~~To the extent practicable,~~ Each institution should ~~attempt to~~ record the date of actual receipt ~~as in the case of hand deliveries or~~ by certified mailing (return receipt).

B. Upon the filing of a petition for review with the court, and being noticed thereof, the institution shall:

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<sup>5</sup> As of ~~May 1996~~ *June 2001*, the states having income tax reciprocity with Virginia are: Kentucky, Maryland, Pennsylvania, *the District of Columbia*, and West Virginia.

1. Immediately advise legal counsel for the institution that a petition for review has been filed with the circuit court; and

2. Coordinate with legal counsel to file with the court a copy of this chapter, ~~and the written decision of the institution, including the application forms and, all other documentary information considered by, or made available to, the institution, and the written decisions of the institution.~~

C. As provided by law, the court's function shall be only to determine whether the decision reached by the institution could reasonably be said, on the basis of the record, not to be arbitrary, capricious or otherwise contrary to law.

VA.R. Doc. No. R02-205; Filed June 11, 2002, 11:59 a.m.

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**REGISTRAR'S NOTICE:** The State Council of Higher Education for Virginia is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts agency actions relating to grants of state or federal funds or property.

Title of Regulation: **8 VAC 40-130. Virginia Student Financial Assistance Program Regulations (amending 8 VAC 40-130-10, 8 VAC 40-130-30, 8 VAC 40-130-50, 8 VAC 40-130-70, 8 VAC 40-130-90, 8 VAC 40-130-120, 8 VAC 40-130-130, 8 VAC 40-130-150 through 8 VAC 40-130-180, 8 VAC 40-130-200, and 8 VAC 40-130-220; adding 8 VAC 40-130-25; repealing 8 VAC 40-130-100 and 8 VAC 40-130-140).**

Statutory Authority: § 23-38.53:4 of the Code of Virginia.

Effective Date: July 1, 2002.

Summary:

*These regulations provide guidance to the State Council of Higher Education and the state-supported colleges and universities in Virginia in the administration of the Virginia Student Financial Assistance Program (VSFAP) (§ 23-38.53:4 et seq. of the Code of Virginia and § 4-5.01 of Chapter 899 of the 2002 Acts of Assembly.*

*During the 2002 Session of the General Assembly, changes were approved to Chapter 899 that necessitated changes to the VSFAP regulations. These changes require that students seeking a second degree receive lower priority in obtaining an award under this program and that an exception for military families be granted from the restriction requiring students to graduate from a Virginia high school in order to be eligible for this program. Additionally, amendments require that students maintain a 2.0 grade point average after completion of 60 credit hours in order to continue to be eligible to receive a Commonwealth award; exclude a student's Virginia Prepaid Education Program and GEAR UP funds from the calculation of students financial need for the purpose of determining eligibility for VSFAP awards; and provide a standard exception from requirement of continuous enrollment for students involved in an internship, CO-OP or military service.*

Agency Contact: Frances C. Bradford, Regulatory Coordinator, State Council of Higher Education, 101 N. 14th

Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2636, FAX (804) 225-2638 or e-mail bradford@schev.edu.

**8 VAC 40-130-10. Definitions.**

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

*"Academic period" means the academic year as defined by the institution for federal Title IV compliance purposes.*

~~"Academic year" means the enrollment period which normally extends from late August to May or June and which is normally comprised of two semesters 15 to 16 weeks in length. The semesters do not include intersessions or short terms that precede or follow the regular semesters.~~

~~"Applicant" means any undergraduate or graduate student who is a domiciliary resident of Virginia, who has completed an approved application for need-based aid, and who has filed the application with the participating institution at which the student will enroll.~~

*"Approved course of study" means a curriculum of courses in a certificate, diploma, or degree program at the undergraduate, graduate or first professional level.*

"Awards" mean grants from state funds appropriated for the Virginia Student Financial Assistance Program; *among* these grants are called *the Commonwealth awards* and *Virginia Guaranteed Assistance Program (VGAP) awards*.

*"Book allowance" means the allowance for education-related book and supply expenses as determined by an institution for purposes of calculating a student's financial need and awarding federal student aid funds.*

"Cost of attendance" means the sum of tuition, required fees, room, board, books and supplies, and other education related expenses, as determined by an institution for purposes of calculating a student's financial need and awarding federal student aid funds.

"Council" means the State Council of Higher Education for Virginia.

"Domiciliary resident of Virginia" means a student who is determined by the council or by a participating institution to meet the eligibility requirements specified by § 23-7.4 of the Code of Virginia.

~~"Eligible course of study" means a curriculum of courses in a certificate, diploma, or degree program at the undergraduate, graduate, or first professional level which requires at least one academic year to complete.~~

"Expected family contribution" or "EFC" means the amount a student and ~~his~~ *the student's* family is expected to contribute toward the cost of college attendance. A student's EFC will be determined by the federal aid need analysis method used for Title IV programs. The participating institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors which affect the family's ability to pay.

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"Financial need" means any positive difference between a student's cost of attendance and the student's expected family contribution (see *definition of "remaining need"*).

~~"Fiscal year" means the period extending from July 1 to June 30.~~

"Full-time study" means enrollment for at least 12 credit hours per semester or its equivalent at the undergraduate level and enrollment for at least nine credit hours per semester or its equivalent at the graduate or first professional level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a degree at the participating institution.

~~"Fund" means a student loan fund.~~

"Gift assistance" means financial aid in the form of scholarships, grants, and other sources that do not require work or repayment.

"Graduate student" means a student enrolled in an approved master's, certificate of ~~advanced~~ graduate study, specialist, doctoral, or first professional degree program.

"Half-time study" means enrollment for at least six credit hours per semester or quarter, or its equivalent at the undergraduate level, *and at least five credit hours per semester or quarter, or its institutional equivalent at the graduate level.* The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a certificate, diploma, or degree at the participating institution.

~~"Nontraditional" or "nonstandard program" means a degree program where the terms of the program do not conform to the standard terms of the institution's academic year.~~

"Participating Institution" means any public institution of higher education in Virginia participating in the Virginia Student Financial Assistance Program.

"Program" means the Virginia Student Financial Assistance Program.

"Proportionate award schedule" means the table or formula used by institutions to award program funds such that needier students receive larger awards than do less needy students *with VGAP recipients receiving larger awards than Commonwealth recipients with equivalent need.*

"Remaining need" means any positive difference between a student's financial need and the sum of all *need-based* gift assistance *known by the institution at the time of packaging awards under the Virginia Student Financial Assistance Program* (see *definition of "financial need"*).

"Satisfactory academic progress" means:

1. Acceptable progress towards completion of an approved program, as defined by the institution for the purposes of eligibility under ~~Title IV of the federal Higher Education Act, as amended (hereafter, Title IV programs)~~ Section 668 of the *Federal Compilation of Student Financial Aid Regulations*; and

2. For a student receiving a Virginia Guaranteed Assistance Program award, acceptable progress towards completion of an approved program in which a student earns not less than the minimum number of credit hours required for full-time standing during an academic ~~year period and maintains a cumulative minimum grade point average of 2.0.~~ *Effective July 1, 2003, satisfactory academic progress shall mean: (i) for a student receiving a Commonwealth Award, acceptable progress as defined by the institution towards completion of an approved program for the purposes of eligibility under Section 668 of the Federal Compilation of Student Financial Aid Regulations while maintaining a cumulative minimum grade point average of 2.0 at the completion of 60 or more credit hours for undergraduate students; and (ii) for a student receiving a Virginia Guaranteed Assistance Program award, acceptable progress towards completion of an approved program in which a student earns not less than the minimum number of credit hours required for full-time standing during an academic period and maintains a cumulative minimum grade point average of 2.0; and (iii) students may receive VSFAP awards for a maximum of 15 credit hours beyond the minimum hours required to complete the student's course of study.*

"Undergraduate" means a ~~program-placed~~ *matriculated* student in an approved program leading to a certificate, diploma, associate's degree, or bachelor's degree.

"VGAP" means the Virginia Guaranteed Assistance Program, as authorized by the laws of the Commonwealth including §§ 23-38.53:4, 23-38.53:5 and 23-38.53:6 of the Code of Virginia.

## **8 VAC 40-130-25. Type of awards.**

*Any institution may, with the approval of the council, use funds from its appropriation to provide the institutional contribution to any undergraduate student financial aid grant program established by the federal government or private sources which requires the matching of the contribution by institutional funds, except for programs requiring work. Awards may include one or both of the following:*

1. *Grants to undergraduate students enrolled full-time in an approved degree, certificate, or diploma program, and*
2. *Institutional contributions to federal or private undergraduate student aid grant programs requiring matching funds by the institution, except for programs requiring work.*

## **8 VAC 40-130-30. Priority for undergraduate awards.**

A. *Priority for awards will be given to those students who file an application as required by the institution for need-based financial aid by the institutional priority filing date (deadline). Those students who file an application after the institution has completed its financial aid packaging institutional priority filing date (deadline) may receive an award; however, the award will be based on the funds available at the time the award is made and may be based on a new award schedule.*

B. *Undergraduate awards shall not be made to student seeking a second or additional baccalaureate degree until the financial aid needs of first-degree seeking students are fully met.*

## 8 VAC 40-130-50. Financial need and individual awards.

An institution shall determine a student's financial need by using the federal aid need analysis method used for Title IV programs to determine expected family contribution. An award under the program will be set by the institution so that the program award, *when combined with other gift assistance*, will not exceed the student's *financial need*.

*Institutions may exclude as a resource any portion of a Federal Direct Stafford/Ford Loan and subsidized Federal Stafford Loan that is equal to or less than the amount of a student's veterans education benefits paid under Chapter 30 of Title 38 of the United States Code (Montgomery GI Bill) and national service education awards or post-service benefits paid for the Cost of Attendance under Title I of the National and Community Service Act of 1990 (AmeriCorps), pursuant to § 417(a)(1)(C) of Title IV of the Higher Education Act of 1965, as amended. Therefore, overawards due to the exclusion of veteran's benefits or Americorps awards when determining federal subsidized Stafford loan eligibility are permissible.*

*Overawards due to payments under the Virginia Prepaid Education Program shall not be considered a violation of VSFAP regulations.*

*No awards received under the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) grant shall be used to displace state grants. VSFAP overawards shall not be considered a violation of VSFAP regulations.*

## 8 VAC 40-130-70. Summer session awards.

*Institutions may elect to award during summer sessions; however, an award made to assist a student in attending an institution's summer session shall be prorated according to the size of comparable awards for students with similar financial needs made in that institution's regular session. Institutions may elect to limit awards to the regular academic year.*

## 8 VAC 40-130-90. Undergraduate eligibility criteria for an initial award.

In order to participate, an undergraduate student shall:

1. Be admitted and enrolled for at least half-time study in an approved degree, certificate, or diploma program at the institution making the award;
2. Be a domiciliary resident of Virginia; ~~and~~
3. *Be a U.S. citizen or eligible noncitizen as defined by 8 VAC 40-120; and*
- ~~3.~~ 4. Demonstrate financial need for federal Title IV financial aid purposes.

## 8 VAC 40-130-100. ~~Type of awards. (Repealed.)~~

~~Any institution may, with the approval of the council, use funds from its appropriation to provide the institutional contribution to any undergraduate student financial aid grant program established by the federal government or private sources which requires the matching of the contribution by institutional funds, except for programs requiring work.~~

~~Awards may include one or both of the following:~~

- ~~1. Grants to undergraduate students enrolled at least half time in an approved degree, certificate, or diploma program; and~~
- ~~2. Institutional contributions to federal or private undergraduate student aid grant programs requiring matching funds by the institution, except for programs requiring work.~~

## 8 VAC 40-130-120. Renewability of awards.

Awards may be renewed provided that the student:

1. Maintains satisfactory academic progress; and
2. Continues to meet all of the requirements of 8 VAC 40-130-90 ~~of these regulations.~~

Students who transfer to a participating institution shall be considered renewal students if they received an award during the prior year providing they meet renewal criteria. *Students who do not initially receive a Commonwealth award may be considered for renewal awards provided that they met initial eligibility criteria and continue to meet renewal criteria.*

## 8 VAC 40-130-130. VGAP eligibility criteria for an initial award.

In order to participate, a VGAP-eligible student shall:

1. Be admitted and enrolled for full-time study in an approved degree, certificate, or diploma program;
2. Be a domiciliary resident of Virginia;
3. *Be a U.S. citizen or eligible noncitizen as defined by 8 VAC 40-120;*
- ~~3.~~ 4. Demonstrate financial need for federal Title IV financial aid purposes;
4. 5. Be a graduate from a Virginia high school (students who obtain a GED or complete home schooling are not eligible). *Exceptions granted for dependent children of active duty military personnel residing outside the Commonwealth pursuant to military orders and claiming Virginia on their State of Legal Residence Certificate and satisfying the domicile requirements for such active duty military personnel pursuant to subsection B of § 23-7.4 of the Code of Virginia;*
- ~~5.~~ 6. Have at least a cumulative 2.5 grade point average on a 4.0 scale (or its equivalent) at the time of admission to the institution or according to the latest available high school transcript. *In the absence of a high school transcript indicating the grade point average, the institution must have on file a letter from the student's high school certifying the student's high school GPA; and*
- ~~6.~~ 7. Be classified as a dependent student for federal financial aid purposes.

*Transfer and dual-enrollment high school students who have not received the award previously shall be considered for an initial VGAP award provided they meet all of the initial award eligibility requirements.*

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## **8 VAC 40-130-140. Type of awards. (Repealed.)**

~~Any institution may, with the approval of the council, use funds from its appropriation to provide the institutional contribution to any undergraduate student financial aid grant program established by the federal government or private sources which requires the matching of the contribution by institutional funds, except for programs requiring work.~~

~~Awards may include one or both of the following:~~

- ~~1. Grants to undergraduate students enrolled full time in an approved degree, certificate, or diploma program; and~~
- ~~2. Institutional contributions to federal or private undergraduate student aid grant programs requiring matching funds by the institution, except for programs requiring work.~~

## **8 VAC 40-130-150. Amount of awards.**

No academic year award may exceed the cost of tuition, required fees, and a *standard* book allowance of \$500. Those VGAP students who fall into the neediest category (as defined by the institution and reflected in its award schedule) and who apply by the institution's deadline (as discussed in 8 VAC 40-130-30) must receive awards of at least tuition.

## **8 VAC 40-130-160. Renewability of awards.**

~~Awards for students attending two-year colleges may be renewed for up to three additional years provided that the student for one academic year while awards for students attending four-year colleges may be renewed for three academic years. Students shall be limited to a cumulative total of four academic years of eligibility. Awards may be renewed annually provided that the student.~~

- ~~1. Continues to be enrolled in an approved degree, certificate, or diploma program;~~
- ~~2. Maintains domiciliary residency in Virginia;~~
- ~~3. Continues to be a U.S. citizen or eligible noncitizen as defined by 8 VAC 40-120;~~
- ~~4. Demonstrates continued financial need for federal Title IV financial aid purposes;~~
- ~~4. 5. Maintains at least a 2.0 GPA on a 4.0 scale, or its equivalent;~~
- ~~5. 6. Maintains satisfactory academic progress;~~
- ~~6. 7. Maintains full-time standing during the academic year unless granted an exception due to mitigating circumstances and approved by the institution in consultation with the council; Earns not less than the minimum number of hours of credit required for full-time standing in each academic period; and~~
- ~~7. 8. Maintains continuous enrollment from the time of receipt of the initial award (excluding the summer term) unless granted an exception for cause by the council; and . A student participating in a CO-OP or internship that is part of their academic program and a student whose college education is interrupted by a call to military service shall be deemed to have maintained continuous enrollment.~~

~~8. Continues to be classified as a dependent student for federal financial aid purposes.~~

Students who transfer to a participating institution shall be considered renewal students if they received an award during the prior year provided they meet renewal criteria. *Students who do not initially receive a VGAP award may be considered for renewal awards provided that they meet initial eligibility criteria and continue to meet renewal criteria.* Once a student loses his classification as VGAP-eligible, the student cannot reestablish such eligibility. However, the student may qualify for a Commonwealth Award.

## **8 VAC 40-130-170. Graduate eligibility criteria for an initial award.**

In order to participate, a graduate student will be admitted to and enrolled ~~full-time~~ *at least half-time* in an approved degree, certificate, or diploma program.

## **8 VAC 40-130-180. Type of awards.**

Any institution may, with the approval of the council, use funds from its appropriation to provide the institutional contribution to any graduate student financial aid grant program established by the federal government or private sources which requires the matching of the contribution by institutional funds, except for programs requiring work.

Funds may be used for one, all, or any combination of the following:

1. Grants to ~~full-time~~ graduate students *enrolled at least half-time*;
2. Institutional contributions to federal or private graduate student aid grant programs requiring matching funds by the institution except for programs requiring work; and
3. Awards made from the transfer of funds to the education and general account to establish an employment program requiring specific service to the institution for graduate students. No more than 50% of an institution's graduate funds may be transferred to the education and general account for this purpose. These awards must be made in accordance with the Chart of Accounts for institutions of higher education dated July 1, 1990, as promulgated by the council.

## **8 VAC 40-130-200. Renewability of awards.**

Awards may be renewed provided that the student:

1. Maintains satisfactory academic progress; and
2. Continues to be enrolled ~~full-time~~ *at least half-time* in an approved degree, certificate, or diploma program.

Students who transfer to a participating institution shall be considered renewal students if they received an award during the prior year providing they meet renewal criteria. *Students who do not initially receive a Commonwealth award may be considered for renewal awards provided that they meet initial eligibility criteria and continue to meet renewal criteria.*

**8 VAC 40-130-220. Responsibility of participating institutions.**

Participating institutions shall:

1. Provide reports to the council which will include, but not be limited to, information describing the students served, the awards received, and the number and value of awards. Each institution shall annually report to the council its definition of "neediest" students;
2. Maintain documentation necessary to demonstrate that students' awards calculated during the same packaging cycle used the same proportionate award schedule;
3. Provide the council with the initial award schedule or formula that will be used to package on-time applications when submitting an annual report; *and*
- ~~4. In the absence of a high school transcript, have on file a letter from the student's high school certifying a VGAP student's high school GPA; and~~
4. Upon request by a student transferring to another institution, send to the other institution information about the student's VGAP eligibility.

VA.R. Doc. No. R02-203; Filed June 11, 2002, 12:02 p.m.

**TITLE 9. ENVIRONMENT**

**STATE AIR POLLUTION CONTROL BOARD**

**REGISTRAR'S NOTICE:** Revision D97 was first published in final version in 16:17 VA.R. 2135-2188 May 8, 2000; however, the amendments to the regulations were suspended pursuant to § 2.2-4007 J of the Code of Virginia in 16:20 VA.R. 2465-2467 June 19, 2000. The changes made since the 16:17 publication are shown in brackets.

**Title of Regulation:** Regulations for the Control and Abatement of Air Pollution: Special Provisions for Existing Sources, New and Modified Sources, and Hazardous Air Pollutant Sources (Rev. D97).

**9 VAC 5-10-10 et seq. General Definitions (amending [ 9 VAC 5-10-10 and ] 9 VAC 5-10-20).**

**9 VAC 5-20-10 et seq. General Provisions (amending 9 VAC 5-20-180).**

**9 VAC 5-40-10 et seq. Existing Stationary Sources (amending 9 VAC 5-40-10, 9 VAC 5-40-20, 9 VAC 5-40-30, 9 VAC 5-40-40, and 9 VAC 5-40-50).**

**9 VAC 5-50-10 et seq. New and Modified Stationary Sources (amending 9 VAC 5-50-10, 9 VAC 5-50-20, 9 VAC 5-50-30, 9 VAC 5-50-40, and 9 VAC 5-50-50).**

**9 VAC 5-60-10 et seq. Hazardous Air Pollutant Sources (amending 9 VAC 5-60-10, 9 VAC 5-60-20, and 9 VAC 5-60-30).**

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

**Effective Date:** August 1, 2002.

**Summary:**

*The first final regulation was adopted on March 30, 2000, and published in Volume 16, Issue 17 of the Virginia Register. In consideration of the substantive changes made to the final, the agency suspended the effective date and conducted additional public participation activities. This second final contains a number of changes, but the primary changes return the regulation to use the no violation approach (if certain conditions are met) to address excess emissions during periods of startup, shutdown and malfunction (SSM) in lieu of the EPA approach whereby sources would be in violation for these excess emissions during periods of SSM but the sources could put forth an affirmative defense if certain conditions were met and avoid penalties.*

*Special provisions are contained in several locations throughout the regulations as follows: Existing Sources, Chapter, 40 Part I; New and Modified Sources, Chapter 50, Part I; and Hazardous Air Pollutant Sources, Chapter 60, Part I. The special provisions address such issues such as: applicability, compliance, emission testing, monitoring, notification, records and reporting. Provisions relating to maintenance and malfunction of facility control and monitoring equipment are found in 9 VAC 5-20-180. The amendments:*

1. Update requirements related to source surveillance (compliance, emission testing, monitoring, notification, records and reporting) to be consistent with new federal requirements and EPA policy;
2. Allow for the submittal of information electronically upon mutual consent by owner and Board, except for documents requiring signature or certifications;
3. Address concerns relating to maintenance and malfunction of facility control and monitoring equipment identified pursuant to the review of existing regulations mandated by Executive Order 15(94); and
4. Allow the general provisions of 40 CFR Parts 60, 61 and 63 to be implemented under the authority of the state regulations.

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

**Agency Contact:** Alma Jenkins, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070.

CHAPTER 10.  
GENERAL DEFINITIONS.

[ **9 VAC 5-10-10. General.**

A. For the purpose of *applying* the Regulations for the Control and Abatement of Air Pollution and [ ~~subsequent amendments or any orders issued by the board~~ *related use*, the words or terms shall have the meanings given them in 9 VAC 5-10-20.

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B. Unless specifically defined in the Virginia Air Pollution Control Law or in the Regulations for the Control and Abatement of Air Pollution, terms used shall have the meanings given them by 9 VAC 5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.

C. In addition to the definitions given in this chapter, some other major divisions (i.e., chapters, parts, articles, etc.) of the Regulations for the Control and Abatement of Air Pollution have within them definitions for use with that specific major division. *Where there are differences between the definitions in 9 VAC 5-10-20 and those definitions in a major division, the definitions in that major division shall prevail in the application of that major division.* ]

## 9 VAC 5-10-20. Terms defined.

*"Actual emissions rate"* means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

*"Affected facility"* means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated. *The term "affected facility" includes any affected source [ as defined in 40 CFR 63.2 ].*

[ ~~*"Affirmative defense"* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.~~ ]

*"Air pollution"* means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

*"Air quality"* means the specific measurement in the ambient air of a particular air pollutant at any given time.

*"Air quality control region"* means any area designated as such in 9 VAC 5-20-200.

~~*"Air quality maintenance area"* means any area which, due to current air quality or projected growth rate or both, may have the potential for exceeding any ambient air quality standard set forth in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.) within~~

~~a subsequent 10-year period and designated as such in 9 VAC 5-20-203.~~

*"Alternative method"* means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

*"Ambient air"* means that portion of the atmosphere, external to buildings, to which the general public has access.

*"Ambient air quality standard"* means any primary or secondary standard designated as such in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.).

*"Board"* means the State Air Pollution Control Board or its designated representative.

*"Class I area"* means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9 VAC 5-20-205.

*"Class II area"* means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9 VAC 5-20-205.

*"Class III area"* means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9 VAC 5-20-205.

*"Continuous monitoring system"* means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

*"Control program"* means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.
2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.
3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.
4. The date by which final compliance is to be achieved.

"*Criteria pollutant*" means any pollutant for which an ambient air quality standard is established under 9 VAC 5 Chapter 30 (9 VAC 5-30 [ ~~40 et seq.~~ ] )

"*Day*" means a 24-hour period beginning at midnight.

"*Delayed compliance order*" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable ~~State~~ implementation plan.

"*Department*" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"*Director*" or "*executive director*" means the director of the Virginia Department of Environmental Quality or a designated representative.

"*Dispersion technique*"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the

merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"*Emergency*" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"*Emission limitation*" means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

"*Emission standard*" means any provision of 9 VAC 5 Chapter 40 (9 VAC 5-40 [ ~~40 et seq.~~ ] ), 9 VAC 5 Chapter 50 (9 VAC 5-50 [ ~~40 et seq.~~ ] ) or 9 VAC 5 Chapter 60 (9 VAC 5-60 [ ~~40 et seq.~~ ] ) which prescribes an emission limitation, or other requirements that control air pollution emissions.

"*Emissions unit*" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"*Equivalent method*" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

"*EPA*" means the U.S. Environmental Protection Agency or an authorized representative.

"*Excess emissions*" means emissions of air pollutant in excess of an emission standard.

"*Excessive concentration*" is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to

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a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of [ ~~9 VAC 5-80-20~~ Article 8 (9 VAC 5-80-1700 et seq.) of Part II of 9 VAC 5 Chapter 80 ], an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"Facility" means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC § 7401 et seq., 91 Stat 685.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, ~~including and citizens under the federal Clean Air Act or that are enforceable~~

under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

~~1. Any requirement approved by the administrator pursuant to the provisions of § 111 or § 112 of the federal Clean Air Act;~~

~~2. Any applicable source-specific or source-category emission limit or requirement in an implementation plan;~~

~~3. Any permit requirements established pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), with the exception of terms and conditions established to address applicable state requirements; and~~

4. Any other applicable federal requirement.

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an ~~approved State Implementation Plan (SIP) or a Federal implementation plan (FIP).~~

5. Limitations and conditions that are part of a § 111(d) [ or § 111(d)/129 ] plan.

~~6. 6. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.~~

~~7. 7. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.~~

~~8. 8. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.~~

~~9. 9. Individual consent agreements [ that EPA has issued pursuant to the ] legal authority [ to create of EPA ].~~

"Good engineering practice" or "GEP," with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or

approvals required under 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.),

$$\text{Hg} = 2.5\text{H},$$

provided the owner produces evidence that this equation was actually relied on in establishing an emission limitation;

b. For all other stacks,

$$\text{Hg} = \text{H} + 1.5\text{L},$$

where:

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

*"Hazardous air pollutant"* means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

*"Implementation plan"* means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

*"Initial emission test"* means the test required by any regulation, permit issued pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80 [~~40 et seq.~~]), control program, compliance schedule or other enforceable mechanism for determining compliance with new or more stringent emission standards or permit limitations or other emission limitations requiring the installation or modification of air pollution control equipment or implementation of a control method. Initial emission tests shall be conducted in accordance with 9 VAC 5-40-30.

*"Initial performance test"* means the test required by 40 CFR Part 60 for a permit issued pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80 [~~40 et seq.~~]) for determining initial compliance with standards of performance or permit limitations. Initial performance tests shall be conducted in accordance with 9 VAC 5-50-30.

*"Isokinetic sampling"* means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

*"Locality"* means a city, town, county or other public body created by or pursuant to state law.

*"Maintenance area"* means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9 VAC 5-20-203.

*"Malfunction"* means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

*"Metropolitan statistical area"* means any area designated as such in 9 VAC 5-20-202.

*"Monitoring device"* means the total equipment used to measure and record (if applicable) process parameters.

*"Nearby"* as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed two miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

*"Nitrogen oxides"* means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

*"Nonattainment area"* means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9 VAC 5-20-204.

*"One hour"* means any period of 60 consecutive minutes.

*"One-hour period"* means any period of 60 consecutive minutes commencing on the hour.

*"Organic compound"* means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic

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disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM<sub>10</sub> emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Performance test" means a test for determining emissions from new or modified sources.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in 9 VAC 5-20-204 for a particular pollutant and designated as such in 9 VAC 5-20-205.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § [ 9-6-14:7-1 2.2-4007 ] of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9 VAC 5 Chapter 30 (9 VAC 5-30-10 et seq.): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) and 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.): *Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.*

3. For emission standards in 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.): *Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.*

"Regional director" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

"Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 (9 VAC 5-10-10 et seq.) through 80 (9 VAC 5-80-10 et seq.).

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, "Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see 9 VAC 5-20-21).

"Run" means the net period of time during which an emission sampling is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with § 111(d)(1) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § [ 440 111 ] (d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

[ "Section 111(d)/129 plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with §§ 111(d)(2) and 129(b)(3) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act. ]

"Shutdown" means the cessation of operation of an affected facility for any purpose.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines,

equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or
2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

"Standard of performance" means any provision of 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) which prescribes an emission limitation or other requirements that control air pollution emissions.

"Startup" means the setting in operation of an affected facility for any purpose.

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9 VAC 5-20-110; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80 [ ~~40 et seq.~~ ] )

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see [ ~~9 VAC 5-40-24~~ 9 VAC 5-20-21 ] ).

"These regulations" means 9 VAC 5 Chapters 10 (9 VAC 5-10 [ ~~40 et seq.~~ ] ) through 80 (9 VAC 5-80 [ ~~40 et seq.~~ ] ).

"Total suspended particulate (TSP)" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from External Floating-Roof Tanks" (see 9 VAC 5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9 VAC 5-20-201.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute publication, "Evaporative Loss from External Floating-Roof Tanks" (see 9 VAC 5-20-21).

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

- a. Methane;
- b. Ethane;
- c. Methylene chloride (dichloromethane);
- d. 1,1,1-trichloroethane (methyl chloroform);
- e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
- f. Trichlorofluoromethane (CFC-11);
- g. Dichlorodifluoromethane (CFC-12);
- h. Chlorodifluoromethane (H CFC-22);
- i. Trifluoromethane (H FC-23);
- j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);
- k. Chloropentafluoroethane (CFC-115);
- l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- m. 1,1,1,2-tetrafluoroethane (HFC-134a);
- n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
- o. 1-chloro 1,1-difluoroethane (HCFC-142b);
- p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- q. Pentafluoroethane (HFC-125);
- r. 1,1,2,2-tetrafluoroethane (HFC-134);
- s. 1,1,1-trifluoroethane (HFC-143a);
- t. 1,1-difluoroethane (HFC-152a);

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- u. Parachlorobenzotrifluoride (PCBTF);
- v. Cyclic, branched, or linear completely methylated siloxanes;
- w. Acetone;
- x. Perchloroethylene (tetrachloroethylene); ~~and~~
- y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
- z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
- aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
- bb. Difluoromethane (HFC-32);
- cc. Ethylfluoride (HFC-161);
- dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
- ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);
- ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);
- gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);
- hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);
- ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
- jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
- kk. Chlorofluoromethane (HCFC-31);
- ll. 1 chloro-1-fluoroethane (HCFC-151a);
- mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
- nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);
- oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>);
- pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);
- qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);
- rr. Methyl acetate ; and
- ss. Perfluorocarbon compounds which fall into these classes:
  - (1) Cyclic, branched, or linear, completely fluorinated alkanes;
  - (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
  - (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
  - (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured

by the appropriate reference method in accordance with the provisions of 9 VAC 5-40-30 or 9 VAC 5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly-reactive compounds in the emissions of the source.

4. Exclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

## CHAPTER 20. GENERAL PROVISIONS.

### **9 VAC 5-20-180. Facility and control equipment maintenance or malfunction.**

~~A. At all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions. The provisions of this section apply to periods of excess emissions resulting from (i) the shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance and (ii) malfunctions or other equipment failures of any affected facility or related air pollution control equipment. [ The provisions of subsection G of this section shall not apply to the following:~~

~~1. Sources subject to the applicable subparts listed in 9 VAC 5-50-410 unless specifically allowed by the applicable subparts listed in 9 VAC 5-50-410.~~

~~2. Sources subject to the applicable subparts listed in 9 VAC 5-60-70 unless specifically allowed by the applicable subparts listed in 9 VAC 5-60-70.~~

~~3. Sources subject to the applicable subparts listed in 9 VAC 5-60-100 unless specifically allowed by the applicable subparts listed in 9 VAC 5-60-100.~~

~~4. Sources and pollutants in areas where a single source or small group of sources has the potential to cause an exceedance of any ambient air quality standard or any ambient air increment prescribed under 9 VAC 5-80-1730.~~

~~5. Affected units subject to a federal operating permit unless specifically allowed by the permit. This prohibition applies only to terms and conditions of the permit derived from the acid rain program. ]~~

B. In case of shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance which results in excess emissions for more than one hour, the intent to shut down such equipment shall be reported to the board and local air pollution control agency, if any, at least 24 hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit or registration number;
2. The expected length of time that the air pollution control equipment will be out of service;
3. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period; and
4. Measures that will be taken to minimize the length of the shutdown ~~or~~ and to negate the effect of the outage of the air pollution control equipment.

C. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall, as soon as practicable but no later than [ ~~four six~~ ] daytime business hours *after the malfunction is discovered*, notify the board by facsimile transmission, telephone or telegraph of such failure or malfunction and shall within two weeks provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. Owners subject to the requirements of 9 VAC 5-40-50 C and 9 VAC 5-50-50 C are not required to provide the written statement prescribed in this ~~paragraph~~ *subsection* for facilities subject to the monitoring requirements of 9 VAC 5-40-40 and 9 VAC 5-50-40. When the condition causing the failure or malfunction has been corrected and the *facility or control* equipment is again in operation, the owner shall notify the board.

D. In the event that the breakdown period cited in subsection C of this section exists or is expected to exist for 30 days or more, the owner shall, ~~within 30 days of~~ *as expeditiously as possible but no later than 30 days after* the failure or malfunction and semi-monthly thereafter until the failure or malfunction is corrected, submit to the board a written report containing the following:

1. Identification of the specific facility that is affected as well as its location and permit or registration number;
2. The expected length of time that the air pollution control equipment will be out of service;
3. The nature and quantity of air pollutant emissions likely to occur during the breakdown period;

4. Measures to be taken to reduce emissions to the lowest amount practicable during the breakdown period;

5. A statement as to why the owner was unable to obtain repair parts or perform repairs which would allow compliance with the ~~provisions of these regulations~~ *Regulations for the Control and Abatement of Air Pollution* within 30 days of the malfunction or failure;

6. An estimate, with reasons given, of the duration of the shortage of repairs or repair parts which would allow compliance with the ~~provisions of these regulations~~ *Regulations for the Control and Abatement of Air Pollution*; and

7. Any other pertinent information as may be requested by the board.

E. The provisions of subsection D of this section shall not apply beyond three months of the date of the malfunction or failure. Should the breakdown period exist past the three-month period, the owner may apply for a variance in accordance with 9 VAC 5-20-50 A.

F. [ ~~The following special provisions govern facilities which are subject to the provisions of ] Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 [ For sources subject to the applicable subparts listed in 9 VAC 5-60-100, the provisions of 40 CFR 63.6 governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 63, the more restrictive provisions shall apply. Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50, Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60, or Article 2 (9 VAC 5-60-90 et seq.) of 9 VAC 5 Chapter 60 ],~~

~~1. Nothing in this section shall be understood to allow any such facility to operate in violation of applicable emission standards, except that all such facilities shall be subject to the reporting and notification procedures in this section.~~

~~2. Any facility which is subject to the provisions of Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60 shall shut down immediately if it is unable to meet the applicable emission standards, and it shall not return to operation until it is able to operate in compliance with the applicable emission standards.~~

~~3. Regardless of any other provision of this section, any facility which is subject to the provisions of Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 or Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50 shall shut down immediately upon request of the board if its emissions increase in any amount because of a bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment; and such facility shall not return to operation until it and the associated air pollution control equipment are able to operate in a proper manner.~~

~~[ 1. For sources subject to the applicable subparts listed in 9 VAC 5-50-410, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 60, the more restrictive provisions shall apply.~~

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2. For sources subject to the applicable subparts listed in 9 VAC 5-60-70, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 61, the more restrictive provisions shall apply.

3. For sources subject to the applicable subparts listed in 9 VAC 5-60-100, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 63, the more restrictive provisions shall apply. ]

G. [ No ~~#-a~~ ] violation of applicable emission standards [ or monitoring requirements shall be ~~is~~ ] judged to have taken place [ if the ~~as a result of periods of~~ ] excess emissions [ or cessation of monitoring activities is due to a malfunction ~~subject to this section~~ ], [ ~~the owner is entitled to an affirmative defense for relief from penalties~~ ] provided [ ~~the owner proves~~ ] that:

1. The procedural requirements of this section ~~are~~ were met or the owner has submitted an acceptable application for a variance, which is subsequently granted;

2. [ The owner has taken ] ~~expedient~~ [ ~~expeditious~~ and reasonable measures to minimize emissions during the breakdown period ~~The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of excess emissions~~];

3. [ The owner has taken ] ~~expedient~~ [ ~~expeditious~~ and reasonable measures to correct the malfunction and return the facility to a normal operation; and ~~Repairs were made in an expeditious fashion when the owner knew or should have known that applicable emission limitations were being exceeded. Off shift labor and overtime shall have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;~~ ]

4. The source is in compliance at least 90% of the operating time over the most recent 12-month period [ ; . ]

[ ~~5. The source is in compliance with any source-specific applicable requirements related to the provisions of this section;~~

~~6. The excess emissions were caused by a sudden, unavoidable breakdown of technology beyond the control of the owner;~~

~~7. The excess emissions (i) did not stem from any activity or event that could have been foreseen and avoided or planned for and (iii) could not have been avoided by better operation and maintenance practices;~~

~~8. To the maximum extent practicable the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;~~

~~9. All possible steps were taken to minimize the impact of the excess emissions on the ambient air quality;~~

~~10. All emission monitoring systems were kept in operation if at all possible;~~

~~11. The owner's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs or other relevant evidence; and~~

~~12. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance. ]~~

H. Nothing in this section shall be construed as giving an owner the right to increase temporarily the emission of pollutants or to circumvent the emission standards or monitoring requirements otherwise provided in ~~these regulations~~ the Regulations for the Control and Abatement of Air Pollution.

I. Regardless of any other provision of this section, the owner of any facility subject to the ~~provisions of these regulations~~ Regulations for the Control and Abatement of Air Pollution shall, upon request of the board, reduce the level of operation at the facility if the board determines that this is necessary to prevent a violation of any [ primary ] ambient air quality standard [ ~~or any ambient air increment prescribed under 9 VAC 5-80-1730~~ ]. Under worst case conditions, the board may order that the owner shut down the facility, if there is no other method of operation to avoid a violation of the [ primary ] ambient air quality standard [ ~~or any ambient air increment prescribed under 9 VAC 5-80-1730~~ ]. The board reserves the right to prescribe the method of determining if a facility will cause such a violation. In such cases, the facility shall not be returned to operation until it and the associated air pollution control equipment are able to operate without violation of any [ primary ] ambient air quality standard [ ~~or any ambient air increment prescribed under 9 VAC 5-80-1730~~ ] .

J. Any owner of an affected facility subject to the provisions of this section shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment that results in excess emissions for more than one hour. The records shall be maintained in a form suitable for inspection and maintained for at least two years [ ~~(unless a longer period is specified in the applicable emission standard)~~ ] following the date of the occurrence.

## CHAPTER 40. EXISTING STATIONARY SOURCES.

### 9 VAC 5-40-10. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply to existing sources for which emission standards are prescribed under this chapter, ~~mobile sources and open burning.~~

B. The provisions of this chapter shall not apply to sources specified below except in cases where the provisions of this chapter [ (i) specifically provide otherwise or (ii) ] are more restrictive than the provisions of 9 VAC 5 Chapter 50 (9 VAC 5-50 [ -40 et seq. ] ), 9 VAC 5 Chapter 80 (9 VAC 5-80 [ -40 et seq. ] ), or any permit issued pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80 [ -40 et seq. ] ) [ ; however, such . ] Sources [ exempted under this subsection ] shall be subject to the

provisions of 9 VAC 5 Chapter 50 (9 VAC 5-50 [ ~~40 et seq.~~ ] ) [ or 9 VAC Chapter 60 (9 VAC 5-60), or both, as applicable ] .

1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.
2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

C. If a facility becomes subject to any requirement in ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* because it exceeds an exemption level, the facility shall continue to be subject to all applicable requirements even if future conditions cause the facility to fall below the exemption level.

D. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and board. [ This subsection shall not apply to documents requiring signatures or certification under 9 VAC 5-20-230. ]

[ ~~E. The provisions of 9 VAC 5-40-20 K shall not apply to the following:~~

- ~~1. Sources and pollutants in areas where a single source or small group of sources has the potential to cause an exceedance of any ambient air quality standard or any ambient air increment prescribed under 9 VAC 5-80-1730; and~~
- ~~2. Affected units subject to a federal operating permit unless specifically allowed by the permit. This prohibition applies only to terms and conditions of the permit derived from the acid rain program. ]~~

**9 VAC 5-40-20. Compliance.**

A. Ninety days after the effective date of any emission standard prescribed under this chapter, no owner or other person shall operate any existing source in violation of such standard.

1. Compliance with standards in this chapter, other than opacity standards, shall be determined by emission tests established by 9 VAC 5-40-30, unless specified otherwise in the applicable standard.
2. Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:
  - a. New source performance standards established pursuant to § 111 of the federal Clean Air Act.
  - b. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
  - c. ~~Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal implementation plan (FIP).~~

~~d. Limitations and conditions that are part of an approved State Designated Pollutant Plan or a Federal Designated Pollutant Plan a § 111(d) [ or § 111(d)/129 ] plan.~~

~~e. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.~~

~~f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.~~

3. Compliance with opacity standards in this chapter shall be determined by conducting observations in accordance with Reference Method 9 (see ~~9 VAC 5-20-21~~) or any alternative method [ ~~; or as provided in subdivision G 5 of this section~~ ]. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the emission test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. ~~The results of continuous monitoring by transmissometer (which indicate that the opacity at the time visual observations were made was not in excess of the standard) are probative, but not conclusive evidence, of the actual opacity of an emission. In such cases, the owner must prove that, at the time of the alleged violation, the instrument used met Performance Specification 1 of Appendix B of 40 CFR Part 60, and had been properly maintained and calibrated, and that the resulting data has not been tampered with in any way.~~

~~3. [ 4. The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard. This exception shall not apply to the following federal requirements:~~

- ~~a. Limitations and conditions that are part of an implementation plan.~~
- ~~b. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.~~
- ~~c. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability. ]~~

B. No owner of an existing source subject to the provisions of this chapter shall fail to conduct emission tests as required under this chapter.

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C. No owner of an existing source subject to the provisions of this chapter shall fail to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both as required under this chapter.

D. No owner of an existing source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report emission test or monitoring results as required under this chapter.

E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

F. At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers which are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

G. ~~Reserved.~~ *The following provisions apply with respect to demonstrating compliance with opacity standards.*

1. *For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial emission test required in 9 VAC 5-40-30 unless one of the following conditions apply.*

a. *If no emission test under 9 VAC 5-40-30 is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility the compliance date.*

b. *If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial emission test required under 9 VAC 5-40-30, the owner shall reschedule the opacity observations as soon after the initial emission test as possible, but not later than 30 days thereafter, and shall advise the board of the rescheduled date. In these cases, the 30-day prior notification to the board required by 9 VAC 5-40-50 A 3 shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial emission test conducted under 9 VAC 5-40-30. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial emission test in accordance with procedures contained in Reference Method 9.*

*Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner of an affected facility shall make available, upon request by the board, such records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. [ ~~Except as provided in subdivision 5 of this subsection,~~ ] The results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided the source meets the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.*

2. *Except as provided in subdivision 3 of this subsection, the owner of an affected facility to which an opacity standard in this chapter applies shall conduct opacity observations in accordance with subdivision A [ 2 3 ] of this section, shall record the opacity of emissions, and shall report to the board the opacity results along with the results of the initial emission test required under 9 VAC 5-40-30. The inability of an owner to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial emission test.*

3. *The owner of an affected facility to which an opacity standard in this chapter applies may request the board to determine and to record the opacity of emissions from the affected facility during the initial emission test and at such times as may be required. The owner of the affected facility shall report the opacity results. Any request to the board to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in 9 VAC 5-40-50 A 3. If, for some reason, the board cannot determine and record the opacity of emissions from the affected facility during the emission test, then the provisions of subdivision 1 of this subsection shall apply.*

4. *An owner of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial emission test required by 9 VAC 5-40-30 and shall furnish the board a written report of the monitoring results along with [ the ] Reference Method 9 and 9 VAC 5-40-30 [ the ] initial emission test results.*

[ ~~5. An owner of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any required emission test required under 9 VAC 5-40-30 in lieu of Reference Method 9 observation data. If an owner elects to submit COMS data for compliance with the opacity standard, he shall notify the board of that decision, in writing, at least 30 days before any required emission test required under 9 VAC 5-40-30 is conducted. Once the owner of an affected facility has notified the board to that~~ ]

~~effect, the COMS data results will be used to determine opacity compliance during subsequent tests required under 9 VAC 5-40-30 until the owner notifies the board, in writing, to the contrary. For the purpose of determining compliance with the opacity standard during a required emission test required under 9 VAC 5-40-30 using COMS data, the minimum total time of COMS data collection shall be averages of all six-minute continuous periods within the duration of the mass emission test. Results of the COMS opacity determinations shall be submitted along with the results of the emission test required under 9 VAC 5-40-30. The owner of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in 9 VAC 5-40-40 E, that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way. If COMS data results are submitted for compliance with the opacity standard for a period of time during which Reference Method 9 data indicates noncompliance, the Reference Method 9 data will be used to determine opacity compliance.~~

~~6. Upon receipt from an owner of the written reports of the results of the emission tests required by 9 VAC 5-40-30, the opacity observation results and observer certification required by subdivision 1 of this subsection, and the COMS results, if applicable, the board will make a finding concerning compliance with opacity and other applicable standards. If COMS data results are used to comply with an opacity standard, only those results are required to be submitted along with the emission test results required by 9 VAC 5-40-30. If the board finds that an affected facility is in compliance with all applicable standards for which emission tests are conducted in accordance with 9 VAC 5-40-30 but during the time such emission tests are being conducted fails to meet any applicable opacity standard, the board shall notify the owner and advise him that he may request a waiver from the board within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility in accordance with 9 VAC 5-40-120.~~

~~7. The board will grant such a petition upon a demonstration by the owner that the affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the opacity of emissions during the emission tests, that the emission tests were performed under the conditions established by the board, that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard, and that the provisions of 9 VAC 5-40-120 are met.~~

~~8. The board will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the emission and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard.]~~

H. The following provisions apply with respect to new or more stringent emission standards.

1. The following provisions apply with respect to emission standards for volatile organic compounds.

a. In the case of any emission standard for volatile organic compounds adopted by the board which is more stringent than the emission standard for the source in effect prior to such adoption, if any, or where there was no emission standard, the source shall not be considered in violation of the newly adopted emission standard provided that the owner accomplishes the following:

(1) Complies with the emission standard as expeditiously as possible but in no case later than one year after the effective date of the emission standard.

(2) Within one month of achieving compliance, notifies the board of same.

(3) Within six months of achieving compliance, demonstrates to the satisfaction of the board compliance with the emission standard.

b. The reprieve provided by subdivision H 1 a of this section subsection shall only apply in cases where it is necessary for the owner to:

(1) Install emission control equipment or other equipment that alters the facility in order to comply with the emission standard; or

(2) Switch fuel or raw materials or both in order to comply with the emission standard.

c. Owners of sources not in compliance with the newly adopted emission standard, but in compliance with the provisions of subdivision H 1 a of this section subsection shall not be subject to any penalties for violation of the newly adopted emission standard that may be required by the Virginia Air Pollution Control Law.

d. Any reprieve from the sanctions of any provision of the Virginia Air Pollution Control Law pursuant to subdivision H 1 a of this section subsection shall not extend beyond the date by which compliance is to be achieved.

e. Nothing in subdivision H 1 a of this section subsection shall prevent the board from promulgating a separate compliance schedule for any source if the board finds that it is technologically infeasible or it is infeasible due to the nonavailability of necessary equipment or materials or other circumstances beyond the owner's control for the source to achieve compliance within one year of the effective date of an emission standard.

f. All compliance schedules proposed or prescribed under this section shall provide for compliance with the applicable emission standards as expeditiously as practicable.

g. Any compliance schedule approved under this subsection may be revoked at any time if the source owner does not meet the stipulated increments of progress, and if the failure to meet the date for final compliance, and the failure to meet the increment is due to causes within the owner's control.

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2. *The following provisions apply with respect to emission standards for pollutants other than volatile organic compounds.*

a. In the case of any emission standard adopted by the board which is more stringent than the emission standard for the source in effect prior to such adoption, if any, or where there was no emission standard, the source shall not be considered in violation of the newly adopted emission standard provided that the owner accomplishes the following:

(1) Submits in a form and manner satisfactory to the board, a control program showing how compliance shall be achieved within the time frame in the applicable compliance schedule prescribed under 9 VAC 5-40-21; or, where no applicable compliance schedule is prescribed under 9 VAC 5-40-21, how compliance shall be achieved as expeditiously as possible; but in no case later than three years after the effective date of such emission standard.

(2) Receives approval of the board of such control program.

(3) Complies with all provisions, terms and conditions of the control program including the increments of progress.

b. The reprieve provided by subdivision H 2 a of this ~~section~~ *subsection* shall only apply in cases where it is necessary for the owner to:

(1) Install emission control equipment or other equipment that alters the facility in order to comply with the emission standard; or

(2) Switch fuel or raw materials or both in order to comply with the emission standard.

c. Owners of sources not in compliance with the newly adopted emission standard, but in compliance with the provisions of subdivision H 2 a of this ~~section~~ *subsection* shall not be subject to any penalties for violation of the newly adapted emission standard that may be required by the Virginia Air Pollution Control Law.

d. Any reprieve from the sanctions of any provision of the Virginia Air Pollution Control Law pursuant to subdivision H 2 a of this ~~section~~ *subsection* shall not extend beyond the date, specified in the emission standard or approved control program, by which compliance is to be achieved.

e. Control programs submitted under the provisions of subdivision H 2 a of this ~~section~~ *subsection* shall be processed in accordance with the provisions of 9 VAC 5-20-170. However, if the control program contains a compliance schedule which conforms to the applicable schedule prescribed in 9 VAC 5-40-21, the public hearing provision of 9 VAC 5-20-170 shall not apply.

f. Nothing in this section shall prevent the board from promulgating a separate compliance schedule for any source if the board finds that the application of a compliance schedule in 9 VAC 5-40-21 is technologically infeasible, or if the board finds that the application of a

compliance schedule in 9 VAC 5-40-21 is infeasible due to the nonavailability of necessary equipment or materials or other circumstances beyond the owner's control.

g. Nothing in this section shall prevent the owner of a source subject to a compliance schedule in 9 VAC 5-40-21 from submitting to the board a proposed alternative compliance schedule provided the following conditions are met:

(1) The proposed alternative compliance schedule is submitted within six months of the effective date of the emission standard;

(2) The final control plans for achieving compliance with the applicable emission standard are submitted simultaneously;

(3) The alternative compliance schedule contains the same increments of progress as the schedule for which it is proposed as an alternative; and

(4) Sufficient documentation is submitted by the owner of the source to justify the alternative dates proposed for the increments of progress.

h. All compliance schedules proposed or prescribed under this section shall provide for compliance with the applicable emission standards as expeditiously as practicable.

i. Any compliance schedule approved under this subsection may be revoked at any time if the source owner does not meet the stipulated increments of progress, and if the failure to meet an increment is likely to result in failure to meet the date for final compliance, and the failure to meet the increment is due to causes within the owner's control.

j. The provisions of 9 VAC 5-40-21 shall not apply to owners of sources which are in compliance with the applicable emission standard and for which the owners have determined and certified compliance to the satisfaction of the board within 12 months of the effective date of the applicable emission standard.

l. *The following provisions apply with respect to stack heights.*

1. The degree of emission limitation required of any source owner for control of any air pollutant shall not be affected in any manner by:

a. So much of the stack height of any source as exceeds good engineering practice, or

b. Any other dispersion technique.

2. The provisions of subdivision † 1 of this subsection shall not apply to:

a. Stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in ~~Section~~ § 111(a)(3) of the federal Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in Article 8 (9 VAC 5-80-1700 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of Part II of

9 VAC 5 Chapter 80, were carried out after December 31, 1970; or

b. Coal-fired steam electric generating units subject to the provisions of Section § 118 of the federal Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

3. Prior to the adoption of a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition, the board ~~must~~ shall notify the public of the availability of the demonstration study and ~~must~~ shall provide the opportunity for public hearing on it.

4. For purposes of *this* subsection ~~of this section~~, such height shall not exceed the height allowed by subdivision 1 or 2 of the GEP definition unless the owner demonstrates to the satisfaction of the board, after 30 days notice to the public and opportunity for public hearing, that a greater height is necessary as provided under subdivision 3 of the GEP definition.

5. In no event may the board prohibit any increase in any stack height or restrict in any manner the maximum stack height of any source.

6. Compliance with emission standards in this chapter shall not be affected in any manner by the stack height of any source or any other dispersion technique.

*J. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate emission or compliance test or procedure had been performed.*

~~[ K. If a violation of applicable emission standards is judged to have taken place as a result of periods of excess emissions during startup or shutdown, the owner is entitled to an affirmative defense for relief from penalties provided the owner proves that:~~

~~1. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design;~~

~~2. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;~~

~~3. If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;~~

~~4. At all times, the facility was operated in a manner consistent with good practice for minimizing emissions;~~

~~5. The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable;~~

~~6. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;~~

~~7. All emission monitoring systems were kept in operation if at all possible;~~

~~8. The owner's or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and~~

~~9. The owner or operator properly and promptly notified the appropriate regulatory authority. ]~~

**9 VAC 5-40-30. Emission testing.**

A. Emission tests for existing sources shall be conducted and reported, and data shall be reduced as set forth in this chapter and in the appropriate reference methods; ~~if not appropriate, then equivalent or alternative methods shall be used unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which the board has determined to be adequate for indicating whether a specific source is in compliance; (iv) waives the requirement for emission tests because the owner of a source has demonstrated by other means to the board's satisfaction that the affected facility is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.~~ In cases where no appropriate reference method exists for an existing source subject to an emission standard for volatile organic compounds, the applicable test method in 9 VAC 5-20-121 may be considered appropriate.

B. Emission testing for existing sources shall be subject to testing guidelines approved by the board. Procedures may be adjusted or changed by the board to suit specific sampling conditions or needs based upon good practice, judgement and experience. When such tests are adjusted, consideration shall be given to the effect of such change on established emission standards. Tests shall be performed under the direction of persons whose qualifications are acceptable to the board.

C. Emission tests for existing sources shall be conducted under conditions which the board shall specify to the owner, based on representative performance of the source. The owner shall make available to the board such records as may be necessary to determine the conditions of the emission tests. Operations during periods of startup, shutdown and malfunction shall not constitute representative conditions of ~~emission tests for the purpose of an emission test nor shall.~~ During the initial emission test, emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction shall not be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

D. An owner may request that the board determine the opacity of emissions from an existing source during the emission tests required by this section.

E. Each emission test for an existing source shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions

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acceptable to the board. For the purpose of determining compliance with an applicable standard, the arithmetic mean of the results of the three runs shall apply. In the event that a sample is accidentally lost, or if conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions or other circumstances beyond the owner's control, compliance may, upon the approval of the board, be determined using the arithmetic mean of the results of the two other runs.

F. The board may test emissions of air pollutants from any existing source. Upon request of the board the owner shall provide, or cause to be provided, emission testing facilities as follows:

1. Sampling ports adequate for test methods applicable to such source. *This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow with acceptable flow characteristics during emission tests, as demonstrated by applicable test methods and procedures.*
2. Safe sampling platforms.
3. Safe access to sampling platforms.
4. Utilities for sampling and testing equipment.

G. Upon request of the board the owner of any existing source subject to the provisions of this chapter shall conduct emission tests in accordance with procedures approved by the board.

## 9 VAC 5-40-40. Monitoring.

A. Unless otherwise approved by the board, owners of existing sources specified in the applicable emission standard shall install, calibrate, maintain and operate systems for continuously monitoring and recording emissions of specified pollutants. ~~[ For the purposes of this section, all continuous monitoring systems required under the applicable emission standard shall be subject to the provisions of the performance specifications for continuous monitoring systems under Appendix B of 40 CFR Part 60 and, if the continuous monitoring system is used to demonstrate compliance with emission limits on a continuous basis, Appendix F of 40 CFR Part 60, unless otherwise specified in this part, in an applicable standard or by the board. ]~~ However, nothing in this chapter shall exempt any owner from complying with subsection [ F G ] of this section.

B. All continuous monitoring systems and monitoring devices shall be installed and operational by July 5, 1983. Verification of operational status shall, as a minimum, consist of the completion of the conditioning period specified by applicable requirements in Appendix B of 40 CFR Part 60.

C. Within 30 days after the date set forth in subsection B of this section and at such other times as may be requested by the board, the owner of any existing source shall conduct continuous monitoring system performance evaluations and furnish the board within 60 days of them two or, upon request, more copies of a written report of the results of such tests.

~~[ D. If the owner of an affected facility elects to submit continuous opacity monitoring system (COMS) data for compliance with the opacity standard as provided under 9 VAC 5-40-20 G 5, he shall conduct a performance evaluation of the COMS as specified in Performance Specification 1 in Appendix B of 40 CFR Part 60 before the required emission test required under 9 VAC 5-40-30 is conducted. Otherwise, the owner of an affected facility shall conduct a performance evaluation of the COMS or continuous emission monitoring system (CEMS) during any required emission test required under 9 VAC 5-40-30 or within 30 days thereafter in accordance with the applicable performance specification in Appendix B of 40 CFR Part 60. The owner of an affected facility shall conduct COMS or CEMS performance evaluations at such other times as may be required by the board.~~

~~1. The owner of an affected facility using a COMS to determine opacity compliance during any required emission test required under 9 VAC 5-40-30 and as described in 9 VAC 5-40-20 G 5 shall furnish the board two or, upon request, more copies of a written report of the results of the COMS performance evaluation described in this subsection at least 10 days before the emission test required under 9 VAC 5-40-30 is conducted.~~

~~2. Except as provided in subdivision 1 of this subsection, the owner of an affected facility shall furnish the board within 60 days of completion two or, upon request, more copies of a written report of the results of the performance evaluation. ]~~

~~E. D. ]~~ Unless otherwise approved by the board, all continuous monitoring systems required by subsection A of this section shall be installed, calibrated, maintained and operated in accordance with applicable requirements in this section, 9 VAC 5-40-41, and the applicable emission standard.

~~[ F. E. ]~~ After receipt and consideration of written application, the board may approve alternatives to any monitoring procedures or requirements of this chapter including, but not limited to, the following:

1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this chapter would not provide accurate measurements due to liquid water or other interferences caused by substances [ ~~with~~ within ] the effluent gases;
2. Alternative monitoring requirements when the source is infrequently operated;
3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions;
4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner can demonstrate the installation at alternate locations will enable accurate and representative measurements;
5. Alternative methods of converting pollutant concentration measurements to units of the standards;
6. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities

may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period);

7. Alternative monitoring requirements when the effluent from a single source or the combined effluent from two or more sources are released to the atmosphere through more than one point;

8. Alternative procedures for performing calibration checks;

9. Alternative monitoring requirements when the requirements of this section would impose an extreme economic burden on the owner;

10. Alternative monitoring requirements when the continuous monitoring systems cannot be installed due to physical limitations at the source; and

11. Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 of Appendix B of 40 CFR Part 60, but which adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1 of Appendix B of 40 CFR Part 60. The board may require that such demonstration be performed for each source.

12. *Alternative monitoring systems that meet the requirements of 40 CFR Part 75 (i) if a source is subject to 40 CFR Part 75 or (ii) if the board determines that the requirements of 40 CFR Part 75 are more appropriate for the source than the pertinent provisions of this chapter.*

[ ~~G~~ F. ] Upon request of the board, the owner of an existing source subject to the provisions of this chapter shall install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both in accordance with methods and procedures acceptable to the board.

**9 VAC 5-40-50. Notification, records and reporting.**

A. Any owner of an existing source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9 VAC 5-40-40 C. Notification shall be postmarked not less than 30 days prior to such date.

2. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked not less than 30 days prior to such date.

3. *The anticipated date for conducting the opacity observations required by 9 VAC 5-40-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during an emission test. The notification shall be postmarked not less than 30 days prior to such date.*

[ ~~4. That continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity standard during an a required emission test required by 9 VAC 5-40-30 in lieu of Reference Method 9 observation data as allowed by 9 VAC 5-40-20 G 5. This notification shall be postmarked not less than 30 days prior to the date of the emission test.~~ ]

B. Any owner of an existing source subject to the provisions of 9 VAC 5-40-40 A shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of such source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable emission standard) and [ either a ] monitoring systems performance report or a summary report form, or both, to the board for every calendar quarter semiannually, except when (i) more frequent reporting is specifically required by an applicable emission standard; ~~(ii)~~ [ or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; ] or ~~(iii)~~ (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All [ quarterly ] reports shall be postmarked by the 30th day following the end of each [ calendar ] quarter and [ half (or quarter, as appropriate) six-month period ]. Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 9 VAC 5-40-41 B 6, any conversion factors used, and the date and time of commencement and completion of each period of excess emissions; ~~The process operating time during the reporting period.~~

2. Specific identification of each period of excess emissions that occurs during startups, shutdowns and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted;

3. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; ~~and.~~

4. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

D. Any owner of an existing source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and emission testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a

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permanent form suitable for inspection. The file shall be retained for at least two years [ *unless a longer period is specified in the applicable standards* ] following the date of such measurements, maintenance, reports and records.

E. Any data or information required by ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution*, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard ~~must~~ *shall* be recorded or maintained in a time frame consistent with the averaging period of the standard.

F. The owner of a stationary source shall keep records as may be necessary to determine its emissions. Any owner claiming that a facility is exempt from the provisions of ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* shall keep records as may be necessary to demonstrate to the satisfaction of the board its continued exempt status.

G. The owner of an existing source subject to any emission standard in Article 26 (9 VAC 5-40-3560 et seq.) through Article 36 (9 VAC 5-40-5060 et seq.) of 9 VAC 5 Chapter 40 shall maintain records in accordance with the applicable procedure in 9 VAC 5-20-121.

H. Upon request of the board, the owner of an existing source subject to the provisions of this chapter shall provide notifications and report, revise reports, maintain records or report emission test or monitoring result in a manner and form and using procedures acceptable to board.

## CHAPTER 50.

### NEW AND MODIFIED STATIONARY SOURCES.

#### 9 VAC 5-50-10. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply to new and modified sources.

B. The provisions of this chapter shall apply to sources specified below [ *except as provided in 9 VAC 5-40-10 B* ]:

1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.

2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

C. If a facility becomes subject to any requirement in ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* because it exceeds an exemption level, the facility shall continue to be subject to all applicable requirements even if future conditions cause the facility to fall below the exemption level.

D. The provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), unless specified otherwise, shall apply to new and modified sources to the extent that those provisions thereof are more restrictive than the provisions of this chapter, 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), or any permit issued pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.).

E. *For sources subject to the applicable subparts listed in 9 VAC 5-50-410, the provisions of 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 and 40 CFR 60.13 shall be implemented*

*through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 60, the more restrictive provisions shall apply.*

F. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and board. [ *This subsection shall not apply to documents requiring signatures or certification under 9 VAC 5-20-230.* ]

[ ~~G. The provisions of 9 VAC 5-50-20 J shall not apply to the following:~~

~~1. Sources subject to the applicable subparts listed in 9 VAC 5-50-410 unless specifically allowed by the applicable subparts listed in 9 VAC 5-50-410.~~

~~2. Sources and pollutants in areas where a single source or small group of sources has the potential to cause an exceedance of any ambient air quality standard or any ambient air increment prescribed under 9 VAC 5-80-1730.~~

~~3. Affected units subject to a federal operating permit unless specifically allowed by the permit. This prohibition applies only to terms and conditions of the permit derived from the acid rain program.~~ ]

#### 9 VAC 5-50-20. Compliance.

A. Sixty days after achieving the maximum production rate, but not later than 180 days after initial startup, no owner or other person shall operate any new or modified source in violation of any standard of performance prescribed under this chapter.

1. Compliance with standards in this chapter, other than opacity standards, shall be determined by performance tests established by 9 VAC 5-50-30, unless specified otherwise in the applicable standard.

2. *Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:*

a. *New source performance standards established pursuant to § 111 of the federal Clean Air Act.*

b. *All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.*

c. ~~Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal implementation plan (FIP).~~

d. ~~Limitations and conditions that are part of an approved State Designated Pollutant Plan or a Federal Designated Pollutant Plan a § 111(d) [ or § 111(d)/129 ] plan.~~

e. *Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.*

f. *Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA*

into a ~~SIP~~ an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

3. Compliance with opacity standards in this chapter shall be determined by conducting observations in accordance with Reference Method 9 or any alternative method, if specified in the permit granted pursuant to 9 VAC 5 Chapter 80 (9 VAC 5-80 [ ~~40 et seq.~~ ] ) [ ~~, or as provided in subdivision G 5 of this section~~ ]. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. ~~The results of continuous monitoring by transmissometer which indicated that the opacity at the time observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission. In such cases, the owner must prove that, at the time of the alleged violation, the instrument used met Performance Specification 1 of Appendix B of 40 CFR 60, and had been properly maintained and calibrated, and that the resulting data had not been tampered with in any way.~~

~~3.~~ [ 4. The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction and as otherwise provided in the applicable standard. ]

~~4.~~ [ 5. 4. ] Variation from a specified standard may be granted by the board for a definite period for testing and adjustment.

B. No owner of a new or modified source subject to the provisions of this chapter shall fail to conduct performance tests as required under this chapter.

C. No owner of a new or modified source subject to the provisions of this chapter shall fail to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both as required under this chapter.

D. No owner of a new or modified source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report performance test or monitoring results as required under this chapter.

E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

F. At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers which are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

G. ~~Reserved.~~ The following provisions apply with respect to compliance with opacity standards.

1. For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial performance test ~~required in 9 VAC 5-50-30~~ unless one of the following conditions apply.

a. If no performance test ~~under 9 VAC 5-50-30~~ is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility.

b. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test ~~required under 9 VAC 5-50-30~~, the owner shall reschedule the opacity observations as soon after the initial performance test as possible, but not later than 30 days thereafter, and shall advise the board of the rescheduled date. In these cases, the 30-day prior notification to the board required by 9 VAC 5-50-50 A 6 shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test ~~conducted under 9 VAC 5-50-30~~. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test in accordance with procedures contained in Reference Method 9.

Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner of an affected facility shall make available, upon request by the board, such records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. [ ~~Except as provided in subdivision 5 of this subsection,~~ ] The results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided the source meets the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

2. Except as provided in subdivision 3 of this subsection, the owner of an affected facility to which an opacity standard in this chapter applies shall conduct opacity observations in

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accordance with subdivision A [ 2 3 ] of this section, shall record the opacity of emissions, and shall report to the board the opacity results along with the results of the initial performance test required under 9 VAC 5-50-30. The inability of an owner to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.

3. The owner of an affected facility to which an opacity standard in this chapter applies may request the board to determine and to record the opacity of emissions from the affected facility during the initial performance test and at such times as may be required. The owner of the affected facility shall report the opacity results. Any request to the board to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in 9 VAC 5-50-50 A 6. If, for some reason, the board cannot determine and record the opacity of emissions from the affected facility during the performance test, then the provisions of subdivision 1 of this subsection shall apply.

4. An owner of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial performance test required by 9 VAC 5-50-30 and shall furnish the board a written report of the monitoring results along with [ the ] Reference Method 9 and 9 VAC 5-50-30 [ the ] initial performance test results.

[ 5. An owner of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any required performance test required under 9 VAC 5-50-30 in lieu of Reference Method 9 observation data. If an owner elects to submit COMS data for compliance with the opacity standard, he shall notify the board of that decision, in writing, at least 30 days before any required performance test required under 9 VAC 5-50-30 is conducted. Once the owner of an affected facility has notified the board to that effect, the COMS data results will be used to determine opacity compliance during subsequent tests required under 9 VAC 5-50-30 until the owner notifies the board, in writing, to the contrary. For the purpose of determining compliance with the opacity standard during a performance test required under 9 VAC 5-50-30 using COMS data, the minimum total time of COMS data collection shall be averages of all six-minute continuous periods within the duration of the mass emission performance test. Results of the COMS opacity determinations shall be submitted along with the results of the performance test required under 9 VAC 5-50-30. The owner of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in 9 VAC 5-50-40 E, that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way. If COMS data results are submitted for compliance with the opacity standard for a period of time during which Reference Method 9 data indicates noncompliance, the Reference Method 9 data will be used to determine opacity compliance.

6. Upon receipt from an owner of the written reports of the results of the performance tests required by 9 VAC 5-50-30, the opacity observation results and observer certification required by subdivision 1 of this subsection, and the COMS

~~results, if applicable, the board will make a finding concerning compliance with opacity and other applicable standards. If COMS data results are used to comply with an opacity standard, only those results are required to be submitted along with the performance test results required by 9 VAC 5-50-30. If the board finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted in accordance with 9 VAC 5-50-30 but during the time such performance tests are being conducted fails to meet any applicable opacity standard, the board shall notify the owner and advise him that he may request a waiver from the board within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility in accordance with 9 VAC 5-50-120.~~

~~7. The board will grant such a petition upon a demonstration by the owner that the affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the opacity of emissions during the performance tests, that the performance tests were performed under the conditions established by the board, that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard, and that the provisions of 9 VAC 5-50-120 are met.~~

~~8. The board will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard.]~~

H. The following provisions apply with respect to stack heights.

1. The degree of emission limitation required of any source owner for control of any air pollutant shall not be affected in any manner by:

- a. So much of the stack height of any source as exceeds good engineering practice, or
- b. Any other dispersion technique.

2. The provisions of subdivision H 1 of this subsection shall not apply to:

- a. Stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section § 111(a)(3) of the federal Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in [ 9 VAC 5-30-20 and 9 VAC 5-30-30 Article 8 (9 VAC 5-80-1700 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of Part II of 9 VAC 5 Chapter 80 ], were carried out after December 31, 1970; or
- b. Coal-fired steam electric generating units subject to the provisions of Section § 118 of the federal Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

3. Prior to the adoption of a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by paragraphs [ ~~subdivisions~~ subdivision ] 1 or 2 of the GEP definition, the board ~~must~~ shall notify the public of the availability of the demonstration study and ~~must~~ shall provide opportunity for public hearing on it.

4. For purposes of ~~this subsection H of this section~~, such height shall not exceed the height allowed by paragraphs [ ~~subdivisions~~ subdivision ] 1 or 2 of the GEP definition unless the owner demonstrates to the satisfaction of the board, after 30 days notice to the public and opportunity for public hearing, that a greater height is necessary as provided under paragraph ~~subdivision~~ 3 of the GEP definition.

5. In no event may the board prohibit any increase in any stack height or restrict in any manner the maximum stack height of any source.

6. Compliance with standards of performance in this chapter shall not be affected in any manner by the stack height of any source or any other dispersion technique.

*I. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.*

~~[ J. If a violation of applicable emission standards is judged to have taken place as a result of periods of excess emissions during startup or shutdown, the owner is entitled to an affirmative defense for relief from penalties provided the owner proves that:~~

~~1. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design;~~

~~2. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;~~

~~3. If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;~~

~~4. At all times, the facility was operated in a manner consistent with good practice for minimizing emissions;~~

~~5. The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable;~~

~~6. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;~~

~~7. All emission monitoring systems were kept in operation if at all possible;~~

~~8. The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and~~

~~9. The owner or operator properly and promptly notified the appropriate regulatory authority. ]~~

**9 VAC 5-50-30. Performance testing.**

A. Performance tests for new or modified sources shall be conducted and reported and data shall be reduced as set forth in this chapter and the test methods and procedures contained in each applicable subpart listed in 9 VAC 5-50-410 ~~unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which [ he the board ] has determined to be adequate for indicating whether a specific source is in compliance; (iv) waives the requirement for performance tests because the owner of a source has demonstrated by other means to the board's satisfaction that the affected facility is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.~~ Any new or modified source, for which no standards of performance are set forth in Article 5 (9 VAC 5-50-400 et seq.) of this chapter part, shall be performance tested by appropriate reference methods; ~~if not appropriate, then equivalent or alternative methods shall be used unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which [ he the board ] has determined to be adequate for indicating whether a specific source is in compliance; (iv) waives the requirement for performance tests because the owner of a source has demonstrated by other means to the board's satisfaction that the affected facility is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.~~ In cases where no appropriate reference method exists for a new or modified source subject to a standard of performance for volatile organic compounds, the test methods in 9 VAC 5-20-121 may be considered appropriate.

B. Performance testing for new or modified sources shall be subject to testing guidelines approved by the board. Procedures may be adjusted or changed by the board to suit specific sampling conditions or needs based upon good practice, judgment and experience. When such tests are adjusted, consideration shall be given to the effect of such change on established standards. Tests shall be performed under the direction of persons whose qualifications are acceptable to the board.

C. Performance tests for new or modified sources shall be conducted under conditions which the board shall specify to the owner based on representative performance of the source. The owner shall make available to the board such records as may be necessary to determine the conditions of the performance tests. Operation during periods of startup, shutdown and malfunction shall not constitute representative conditions ~~of performance tests for the purpose of a~~

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~~performance test nor shall. During the initial performance test [ , ] emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction shall not be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.~~

D. An owner may request that the board determine the opacity of emissions from a new or modified source during the performance tests required by this section.

E. Unless specified otherwise in the applicable standard, each performance test for a new or modified source shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard the arithmetic mean of the results of the three runs shall apply. In the event that a sample is accidentally lost or if conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions or other circumstances beyond the owner's control, compliance may, upon the approval of the board, be determined using the arithmetic mean of the results of the two other runs.

F. The board may test emissions of air pollutants from any new or modified source. Upon request of the board the owner shall provide, or cause to be provided, performance testing facilities as follows:

1. Sampling ports adequate for test methods applicable to such source; ~~This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow with acceptable flow characteristics during performance tests, as demonstrated by applicable test methods and procedures.~~
2. Safe sampling platforms;
3. Safe access to sampling platforms;
4. Utilities for sampling and testing equipment.

G. Upon request of the board, the owner of any new or modified source subject to the provisions of this chapter shall conduct performance tests in accordance with procedures approved by the board.

## 9 VAC 5-50-40. Monitoring.

A. Unless otherwise approved by the board or specified in applicable subparts listed in 9 VAC 5-50-410, the requirements of this section shall apply to all continuous monitoring systems required for affected facilities in accordance with applicable subparts listed in 9 VAC 5-50-410. ~~[ For the purposes of this section, all continuous monitoring systems required under applicable subparts listed in 9 VAC 5-50-410 shall be subject to the provisions of this section upon promulgation of performance specifications for continuous monitoring systems under Appendix B of 40 CFR Part 60 and, if the continuous monitoring system is used to demonstrate compliance with emission limits on a continuous basis, Appendix F of 40 CFR Part 60, unless otherwise specified in an applicable subpart listed in 9 VAC 5-50-410 or by the board ].~~ However,

nothing in this chapter shall exempt any owner from complying with subsection [ F G ] of this section.

B. All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under 9 VAC 5-50-30. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation and calibration of the device.

C. During any performance tests required under 9 VAC 5-50-30 or within 30 days thereafter and at such other times as may be requested by the board, the owner of any affected facility shall conduct continuous monitoring system performance evaluations and furnish the board within 60 days of them two or, upon request, more copies of a written report of the results of such tests. These continuous monitoring system performance evaluations shall be conducted in accordance with the requirements and procedures contained in the applicable performance specification of Appendix B of 40 CFR Part 60.

~~[ D. If the owner of an affected facility elects to submit continuous opacity monitoring system (COMS) data for compliance with the opacity standard as provided under 9 VAC 5-50-20 G 5, he shall conduct a performance evaluation of the COMS as specified in Performance Specification 1 in Appendix B of 40 CFR Part 60 before the required performance test required under 9 VAC 5-50-30 is conducted. Otherwise, the owner of an affected facility shall conduct a performance evaluation of the COMS or continuous emission monitoring system (CEMS) during any required performance test required under 9 VAC 5-50-30 or within 30 days thereafter in accordance with the applicable performance specification in Appendix B of 40 CFR Part 60. The owner of an affected facility shall conduct COMS or CEMS performance evaluations at such other times as may be required by the board.~~

~~1. The owner of an affected facility using a COMS to determine opacity compliance during any required performance test required under 9 VAC 5-50-30 and as described in 9 VAC 5-50-20 G 5 shall furnish the board two or, upon request, more copies of a written report of the results of the COMS performance evaluation described in this subsection at least 10 days before the performance test required under 9 VAC 5-50-30 is conducted.~~

~~2. Except as provided in subdivision 1 of this subsection, the owner of an affected facility shall furnish the board within 60 days of completion two or, upon request, more copies of a written report of the results of the performance evaluation.~~

~~E. D. ]~~ Unless otherwise approved by the board, all continuous monitoring systems required by subsection A of this section shall be installed, calibrated, maintained and operated in accordance with applicable requirements in this section, 40 CFR 60.13 and the applicable subpart listed in 9 VAC 5-50-410.

[ E. F. ] After receipt and consideration of written application, the board may approve alternatives to any monitoring procedures or requirements of this chapter including, but not limited to, the following:

1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this chapter would not provide accurate measurements due to liquid water or other interferences caused by substances [ ~~with~~ *within* ] the effluent gases;
2. Alternative monitoring requirements when the affected facility is infrequently operated;
3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions;
4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner can demonstrate that installation at alternate locations will enable accurate and representative measurements;
5. Alternative methods of converting pollutant concentration measurements to units of the applicable standards;
6. Alternative procedures for performing daily checks or zero and span drift that do not involve use of span gases or test cells;
7. Alternatives to the ASTM test methods or sampling procedures specified by any subpart listed in 9 VAC 5-50-410;
8. Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 of Appendix B of 40 CFR Part 60, but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1 of Appendix B of 40 CFR Part 60. The board may require that demonstration be performed for each affected facility; ~~and~~.
9. Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.
10. *Alternative monitoring systems that meet the requirements of 40 CFR Part 75 (i) if a source is subject to 40 CFR Part 75 or (ii) if the board determines that the requirements of 40 CFR Part 75 are more appropriate for the source than the pertinent provisions of this chapter.*

[ ~~F. G.~~ ] Upon request of the board, the owner of a new or modified source subject to the provisions of this chapter shall install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both in accordance with methods and procedures acceptable to the board.

**9 VAC 5-50-50. Notification, records and reporting.**

A. Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date;

2. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date;
3. The actual date of initial startup of a new or modified source postmarked within 15 days after such date;
4. The date of any performance test required by 9 VAC 5 Chapter 80 (9 VAC 5-80 [ ~~40 et seq.~~ ]) and any other performance test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked not less than 30 days prior to such date; ~~and~~.
5. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9 VAC 5-50-40 C. Notification shall be postmarked not less than 30 days prior to such date.
6. *The anticipated date for conducting the opacity observations required by 9 VAC 5-50-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during a performance test. The notification shall be postmarked not less than 30 days prior to such date.*

[ ~~7. That continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity standard during a required performance test required by 9 VAC 5-50-30 in lieu of Reference Method 9 observation data as allowed by 9 VAC 5-50-20 G 5. This notification shall be postmarked not less than 30 days prior to the date of the performance test.~~ ]

B. Any owner of a new or modified source subject to the provisions of 9 VAC 5-50-40 A shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of such source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable subpart in 9 VAC 5-50-410) ~~and~~ [ either a ] monitoring systems performance report [ ~~and~~ ] or a summary report form [ , or both ] to the board ~~for every calendar quarter semiannually, except when (i) more frequent reporting is specifically required by an applicable subpart listed in 9 VAC 5-50-410 ; (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All~~ quarterly reports shall be postmarked by the 30th day following the end of each [ calendar ] quarter ~~and~~ [ half (or quarter, as appropriate) ~~six-month period~~ ]. Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 40 CFR 60.13(h), any conversion factors used, and the date and time of commencement and

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completion of each period of excess emissions; *The process operating time during the reporting period.*

2. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted;

3. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; ~~and.~~

4. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

D. Any owner of a new or modified source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years [ *unless a longer period is specified in the applicable standard* ] following the date of such measurements, maintenance, reports and records.

E. Any data or information required by ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution*, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard ~~must~~ *shall* be recorded or maintained in a time frame consistent with the averaging period of the standard.

F. The owner of a stationary source shall keep records as necessary to determine its emissions. Any owner claiming that a facility is exempt from the provisions of ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* shall keep records to demonstrate its continued exempt status.

G. The owner of a new or modified source subject to any volatile organic compound emission standard for a coating operation or printing process shall maintain records in accordance with the applicable procedure in 9 VAC 5-20-121.

H. Upon request of the board, the owner of a new or modified source subject to the provisions of this chapter shall provide notifications and reports, maintain records or report performance test or monitoring results in a manner and form and using procedures acceptable to the board.

## CHAPTER 60. HAZARDOUS AIR POLLUTANT SOURCES.

### 9 VAC 5-60-10. Applicability.

A. The provisions of this chapter shall apply to all existing, new and modified hazardous air pollutant sources for which emission standards are prescribed under this chapter.

B. For sources subject to the applicable subparts listed in 9 VAC 5-60-70, the provisions of 40 CFR 61.09, 40 CFR 61.10, 40 CFR 61.12, 40 CFR 61.13, and 40 CFR 61.14 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 61, the more restrictive provisions shall apply.

C. For sources subject to the applicable subparts listed in 9 VAC 5-60-100, the provisions of 40 CFR 63.6, 40 CFR 63.7, 40 CFR 63.8, 40 CFR 63.9, 40 CFR 63.10 and 40 CFR 63.11 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 63, the more restrictive provisions shall apply.

D. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and the board. [ *This subsection shall not apply to documents requiring signatures or certification under 9 VAC 5-20-230.* ]

[ ~~E. The provisions of 9 VAC 5-60-20 F shall not apply to the following:~~

~~1. Sources subject to the applicable subparts listed in 9 VAC 5-60-70 unless specifically allowed by the applicable subparts listed in 9 VAC 5-60-70.~~

~~2. Sources subject to the applicable subparts listed in 9 VAC 5-60-100 unless specifically allowed by the applicable subparts listed in 9 VAC 5-60-100.~~ ]

### 9 VAC 5-60-20. Compliance.

A. Ninety days after the effective date of any emission standard prescribed under this chapter no owner or other person shall operate any existing hazardous air pollutant source in violation of such standard. After the effective date of any emission standard prescribed under this chapter no owner or other person shall operate any new or modified hazardous air pollutant source in violation of such standard.

1. Compliance with standards in this chapter, ~~other than visible emission standards~~ shall be determined by emission tests established by 9 VAC 5-60-30, unless specified otherwise in the applicable standard.

2. ~~The visible emission standards prescribed under this chapter shall apply at all times.~~ *Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:*

a. *Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.*

b. *Emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.*

c. *All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.*

~~d. Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal implementation plan (FIP).~~

~~e. Limitations and conditions that are part of an approved State Designated Pollutant Plan or a Federal Designated Pollutant Plan a § 111(d) [ or § 111(d)/129 ] plan.~~

~~f. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.~~

~~g. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.~~

~~h. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.~~

B. No owner of a hazardous air pollutant source subject to the provisions of this chapter shall fail to conduct emission tests as required under this chapter.

C. No owner of a hazardous air pollutant source subject to the provisions of this chapter shall fail to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions, process parameters or air quality, or both, as required in this chapter.

D. No owner of a hazardous air pollutant source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report emission test or monitoring results, or both, as required under this chapter.

*E. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.*

~~[ F. If a violation of applicable emission standards is judged to have taken place as a result of periods of excess emissions during startup or shutdown, the owner is entitled to an affirmative defense for relief from penalties provided the owner proves that:~~

~~1. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design;~~

~~2. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;~~

~~3. If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass~~

~~was unavoidable to prevent loss of life, personal injury, or severe property damage;~~

~~4. At all times, the facility was operated in a manner consistent with good practice for minimizing emissions;~~

~~5. The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable;~~

~~6. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;~~

~~7. All emission monitoring systems were kept in operation if at all possible;~~

~~8. The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and~~

~~9. The owner or operator properly and promptly notified the appropriate regulatory authority. ]~~

**9 VAC 5-60-30. Emission testing.**

A. Emission tests for hazardous air pollutant sources shall be conducted and reported and data shall be reduced as set forth in this chapter and in the appropriate reference methods; if not appropriate, then equivalent or alternative methods shall be used unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which the board has determined to be adequate for indicating whether a specific source is in compliance; (iv) waives the requirement for emission tests because the owner of a source has demonstrated by other means to the board's satisfaction that the affected facility is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.

B. Emission testing for hazardous air pollutant sources shall be subject to testing guidelines approved by the board. Procedures may be adjusted or changed by the board to suit specific sampling conditions or needs based upon good practice, judgement and experience. When such tests are adjusted, consideration shall be given to the effect of such change on established emission standards. Tests shall be performed under the direction of persons whose qualifications are acceptable to the board.

C. Emission tests for hazardous air pollutant sources shall be conducted under conditions which the board shall specify to the owner based on representative performance of the source. The owner shall make available to the board such records as may be necessary to determine the conditions of the emission tests. Operations during periods of startup, shutdown and malfunction shall not constitute representative conditions of emission tests for the purpose of an emission test nor shall . During the initial emission test [ , ] emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction shall not be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

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~~D. Any owner may request that the board determine the visible emissions from a hazardous air pollutant source during the emission tests required by this section.~~

~~E. D.~~ Each emission test for a hazardous air pollutant source shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard the arithmetic mean of the results of the three runs shall apply. In the event that a sample is accidentally lost or if conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of the sample train, extreme meteorological conditions or other circumstances beyond the owner's control, compliance may, upon the approval of the board, be determined using the arithmetic mean of the results of the two other runs.

~~F. E.~~ The board may test emissions of air pollutants from any hazardous air pollutant source. Upon request of the board the owner shall provide, or cause to be provided, emission testing facilities as follows:

1. Sampling ports adequate for test methods applicable to such source; *This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow with acceptable flow characteristics during performance emission tests, as demonstrated by applicable test methods and procedures.*
2. Safe sampling platforms;
3. Safe access to sampling platforms; and
4. Utilities for sampling and testing equipment.

~~G. Methods 101, 101A, 102 and 104 of Appendix B of 40 CFR 61 shall be used for all hazardous air pollutant source tests required under this chapter unless an equivalent method or an alternative method has been approved by the board.~~

~~H. Method 103 of Appendix B of 40 CFR 61 is hereby approved as an alternative method for sources subject to 40 CFR 61.32(a) and 40 CFR 61.42(b).~~

~~I. Method 105 of Appendix B of 40 CFR 61 is hereby approved as an alternative method for sources subject to 40 CFR 61.52(b).~~

~~J. The board may, after notice to the owner, withdraw approval of an alternative method granted under subsections H and I of this section. Where the test results using an alternative method do not adequately indicate whether a source is in compliance with a standard, the board may require the use of the reference method or its equivalent.~~

~~K. F.~~ Upon request of the board, the owner of any hazardous air pollutant source subject to the provisions of this chapter shall conduct emission tests in accordance with procedures approved by the board.

VA.R. Doc. No. R97-708; Filed June 11, 2002, 12:22 p.m.

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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

**Title of Regulation:** 12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-20; adding 12 VAC 30-80-25).

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

**Effective Date:** August 1, 2002.

**Summary:**

*The amendments conform this regulation to federal requirements pursuant to Section 702 of the Benefits Improvement and Protection Act (BIPA) of 2000. BIPA 2000 required that Medicaid programs reimburse federally qualified health centers (FQHCs) and rural health clinics (RHCs) on a prospective payment system (PPS) or, at the option of the state, under an alternative payment methodology. Since the Commonwealth previously reimbursed these providers at 100% of their reasonable costs, DMAS is retaining that methodology as permitted under the BIPA 2000 alternative methodology provision.*

**Agency Contact:** Pete Epps, Health Care Specialist, Department of Medical Assistance Services, 600 East Broad Street, Suite 500, Richmond, VA 23219, telephone (804) 225-4591, FAX (804) 786-0729 or e-mail pepps@dmass.state.va.us.

**12 VAC 30-80-20. Services which are reimbursed on a cost basis.**

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall

take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule or summary;
6. Home office cost report, if applicable; and
7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals
2. Outpatient hospital services excluding laboratory.

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

*"All-inclusive"* means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

*"DMAS"* means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

*"Emergency hospital services"* means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

*"Recent injury"* means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

- (1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive

reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 2 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 2b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

~~3. Rural health clinic services provided by rural health clinics or other federally qualified health centers defined as eligible to receive grants under the Public Health Services Act §§ 329, 330, and 340.~~

4. 3. Rehabilitation agencies. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment shall in no way diminish any obligation

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of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

5- 4. Comprehensive outpatient rehabilitation facilities.

6- 5. Rehabilitation hospital outpatient services.

## **12 VAC 30-80-25. Reimbursement for federally qualified health centers (FQHCs) and rural health clinics (RHCs).**

A. Consistent with the Benefits Improvement and Protection Act (BIPA) of 2000, Section 702, DMAS adopts the alternative payment methodology. This alternative payment methodology continues established reasonable cost reimbursement using Medicare principles of reimbursement. The Commonwealth shall make interim payments on a per visit basis and shall reconcile to actual costs via the year-end cost report. The methodology used to determine the payment amount is: (i) agreed to by the Commonwealth and the center or clinic and (ii) results in payment to the center or clinic of an amount that is at least equal to the PPS payment rate.

1. Newly qualified FQHCs/RHCs adopting the alternative payment methodology after federal fiscal year 2000 will have initial payments established through pro forma cost reporting methods.

2. At the end of the cost reporting cycle, the Commonwealth shall compare the alternative per visit rate to the PPS rate and reimburse the center/clinic the higher of the alternative rate or the PPS rate for the number of visits recorded during the reporting period.

B. In the event a FQHC/RHC does not select the alternative payment methodology, DMAS shall provide payment consistent with the new Prospective Payment System (PPS) as prescribed by the BIPA of 2000, Section 702.

1. Baseline PPS rate methodology. The PPS baseline payment period (January 1, 2001 – September 30, 2001) rate shall be determined by averaging 100% of the FQHCs/RHCs reasonable costs of providing Medicaid-covered services during the providers' 1999 and 2000 fiscal years, adjusted to take into account any increase or decrease in the scope of services furnished during provider FY 2001 by the FQHC/RHC (calculating the payment amount on a per visit basis). Beginning October 1, 2001, and for each fiscal year thereafter, each FQHC/RHC shall be entitled to the payment amount (on a per visit basis) to which the center or clinic was entitled under BIPA of 2000 in the previous fiscal year, adjusted by the percentage change in the Medicare Economic Index (MEI) for primary care services, and adjusted to take into account any increase or decrease in the scope of services furnished by the FQHC/RHC during its fiscal year.

2. For new FQHCs/RHCs that qualify on or after fiscal year 2000, DMAS will compare the new center/clinic to other centers/clinics in the same or adjacent areas, as defined by the current U.S. Department of Commerce, Bureau of Economic Analysis, Metropolitan Statistical Area Component County List, issued by the Office of Management and Budget, with similar case loads for purposes of establishing an initial payment rate. If no comparable center/clinic exists, DMAS will compute a center/clinic-specific rate based upon the clinic's pro forma

budget or historical costs adjusted for changes in scope of services. At the end of the first fiscal year, initial payments will be reconciled to equate to 100% of costs. After the initial year, payment shall be increased or decreased using the MEI and adjusted for changes in the scope of services as described in this section.

C. Supplemental payments. As specified in the BIPA of 2000, Section 702, in the case of services furnished by FQHC/RHC pursuant to a contract between the center and a managed care entity (MCE), provision is hereby made for payment to the center or clinic at least quarterly by the Commonwealth of a supplemental payment equal to the amount (if any) by which the amount determined under subsection A or B of this section exceeds the amount of the payments provided under such HMO contract.

1. Supplemental payments for FQHCs/RHCs selecting the alternative methodology. FQHCs/RHCs that provide services under a contract with an MCE will receive quarterly state supplemental payments for the cost of furnishing such services that are an estimate of the difference between the payments the FQHC/RHC receives from the MCE or MCEs and the payments the FQHC/RHC would have received under the alternative methodology. At the end of the FQHC's/RHC's fiscal year, the total amount of supplemental and MCE payments received by the FQHC/RHC will be reviewed against the amount that the actual number of visits provided under the FQHC's/RHC's contract with MCE or MCEs would have yielded under the alternative methodology. If the alternative amount exceeds the total amount of supplemental and MCE payments, the FQHC/RHC will be paid the difference between the amount calculated using the alternative methodology and actual number of visits, and the total amount of supplemental and MCE payments received by the FQHC/RHC. If the alternative amount is less than the total amount of supplemental and MCE payments, the FQHC/RHC will refund the difference to DMAS between the alternative amount calculated using the actual number of visits and the total amount of supplemental and MCE payments received by the FQHC/RHC.

2. Supplemental payments for FQHCs/RHCs selecting the PPS methodology. FQHCs/RHCs that provide services under a contract with an MCE will receive quarterly state supplemental payments for the cost of furnishing such services that are an estimate of the difference between the payments the FQHC/RHC receives from MCEs and the payments the FQHC/RHC would have received under the BIPA PPS methodology. At the end of each FQHC's/RHC's fiscal year, the total amount of supplemental and MCE payments received by the FQHC/RHC will be reviewed against the amount that the actual number of visits provided under the FQHC's/RHC's contract with MCE would have yielded under the PPS. If the PPS amount exceeds the total amount of supplemental and MCE payments, the FQHC/RHC will be paid the difference between the PPS amount calculated using the actual number of visits and the total amount of supplemental and MCE payments received by the FQHC/RHC. If the PPS amount is less than the total amount of supplemental and MCE payments, the FQHC/RHC will refund to DMAS the difference between the

*PPS amount calculated using the actual number of visits and the total amount of supplemental and MCE payments received by the FQHC/RHC.*

*D. These providers shall be subject to the same cost reporting submission requirements as specified in 12 VAC 30-80-20 for cost-based reimbursed providers.*

VA.R. Doc. No. R02-202; Filed June 7, 2002, 11:36 a.m.

\* \* \* \* \*

**Title of Regulation: Married Institutionalized Individuals Eligibility and Patient Pay.**

**12 VAC 30-110. Eligibility and Appeals (amending 12 VAC 30-110-720 [and 12 VAC 30-110-741]; adding 12 VAC 30-110-831).**

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

**Effective Date:** August 1, 2002.

**Summary:**

*These amendments establish a more precise definition of hardship to be used in determining Medicaid eligibility for institutionalized individuals who have spouses living in the community.*

*The following changes are made to the proposed regulation:*

- 1. The definition of undue hardship is revised.*
- 2. Amendments to 12 VAC 30-110-741 are added to allow an undue hardship claim when the institutionalized individual is unable to establish marital status, locate the separated spouse or when the community spouse does not provide information to complete a resource assessment.*
- 3. The proposed regulations did not allow undue hardship to be claimed when the institutionalized spouse failed to establish his marital status or when the community spouse refused or failed to verify the values of resources owned. These restrictive conditions are removed and provisions added to allow an applicant to claim undue hardship when specific criteria are met.*

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

**Agency Contact:** Patricia Sykes, Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail psykes@dmas.state.va.us.

**12 VAC 30-110-720. Definitions.**

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

*"Acceptable medical evidence"* means either (i) certification by a nursing home preadmission screening committee; or (ii) certification by the individual's attending physician.

*"Actual monthly expenses"* means the total of:

1. Rent or mortgage, including interest and principal;
2. Taxes and insurance;
3. Any maintenance charge for a condominium or cooperative; and
4. The utility standard deduction under the Food Stamp Program that would be appropriate to the number of persons living in the community spouse's household, if utilities are not included in the rent or maintenance charge.

*"Applicable percent"* means that percentage as defined in § 1924(d)(3)(B) of the Social Security Act.

*"As soon as practicable"* (as it relates to transfer of resources from the institutionalized spouse to the community spouse for the purpose of the community spouse resource allowance) means within 90 days from the date the local agency takes action to approve the institutionalized spouse's initial eligibility for medical assistance long-term care services when the institutionalized spouse agrees to transfer resources to the community spouse.

*"At the beginning of the first continuous period of institutionalization"* means the first calendar month of a continuous period of institutionalization in a medical institution or of receipt of a Medicaid community-based care waiver service or hospice.

*"Community spouse"* means a person who is married to an institutionalized spouse and is not himself an inpatient at a medical institution or nursing facility.

*"Community spouse monthly income allowance"* means an amount by which the minimum monthly maintenance needs allowance exceeds the amount of monthly income otherwise available to the community spouse.

*"Community spouse resource allowance"* means the amount of the resources in the institutionalized spouse's name that can be transferred to the community spouse to bring the resources in the community spouse's name up to the protected resource amount.

*"Continuous period of institutionalization"* means 30 consecutive days of institutional care in a medical institution or nursing facility, or 30 consecutive days of receipt of Medicaid waiver or hospice services, or 30 consecutive days of a combination of institutional care and waiver and hospice services. Continuity is broken only by 30 or more days absence from a medical institution or 30 or more days of nonreceipt of waiver services.

*"Couple's countable resources"* means all of the couple's nonexcluded resources regardless of state laws relating to community property or division of marital property. For purposes of determining the combined and separate resources of the institutionalized and community spouses when determining the institutionalized spouse's eligibility, the couple's home, contiguous property, household goods and one automobile are excluded.

*"Department"* means the Department of Medical Assistance Services.

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*"Dependent child"* means a child under age 21 and a child age 21 years old or older, of either spouse, who lives with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

*"Dependent family member"* means a parent, minor child, dependent child, or dependent sibling, including half brothers and half sisters and siblings gained through adoption, of either member of a couple who resides with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

*"Exceptional circumstances resulting in significant financial duress"* means circumstances other than those taken into account in establishing the spousal maintenance allowance for which the community spouse incurs expenses in amounts that he cannot be expected to pay from the spousal maintenance allowance or from amounts held in the community spouse resource allowance.

*"Excess shelter allowance"* means the amount by which the actual monthly expense of maintaining the community spouse's residence plus the standard utility allowance exceeds the excess shelter standard.

*"Excess shelter standard"* means 30% of the monthly maintenance needs standard.

*"Family member's income allowance"* means an allowance for each dependent family member residing with the community spouse. The family member's income allowance is equal to 1/3 of the amount by which the monthly maintenance needs standard exceeds the family member's income.

*"Federal Poverty Level"* or *"FPL"* means the annual Federal Poverty Level as computed by the Office of Management and Budget and published in the Federal Register.

*"First continuous period of institutionalization"* means the first day of the first month of the first continuous period of institutionalization, which began on or after September 30, 1989.

*"Initial eligibility determination"* means:

1. An eligibility determination made in conjunction with a medical assistance application filed during an individual's most recent continuous period of institutionalization; or
2. The initial redetermination of eligibility for a medical assistance eligible institutionalized spouse after being admitted to an institution or receiving medical assistance community-based care waiver services.

*"Initial redetermination"* means the first redetermination of eligibility for a medical assistance eligible spouse which is regularly scheduled, or which is made necessary by a change in the individual's circumstances.

*"Institutionalized spouse"* means an individual who is an inpatient at a medical institution, who is receiving medical assistance community-based care waiver services, or who has elected hospice services, and who is likely to remain in such facility or to receive waiver or hospice services for at least 30

consecutive days, and who has a spouse who is not in a medical institution or nursing facility.

*"Likely to remain in an institution"* means a reasonable expectation based on acceptable medical evidence that an individual will be in a medical institution or will receive medical assistance waiver or hospice services for 30 consecutive days, even if receipt of institutional care or waiver or hospice services actually terminates in less than 30 days. Individuals who have been screened and approved for medical assistance community-based waiver services or who have elected hospice services shall be considered likely to remain in an institution.

*"Maximum monthly maintenance needs standard"* is the upper limit, i.e., cap established under § 1924(d)(3)(C) of the Social Security Act.

*"Maximum spousal resource standard"* means the maximum amount of the couple's combined countable resources established for a community spouse to maintain himself in the community calculated in accordance with § 1924(f)(2)(A)(ii)(II) of the Social Security Act. This amount increases annually by the same percentage as the percentage increase in the Consumer Price Index for all urban consumers between September 1988 and the September before the calendar year involved as required in § 1924(g) of the Social Security Act.

*"Medical institution"* or *"nursing facility"* means hospitals and nursing facilities (including ICF/MR), consistent with the definitions of such institutions found in the Code of Federal Regulations at 42 CFR 435.1009, 440.40 and 440.150 and which are authorized under Virginia law to provide medical care.

*"Minimum monthly maintenance needs allowance"* means the monthly maintenance needs standard, plus an excess shelter allowance, if applicable, not to exceed the maximum monthly maintenance needs standard. The minimum monthly maintenance needs allowance is the amount to which a community spouse's income is compared in order to determine the community spouse's monthly income allowance.

*"Minor"* means a child under age 21, of either spouse, who lives with the community spouse.

*"Monthly maintenance needs standard"* means an amount no less than 150% of 1/12 of the Federal Poverty Level for a family of two in effect on July 1 of each year.

*"Other family members"* means dependent children and dependent parents and siblings of either member of a couple who reside with the community spouse.

*"Otherwise available income or resources"* means income and resources which are legally available to the community spouse and to which the community spouse has access and control.

*"Promptly assess resources"* means within 45 days of the request for resource assessment unless the delay is due to nonreceipt of documentation or verification, if required, from the applicant or from a third party.

"Protected period" means a period of time, not to exceed 90 days after an initial determination of medical assistance eligibility. During the protected period, the amount of the community spouse resource allowance will be excluded from the institutionalized spouse's countable resources if the institutionalized spouse expressly indicates his intention to transfer resources to the community spouse.

"Resource assessment" means a computation, completed by request or upon medical assistance application, of a couple's combined countable resources at the beginning of the first continuous period of institutionalization of the institutionalized spouse beginning on or after September 30, 1989.

"Resources" means real and personal property owned by a medical assistance applicant or his spouse. Resources do not include resources excluded under subsection (a) or (d) of § 1613 of the Social Security Act and resources that would be excluded under § 1613(a)(2)(A) but for the limitation on total value described in such section.

"Significant financial duress" means, but is not limited to, threatened loss of basic shelter, food or medically necessary health care or the financial burden of caring for a disabled child, sibling or other immediate relative.

"Spousal protected resource amount" means (at the time of medical assistance application as an institutionalized spouse) the greater of: (i) the spousal resource standard in effect at the time of application; (ii) the spousal share, not to exceed the maximum spousal resource standard in effect at the time of application; (iii) the amount actually transferred to the community spouse by the institutionalized spouse pursuant to a court spousal support order; or (iv) the amount of resources designated by a department hearing officer.

"Spousal resource standard" means the minimum amount of a couple's combined countable resources calculated in accordance with § 1924(f)(2)(A)(i) of the Social Security Act necessary for the community spouse to maintain himself in the community. The amount increases each calendar year after 1989 by the same percentage increase as in the Consumer Price Index as required by § 1924(g) of the Social Security Act.

"Spousal share" means 1/2 of the couple's total countable resources at the beginning of the first continuous period of institutionalization as determined by a resource assessment.

"Spouse" means a person who is legally married to another person under Virginia law.

"State Plan" means the State Plan for Medical Assistance.

"Undue hardship" means ~~[ denial of medical assistance eligibility due to excess resources would result in the institutionalized spouse being removed from the institution and unable to purchase life-sustaining medical care ] when the applicant has exhausted all legal avenues to access the resources [ due to reasons permitted under that ] the provisions listed under 12 VAC 30-110-831 [ have been met. The absence of an undue hardship provision would result in the institutionalized spouse being ineligible for Medicaid payment of long-term care services and unable to purchase life-sustaining medical care ].~~

"Waiver services" means medical assistance reimbursed home or community-based services covered under a § 1915(c) waiver approved by the Secretary of the United States Department of Health and Human Services.

**[ 12 VAC 30-110-741. Resource assessment required.**

A resource assessment shall be completed by the entity determining medical assistance eligibility on all medical assistance applications for married institutionalized individuals who have a community spouse. If an applicant alleges that his marital status is unknown, it shall be his responsibility to establish his marital status. It shall be the applicant's responsibility to locate his community spouse. If attempts to *establish marital status* or locate the separated spouse are unsuccessful or the community spouse does not provide the required information necessary to complete the resource assessment, the medical assistance eligibility application will be denied due to inability to complete the required resource assessment, *unless undue hardship, as defined herein, is met.* ]

**12 VAC 30-110-831. Undue hardship.**

A. *Undue hardship can be claimed when the value of resources owned on the first day of the first month of the first continuous period of institutionalization cannot be verified after both spouses have exhausted all avenues to document the value of the resources owned on that day. When hardship is claimed, the spousal resource standard shall be used as a substitute for the spousal share when calculating the spousal protected resource amount.*

B. *Undue hardship [ shall not can also ] be claimed [ when an applicant is determined ineligible for Medicaid because if each of the following criteria are met ]:*

~~[ 1. The institutionalized spouse fails to establish his marital status; or~~

~~2. The community spouse refuses or fails to disclose or verify the value of resources owned by the community spouse.~~

1. *The applicant establishes by affidavit specific facts sufficient to demonstrate:*

a. *That he has taken all steps reasonable under the circumstances to locate the spouse, to obtain relevant information about the resources of the spouse, and to obtain financial support from the spouse; and*

b. *That he has been unsuccessful in doing so.*

*Absent extraordinary circumstances, determined by DMAS, the requirements of subdivision 1 a of this subsection cannot be met unless the applicant and spouse have lived separate and apart without cohabitation and without interruption for at least 36 months.*

2. *Upon such investigation as DMAS may undertake, no facts are revealed that refute the statements contained in the applicant's affidavit, as required by subdivision 1 of this subsection;*

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# Final Regulations

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3. *The applicant has assigned to DMAS, to the full extent allowed by law, all claims he may have to financial support from the spouse; and*

4. *The applicant cooperates with DMAS in any effort undertaken or requested by DMAS to locate the spouse, to obtain information about the spouse's resources or to obtain financial support from the spouse. ]*

VA.R. Doc. No. R01-191; Filed June 3, 2002, 12:03 p.m.

◆ ————— ◆

## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

<p><b>REGISTRAR'S NOTICE:</b> The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.</p>
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**Title of Regulation:** 14 VAC 5-140. Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act (INS-2002-00060) (amending 14 VAC 5-140-20 through 14 VAC 5-140-90).

**Statutory Authority:** §§ 12.1-13, 38.2-223, and 38.2-3516 of the Code of Virginia.

**Effective Date:** July 1, 2002.

**Summary:**

*The revisions define and clarify what is necessary for coverage to be considered "limited benefit health insurance coverage" under this chapter, specifically 14 VAC 5-140-70 H. Other provisions are amended to provide consistency with revised 14 VAC 5-140-70 H. Finally, a number of nonsubstantive cleanup changes are made.*

**Agency Contact:** Althelia Battle, Principal Insurance Market Examiner, Bureau of Insurance, P.O. Box 1158, Richmond, VA 23218, telephone (804) 371-9154, FAX (804) 371-9944, toll-free 1-800-552-7945, or e-mail abattle@scc.state.va.us.

AT RICHMOND, JUNE 7, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-00060

**Ex Parte:** In the matter of  
Adopting Revisions to the Rules  
Governing the Implementation of  
the Individual Accident and  
Sickness Insurance Minimum  
Standards Act

### ORDER ADOPTING REVISIONS TO RULES

WHEREAS, by order entered herein April 29, 2002, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to May 30, 2002, adopting revisions proposed by Stephen D. Rosenthal, Esquire, to the Commission's Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act to define and clarify what is necessary for coverage to be considered "limited benefit health insurance coverage" and to make non-substantive revisions to certain language in the Rules, unless on or before May 30, 2002, any person objecting to the adoption of the proposed revisions filed a request for a hearing with the Clerk of the Commission;

WHEREAS, the April 29, 2002, Order also required all interested persons to file their comments in support of or in opposition to the proposed revisions on or before May 30, 2002;

WHEREAS, as of the date of this Order, no request for a hearing has been filed with the Clerk of the Commission;

WHEREAS, as of the date of this Order, no comments have been filed with the Clerk of the Commission;

WHEREAS, the Bureau has no objection to the proposed revisions; and

THE COMMISSION, having considered the proposed revisions and the Bureau's position, is of the opinion that the attached proposed revisions should be adopted;

THEREFORE, IT IS ORDERED THAT:

(1) The revisions to Chapter 140 of Title 14 of the Virginia Administrative Code entitled "Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act," which amend the rules at 14 VAC 5-140-20, 14 VAC 5-140-30, 14 VAC 5-140-40, 14 VAC 5-140-50, 14 VAC 5-140-60, 14 VAC 5-140-70, 14 VAC 5-140-80, and 14 VAC 5-140-90, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective July 1, 2002;

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who forthwith shall give further notice of the adoption of the revisions to the rules by mailing a copy of this Order, together with a clean copy of the revised rules, to all insurers and health services plans licensed to write accident and sickness insurance in the Commonwealth of Virginia; and by forwarding a copy of this Order, including a copy of the attached revised rules, to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations; and

(3) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:18 VA.R. 2247-2256 May 20, 2002, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-174; Filed June 11, 2002, 9:01 a.m.

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**Title of Regulation:** 14 VAC 5-395. Rules Governing Settlement Agents (amending 14 VAC 5-395-20 and 14 VAC 5-395-30 through 14 VAC 5-395-60).

**Statutory Authority:** §§ 6.1-2.25 and 12.1-13 of the Code of Virginia.

**Effective Date:** June 3, 2002.

**Summary:**

*The amendments (i) change the definitions of "agent," "title insurance agency," and "title insurance agent" to make them consistent with the recent changes to these definitions in Title 38.2 of the Code of Virginia; (ii) add the term "settlement agent" to the definitions section of the regulation; (iii) eliminate the requirement that agents and agencies submit their errors and omissions policies and employee dishonesty policies to the Bureau of Insurance, which will allow agents and agencies to submit a certification that they have and will maintain these coverages; (iv) eliminate the requirement that title insurers have their escrow accounts audited if the insurer's financial statements are audited annually by an independent CPA; and (v) allow agents and agencies to keep excess funds in their escrow accounts to guarantee the adequacy of the accounts.*

**Agency Contact:** Michael Beavers, Supervisor of Agents Investigation Section, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9465, FAX (804) 371-9396, toll-free 1-800-552-7945 or e-mail mbeavers@scc.state.va.us.

AT RICHMOND, MAY 30, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-00107

**Ex Parte:** In the matter of  
Adopting Revisions to the Rules  
Governing Settlement Agents

**ORDER ADOPTING REVISIONS TO RULES**

WHEREAS, by Order entered herein April 16, 2002, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to May 28, 2002, adopting revisions proposed by the Bureau of Insurance to the Commission's Rules Governing Settlement Agents unless on or before May 28, 2002, any person

objecting to the adoption of the proposed revisions filed a request for a hearing with the Clerk of the Commission;

WHEREAS, the Order also required all interested persons to file their comments in support of or in opposition to the proposed revisions on or before May 28, 2002;

WHEREAS, as of the date of this Order, no request for a hearing has been filed with the Clerk of the Commission;

WHEREAS, as of the date of this Order, no comments have been filed with the Clerk of the Commission;

WHEREAS, the Bureau has recommended that the proposed revisions be adopted;

THE COMMISSION, having considered the proposed revisions and the Bureau's recommendation, is of the opinion that the attached proposed revisions should be adopted;

THEREFORE, IT IS ORDERED THAT:

(1) The revisions to Chapter 395 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Settlement Agents," which amend the rules at 14 VAC 5-395-20, 14 VAC 5-395-30, 14 VAC 5-395-40, 14 VAC 5-395-50, and 14 VAC 5-395-60, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective June 3, 2002;

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Mary M. Bannister, who forthwith shall give further notice of the adoption of the revisions to the rules by mailing a copy of this Order, together with a copy of the revised rules, to all title insurance companies, title settlement agents, and title settlement agencies licensed in the Commonwealth of Virginia; and by forwarding a copy of this Order, including a copy of the attached revised rules, to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*; and

(3) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:17 VA.R. 2171-2173 May 6, 2002, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-159; Filed May 31, 2002, 2:14 p.m.



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# Final Regulations

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

**Title of Regulation:** 18 VAC 85-50. Regulations Governing the Practice of Physician Assistants (amending 18 VAC 85-50-56 and 18 VAC 85-50-115; adding 18 VAC 85-50-35; repealing 18 VAC 85-50-170).

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

**Effective Date:** July 31, 2002.

**Summary:**

*The amendments establish educational, examination and practice requirements for the licensure of physician assistants and provisions for renewal or reinstatement of a license, supervisory responsibilities of physicians, requirements for a written protocol, practice responsibilities for the assistant, standards for prescriptive authority, and fees to support the regulatory and disciplinary activities of the board.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

**Agency Contact:** Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:6 VA.R. 872-874 December 3, 2001, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R01-63; Filed June 11, 2002, 1:38 p.m.

### BOARD OF NURSING

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

**Title of Regulation:** 18 VAC 90-20. Regulations Governing the Practice of Nursing (amending 18 VAC 90-20-200 and 18 VAC 90-20-210).

**Statutory Authority:** §§ 54.1-3005 and 54.1-3018 of the Code of Virginia.

**Effective Date:** July 31, 2002.

**Summary:**

*The amendments conform regulations to Chapter 713 of the 2002 Acts of Assembly, which mandates that nurses who graduated from a Canadian nursing school where English*

*was the primary language and who passed the Canadian Registered Nurses Examination are eligible for licensure by endorsement. The regulation further provides that eligible applicants from Canada may practice for a maximum of 30 days while awaiting licensure by the board.*

**Agency Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512 or e-mail nancy.durrett@dhp.state.va.us.

### 18 VAC 90-20-200. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing, or is eligible for reinstatement, if lapsed, shall be eligible for licensure by endorsement in Virginia, provided the applicant satisfies the requirements for registered nurse or practical nurse licensure. *A graduate of a nursing school in Canada where English was the primary language shall be eligible for licensure by endorsement provided the applicant has passed the Canadian Registered Nurses Examination (CRNE) and holds an unrestricted license in Canada.*

B. An applicant for licensure by endorsement shall submit the required application and fee and submit the required form to the appropriate credentialing agency in the state or province of original licensure for verification of licensure. Applicants will be notified by the board after 30 days, if the completed verification form has not been received.

C. If the application is not completed within one year of the initial filing date, the application shall be retained on file by the board as required for audit.

### 18 VAC 90-20-210. Licensure of applicants from other countries.

A. *With the exception of applicants from Canada who are eligible to be licensed by endorsement*, 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 subsections B and D of this section.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence of passing the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and

2. Submit the required application and fee for licensure by examination.

C. An applicant for licensure as a registered nurse who has met the requirements of subsections A and B of this section may practice for a period not to exceed 90 days from the date of approval of an application submitted to the board when he is working as a nonsupervisory staff nurse in a licensed nursing home or certified nursing facility.

1. Applicants who practice nursing as provided in this subsection shall use the designation "foreign nurse graduate" on nametags or when signing official records.

2. During the 90-day period, the applicant shall take and pass the licensing examination in order to remain eligible to practice nursing in Virginia.

3. Any person practicing nursing under this exemption who fails to pass the licensure examination within the 90-day period may not thereafter practice nursing until he passes the licensing examination.

D. Such applicants for practical nurse licensure shall:

1. Submit evidence from a recognized agency that reviews credentials of foreign-educated nurses that the secondary education, nursing education, and license are comparable to those required for licensed practical nurses in the Commonwealth;

2. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and

3. Submit the required application and fee for licensure by examination.

**NOTICE:** The forms used in administering 18 VAC 90-20, Regulations Governing the Practice of Nursing, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6606 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Application for Licensure by Endorsement -- Registered Nurse ~~(with instructions)~~(rev. ~~6/98~~ 5/02).

*Instructions for Licensure by Endorsement -- Registered Nurse* (rev. 5/02).

Application for Licensure by Endorsement -- Licensed Practical Nurse (rev. ~~8/99~~ 5/02).

Instructions for Filing Application for Licensure by Examination for Registered Nurses (~~8/97~~ rev. 4/00).

Application for Licensure by Examination -- Registered Nurse (rev. ~~8/99~~ 4/01).

Instructions for Filing Application for Licensure by Examination for Practical Nurses (rev. ~~11/96~~ 10/99).

Application for Licensure by Examination -- Licensed Practical Nurses (rev. ~~8/99~~ 4/01).

Instructions for Filing Application for Licensure by Repeat Examination for Registered Nurses (rev. 8/97).

Application for Licensure by Repeat Examination for Registered Nurse (rev. 8/99).

Instructions for Filing Application for Licensure by Repeat Examination for Practical Nurses (rev. ~~8/97~~ 10/99).

Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev. 8/99).

Instructions for Filing Application for Licensure by Examination for *Licensed Practical Nurses Educated in Other Countries* (rev. ~~8/97~~ 4/01).

Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. ~~8/99~~ 4/01).

Temporary Exemption To Licensure (eff. 5/01).

Instructions for Filing Application *for Licensure by Examination by Practical Nurses from Other Countries* (rev. ~~4/94~~ 4/00).

Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. ~~8/99~~ 4/01).

Application for Reinstatement of License as a Registered Nurse (rev. ~~8/99~~ 2/00).

Application for Reinstatement of License as a Licensed Practical Nurse (rev. ~~8/99~~ 4/01).

Verification of Licensure or Registration (rev. 11/95).

Renewal Notice and Application (rev. 2/00).

Application for Registration as a Clinical Nurse Specialist (rev. ~~2/98~~ 4/01).

Survey Visit Report.

Annual Report for Registered Nursing Programs.

Annual Report for Practical Nursing Programs.

Certified Nurse Aide Renewal Notice and Application (rev. 2/00).

Application for Reinstatement of Nurse Aide Certification (rev. 8/99).

Application for Nurse Aide Certification by Endorsement.

Nurse Aide Certification Verification Form.

Application to Establish Nurse Aide Education Program (rev. 5/99).

Program Evaluation Report (rev. 5/99).

On-Site Review Report (rev. 5/99).

Evaluation of On-Site Visitor.

Request for Statistical Information.

VA.R. Doc. No. R02-200; Filed June 4, 2002, 7:55 a.m.

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

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

Appendices A through F referenced in the following order are not being published. However, these appendices are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5 p.m., Monday through Friday.

**Title of Regulation:** 20 VAC 5-300. Energy Regulation; In General (amending 20 VAC 5-300-90).

**Effective Date:** June 7, 2002.

**Statutory Authority:** §§ 12.1-13 and 56-265.16:1 of the Code of Virginia.

**Summary:**

*The regulation rewrites the rules governing the certification and maintenance of notification centers under the Underground Utility Damage Prevention Act. It expands the factors the State Corporation Commission must consider when certifying or revoking or modifying a certificate that it has granted to a notification center.*

*The regulation is reorganized into three parts. Subsection A addresses provisions of general applicability to the notification center, subsection B details the information required in an application to obtain a certificate for a notification center, and subsection C delineates the operational standards for such centers. The regulation has also been amended to permit the commission to grant waivers from the provisions of the section consistent with the provisions of § 56-265.16:1 of the Code of Virginia. The regulation requires 20% of the voting members of the governing body of a notification center to be composed of individuals who are not utilities or operators or employees of utilities or operators. It also eliminates the requirement that applications for a notification center certificate be supported by operators of underground facilities responsible for more than half of the ticket volumes applicable to Virginia during the most recent 12-month period preceding the filing of the application. Instead, the regulation requires that material detailing the support of persons who may be impacted by services of the notification centers (excavators, operators, contract locators, property owners, and localities) be filed with an application for a notification center. The regulation requires a certificated notification center to notify the commission in writing when the center proposes to change an agent or vendor that provides the primary notification function.*

**Agency Contact:** Massoud Tahamtani, Assistant Director of the Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9264, FAX (804) 371-9350, toll-free 1-800-552-7945 or e-mail [mtahamtani@scc.state.va.us](mailto:mtahamtani@scc.state.va.us).

AT RICHMOND, JUNE 7, 2002

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUE-2001-00422

**Ex Parte:** In the matter concerning the Rules Governing Certification and Maintenance of Notification Centers

#### ORDER ADOPTING RULES

This Order promulgates revised rules governing the certification and maintenance of notification centers. In 1989, the General Assembly amended § 56-265.16:1 of the Code of Virginia ("Code") and directed the State Corporation Commission ("Commission") to promulgate rules governing the certification of notification centers. Thereafter, the Commission adopted Rules Governing the Certification of Notification Centers ("existing rules"), effective October 3, 1990.<sup>1</sup>

The 2001 General Assembly further amended § 56-265.16:1 of the Code effective July 1, 2001. See 2001 Va. Acts ch. 399. As amended, § 56-265.16:1 D of the Code provides that:

Every Commission action regarding the optimum number of notification centers, the geographic area to be served by each notification center, the promulgation of notification center regulations, and the grant, amendment, or revocation of notification center certifications shall be made in furtherance of the purpose of preventing or mitigating loss of, or damage to, life, health, property or essential public services resulting from damage to underground utility lines.

The statute further directs the Commission, in any action to approve or revoke any notification center certification, to:

1. Ensure protection for the public from the hazards that this chapter [Chapter 10.3 of the Code] is intended to prevent or mitigate;
2. Ensure that all persons served by the notification center receive an acceptable level of performance, which level shall be maintained throughout the period of the notification center's certification; and
3. Require the notification center and its agents to demonstrate financial responsibility for any damages that may result from their violation of any provision of this chapter. Such requirement may be met by purchasing and maintaining liability insurance on such terms and in such amount as the Commission deems appropriate.

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<sup>1</sup> See Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of adopting Rules Governing the Certification of Notification Centers pursuant to § 56-265.16:1 of the Code of Virginia, Case No. PUE-1990-00033, 1990 S.C.C. Ann. Rept. 344.

In accordance with the amended statute and to facilitate the review of our currently effective rules, we entered an Order Establishing Investigation and Inviting Comments on July 30, 2001. This Order solicited public comment on a number of issues (Attachment A to the Order) relating to certification, operation, and maintenance of a notification center and encouraged interested parties to propose rules corresponding to the issues set forth in Attachment A to the Order. The Order also provided for the publication of notice of the investigation and rulemaking; it also instructed the Staff to file a report summarizing and responding to the comments filed in the proceeding and proposing revisions to the rules adopted in 1990, where appropriate.

The Staff filed its report in this proceeding on November 9, 2001. This report summarized the filed comments, discussed the development of the rules governing the certification of notification centers in Virginia, reviewed national "best practices" relative to operation and maintenance of a notification center, and proposed specific revisions and additions to the existing rules.

On November 14, 2001, the Commission entered an Order inviting interested persons to file comments or request a hearing on the Staff's proposed "Rules Governing the Certification and Maintenance of Notification Centers" attached to that Order.

In response to this Order, we received comments from parties that included vendors assisting the existing notification centers, the currently certificated notification centers, excavators, and operators. The Virginia Underground Utility Protection Service, Inc. ("VUUPS"), and Northern Virginia Utility Protection Service, Inc. ("NVUPS"), filing jointly, and One Number Information Systems, Inc. ("ONIS") requested a hearing on various rules proposed by the Staff. Many of those filing comments reserved the right to participate in any further proceedings in this matter.

Accordingly, by Order of January 16, 2002, and Amending Order of February 7, 2002, we scheduled a public hearing for March 6, 2002. These procedural orders directed Staff to prefile its direct testimony on February 5, 2002, and the parties to file either testimony or statements adopting their comments on February 15, 2002. Parties planning to adopt their comments and not planning to add any additional comments or testimony were directed to notify the Commission in writing of such intent on or before February 25, 2002. The Staff was further ordered to prefile its rebuttal testimony, if any, by February 15, 2002.

A public hearing on the proposed rules was convened before the Commission on March 6, 2002. Mark I. Singer, Executive Director of the Virginia Utility & Heavy Contractors Council; Johnnie Barr, Vice President of Ward & Stancil, Incorporated, a site development contractor; and Gray Pruitt, a contractor, testified as public witnesses. Testimony was presented by witnesses for Staff, One Call Concepts, Inc. ("OCCI"), Washington Gas Light Company ("WGL"), Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon"), Appalachian Power Company d/b/a American Electric Power

("APCO"), ONIS, the cooperatives,<sup>2</sup> Virginia Power, and VUUPS and NVUPS.

The Commission invited counsel to file post-hearing briefs three weeks after the transcript was filed in this case, *i.e.*, by April 18, 2002. Post-hearing briefs were jointly filed by VUUPS and NVUPS, and by Virginia Power, Verizon, APCO, WGL, OCCI, ONIS, and the Staff.

NOW, upon consideration of all comments received, the evidentiary record, the post-hearing briefs, and the applicable law, the Commission is of the opinion and finds that the Rules set out in Attachment A hereto should be adopted, effective June 7, 2002. We commend the participants in the proceeding for their cooperation in focusing the issues we are called upon to decide.

As is evident from Attachment A, we have reorganized the rules into three distinct parts:<sup>3</sup> Subsection A of the rules addresses matters of general applicability to the notification centers; subsection B details the information required in an application to obtain a certificate for a notification center; and subsection C delineates the operational standards for such centers.

While we will not comment on all of the revisions we have made to the rules proposed by the Staff, we will address the following provisions of the amended rules that, in our opinion, merit additional discussion and were the subject of comment and testimony at the hearing: subdivisions 20 VAC 5-300-90 A 6,<sup>4</sup> 90 B 3(e); 90 C 18; 90 A 11; 90 A 13; and 90 B 3(c). We will also discuss VUUPS' and NVUPS' proposal to require notification centers to be operated by employees of the certificate holder and on a not-for-profit basis (Exhibit 7). Additionally, we will address the filing requirements of Rule 90 A 8 for notification centers using or planning to use agents or vendors to provide the primary notification service. Finally, we will discuss new Rule 90 A 14 that permits the waiver of these rules under certain conditions in furtherance of the purposes of § 56-265.16:1 of the Code of Virginia.

Rules 90 A 6 (Staff Proposed Rule F 19), 90 B 3(e), and 90 C 18 - Performance Standards for Notification Centers

Staff's proposed Rule 90 F 19 would require that the performance levels recommended by the U.S. Department of Transportation's "Common Ground Study of One-Call Systems and Damage Prevention Best Practices" Report (the

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<sup>2</sup> The cooperatives consist of A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Inc., Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, and the Virginia, Maryland & Delaware Association of Electric Cooperatives.

<sup>3</sup> In addition to the reorganization, we have made a number of changes to the proposed rules. Most of these changes are for clarification purposes or changes in form.

<sup>4</sup> For ease of reference, the designation 20 VAC 5-300 will be dropped. The reader should assume this is the title and chapter for all rules discussed in this Order unless specifically stated otherwise. For example, when the Order refers to "Rule 90 A 6," it should be understood that this refers to 20 VAC 5-300-90 A 6.

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"Common Ground Report") ("best practices") be achieved by each center. VUUPS and NVUPS, among others, oppose the carte blanche application of these performance standards to all notification centers in Virginia.

We agree that performance standards for a notification center are essential to ensure that a notification center complies with the requirement of subsection D of § 56-265.16:1 relative to the provision and maintenance of acceptable performance throughout the period of a notification center's certification. We will therefore adopt Rule 90 A 6 that requires each notification center to have and meet performance standards approved by the Commission in order to promote accuracy, cost effectiveness, operational efficiency, and customer satisfaction. Applicants for a certificate must include proposed standards as part of their applications. Currently certificated notification centers must file their performance standards within 60 days of the effective date of this section with the Commission for approval. Rule 90 B 3(e) incorporates by reference the requirements of subsection 90 A 6 discussed above.

The "best practices" standards are retained as a benchmark for performance in Rule 90 C 18, in that certificated notification centers must compare their performance standards to the best practice standards then in effect as part of their periodic reports to the Commission. Standards of performance may be changed on motion of the notification center, the Commission, or Staff, after notice and an opportunity to be heard. See Rule 90 A 6. These rules provide flexibility to a notification center and the Commission to vary requirements from the "best practices" set forth in the then-current Common Ground Report.

## Rule 90 A 11 (Staff Proposed Rule 90 P) - Composition of a Notification Center's Governing Body

As proposed by Staff, Rule 90 P provides that the center's governing body be made up of representatives of all stakeholders including various utility types, excavators, locators, local governments, and the Virginia Department of Transportation.

NVUPS and VUUPS, WGL, APCO, and Virginia Power asserted in testimony and argument that as members of the notification centers, operators are financially responsible for, and have a special interest in, the operation of notification centers. These and other operator participants in this proceeding assert that the composition of a notification center's governing body should be left solely to the notification center's discretion.

The record before us indicates that many notification centers throughout the country include non-operator representatives as part of their governing bodies. See Exhibit 19. Indeed, VUUPS, the certificated notification center for areas south of the Rappahannock River, has one non-operator member sitting on its board. Transcript at 226-227. Public witness Mark Singer explained the benefits of non-operator participation as part of the governing bodies of notification centers. Transcript at 44-48. We require in Rule 90 A 11 that at least 20 percent of the voting members of the notification center's governing body be composed of individuals who are not utilities or operators; nor may such individuals be employed by a utility or

an operator.<sup>5</sup> In adopting such a rule, we recognize the value non-operator members may offer to the governing body of a notification center, and also preserve the important interests of operators in formulating notification center policies by permitting the great majority of the governing body of a notification center to be made up of operators or their representatives.

## Rule 90 A 13 (Current Rule 90 J) - Suspension or Revocation of a Notification Center's Certificate

Current Rule 90 J provides that excessive complaints against a certificated notification center or violations of the rules are grounds for suspension or revocation of a notification center's certificate. Staff proposed a change that would make a single violation of the rules or a violation of the Act a basis for suspension or revocation of a center's certificate. NVUPS and VUUPS opposed this revision and presented testimony that the rule would have the effect of allowing the Commission to revoke a certificate for a single violation of the rules or the Act without giving the certificate holder an opportunity to remedy the violation. They argued in their post-hearing brief that the Commission should adopt a rule applying the procedures permitted by § 56-265.6 of the Code. Post-Hearing Brief of NVUPS and VUUPS at 9-10. According to these parties, this procedure would give notification centers an opportunity to defend their performance and correct any performance found to be inadequate by the Commission.

We disagree that such a procedure is appropriate. Section 56-265.16:1 D of the Code instructs the Commission that its actions regarding the promulgation of notification center certification regulations, and the grant, amendment, or revocation of notification center certifications shall be made in furtherance of the purpose of preventing or mitigating loss of, or damage to, life, health, property, or essential public services resulting from damage to underground utility lines. This statute directs that any Commission action to approve or revoke any notification center certification shall (i) ensure protection for the public from the hazards the Act is intended to prevent or mitigate, (ii) ensure that all persons served by the center receive an acceptable level of performance and maintenance of this level of performance throughout the period of the notification center's certification, and (iii) require the notification center and its agents to demonstrate financial responsibility for damages that may result from their violation of any provisions of the Act.

We have revised Rule 90 A 13 to include the statutory principles identified in § 56-265.16:1 D, *i.e.*, we may suspend or revoke a notification center's certificate as a result of a violation of the section, a Commission order, or the Act if we find that the notification center or its agent or vendor has not, or is not currently, or cannot in the future: (1) ensure protection for the public from the hazards the Act is intended to prevent or mitigate, (2) ensure that all persons served by the center receive an acceptable level of performance, and (3) be financially responsible for any damages that may result

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<sup>5</sup> As defined in § 56-265.15 of the Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.15 *et seq.*) of Title 56 of the Code, an "Operator" means any person who owns, furnishes or transports materials or services by means of a utility line."

from the center's violation of the law or rules. Rule 90 A 13 provides that the center will be given notice of the allegations against it and provided an opportunity to be heard before we make a determination affecting a notification center's certification. During such a proceeding, a center may present its defense and any actions it has taken or intends to take relative to the allegations made against it, and may make its arguments why suspension or revocation of the certificate should not occur.

Finally, we have revised Rule 90 A 13 to remove the reference to excessive complaints. Numerous complaints against a center in and of themselves should not be the basis for suspension or revocation of a certificate. Only if the criteria identified in § 56-265.16:1 D and Rule 90 A 13 are imperiled should the extreme remedy of suspension or revocation of a certificate be available for consideration.

#### Rule 90 B 3(c) (Existing Rule 90 I) - Support for an Application for a Certificate

Existing Rule 90 I ("51% rule") permits the filing of an application for a certificate to operate a notification center to be submitted for any geographic area (i) for which a certificate has been previously granted by the Commission, or (ii) in which a notification center exempt from the requirements of § 56-265.16:1 of the Code is currently operating, if such application is supported by the operators of the underground facilities responsible for more than half of the ticket volume applicable to Virginia of the existing notification center during the most recent 12-month period preceding the filing of the application for which data is available. Staff recommended that this rule be deleted. The operators participating in this proceeding and NVUPS and VUUPS support the retention of this rule.

In our view, the 51% rule should not be retained. A notification center must be able to ensure that "all persons" it serves receive an acceptable level of performance. See § 56-265.16:1 D 3 of the Code. Consequently, Rule 90 B 3(c) provides that applicants for a notification center must file material detailing the support of persons who may be impacted by the services provided by the notification center, *i.e.*, excavators, operators, contract locators, property owners, and localities, not only the operators responsible for ticket volumes. All persons impacted by the service are those who are "served" by the notification center. Such persons are served by way of being able to notify the center of impending excavations, receiving information regarding the status of such notices, receiving notifications of a proposed excavation, and, in turn, advising the centers that underground utilities have been marked or have no underground utility lines that may be affected by a proposed excavation. Operators, government officials, or other members of the public who may be impacted by the services provided by the notification center will have the opportunity to participate either in support of or in opposition to applications for certification in accordance with the provisions of the Commission's initial order docketing a certificate application for consideration. See Rule 90 B 2.

#### Operation of a Notification Center by Employees of a Certificate Holder and on a Non-profit Basis

VUUPS and NVUPS proposed in Exhibit 7 to revise Staff's proposed Rule 90 F to require a notification center to be operated by employees of the certificate holder and on a non-profit basis. We decline to adopt these proposals. Section 56-265.16:1 of the Code does not require that notification centers be operated by employees of the certificate holder. Such a broadly worded rule, if adopted, could foreclose a notification center from outsourcing any part of its functions, such as billing. Further, there was no showing in this record that vendors or agents could not provide a notification center's functions efficiently, economically, effectively, adequately, and in accordance with § 56-265.16:1 of the Code and these rules.

We further decline to adopt a rule requiring notification centers to be operated on a non-profit basis. In our view, § 56-265.16:1 does not express a preference for profit or non-profit notification centers. If a for-profit notification center can perform the functions essential to a notification center efficiently, economically, effectively, adequately, and in accordance with § 56-265.16:1 of the Code and these rules, its operation should not be prohibited by regulation.

#### Rule 90 A 8 - Use of Agents or Vendors

Closely related to the foregoing discussion is Rule 90 A 8. This rule recognizes that notification centers may choose to use agents or vendors to provide the primary notification service. If a notification center uses an agent or a vendor to provide primary notification service, it must file information with the Commission relative to the vendor's or agent's qualifications to provide these services. The notification center retains the discretion to use vendors or agents who perform primary notification services but must under this Rule provide information about the vendor's or agent's qualifications to provide the primary notification service. In this way, the Commission may comply with the requirements of § 56-265.16:1 D.

#### Rule 90 A 14 - Waiver of Rules

Rule 90 A 14 has been added to grant the Commission discretion to waive any of the provisions of the rules governing notification center certification, operation, and maintenance of notification center or centers upon such terms and conditions as we deem appropriate consistent with the provisions of § 56-265.16:1 of the Code of Virginia. We have included similar rules in other rulemakings.<sup>6</sup> Rule 90 A 14 offers the necessary flexibility to waive any provision of the rules where appropriate consistent with the provisions of § 56-265.16:1 of the Code.

Accordingly, IT IS ORDERED THAT:

- (1) The Rules governing certification, operation, and maintenance of notification center or centers, appended

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<sup>6</sup> An example where we have included a waiver provision in another rulemaking is Rule 20 VAC 5-200-300 A 11 of our rules governing utility rate increase applications and annual informational filings ("rate case rules") adopted in Case No. PUA-1999-00054. That rule permits the Commission the right to waive any or all parts of the rate case rules for good cause shown.

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hereto as Attachment A, are hereby adopted, effective June 7, 2002.

(2) A copy of this Order and the Rules adopted herein shall be forwarded to the Virginia Register of Regulations for publication.

(3) There being nothing further to be done in this matter, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

## **20 VAC 5-300-90. Rules governing certification [ , operation, ] and maintenance of notification center or centers.**

[ A. ~~The purpose of this section is to facilitate the filing of applications by those desiring to serve as a notification center pursuant to § 56-265.16:1 of the Code of Virginia as amended by House Bill No. 720 of the 1989-2001 Session of the General Assembly, effective July 1, 1990-2001. These rules further detail certain standards and requirements for operation and maintenance of the notification center or centers.~~

B. ~~An original and 15 copies of an application for certification shall be filed with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118 Richmond, Virginia 23216-23218 and shall contain all the information and exhibits required herein.~~

C. ~~Notice of the application shall be given to the public, governmental officials and to utility operators within the applicant's proposed area as required by the Commission in its initial order docketing the case for consideration.~~

D. ~~An applicant shall submit information which identifies itself, including (i) its name, address and telephone number (ii) its corporate ownership (iii) the name, address and telephone number of its corporate parent or parents, if any, (iv) a list of its officers and directors, or if the applicant is not a corporation, a list of its principals and their directors if said principals are corporations, and (v) the names, addresses and telephone numbers of its legal counsel.~~

E. ~~Each application shall be accompanied by maps depicting the areas of the Commonwealth in which the applicant proposes to act as a notification center. These maps and certificates for notification centers, when granted, will be retained on file in the Commission's Division of Energy Regulation.~~

F. ~~Each application shall demonstrate that the applicant fully qualifies as a notification center. At a minimum, a notification center is one that:~~

~~1. May be *is capable of being* contacted by means of a toll-free telephone call, *teletype, telecopy or personal computer* from any point within the Commonwealth;~~

~~2. *Is open to participation by any operator of underground facilities utility lines* within the service area sought as set out in § 56-265.15 of the Code of Virginia;~~

~~3. *Is capable of making the filings required by § 56-265.16:1 of the Code of Virginia;*~~

~~4. *Is capable of providing emergency service 365 days a year, 24 hours per day and capable of providing regular service Monday through Friday 7:00 a.m. through 5:00 p.m., excluding designated legal state and national holidays;*~~

~~5. *Shall maintain such telecommunications equipment necessary to insure a minimum level of response acceptable to the participating operators and to users of the service performance as detailed in this section;*~~

~~6. *Has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone;*~~

~~7. *Has the capability to transmit, within five minutes of receipt, notice of emergency excavation to member operators by teletype, telephone, facsimile, personal computer, or telephone;*~~

~~7. 8. *Is capable of maintaining equipment adequate to voice record all incoming calls and retain such records for a minimum of six years and is capable of recording all transmissions (tickets or notices) of proposed excavations to member operators and retaining those records for a minimum of six years;*~~

~~8. 9. *Shall maintain an adequate level of liability insurance coverage of such terms and amounts deemed appropriate by the commission;*~~

~~9. 10. *Shall maintain detailed maps and other electronic means depicting areas with underground utility facilities lines and shall be able to pass on to operators the specific site address of a proposed excavation using multiple types of points of reference such as street addresses where those exist or, where addresses do not exist, the distance and direction to the nearest intersection of named or numbered public roads, latitude/longitude, and highway/railroad/pipeline mile markers, etc.; and*~~

~~10. 11. *Shall notify those calling about proposed excavations of the time frame within which an operator must respond and mark its facilities.;*~~

~~12. *Shall provide the caller with the ticket number, and the names of operators who will be notified for each locate request;*~~

~~13. *Has a comprehensive and documented operating plan. Such plan shall detail the center's organizational structures, corporate form, the center's governing structure, personnel qualification criteria, operating budget and financial resources, description of physical facilities, description of computer hardware and software systems, description of the communication facilities, description of the center's security and protection components, and procedures designed to ensure compliance with this section;*~~

~~14. Has the capability to time and date stamp responses to the Ticket Information Exchange (TIE) system provided by operators and contract locators;~~

~~15. Has the capability of interactive data communication to permit remote data entry for member operators and excavators;~~

~~16. Has a formal and effective training program for its employees;~~

~~17. Has procedures and practices designed to reduce over-notification;~~

~~18. Has a detailed disaster recovery plan which, when implemented, enables the center to continue acceptable operation during a disaster;~~

~~19. Has a plan detailing the center's performance standards for the purpose of promoting accuracy, cost effectiveness, operational efficiency, and customer satisfaction. This plan shall detail key indices used to measure the center's performance. These measures shall include: Average Speed of Answer, Abandoned Call Rate, Busy Signal Rate, Customer Satisfaction Rate and Locate Request Delivery criteria. The performance level recommended by "Best Practices" shall be achieved by the center. The center shall provide to the commission periodic reports no less frequently than once a quarter detailing the various performance measures achieved by the center; and~~

~~20. Has procedures to regularly verify with the operators the data received from the operators that will allow proper notification.~~

~~G. Except as provided in Subsection I, Only one notification center will be granted a certificate for a given geographic area.~~

~~H. No certificated notification center shall abandon or discontinue service to the public or any part thereof except with the approval of the commission and upon such terms and conditions as prescribed. The relationships between centers and operators of underground facilities are governed by their own agreements and not by this section or by the commission.~~

~~I. An application for a certificate may be submitted for any geographic area (i) for which a certificate has been previously granted by the Commission, or (ii) in which a notification center exempt from the requirements of § 56-265.16:1 of the Code of Virginia is currently operating, if such application is supported by the operators of the underground facilities responsible for more than half of the ticket volume applicable to Virginia of the existing notification center during the most recent 12-month period preceding the filing of the application for which data is available. If the Commission determines that a certificate should be granted to the applicant hereunder, the certificate previously issued for the same geographic area shall terminate as of the effective date of the new certificate.~~

~~I. Only one toll-free number shall be used across the Commonwealth to contact the notification center or centers regarding proposed excavation.~~

~~J. Excessive complaints against a certificated notification center or violations of this section shall be grounds for suspension or revocation of the notification center's certificate.~~

~~In all proceedings pursuant to this section, the commission shall give notice to the notification center of the allegation against it and shall provide the center with an opportunity to be heard concerning those allegations prior to the suspension or revocation of the center's certificate.~~

~~K. The certificated notification center or centers devise an effective public education/awareness plan regarding underground utility damage prevention as required by §§ 56-265.16:1 E and 56-265.32 B of the Code of Virginia.~~

~~L. The certificated notification center shall notify the commission in writing when it proposes to change its agent or vendor that provides the primary notification function. This notification shall be provided 60 days prior to the planned change.~~

~~M. The plans, procedures, and information required by subdivisions F 13 and F 16 through F 20 of this section shall be filed with the commission with an application for certification of a notification center or upon a request from the commission. Thereafter, updates to these plans shall be filed with the commission within 30 days of any substantial change to the plans, procedures, and information required by this section.~~

~~N. The certificated notification center shall file with the commission information required by subdivisions F 13 and F 16 through F 20 of this section, and any other information (experience, financial capability, insurance coverage, etc.) that demonstrates the center's agent or vendor providing the primary notification service is fully qualified.~~

~~O. The codes and subcodes used for the operation of the TIE system shall be reviewed and approved by the commission's Damage Prevention Advisory Committee.~~

~~P. The center's governing body shall be made up of representatives of all stakeholders including various utility types, excavators, locators, local governments and the Virginia Department of Transportation. Persons serving on the center's governing body shall be knowledgeable of the operation of the center and be committed to Virginia's damage prevention program.~~

~~K. Q. The commission may conduct hearings as necessary to grant, amend, suspend, or revoke certificates and as necessary to enforce this section or the provisions of Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia.~~

~~A. General provisions. The general provisions applicable to a notification center are:~~

~~1. The purpose of this section is to establish minimum standards and requirements for the operation and maintenance of a notification center or centers in Virginia. This section also details application requirements for those desiring to serve as a notification center pursuant to § 56-265.16:1 of the Code of Virginia.~~

~~2. The commission may conduct hearings on matters related to notification centers including, but not limited to, the grant, amendment, suspension, or revocation of certificates issued under § 56-265.16:1 of the Code of Virginia and performance standards and other matters related to the requirements of or enforcement of this section~~

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or the provisions of Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia, as necessary.

3. Only one notification center shall be granted a certificate for a given geographic area.

4. Only one toll-free number shall be used across the Commonwealth to contact the notification center or centers regarding proposed excavation.

5. Each notification center shall at a minimum comply with the operational standards detailed in subsection C of this section.

6. Each notification center shall have and meet performance standards approved by the commission in order to promote accuracy, cost effectiveness, operational efficiency, and customer satisfaction. The performance standards shall include, at a minimum, standards for indices such as: Average Speed of Answer, Abandoned Call Rate, Busy Signal Rate, Customer Satisfaction and Locate Request Delivery criteria. The standards approved by the commission may be amended upon the request of the notification center, the commission's motion, or the staff's motion, after notice and an opportunity to be heard. Applicants for a certificate shall include proposed performance standards as part of their applications. Notification centers currently holding certificates shall file with the commission their proposed performance standards within 60 days of June 7, 2002.

7. Unless otherwise provided, updates of plans, procedures, programs and information required by this section shall be filed with the commission at least 60 days prior to the implementation of any substantive change to such plans, procedures, programs and information.

8. Notification centers that use or plan to use agents or vendors to provide the primary notification service shall file information relative to the vendor or agent's qualifications to provide these services with the commission. Applicants for a certificate that propose to use an agent or vendor to provide the primary notification service shall file such information as part of their applications. Notification centers currently holding certificates shall file such information with the commission within 60 days of June 7, 2002. A notification center that desires to change vendors or agents providing the primary notification service shall file information relative to the new vendor's or agent's qualifications to provide these services with the commission at least 90 days prior to the change in agent or vendor.

9. The commission's Damage Prevention Advisory Committee (committee) shall review the codes and subcodes used for the operation of the Ticket Information Exchange System. Each notification center shall consider the committee's recommendation relative to the codes and subcodes before their implementation.

10. Each notification center shall assist member operators and the commission in devising an effective public education/awareness plan regarding underground utility damage prevention as required by §§ 56-265.16:1 E and 56-265.32 B of the Code of Virginia.

11. At least 20% of the voting members of each notification center's governing body shall be composed of individuals who are neither utilities or operators nor employed by a utility or an operator. This 20% shall be comprised of individuals that may be impacted by the services provided by the notification center, including excavators, contract locators, property owners, and governmental entities that are not operators or utilities.

12. No notification center shall abandon or discontinue service except with the approval of the commission and upon such terms and conditions as may be prescribed.

13. A violation of any provision of this section, a commission order, or the Underground Utility Damage Prevention Act (Act) may be grounds for suspension or revocation of the notification center's certificate if the commission finds that the notification center or its agent or vendor providing the primary notification service has not, is not currently, or cannot in the future, (i) ensure protection for the public from the hazards that the Act is intended to prevent or mitigate; (ii) ensure that all persons served by the notification center receive an acceptable level of performance; and (iii) be financially responsible for any damages that may result from the notification center's violation of the law or this section. In all proceedings pursuant to this section, the commission shall give notice to the notification center of the allegations against it and shall provide the notification center an opportunity to be heard concerning such allegations prior to making a determination concerning the notification center's certification.

14. The commission may waive any provisions of this section and shall consider requests for waivers of any provisions of this section on a case-by-case basis. The commission may grant a waiver upon such terms and conditions as the commission deems appropriate consistent with the provisions of § 56-265.16:1 of the Code of Virginia.

B. Application requirements. The requirements for an application for a certificate as a notification center are as follows:

1. An original and 15 copies of an application for a certificate shall be filed with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall contain all the information and exhibits required herein.

2. Notice of the application shall be given to the public, governmental officials and to operators within the applicant's proposed service area as required by the commission in its initial order docketing the case for consideration.

3. The application shall, at a minimum, include the following information:

a. The applicant's (i) name, corporate address, and telephone number; (ii) corporate ownership; (iii) corporate parent or parents' names, addresses and telephone numbers, if applicable; (iv) officers and directors or, if the applicant is not a corporation, a list of the principals and their directors if said principals are corporations; and (v)

legal counsel's names, addresses and telephone numbers;

b. Maps depicting the areas of the Commonwealth in which the applicant is proposing to act as a notification center. Any maps and certificates for notification centers, if granted, will be retained on file in the commission's Division of Energy Regulation;

c. Material detailing the support of persons who potentially may be impacted by the services provided by the notification center, including excavators, operators, contract locators, property owners, and localities;

d. A written comprehensive operating plan detailing the notification center's organizational structure, corporate form, governing structure, personnel qualification criteria, operating budget, financial resources, disaster recovery plan, procedures designed to ensure compliance with this section, and descriptions of physical facilities, computer hardware, software systems, communication facilities, and security and protection components;

e. Proposed performance standards designed to promote accuracy, cost effectiveness, operational efficiency, and customer satisfaction as required by subdivision A 6 of this section;

f. All information necessary to demonstrate clearly the applicant's ability to comply with this section and to meet and implement the operational standards detailed in subsection C of this section; and

g. In the event the applicant proposes to use an agent or vendor to provide the primary notification service, information required by subdivision A 8 of this section.

C. Operational standards. At a minimum, each notification center shall:

1. Be capable of being contacted by means of a toll-free telephone call, teletype, telecopy or personal computer;
2. Be open to participation by any operator of underground utility lines within the notification center's service area granted by the commission;
3. Make filings required by § 56-265.16:1 of the Code of Virginia;
4. Provide emergency service, as needed, 365 days a year, 24 hours per day, and provide regular service Monday through Friday, 7 a.m. through 5 p.m., excluding legal state and national holidays;
5. Maintain such equipment and personnel necessary to ensure a minimum level of performance as detailed in this section and as approved by the commission;
6. Transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone;
7. Transmit, within five minutes of receipt, notice of emergency excavation to member operators by teletype, telecopy, personal computer, or telephone;

8. Maintain adequate equipment to voice record all incoming calls, record all transmissions (tickets or notices) of proposed excavations to member operators and retain those records or recordings for a minimum of six years;

9. Maintain liability insurance coverage on such terms and in such amounts deemed appropriate by the commission;

10. Maintain detailed maps or electronic means depicting the member operator's service areas with underground utility lines and pass on to operators the specific site address or, where addresses do not exist, any combination of multiple points of reference for the site of the proposed excavation such as the distance and direction to the nearest intersection of named or numbered public roads, latitude/longitude, and highway/railroad/pipeline mile markers, etc.;

11. Inform the person giving notice of a proposed excavation of the time frame within which an operator must respond to the notification;

12. Provide the person giving notice of a proposed excavation a ticket number and the names of member operators who will be notified for each locate request;

13. Time and date stamp responses to the Ticket Information Exchange System provided by operators and contract locators;

14. Have interactive data communication equipment to permit remote data entry for member operators and excavators;

15. Have a formal and effective training program for the notification center's employees;

16. Have procedures and practices designed to reduce over-notification;

17. Have a detailed disaster recovery plan that enables the notification center to continue acceptable operation during a disaster;

18. Meet or exceed the performance standards approved by the commission. The notification center shall provide to the commission periodic reports, no less frequently than once per quarter, detailing the various performance standards experienced by the notification center, and shall compare the notification center's standards to the standards found in the U.S. Department of Transportation's "Common Ground, Study of One-Call Systems and Damage Prevention Best Practices" Report (see <http://ops.dot.gov/damage.htm>) then in effect; and

19. Verify regularly, no less frequently than annually, with the member operators the data provided to the notification center in accordance with 20 VAC 5-309-130 of the commission's Rules for Enforcement of the Underground Utility Damage Prevention Act. ]

VA.R. Doc. No. R02-71; Filed June 7, 2002, 11:09 a.m.



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# EMERGENCY REGULATIONS

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

Title of Regulation: 4 VAC 20-252. Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-150).

Statutory Authority: §§ 28.2-201, 28.2-204 and 28.2-210 of the Code of Virginia.

Effective Dates: May 29, 2002, through June 27, 2002.

Summary:

*The amendment establishes a quota of 98,000 pounds of whole striped bass caught by commercial fishermen in coastal areas.*

Agency Contact: Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail dcawthon@mrc.state.va.us.

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

A. The commercial harvest quota for the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia shall be determined annually by the Marine Resources Commission, as specified in this subsection. The total allowable level of all commercial harvest of striped bass for all open seasons and for all legal gear shall be 1,701,748 pounds of whole fish. At such time as the total commercial harvest of striped bass is projected to reach 1,701,748 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission, as specified in this subsection. The total allowable level of all commercial harvest of striped bass for all open seasons and for all legal gear shall be 98,000 pounds of whole fish. At such time as the total commercial harvest of striped bass is projected to reach 98,000 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes.

~~B.~~ C. For the purposes of assigning individual shares, for the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia, as described in 4 VAC 20-252-160, the commercial harvest quota of striped bass, in pounds, shall be converted to a quota in numbers of fish based on the estimate of the average weight of striped bass harvested during the previous fishing year. One striped bass tag shall be provided for each striped bass in the total quota to arrive at the commercial harvest quota of tags.

D. All other applicable laws and regulations for harvesting striped bass shall apply during this time period.

VA.R. Doc. No. R02-194; Filed May 29, 2002, 2:48 p.m.

Title of Regulation: 4 VAC 20-620. Pertaining to Summer Flounder (amending 4 VAC 20-620-50, 4 VAC 20-620-60 and 4 VAC 20-620-70).

Statutory Authority: §§ 28.2-201 and 28.2-204 of the Code of Virginia.

Effective Dates: June 1, 2002, through June 30, 2002.

Summary:

*The emergency amendment establishes a 17-1/2 inch minimum size limit for recreational Summer Flounder fishing in the Chesapeake Bay and its tributaries and coastal area in order to reduce the recreational harvest by 43.8%.*

Agency Contact: Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail dcawthon@mrc.state.va.us.

#### 4 VAC 20-620-50. Minimum size limits.

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 14 inches, total length.

~~B. The minimum size of Summer Flounder harvested from the Chesapeake Bay and its tributaries by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be 17-1/2 inches, total length. The minimum size of Summer Flounder harvested from the coastal area by recreational fishing gear, including but not limited to hook and line, rod and reel, spear, and gig, shall be 15-1/2 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 fishing recreationally in Virginia to possess aboard any vessel or to land or to bring to shore within the Chesapeake Bay and its tributaries or the coastal area any Summer Flounder smaller than the minimum size limit designated for each respective area as described in subsection B of this section. It shall be unlawful for any person to possess any Summer Flounder smaller than the designated minimum size limit.~~

E. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia which were legally harvested in the Potomac River.

#### 4 VAC 20-620-60. Possession limit.

A. It shall be unlawful for any person fishing recreationally in Virginia with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess aboard any vessel or to land or to bring to shore within the Chesapeake Bay and its tributaries more than eight Summer Flounder. ~~It shall be unlawful for any person fishing recreationally in Virginia to possess aboard any vessel or to land or to bring to shore within the coastal area more than five Summer Flounder.~~ When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by eight.

The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of Summer Flounder which exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

**4 VAC 20-620-70. Recreational fishing season.**

A. The recreational fishing season for the Chesapeake Bay and its tributaries shall be closed from January 1 through March 28 and from July 22 through July 28. ~~The recreational fishing season for the coastal area shall be closed from January 1 through March 28 and from July 22 through August 5.~~

B. It shall be unlawful for any person fishing recreationally to ~~take, catch, or possess aboard any vessel or to land or to bring to shore within the Chesapeake Bay and its tributaries or the coastal area any Summer Flounder during any closed recreational fishing seasons for the respective areas designated in subsection A of this section any Summer Flounder during any closed recreational fishing season.~~

C. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

VA.R. Doc. No. R02-188; Filed May 29, 2002, 2:49 p.m.



## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

**Title of Regulation:** 9 VAC 20-60. Virginia Hazardous Waste Management Regulations (amending 9 VAC 20-60-1285).

**Statutory Authority:** § 10.1-1402(11) and 10.1-1426 et seq. of the Code of Virginia, 42 USC 6921 et seq., and 40 CFR Parts 260-272.

**Effective Dates:** July 1, 2002, through June 30, 2003.

**Preamble:**

*Chapter 14 of the 2002 Acts of Assembly requires the Waste Management Board to promulgate regulations, within 280 days of the enactment of the statute, establishing a fee schedule sufficient to cover no more than 20% of the direct cost of the hazardous and solid waste management programs based on the allocations made to these programs in the 2002 Appropriation Act. The individual permit fees may not increase more than 300%.*

**Substance:** Under this emergency regulation, each permit fee is multiplied by three in order to establish the new permit fee. The regulatory action assures that adequate funds are available to allow the continuation of permitting activities ensuring the protection of human health and the environment. The final regulation will address the appropriate role of the regulation in funding the hazardous waste program.

**Agency Contact:** Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213 or e-mail rgwickline@deq.state.va.us.

**9 VAC 20-60-1285. Permit application fee schedule.**

(The effective date of this fee schedule is ~~October 1, 1984~~ July 2, 2002.)

A. Transporter fees.

Transporters with terminals or other facilities within the Commonwealth.	\$80 420
Other transporters.	\$120 360

B. New TSD facility fees.

Base fee for all facilities, including corrective action for solid waste management units.	\$9,720 29,160
Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units.	\$22,590 67,770
Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF).	\$14,490 43,470

C. Major (Class 3) Permit modification fees.

Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit.	\$50 150
Addition of new wastes.	\$1,330 3,990
Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units.	\$25,920 77,760
Addition of or major (Class 3) change to one or more incineration, boiler, or industrial furnace units.	\$19,430 58,290
Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based.	\$8,080 24,240
Substantive changes (Class 2).	\$1,330 3,990

D. Minor (Class 1) permit modification fees.

Minor (Class 1) permit modification fee.	\$50 150
--	----------

E. Emergency permit fees.

Emergency permit fee.	\$1,330 3,990
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**Illustrative Examples (Note: from July 1, 2002 until June 30, 2003, the fee amounts in the examples below should be tripled in order to calculate the required fee.)**

Example 1.

The applicant is submitting a Part B application for a HWM permit for a facility consisting of several surface impoundments, a land treatment process and an ancillary

# Emergency Regulations

tank and container storage facility. The required fee is calculated as follows:

Base Fee.	\$9,720
Supplementary fee for land-based TSD units.	\$22,590
Tank storage facility (see 9 VAC 20-60-1270 C 4).	\$0
	-----
Total fee.	\$32,310

## Example 2.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to change the manufacturing process and apply for a modification to allow for an addition of several new hazardous streams to be treated in two new incinerators. The required modification fee is calculated from subsection C of this section as follows:

Base fee.	\$50
Addition of new wastes.	\$1,330
Addition of new incineration units.	\$19,430
	-----
Total modification fee.	\$20,810

The fee for a comparable new permit calculated on the basis of subsection B of this section is as follows:

Base fee.	\$9,720
Supplementary fee for land-based units.	\$22,590
Supplementary fee for incineration units.	\$14,490
Storage facility.	\$0
	-----
Total fee.	\$46,800

which is larger than the required modification fee, so that the provisions of 9 VAC 20-60-1270 D 7 do not apply and the proper fee is \$20,810.

## Example 3.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to expand their container storage facility for a storage of additional new waste streams, and apply for a permit modification. The required modification fee is calculated from subsection C of this section as follows:

Base fee.	\$50
Addition of a new waste.	\$1,330
Fee for nonsubstantive change.	\$1,330
	-----
Total modification fee.	\$2,710

/s/ Mark R. Warner  
Governor  
Date: June 4, 2002

VA.R. Doc. No. R02-209; Filed June 10, 2002, 10:38 a.m.

\*\*\*\*\*

**Title of Regulation: 9 VAC 20-90. Solid Waste Management Facility Permit Application Fees (amending Appendix 3.1).**

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

**Effective Dates: July 1, 2002, through June 30, 2003.**

## Preamble:

*Chapter 14 of the 2002 Acts of Assembly requires the Waste Management Board to promulgate regulations, within 280 days of the enactment of the statute, establishing a fee schedule sufficient to cover no more than 20% of the direct cost of the hazardous and solid waste management programs based on the allocations made to these programs in the 2002 Appropriation Act. The individual permit fees may not increase more than 300%.*

**Substance:** Under this emergency regulation, each permit fee listed in the fee tables in Appendix 3.1 of the Solid Waste Management Facilities Permit Application Fees regulations is multiplied by three in order to establish the new permit fee. The regulatory action ensures that adequate funds are available to allow the continuation of permitting activities ensuring the protection of human health and the environment. The final regulation will address the appropriate role of the regulation in funding the solid waste program.

**Agency Contact:** Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146 or e-mail: mjdieter@deq.state.va.us.

## APPENDIX 3.1. PERMIT APPLICATION FEE SCHEDULES

The effective date of this Appendix is ~~June 8, 1992~~ July 1, 2002.

TABLE 3.1-1. NEW FACILITIES

TYPE OF FACILITY:	FEE
All landfills:	
Part A application:	<del>\$3,200</del> 9,600
Part B application:	<del>\$14,300</del> 42,900
Incineration/Energy Recovery Facility:	<del>\$4,500</del> 13,500
Transfer Station, Materials Recovery Facility, Infectious Waste Storage Facility, Infectious Waste Treatment Facility:	<del>\$3,300</del> 9,900
Compost Facility:	
Part A application:	<del>\$1,600</del> 4,800
Part B application:	<del>\$8,100</del> 24,300
Experimental Solid Waste Facility: (Reserved) <sup>1</sup>	

<sup>1</sup>Indicates insufficient experience at the present time to determine proper fee. Should an application for such a facility be received, the lowest fee in the table will be assessed.

TABLE 3.1-2. PERMIT AMENDMENTS, ACTIONS OR MODIFICATIONS

TYPE OF PERMIT MODULE:	FEE
General - Module I:	<del>\$300</del> 900
Facility - Module II:	<del>\$1,000</del> 3,000
Landfill - Module III, IV, or V:	<del>\$5,400</del> 16,200
Design plan review:	<del>\$700</del> 2,100
Liner design review:	<del>\$1,500</del> 4,500

# Emergency Regulations

VA.R. Doc. No. R02-210; Filed June 10, 2002, 10:37 a.m.

Leachate system review:	<del>\$1,000</del> 3,000
Gas management plan review:	----
Drainage plan review:	<del>\$700</del> 2,100
Cover design review:	<del>\$1,400</del> 4,200
Equipment:	----
Compost facility - Module VI:	<del>\$2,800</del> 8,400
Design plan review:	<del>\$500</del> 1,500
Liner design review:	<del>\$1,000</del> 3,000
Leachate system review:	<del>\$700</del> 2,100
<del>Air supply system review:</del>	<del>----</del>
Drainage plan review:	<del>\$500</del> 1,500
Equipment:	----
Transfer station - Module VII:	<del>\$900</del> 2,700
Material recovery facility - Module VIII:	<del>\$1,200</del> 3,600
Waste supply analysis:	<del>\$500</del> 1,500
Waste management areas:	<del>\$400</del> 1,200
Wastewater management areas:	<del>\$300</del> 900
Incinerator/Energy recovery facility - Module IX:	<del>\$2,300</del> 6,900
Waste and residue storage:	<del>\$700</del> 2,100
Operational requirements:	<del>\$1,200</del> 3,600
Waste control procedures:	<del>\$400</del> 1,200
Groundwater monitoring - Module X or XI:	<del>\$2,500</del> 7,500
Well placement:	<del>\$1,000</del> 3,000
Materials and specifications:	<del>\$300</del> 900
Sampling plan:	<del>\$1,200</del> 3,600
Well abandonment:	----
Closure - Module XII:	<del>\$300</del> 900
Post-closure - Module XIII:	<del>\$300</del> 900
Corrective action - Module XIV:	(Reserved)
Leachate handling - Module XV:	(Reserved)
Infectious waste storage facility - Module XVI:	(Reserved)
Infectious waste treatment facility - Module XVII:	(Reserved)
Public participation:	<del>\$800</del> 2,400

## STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-20. Fees for Permits and Certificates (amending 9 VAC 25-20-110, 9 VAC 25-20-120, and 9 VAC 25-20-130).**

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Effective Dates: July 1, 2002, through June 30, 2003.

Preamble:

*The General Assembly of Virginia amended and reenacted revisions to § 62.1-44.15:6 of the Code of Virginia increasing the maximum allowable amounts for processing each type of permit/certificate category. The emergency regulatory action revises the maximum allowable fees in 9 VAC 25-20 to reflect the revisions in § 62.1-44.15:6 of the Code of Virginia. An emergency regulation is necessary because the Acts of Assembly require the State Water Control Board to promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment.*

Substance: Under this emergency regulation, the existing regulation would be revised to reflect the changes in maximum amounts as specified in § 62.1-44.15:6 B of the Code of Virginia. The fees specified in 9 VAC 25-20-110, 9 VAC 25-20-120, and 9 VAC 25-20-130 are multiplied by a factor of three, or increased to the maximum amounts specified in § 62.1-44.15:6 B of the Code of Virginia, whichever is lower. Additionally, the Virginia Water Protection permit waiver fee is eliminated and the fee for registration under a VWP General Permit is staggered for projects impacting less than one-half acre and projects impacting one-half acre or more.

Agency Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117 or e-mail jvansoest@deq.state.va.us.

**9 VAC 25-20-110. Fee schedules for individual new permit issuance and individual existing permit reissuance.**

The following fee schedules apply to applications for issuance of a new individual permit or certificate and reissuance of an existing individual permit or certificate.

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major	<del>\$8,000</del> 24,000
VPDES Municipal Major	<del>\$7,100</del> 21,300
VPDES Municipal Stormwater	<del>\$7,100</del> 21,300
VPDES Industrial Minor/No Standard Limits	<del>\$3,400</del> 10,200
VPDES Industrial Minor/Standard Limits	<del>\$2,200</del> 6,600
VPDES Industrial Stormwater	<del>\$2,400</del> 7,200

TABLE 3.1-3. MINOR PERMIT AMENDMENT OR MODIFICATION

TYPE OF PERMIT MODULE:	FEE
Minor amendment or modification:	<del>\$300</del> 900

/s/ Mark R. Warner  
Governor  
Date: June 4, 2002

# Emergency Regulations

VPDES Municipal Minor/100,000 GPD or More  
~~\$2,500~~ 7,500

VPDES Municipal Minor/More Than 10,000 GPD-Less Than 100,000 GPD  
~~\$2,000~~ 6,000

VPDES Municipal Minor/More Than 1,000 GPD-10,000 GPD or Less  
~~\$1,800~~ 5,400

VPDES Municipal Minor/1,000 GPD or Less  
~~\$1,400~~ 4,200

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation (Reserved)

VPA Intensified Animal Feeding Operation (Reserved)

VPA Industrial Wastewater Operation ~~\$3,500~~ 10,500

VPA Industrial Sludge Operation ~~\$2,500~~ 7,500

VPA Municipal Wastewater Operation ~~\$4,500~~ 13,500

VPA Municipal Sludge Operation ~~\$2,500~~ 7,500

All other operations not specified above ~~\$250~~ 750

3. Virginia Water Protection (VWP) permits.

VWP Category I Project ~~\$3,000~~ 9,000

VWP Category II Project ~~\$2,100~~ 6,300

VWP Category III Project ~~\$800~~ 2,400

~~VWP Waivers~~ ~~\$300~~

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month (Reserved)

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month (Reserved)

Agricultural withdrawal of 300 million gallons or greater in any single month (Reserved)

Certificate for an Existing Nonagricultural Withdrawal  
~~\$2,000~~ 6,000

Permit for a New or Expanded Nonagricultural Withdrawal  
~~\$3,000~~ 9,000

5. Permits for the withdrawal of groundwater issued in response to Chapter 25 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month (Reserved)

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month (Reserved)

Agricultural withdrawal of 300 million gallons or greater in any single month (Reserved)

Initial Permit for an Existing Nonagricultural Withdrawal  
~~\$400~~ 1,200

Permit for a New or Expanded Nonagricultural Withdrawal  
~~\$2,000~~ 6,000

**9 VAC 25-20-120. Fee schedules for major modification of individual permits or certificates requested by the permit or certificate holder.**

The following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder.

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major ~~\$4,000~~ 12,000

VPDES Municipal Major ~~\$3,550~~ 10,650

VPDES Municipal Stormwater ~~\$3,550~~ 10,650

VPDES Industrial Minor/No Standard Limits  
~~\$1,700~~ 5,100

VPDES Industrial Minor/Standard Limits ~~\$1,400~~ 3,300

VPDES Industrial Stormwater ~~\$1,200~~ 3,600

VPDES Municipal Minor/100,000 GPD or More  
~~\$1,250~~ 3,750

VPDES Municipal Minor/More Than 10,000 GPD-Less Than 100,000 GPD  
~~\$1,000~~ 3,000

VPDES Municipal Minor/More Than 1,000 GPD-10,000 GPD or Less  
~~\$900~~ 2,700

VPDES Municipal Minor/1,000 GPD or Less ~~\$700~~ 2,100

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation (Reserved)

VPA Intensified Animal Feeding Operation (Reserved)

VPA Industrial Wastewater Operation ~~\$1,750~~ 5,250

VPA Industrial Sludge Operation ~~\$1,250~~ 3,750

VPA Municipal Wastewater Operation ~~\$2,250~~ 6,750

VPA Municipal Sludge Operation ~~\$1,250~~ 3,750

All other operations not specified above ~~\$125~~ 375

3. Virginia Water Protection (VWP) permits.

VWP Category I Project ~~\$1,500~~ 4,500

VWP Category II Project ~~\$1,050~~ 3,150

VWP Category III Project ~~\$400~~ 1,200

~~VWP Waivers~~ ~~\$150~~

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month (Reserved)

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month (Reserved)

Agricultural withdrawal of 300 million gallons or greater in any single month (Reserved)

Certificate for an Existing Nonagricultural Withdrawal  
~~\$1,000~~ 3,000

Permit for a New or Expanded Nonagricultural Withdrawal  
~~\$1,500~~ 4,500

5. Permits for the withdrawal of groundwater issued in response to Chapter 25 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month (Reserved)

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month (Reserved)

Agricultural withdrawal of 300 million gallons or greater in any single month (Reserved)

Initial Permit for an Existing Nonagricultural Withdrawal  
~~\$200~~ 600

Permit for a New or Expanded Nonagricultural Withdrawal  
~~\$1,000~~ 3,000

**9 VAC 25-20-130. Fees for filing registration statements for general permits issued by the board.**

A. The fee for filing a registration statement for coverage under 9 VAC 25-110-10 et seq. is \$ 0.

B. The fee for filing a registration statement for coverage under 9 VAC 25-120-10 et seq. is \$ 0.

*C. The fee for filing a registration statement for coverage under any VWP General Permit authorizing impacts to less than one-half of an acre of nontidal surface waters shall be \$600.*

*D. The fee for filing a registration statement for coverage under any VWP General Permit authorizing impacts to one-half of an acre or more of nontidal surface waters shall be \$1,200.*

*G. E. Except as specified in 9 VAC 25-20-130 A and, B, C, and D, the maximum fee for filing a registration statement for coverage under any general permit issued by the board shall be ~~\$200~~ 600. Fees for coverage under general permits will be based on the number of years from the filing of a registration statement until the general permit expires. The annual prorated amount is equal to the maximum fee of ~~\$200~~ 600 divided by the total term of the general permit. The fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the filing of a registration statement until the expiration of the general permit.*

/s/ Mark R. Warner  
Governor  
Date: June 4, 2002

VA.R. Doc. No. R02-211; Filed June 10, 2002, 10:38 a.m.



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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION

**REGISTRAR'S NOTICE:** The distribution list referenced as Appendix A in the following order is not being published. However, the list is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or may be viewed at the Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

AT RICHMOND, JUNE 11, 2002

CASE NO. PUE-2002-00315

### IN THE MATTER OF

Receiving comments on a draft memorandum of agreement between the Department of Environmental Quality and the State Corporation Commission

### ORDER INVITING COMMENTS

Chapter 483 of the Acts of Assembly (2002 Va. Acts 483) becomes effective on July 1, 2002 ("Chapter 483"). Chapter 483 requires, among other things, the Department of Environmental Quality ("Department") and the State Corporation Commission ("Commission") to enter into a memorandum of agreement regarding the coordination of reviews of environmental impact of electric generating plants and associated facilities. (See Senate Bill No. 554; Va. Code §§ 10.1-1186.2:1 B and 56-46.1 G.) The Department and the Commission are committed to developing the memorandum of agreement as promptly as practicable.

A draft memorandum of agreement is affixed to this Order as Attachment A. The Department and the Commission seek the benefit of comments from interested persons on this matter. Accordingly, the Department and the Commission hereby invite interested persons to submit comments on the draft memorandum of agreement, pursuant to the procedures set forth in this Order. The Department and the Commission will consider such comments and enter into a final memorandum of agreement, a copy of which will be sent to all persons or entities on the service list.

This is not a formal proceeding that is regulatory, adjudicatory, or other, as defined by 5 VAC 5-20-80, -90, or -100. There will be no final order issued in this case, nor will there be any final finding, decision settling the substantive law, order, or judgment within the meaning of § 12.1-39 of the Code of Virginia. No general order, rule, or regulation is being promulgated in this case. To facilitate the receipt of comments, the Clerk of the Commission shall serve a copy of this Order and Attachment A on all parties included on the service list in Case Nos. PUE-2001-00313 and PUE-2001-00665, which address amendments to the filing requirements for applications to construct and operate electric generating facilities. In addition, this Order and Attachment A shall be forwarded for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

(1) Case No. PUE-2002-00315 is hereby established to permit interested persons to submit comments on a draft memorandum of agreement, affixed hereto as Attachment A, between the Department of Environmental Quality and the State Corporation Commission.

(2) The Clerk of the Commission shall include on the service list in this case all parties on the service list in Case Nos. PUE-2001-00313 and PUE-2001-00665, Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities.

(3) The Commission's Division of Information Resources shall forthwith cause this Order and Attachment A to be forwarded for publication in the Virginia Register of Regulations.

(4) Any interested person or entity desiring to be added to the service list in this matter shall direct such request in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE-2002-00315.

(5) On or before July 10, 2002, interested persons or entities may submit initial comments on Attachment A to this Order. An original and fifteen (15) copies of such comments shall be filed with the Clerk of the Commission at the above address, and a copy of the comments also shall be sent to all parties on the service list in this case. Such comments shall refer to Case No. PUE-2002-00315.

(6) On or before July 24, 2002, interested persons or entities may file reply comments to the initial comments submitted above. An original and fifteen (15) copies of the reply comments shall be filed with the Clerk of the Commission at the above address, and a copy of the comments also shall be sent to all parties on the service list in this case. Such comments shall refer to Case No. PUE-2002-00315.

(7) This matter is now continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on Appendix A attached hereto; and to the Commission's Divisions of Energy Regulation, Economics and Finance, and Public Utility Accounting.

ATTACHMENT A

### MEMORANDUM OF AGREEMENT

The Department of Environmental Quality ("Department") and the State Corporation Commission ("Commission") enter into this memorandum of agreement ("Agreement"), pursuant to §§ 10.1-1186.2:1 B and 56-46.1 G of the Code of Virginia ("Code"), regarding coordination of reviews of the environmental impacts of proposed electric generating plants and associated facilities ("Impact Review").

1. This agreement supersedes any prior written agreements between the Department and the Commission on the matters addressed herein.

2. The Department and the Commission will notify the other party in writing of the appropriate contact persons for the actions described in this Agreement.

3. The Commission's Staff will notify the Department in writing within ten (10) business days of receiving an application for certification of an electric generating facility. No later than ten (10) business days after receipt of the environmental impact analysis information contained in the application, the Department will advise the Commission's Staff in writing as to:

- A. the completeness of the information received;
- B. the estimated length of time required to conclude the Impact Review; and
- C. whether the proposed facility is located in a region that was designated, as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act.

If the Department determines the environmental impact analysis information contained in an application is incomplete, within ten (10) business days of notifying the applicant the Department will notify the Commission's Staff in writing and include a listing of the information needed to initiate the Impact Review. The Department and the Commission's Staff may confer from time to time on these matters.

4. In accordance with §§ 56-46.1 A and 56-580 D of the Code, permits and approvals required for an electric generating plant and associated facilities that are issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact will be deemed to satisfy the requirements of §§ 56-46.1 A and 56-580 D of the Code with respect to all matters that (i) are governed by the permit or approval, or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission will impose no additional conditions with respect to such matters.

5. In accordance with §§ 10.1-1186.2:1, 56-46.1 A, and 56-580 D of the Code:

A. No later than sixty (60) days after initiating the review of the environmental impact analysis information contained in the application, the Department will submit to the Commission's Staff in writing:

- (i) a notification that the Impact Review has been completed; or
- (ii) a notification that the Impact Review has been suspended due to matters discovered during the review. The notification will include a description of the information needed to resume the review.

B. Enclosed in the written notification described in 5.A.(i), above, for all Completed Impact Reviews the Department will submit a written report to the Commission which includes:

- (i) a summary of the findings and any recommendations for the Commission's consideration which resulted from the review; and
- (ii) a list of all environmental permits and approvals required for the proposed facility which were identified during the Impact Review, and the federal, state, or local

governmental entity responsible for granting each permit and approval identified during the review.

For each environmental permit or approval identified during the Impact Review, the Department's report will include:

- (a) for each governmental entity that grants an environmental permit or approval, a listing of environmental issues identified during the review process, which (1) are not governed by the environmental permit or approval, or (2) are not within the authority of, and can not be considered by, the governmental entity in reviewing such permit or approval;
- (b) for environmental permits and approvals needed for the proposed facility, a listing of (1) what matters are governed by the permit or approval, and (2) what matters were or will be considered by the governmental entity, within its authority, in reviewing the application for such permit or approval; and
- (c) the current status of, and any changes in the estimated length of time to conclude, all environmental permit or approval processes.

6. In accordance with § 10.1-1186.2:1 C of the Code, the Department may request assistance from agencies of the Commonwealth as needed to complete reviews of the environmental impacts of proposed electric generating plants and associated facilities.

7. If requested by the Commission's Staff, one or more members of the Department's Staff will appear as a witness at the Commission's evidentiary hearing to testify regarding the activities of the Department with respect to the proposed electric generating plant and associated facilities. The Department also may coordinate the testimony of other governmental agencies on environmental issues.

8. If requested by the Commission's Staff, the Department will endeavor to provide, or seek to coordinate from other governmental entities issuing environmental permits or approvals, expert assistance to the Commission's Staff on issues regarding environmental impacts and mitigation of adverse environmental impacts.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clinton Miller, Chairman  
State Corporation Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Theodore V. Morrison, Jr., Commissioner  
State Corporation Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hullihen Williams Moore, Commissioner  
State Corporation Commission

\_\_\_\_\_  
Date

Agency Contact: John F. Dudley, Counsel to the Commission, State Corporation Commission, P.O. Box 1197, Richmond,

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## General Notices/Errata

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Virginia 23218, (804) 371-9778 (office), (804) 371-9376 (FAX), or e-mail [jdudley@scc.state.va.us](mailto:jdudley@scc.state.va.us).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### **Notice of Intent to Make Additional Medical Assistance Payments to Government-Owned or Operated Nursing Homes, ICFs-MR, Hospitals and Clinics and Physicians Affiliated with a State Academic Health System or an Academic Health System that Operates under a State Authority**

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement plan for qualifying state government-owned nursing homes, ICFs-MR, hospitals and clinics for inpatient and outpatient services, for qualifying nonstate government-owned ICFs-MR and clinics for inpatient and outpatient services and for physician groups affiliated with a state academic health system or an academic health system that operates under a state authority pursuant to the department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). All of the changes, effective August 1, 2002, contained in this public notice are occurring in response to mandates of the 2002 General Assembly as contained in 2002 Acts of Assembly, Chapter 899, Item 325.

Government-owned nursing homes, ICFs-MR, hospitals and clinics and physician groups affiliated with a state academic health system or an academic health system that operates under a state authority fulfill an important and unique role within the Virginia health care system. Subject to the availability of local government, state, and federal funds, the department intends to make supplemental payments to state government-owned or operated nursing homes, ICFs-MR, hospitals and clinics for inpatient and outpatient services and to nonstate government owned ICFs-MR and clinics for inpatient and outpatient services up to the amount permitted under federal regulations (42 CFR 447.272 and 447.321). Subject to the availability of local government, state and federal funds, the department intends to make supplemental payments to physicians affiliated with a state academic health system or an academic health system that operates under a state authority such that total payments will be the lesser of billed charges or the Medicare fee schedule for a particular physician service. This amendment is being developed at the direction of the Virginia General Assembly and will be effective at the earliest possible date subject to approval of the State Plan amendment by the Centers for Medicare and Medicaid Services.

This amendment is estimated to increase total annual Medicaid spending by \$42 million.

A copy of this notice is available for public review from N. Stanley Fields, Director, Division of Cost Settlement and Audit, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and in local public libraries. Comments or inquiries

may be submitted, in writing, within 30 days of this notice publication to Mr. Fields and such comments are available for review at the same address.

### STATE WATER CONTROL BOARD

#### **Proposed Consent Special Order Evergreen Country Club**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the Evergreen Country Club (Evergreen) regarding the Evergreen Country Club sewage treatment plant (STP) located in Prince William County, Virginia.

The STP is subject to VPDES Permit No. VA0087891. The proposed order requires that Evergreen construct a new STP and provides interim limits for the existing STP until construction of the new STP is complete. Evergreen has agreed to payment of a civil charge.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive comments relating to the order through July 31, 2002. Please address comments to: Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193. Please address comments sent via e-mail to [eacrosier@deq.state.va.us](mailto:eacrosier@deq.state.va.us). In order to be considered, comments provided by e-mail must include the commenter's name, address, and telephone number. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to obtain or examine a copy of the order.

#### **Proposed Consent Special Order Honeywell International Incorporated**

The State Water Control Board proposes to issue a consent special order to Honeywell International Inc. to resolve certain alleged violations of environmental laws and regulations occurring at their facility in Hopewell, Virginia. The proposed order requires Honeywell International Inc. to pay a \$47,280 civil charge.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments related to the proposed consent special order. Comments should be addressed to Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060-6295; or sent to the email address of [felupini@deq.state.va.us](mailto:felupini@deq.state.va.us). All comments received by e-mail must include the commenter's name, address and phone number. A copy of the order may be obtained in person or by mail from the above office.

#### **Proposed Consent Special Order Loudoun County Public Schools**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the Loudoun County Public

Schools regarding the Dominion High School construction site located in Loudoun County, Virginia.

The proposed order requires that Loudoun County Public Schools provide a training seminar to certain county personnel regarding state and federal wetlands regulatory programs.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive comments relating to the order through July 31, 2002. Please address comments to: Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193. Please address comments sent via e-mail to [eacrosier@deq.state.va.us](mailto:eacrosier@deq.state.va.us). In order to be considered, comments provided by e-mail must include the commenter's name, address, and telephone number. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to obtain or examine a copy of the order.

### **Proposed Consent Special Order SIL Cleanwater, L.L.C.-North Fork Modular Reclamation and Reuse Facility**

The State Water Control Board proposes to enter into a Consent Special Order with SIL Cleanwater, L.L.C.-North Fork Modular Reclamation and Reuse Facility (SIL) to provide temporary relief of permit requirements at SIL's sewage treatment plant located near Timberville in Rockingham County. Under the terms of a VPDES permit, SIL discharges treated wastewater to the North Fork of the Shenandoah River in the Shenandoah River subbasin, Potomac River basin. SIL is also authorized under the permit to land apply wastewater.

Due to drought conditions, SIL has requested relief from the permit's requirements for the use of soil moisture monitoring to determine appropriate irrigation amounts for land application of wastewater. SIL has experienced operational problems regarding the monitoring of soil moisture since coming on line.

The proposed consent special order incorporates irrigation procedures as temporary relief and as a suitable means of allowing SIL to irrigate during the 2002 growing season.

The board will receive written comments relating to the proposed consent special order for 30 days from the date of publication of this notice. Comments should be addressed to Steven W. Hetrick, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the consent special order. Comments may also be submitted via electronic mail to [swhetrick@deq.state.va.us](mailto:swhetrick@deq.state.va.us). In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address, and telephone number of the person making the comment.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

### **Proposed Consent Special Order Town of Middleburg**

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to the Town of Middleburg regarding the Middleburg sewage treatment plant (STP) located in Loudoun County, Virginia.

The STP is subject to VPDES permit number VA0024775. The proposed order requires that the town pay a civil charge in settlement of alleged violations of its permit related to late submission of information required by the permit. The town has agreed to payment of a civil charge.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive comments relating to the order through July 31, 2002. Please address comments to: Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193. Please address comments sent via e-mail to [eacrosier@deq.state.va.us](mailto:eacrosier@deq.state.va.us). In order to be considered, comments provided by e-mail must include the commenter's name, address, and telephone number. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to obtain or examine a copy of the order.

## **VIRGINIA CODE COMMISSION**

### **Notice to State Agencies**

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

### **Forms for Filing Material for Publication in *The Virginia Register of Regulations***

All agencies are required to use the appropriate forms when furnishing material for publication in the Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: <http://legis.state.va.us/codecomm/register/regindex.htm>

#### **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  
PETITION FOR RULEMAKING - RR13

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# General Notices/Errata

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## ERRATA

### MARINE RESOURCES COMMISSION

Title of Regulation: 4 VAC 20-620. Pertaining to Summer Flounder.

Publication: 18:14 VA.R. 1828-1829 March 25, 2002.

Correction to the final regulation:

Replace 4 VAC 20-620-60 with the following:

#### **4 VAC 20-620-60. Possession limit.**

A. It shall be unlawful for any person fishing recreationally in Virginia to possess aboard any vessel or to land or to bring to shore within the Chesapeake Bay and its tributaries more than eight Summer Flounder. It shall be unlawful for any person fishing recreationally in Virginia to possess aboard any vessel or to land or to bring to shore within the coastal area more than five Summer Flounder. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by eight. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of Summer Flounder which exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

\* \* \* \* \*

Title of Regulation: 4 VAC 20-910. Pertaining to Scup.

Publication: 18:3 VA.R. 357 October 22, 2001.

Correction to the final regulation:

4 VAC 20-910-45 C, line 3, change "2,149" to "2,774"

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# CALENDAR OF EVENTS

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## Symbol Key

-  Location accessible to persons with disabilities  
 Teletype (TTY)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at [www.vipnet.org](http://www.vipnet.org) or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### DEPARTMENT OF THE AGING

† **July 11, 2002 - 10 a.m.** -- Open Meeting  
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Alzheimer's Disease and Related Disorders Commission.

**Contact:** Janet L. Honeycutt, Director of Grant Operations, Department of the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9341, FAX (804) 662-9354, toll-free (800) 552-3402, (800) 552-3402/TTY , e-mail [jlhoneycutt@vdh.state.va.us](mailto:jlhoneycutt@vdh.state.va.us).

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia Egg Board

**August 21, 2002 - 7 p.m.** -- Open Meeting  
Hotel Roanoke and Conference Center, Roanoke, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review financial statements, educational, promotional and research programs. Proposals for future programs will be discussed.

**Contact:** Cecilia Glembocki, Secretary, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102, telephone (703) 790-1984, FAX (703) 821-6748, toll-free (800) 779-7759, e-mail [virginiaeggcouncil@erols.com](mailto:virginiaeggcouncil@erols.com).

#### Pesticide Control Board

† **July 18, 2002 - 9 a.m.** -- Open Meeting  
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia. 

A general business meeting. Portions of the meeting may be held in closed session, pursuant to § 2.2-3711 of the Code of Virginia. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Dr. Marvin Lawson at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Dr. Marvin Lawson, Program Manager/Office of Pesticides Services, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 401, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, e-mail [mlawson@vdacs.state.va.us](mailto:mlawson@vdacs.state.va.us).

#### Virginia Small Grains Board

**July 23, 2002 - 8 a.m.** -- Open Meeting  
Wyndham Hotel and Conference Center, 4700 South Laburnum Avenue, Richmond, Virginia. 

A meeting to review FY 2001-02 project reports and receive 2002-03 project proposals. Minutes from the last board meeting and a current financial statement will be heard and approved. Additionally, action will be taken on any other new business that comes before the group. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA, telephone (804) 371-6157, FAX (804) 371-7786.

#### Virginia Soybean Board

† **August 9, 2002 - 3 p.m.** -- Open Meeting  
Corbin Hall, 2936 Corbin Hall Drive, Waterview, Virginia. 

A meeting to discuss checkoff revenues and the financial status of the board following the end of the fiscal year

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## Calendar of Events

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ending June 30, 2002, and hear and approve the minutes of the March 7, 2002, meeting. Reports will be heard from the chairman, from United Soybean Board representatives, and from other counties. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.

### Virginia Winegrowers Advisory Board

† July 18, 2002 - 10 a.m. -- Open Meeting  
State Capitol, House Room 1, Richmond, Virginia. 

A general meeting of the Winegrowers Advisory Board for fiscal year 2003. The board will elect officers at this meeting and review and approve the board's financial report and the minutes from the last meeting. In addition, viticulture, enology, and marketing reports will be heard. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Mary Davis-Barton at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Mary Davis-Barton, Board Secretary, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685, FAX (804) 786-3122.

### STATE AIR POLLUTION CONTROL BOARD

July 2, 2002 - 7 p.m. -- Public Hearing  
Radford City Council Chambers, 619 Second Street, Radford, Virginia. 

A public hearing to receive comments on an amendment to a state air operating permit for Internet Corporation located in Radford, Virginia. The amendment would extend the schedule of compliance until December 31, 2004.

**Contact:** Steven Dietrich, Department of Environmental Quality, 3019 Peters Creek Rd. Roanoke, VA 24019, telephone (540) 562-6762, e-mail [sadietrich@deq.state.va.us](mailto:sadietrich@deq.state.va.us).

### BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

† July 16, 2002 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Regulatory Review Committee to discuss the board's regulations and any other board business as necessary. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

† July 24, 2002 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Land Surveyor's Section to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

† July 30, 2002 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Landscape Architects Section to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [apelsla@dpor.state.va.us](mailto:apelsla@dpor.state.va.us).

† July 31, 2002 - 9 a.m. -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Architects Section to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

† **August 14, 2002 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Professional Engineers Section to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

† **August 15, 2002 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Interior Designer Section to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

† **September 10, 2002 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the board to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

## ART AND ARCHITECTURAL REVIEW BOARD

NOTE: CHANGE IN MEETING LOCATION

**July 12, 2002 - 10 a.m.** -- Open Meeting  
**August 2, 2002 - 10 a.m.** -- Open Meeting  
**September 6, 2002 - 10 a.m.** -- Open Meeting  
Virginia War Memorial, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. AARB submittal forms and submittal instructions can be downloaded by visiting the DGS forms center at [www.dgs.state.va.us](http://www.dgs.state.va.us). Request submittal form DGS-30-905 or submittal instructions form DGS-30-906.

**Contact:** Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main St., Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY ☎

## VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

**July 16, 2002 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.state.va.us.

## AUCTIONEERS BOARD

† **July 11, 2002 - 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 meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail auctioneers@dpor.state.va.us.

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# Calendar of Events

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## DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

† **July 16, 2002 - 10 a.m.** -- Open Meeting  
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Board for the Blind and Vision Impaired is an advisory board responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly in the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, the budget and requests for appropriations for the department. At this regular meeting, the board will review information regarding department activities and operations, review expenditures from the board's endowment fund, and discuss other issues raised for the board members.

**Contact:** Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY, e-mail proffikc@dbvi.state.va.us.

## BOARD FOR BRANCH PILOTS

† **July 31, 2002 - 8:30 a.m.** -- Open Meeting  
† **August 1, 2002 - 9:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

Examinations will be conducted on July 31. The August 1 meeting will be to conduct board business. Persons desiring to participate in the meetings and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY, e-mail auctioneers@dpor.state.va.us.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **July 24, 2002 - 10:30 a.m.** -- Open Meeting  
Chesapeake Bay Local Assistance Department, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Policy Committee will meet to consider approving the draft policies and procedures for conducting local government compliance evaluations.

**Contact:** Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY, e-mail scrafton@cblad.state.va.us.

## CHILD DAY-CARE COUNCIL

† **July 11, 2002 - 9 a.m.** -- Open Meeting  
Department of Social Services, Theater Row Building, 730 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss issues and concerns that impact child day centers, camps, school age programs and preschools/nursery schools. A public comment period will be at noon. Please call ahead for possible changes in meeting time.

**Contact:** Arlene Kasper, Program Development Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1791, FAX (804) 692-2370.

## STATE CHILD FATALITY REVIEW TEAM

**July 9, 2002 - 10 a.m.** -- Open Meeting  
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond Virginia. (Interpreter for the deaf provided upon request)

The business portion of the meeting will be open to the public until 10:30 a.m. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

**Contact:** Virginia Powell, Ph.D., Coordinator, State Child Fatality Review Team, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail vpowell@vdh.state.va.us.

## STATE BOARD FOR COMMUNITY COLLEGES

† **July 17, 2002 - 2 p.m.** -- Open Meeting  
Virginia Community College System, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Audit Committee will be held with the Auditor of Public Accounts at 2 p.m. Meetings of the Academic and Student Affairs Committee and the Budget and Finance Committee will be held at 2:30 p.m. Meetings of the Facilities Committee and the Personnel Committee will be held at 3:30 p.m.

**Contact:** D. Susan Hayden, Public Relations Manager, Virginia Community College System, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY

† **July 18, 2002 - 9 a.m.** -- Open Meeting  
Virginia Community College System, James Monroe Building, 101 North 14th Street, 15th Floor, Godwin-Hamel Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Public comment will be received at the beginning of the meeting.

**Contact:** D. Susan Hayden, Public Relations Manager, Virginia Community College System, 101 N. 14th St., 15th

Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

## COMPENSATION BOARD

† **July 23, 2002 - 11 a.m.** -- Open Meeting  
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. ♿

A monthly board meeting.

**Contact:** Cindy P. Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

## DEPARTMENT OF CONSERVATION AND RECREATION

† **July 11, 2002 - 9:30 a.m.** -- Open Meeting  
The Meeting House, Sky Meadows State Park, 11012 Edmonds Lane, Delaplane, Virginia. ♿ (Interpreter for the deaf provided upon request)

The third meeting of the Sky Meadows State Park Master Plan Technical Advisory Committee will be held. DCR staff and membership will continue discussion of issues related to the preparation of the revised master plan.

**Contact:** Derral Jones, Planning Bureau Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-9042, FAX (804) 371-7899, e-mail djones@dcr.state.va.us.

† **July 16, 2002 - 1 p.m.** -- Open Meeting  
Smith Mountain Lake State Park, Visitor Center, 1235 State Park Road, Huddleston, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Smith Mountain Lake State Park Master Planning Committee continues discussion of the state park master planning process. Request for interpreter for the deaf should be filed two weeks prior to the meeting.

**Contact:** Robert S. Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rmunson@dcr.state.va.us.

† **July 19, 2002 - 1 p.m.** -- Open Meeting  
Staunton River State Park, Park Office, 1170 Staunton Trail, Scottsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

Continued discussions of the Staunton River State Park master planning process.

**Contact:** Robert S. Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rmunson@dcr.state.va.us.

## Falls of the James Scenic River Advisory Board

**July 11, 2002 - Noon** -- Open Meeting  
Richmond City Hall, 900 East Broad Street, Planning Commission Conference Room, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss river issues.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail rgibbons@dcr.state.va.us.

## BOARD FOR CONTRACTORS

† **July 17, 2002 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regularly scheduled meeting of the board that will address policy and procedural issues; review and render case decisions on matured complaints against licensees, and other matters that may require board action. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. The department fully complies with the Americans with Disabilities Act. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Eric L. Olson.

**Contact:** Eric L. Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.state.va.us.

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† **August 21, 2002 - 2 p.m.** -- Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

**August 30, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Contractors is amending regulations entitled: **18 VAC 50-22. Board for Contractors Regulations;** and **18 VAC 50-30. Tradesman Rules and Regulations.** The purpose of the proposed action is to increase the licensing fees for contractors and tradesmen.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

**Contact:** Eric L. Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.state.va.us.

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# Calendar of Events

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## BOARD OF COUNSELING

**July 19, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling is amending regulations entitled: **18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.** The purpose of the proposed action is to adopt a one-year waiver of the licensure requirements in the current regulations for individuals who hold certain combinations of education and work experience in substance abuse.

Statutory Authority: §§ 54.1-2400 and 54.1-3508 of the Code of Virginia.

Public comments may be submitted until July 19, 2002, to Evelyn B. Brown, Executive Director, Board of Counseling, 6606 W. Broad St., Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

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

**July 22, 2002 - 4 p.m.** -- Public Hearing

Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Drive, 2nd Floor, Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

**August 2, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing is amending regulations entitled: **22 VAC 20-20. Regulations Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices.** The purpose of the proposed action is to add a requirement for program participants to provide proof of income and proof of residency. In addition, definitions and language will be updated for accuracy and clarify.

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

**Contact:** Leslie G. Hutcheson, Regulatory Coordinator, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9703, FAX (804) 662-9718 or e-mail hutchelg@ddhh.state.va.us.

## DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

**July 18, 2002 - 11 a.m.** -- Open Meeting

**August 15, 2002 - 11 a.m.** -- Open Meeting

**† September 19, 2002 - 11 a.m.** -- Open Meeting

Virginia War Memorial, 601 South Belvidere Street, Auditorium, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities to use design-build or construction management-type contracts. Contact the Division of Engineering and Buildings to confirm the meeting. Board rules and regulations can be obtained online at [www.dgs.state.va.us](http://www.dgs.state.va.us) under the DGS Forms, Form DGS-30-904.

**Contact:** Freddie M. Adcock, Administrative Assistant, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY, e-mail fadcock@dgs.state.va.us.

## BOARD OF EDUCATION

**July 25, 2002 - 9 a.m.** -- Open Meeting

**† September 26, 2002 - 9 a.m.** -- Open Meeting

General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency in advance. Public comment will be received.

**Contact:** Dr. Margaret N. Roberts, Office of Policy, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

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**† July 25, 2002 - 2 p.m.** -- Public Hearing

General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.

**September 2, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education is amending regulations entitled: **8 VAC 20-440. Regulations Governing the Employment of Professional Personnel.** The purpose of the proposed action is to amend and clarify the "breach of contract" provision in the regulation.

Statutory Authority: §§ 22.1-16 and 22.1-302 of the Code of Virginia.

**Contact:** Dr. Thomas Elliott, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2924, FAX (804) 225-2524 or e-mail telliott@mail.vak.12ed.edu.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

† **July 1, 2002 - 7 p.m.** -- Public Hearing  
Meherrin Regional Library, Lawrenceville, Virginia. 

A public hearing to receive comments on a tentative draft permit amendment for the Brunswick Sanitary Landfill located approximately four miles southeast of Lawrenceville. The public comment period closes on July 16, 2002.

**Contact:** Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail [gxchriste@deq.state.va.us](mailto:gxchriste@deq.state.va.us).

† **July 2, 2002 - 7 p.m.** -- Public Hearing  
Farmville/Prince Edward Regional Library, Farmville, Virginia. 

A public hearing to receive comments on the tentative draft permit amendment for the Farmville Landfill located off Industrial Park Road, northwest of Farmville. The public comment period closes on July 17, 2002.

**Contact:** Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail [gxchriste@deq.state.va.us](mailto:gxchriste@deq.state.va.us).

† **July 3, 2002 - 7 p.m.** -- Public Hearing  
Bedford Public Library, Bedford, Virginia. 

A public hearing to receive comments on the draft permit amendment for the City of Bedford Landfill located north of John's Creek, along Route 718, just outside the Bedford city limits.

**Contact:** Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail [gxchriste@deq.state.va.us](mailto:gxchriste@deq.state.va.us).

† **July 10, 2002 - 7 p.m.** -- Public Hearing  
Henrico County Library, Sandston Branch, 23 East Williamsburg Road, Richmond, Virginia. 

A public hearing to receive comments on a permit amendment regarding the groundwater monitoring program for the Charles City Road CDD Landfill located off Charles City Road, approximately one mile west of Laburnum Avenue.

**Contact:** Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail [gxchriste@deq.state.va.us](mailto:gxchriste@deq.state.va.us).

† **July 10, 2002 - 7 p.m.** -- Public Hearing  
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia. 

A public hearing to receive comments on the draft permit for operating a hazardous waste storage area at Koppers Industries, Inc. Roanoke Valley Plant located in Salem.

**Contact:** Fuxing Shou, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4126, e-mail [fzhou@deq.state.va.us](mailto:fzhou@deq.state.va.us).

† **July 11, 2002 - 7 p.m.** -- Public Hearing  
York County Library, 100 Long Green Boulevard, Yorktown, Virginia. 

A public hearing to receive comments on a permit amendment regarding the ground water monitoring program for the Grafton Materials CDD Landfill located at 715 Lakeside Drive, 1/2 mile east of Route 17 in Grafton.

**Contact:** Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail [gxchriste@deq.state.va.us](mailto:gxchriste@deq.state.va.us).

**July 16, 2002 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A regular meeting of the Ground Water Protection Steering Committee. Anyone interested in ground water issues is welcome to attend. Meeting minutes and agenda are available from the contact person.

**Contact:** Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail [mamassie@deq.state.va.us](mailto:mamassie@deq.state.va.us).

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **July 16, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A general business meeting including consideration of legislative, regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail [elizabeth.young@dhp.state.va.us](mailto:elizabeth.young@dhp.state.va.us).

## BOARD OF GAME AND INLAND FISHERIES

**July 18, 2002 - 9 a.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. 

A meeting to review and approve the Department of Game and Inland Fisheries' operating and capital budgets for Fiscal Year 2002-2003; elect the board's chairman for 2002-2003; receive a briefing on the department's adoption of emergency regulation amendments to 4 VAC 15-380, Watercraft: Motorboat Numbering, for the purpose of establishing increased fees for certificates of motorboat registration and duplicate registrations, as provided for and authorized in the 2002 Appropriations Act, Item 392; propose regulatory action to remove mute swan from the nuisance species list, as a result of federal action, for adoption as a final regulation amendment at the August 22, 2002, board meeting; adopt webless migratory game bird and September Canada goose seasons and bag limits

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# Calendar of Events

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based on frameworks provided by the U.S. Fish and Wildlife Service; solicit the public's comments in public hearings offered during the regulatory and federal framework portions of the meeting, at which time any interested citizen present shall be heard. The board may also discuss general and administrative issues. The board may elect to hold a dinner Wednesday evening, July 17, at a location and time to be determined, and it may hold a closed session at some time during the July 18 meeting.

**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, Virginia 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail DGIFWeb@dgif.state.va.us.

**August 7, 2002 - 7 p.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public input meeting to discuss and receive public comments regarding season lengths and bag limits for the 2002-2003 hunting seasons for migratory waterfowl (ducks and coots, geese and brant, swan, gallinules and moorhens) and falconry. All interested citizens are invited to attend. DGIF Wildlife Division staff will discuss the population status of these species, and present hunting season frameworks for them provided by the U.S. Fish and Wildlife Service. The public's comments will be solicited in the public meeting portion of the meeting. A summary of the results of this meeting will be presented to the Virginia Board of Game and Inland Fisheries prior to its scheduled August 22, 2002 meeting. The board will hold another meeting on August 22, after which it intends to set 2002-2003 hunting seasons and bag limits for the above species.

**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail regcomments@dgif.state.va.us.

## STATE BOARD OF HEALTH

**July 8, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-90. Regulations for Disease Reporting and Control.** The purpose of the proposed action is to adopt a provision required by law regarding notification of patients reported to the state cancer registry.

Statutory Authority: §§ 32.1-12 and 32.1-70.2 of the Code of Virginia.

**Contact:** Diane Wollard, Ph.D., Director, Division of Surveillance and Investigation, Office of Epidemiology, Department of Health, 1500 E. Main St., Suite 123, Richmond, VA 23219, telephone (804) 786-6261, FAX (804) 786-1076, e-mail dwollard@vdh.state.va.us.

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**July 22, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.**

- 12 VAC 5-230. State Medical Facilities Plan.**
- 12 VAC 5-240. General Acute Care Services.**
- 12 VAC 5-250. Perinatal Services.**
- 12 VAC 5-260. Cardiac Services.**
- 12 VAC 5-270. General Surgical Services.**
- 12 VAC 5-280. Organ Transplantation Services.**
- 12 VAC 5-290. Psychiatric and Substance Abuse Treatment Services.**
- 12 VAC 5-300. Mental Retardation Services.**
- 12 VAC 5-310. Medical Rehabilitation Services.**
- 12 VAC 5-320. Diagnostic Imaging Services.**
- 12 VAC 5-340. Radiation Therapy Services.**
- 12 VAC 5-360. Nursing Home Services.**

The purpose of the proposed action is to respond to legislative changes in the law as a result of the 1999 and 2000 sessions of the General Assembly. The overall impact of the changes is a reduction in the scope of the Certificate of Public Need program. In addition, a provision of the State Medical Facilities Plan regarding liver transplantation services was found to be outdated, inadequate and otherwise inapplicable and in need of revision. The current volume standard (12) for liver transplantation procedures to ensure a successful liver transplantation program is far below the nationally recommended number of procedures (20).

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

**Contact:** Carrie Eddy, Policy Analyst, Department of Health, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 368-2149 or e-mail cedly@vdh.state.va.us.

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**July 30, 2002 - 10 a.m.** -- Public Hearing  
Department of Health, 1500 East Main Street, Room 223, Richmond, Virginia.

**August 19, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-407. Procedures for the Submission of Health Maintenance Organization Quality of Care Data.** The purpose of the proposed action is to adopt regulations to carry out Virginia law, specifically Senate Bill 533 (2000).

Statutory Authority: § 32.1-12 of the Code of Virginia.

**Contact:** Margot Fritts, Office of Health Planning, Department of Health, 1500 E. Main St., Suite 227, Richmond, VA 23219, telephone (804) 692-0808, FAX (804) 371-0116 or e-mail [mfritts@vdh.state.va.us](mailto:mfritts@vdh.state.va.us).

## DEPARTMENT OF HEALTH

† **July 24, 2002 - 10 a.m.** -- Open Meeting  
Natural Resources Building, 900 Natural Resources Drive, Fontaine Research Park, Charlottesville, Virginia. 

A meeting of the Biosolids Use Regulations Advisory Committee to discuss revisions to the Biosolids Use Regulations concerning the land application of biosolids for agricultural use.

**Contact:** Cal Sawyer, Director, Division of Wastewater Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567, e-mail [CSAWYER@vdh.state.va.us](mailto:CSAWYER@vdh.state.va.us).

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **July 17, 2002 - Noon** -- Open Meeting  
James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia.

Agenda materials will be available on the website approximately one week prior to the meeting at [www.schev.edu](http://www.schev.edu). A public comment period will be allocated on the meeting agenda. Persons interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

**Contact:** Lee Ann Rung, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA, telephone (804) 225-2602, FAX (804) 371-7911, e-mail [lrung@schev.edu](mailto:lrung@schev.edu).

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**July 2, 2002 - 9 a.m.** -- Open Meeting  
**August 6, 2002 - 9 a.m.** -- Open Meeting  
**September 3, 2002 - 9 a.m.** -- Open Meeting  
Hopewell Community Center, 100 West City Point Road, Hopewell, Virginia.  (Interpreter for the deaf provided upon request)

The Local Emergency Preparedness Committee will meet as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator, Hopewell Industrial Safety Council, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **July 24, 2002 - 9 a.m.** -- Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. 

This is the annual meeting of the Board of Commissioners. The board will review and, if appropriate, approve the minutes from the prior monthly meeting; elect a Chairman and Vice Chairman; consider for approval and ratification mortgage loan commitments under its various programs; review the authority's operations for the prior month; and consider such other matters and take such actions as they may deem appropriate. Various committees of the Board of Commissioners, including the Programs Committee, the Operations Committee, and the Committee of the Whole, may also meet during the day preceding the annual meeting and before or after the annual meeting and may consider topics within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. The annual meetings of the shareholders and board of directors of Housing of Virginia, Inc., a corporation wholly owned by the authority, will be held following the meeting of the authority's Board of Commissioners.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY 

## STATEWIDE INDEPENDENT LIVING COUNCIL

† **July 16, 2002 - 11:30 a.m.** -- Open Meeting  
Sheraton Richmond West Hotel, 6624 West Broad Street, Richmond, Virginia. 

A regular meeting. Public comment will be received at the beginning of the meeting.

**Contact:** Lisa Grubb, SILC Director, Department of Rehabilitative Services, Richmond, VA, telephone (804) 897-8088, e-mail [sharonm\\_lisa@hotmail.com](mailto:sharonm_lisa@hotmail.com).

## INNOVATIVE TECHNOLOGY AUTHORITY

**July 24, 2002 - 10 a.m.** -- Open Meeting  
Council of Information Technology, 2214 Rock Hill Road, Herndon, Virginia. 

The annual meeting of the Board of Directors to elect officers.

**Contact:** Linda Gentry, Secretary/Treasurer, Innovative Technology Authority, 2214 Rock Hill Rd., Herndon, VA 20170, telephone (703) 689-3035, FAX (703) 464-1706, e-mail [Linda@cit.org](mailto:Linda@cit.org).

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# Calendar of Events

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## DEPARTMENT OF LABOR AND INDUSTRY

### Virginia Migrant and Seasonal Farmworkers Board

**July 10, 2002 - 10 a.m.** -- Open Meeting  
State Capitol, House Room 1, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A regular quarterly meeting of the board.

**Contact:** Betty B. Jenkins, Board Administrator, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2391, FAX (804) 371-6524, (804) 786-2376/TTY , e-mail [bbj@doli.state.va.us](mailto:bbj@doli.state.va.us).

### STATE LAND EVALUATION ADVISORY COUNCIL

**August 8, 2002 - 10 a.m.** -- Open Meeting  
Department of Taxation, Richmond District Office, 1708 Commonwealth Avenue, Richmond, Virginia. 

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

**Contact:** Keith Mawyer, Property Tax Manager, Virginia Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020.

### STATE LIBRARY BOARD

† **September 23, 2002 - 8:15 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

Meetings of the board to discuss matters pertaining to the Library of Virginia and the board. Committees of the board will meet as follows:

8:15 a.m. - Public Library Development Committee, Orientation Room;  
Publications and Educational Services Committee, Conference Room B;  
Records Management Committee, Conference Room C.

9:30 a.m. - Archival and Information Services Committee, Orientation Room;  
Collection Management Services Committee, Conference Room B;  
Legislative and Finance Committee, Conference Room C.

10:30 a.m. - Library Board, Conference Room 2M.

**Contact:** Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY , e-mail [jtaylor@lva.lib.va.us](mailto:jtaylor@lva.lib.va.us).

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**July 5, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120. Waivered Services (Mental Retardation)**. The purpose of the proposed action is to significantly amend the mental retardation waiver program in response to issues raised by the Health Care Financing Administration and affected constituent groups.

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

Public comments may be submitted until July 5, 2002, to Sherry Confer, Analyst, LTC Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

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**August 16, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120. Waivered Services Medallion II**. The purpose of the proposed action is to promulgate changes to Medallion II regulations to provide for three issues: one managed care organization in a region; preassignment process; and limit time enrollees have to select a primary care physician.

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

Public comments may be submitted until August 16, 2002, to Adrienne Fegans, Manager, Division of Managed Care, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

### Medicaid Drug Utilization Review (DUR) Board

† **August 8, 2002 - 2 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. 

A meeting to conduct routine business.

**Contact:** Marianne Rollings, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300 Richmond, VA 23219, telephone (804) 225-4268, FAX (804) 786-1680, (800) 343-0634/TTY , e-mail [mrollings@dmass.state.va.us](mailto:mrollings@dmass.state.va.us).

## BOARD OF MEDICINE

### Informal Conference Committee

**July 24, 2002 - 9:15 a.m.** -- Open Meeting

**August 21, 2002 - 9:30 a.m.** -- Open Meeting  
Williamsburg Marriott Hotel, 50 Kingsmill Road, Williamsburg, Virginia.

**July 18, 2002 - 9:15 a.m.** -- Open Meeting

**August 15, 2002 - 9 a.m.** -- Open Meeting  
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia. ♿

**July 10, 2002 - 8:45 a.m.** -- Open Meeting

† **September 4, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

A meeting to 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 the Code of Virginia. Public comment will not be received.

**Contact:** Peggy Sadler or Renee Dixon, Staff, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ♿, e-mail [Peggy.Sadler@dhp.state.va.us](mailto:Peggy.Sadler@dhp.state.va.us).

## STATE MILK COMMISSION

† **August 28, 2002 - 10:30 a.m.** -- Open Meeting

Department of Forestry, 900 Natural Resources Drive, Room 2063, Charlottesville, Virginia. ♿

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

**Contact:** Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 9th St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail [ewilson@smc.state.va.us](mailto:ewilson@smc.state.va.us).

## DEPARTMENT OF MINES, MINERALS AND ENERGY

† **July 15, 2002 - 7 p.m.** -- Public Hearing

Salem Church Library (meeting room), 2607 Salem Church Road, Fredericksburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Virginia Division of Mineral Mining (DMM) will hold this informal public hearing as an information gathering forum for a proposed mining operation in Spotsylvania County. Persons attending the hearing may present written and/or oral comments, and photographs or other evidence. The hearing will be recorded. The permit applicant, Luck Stone Corporation, has submitted a complete application package,

which is available for review in the DMM office located at 900 Natural Resources Drive, Charlottesville, VA. Special accommodations are available at the hearing on request. Anyone needing special accommodations for the hearing should contact the Department of Mines, Minerals, and Energy at (434) 951-6311 or by calling the Virginia Relay Center at 1-800-828-1120 or 1140/TTY by July 8, 2002.

**Contact:** William L. Lassiter, Environmental Engineer Consultant, Department of Mines, Minerals and Energy, 900 Natural Resources Dr., Charlottesville, VA 22903, telephone (434) 951-6322, FAX (434) 951-6325, (800) 828-1120/TTY ♿, e-mail [wll@mme.state.va.us](mailto:wll@mme.state.va.us).

## DEPARTMENT OF MOTOR VEHICLES

**August 8, 2002 - 9 a.m.** -- Open Meeting

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

A meeting of the Digital Signature Implementation Workgroup. Meetings will be held on the second Thursday of every other month from 9 a.m. until noon at the location noted above unless otherwise noted. The room will be open for coffee and pre-session business at 8:30 a.m.; the business session will begin at 9 a.m.

**Contact:** Vivian Cheatham, Executive Staff Assistant, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-6870, FAX (804) 367-6631, toll-free (866) 68-5463, e-mail [dmvrc@dmv.state.va.us](mailto:dmvrc@dmv.state.va.us).

† **August 14, 2002 - 8 a.m.** -- Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting of the Medical Advisory Board.

**Contact:** J. C. Branche, Assistant Division Manager, Department of Motor Vehicles, 2300 West Broad Street, Richmond VA 23220, telephone (804) 367-0531, FAX (804) 367-1604, toll-free (800) 435-5137, (800) 272-9268/TTY ♿, e-mail [dmvj3b@dmv.state.va.us](mailto:dmvj3b@dmv.state.va.us).

## MOTOR VEHICLE DEALER BOARD

† **July 15, 2002 - 8:30 a.m.** -- Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Committees will meet as follows:

Dealer Practices Committee - 8:30 a.m.

Franchise Law Committee - Five minutes after Dealer Practices Committee

Licensing Committee - 9:30 a.m. or five minutes after Franchise Law

Advertising Committee - 10 a.m. or five minutes after Licensing Committee

Finance Committee - 10:30 a.m. or five to 45 minutes after Personnel Committee

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# Calendar of Events

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Personnel Committee - Five minutes after Advertising Committee  
Transaction Recovery Fund Committee - 11 a.m. or five to 45 minutes after Finance

The full board will meet at 1 p.m. Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.

**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mvb.state.va.us.

## BOARD OF NURSING

**July 15, 2002 - 9 a.m.** -- Open Meeting  
**July 17, 2002 - 9 a.m.** -- Open Meeting  
**July 18, 2002 - 9 a.m.** -- Open Meeting  
**† September 23, 2002 - 9 a.m.** -- Open Meeting  
**† September 25, 2002 - 9 a.m.** -- Open Meeting  
**† September 26, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A panel of the board will conduct formal hearings with licensees or certificate holders. 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, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.state.va.us.

**† July 16, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A general business meeting including, but not limited to, action on proposed regulations pursuant to a periodic review and on disciplinary orders. Public comment will be received at 11 a.m.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail ndurrett@dhp.state.va.us.

**July 16, 2002 - 1:30 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

The Board of Nursing will receive public comment on proposed 18 VAC 90-40, Regulations for Prescriptive Authority for Nurse Practitioners.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX

(804) 662-9512, (804) 662-7197/TTY , e-mail ndurrett@dhp.state.va.us.

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**† July 16, 2002 - 1:45 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

**August 31, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-50. Regulations Governing the Certification of Massage Therapists.** The purpose of the proposed action is to address concerns about competency of certificate holders by requiring recertification by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or obtaining at least 25 hours of continuing education in the biennium before renewal. The board will also amend regulations to further specify the requirements for licensure by endorsement, to delete outdated "grandfathering" provisions and unnecessary rules for provisional certification, and to incorporate by reference the code of ethics and standards of practice of the NCBTMB.

Statutory Authority: Chapter 30 of Title 54.1 of the Code of Virginia.

Public comments may be submitted until August 30, 2002, to Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

## Special Conference Committee

**July 30, 2002 - 9 a.m.** -- Open Meeting  
**August 1, 2002 - 9 a.m.** -- Open Meeting  
**August 5, 2002 - 9 a.m.** -- Open Meeting  
**August 6, 2002 - 9 a.m.** -- Open Meeting  
**August 12, 2002 - 9 a.m.** -- Open Meeting  
**August 13, 2002 - 9 a.m.** -- Open Meeting  
**August 29, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees or certificate holders. 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, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.state.va.us.

## BOARD OF NURSING HOME ADMINISTRATORS

† **July 10, 2002 - 10:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia.

A general business meeting, including the adoption of proposed regulations. Policy and disciplinary issues will be considered as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Sandra Reen, Executive Director, Board of Nursing Home Administrators, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [sandra\\_reen@dhp.state.va.us](mailto:sandra_reen@dhp.state.va.us).

**July 10, 2002 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia.

A panel of the board will convene an informal hearing to inquire into allegations that a certain practitioner may have violated laws governing the practice of nursing home administration. The panel will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

**Contact:** Cheri Emma-Leigh/Senita Booker, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-7457, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail [denbd@dhp.state.va.us](mailto:denbd@dhp.state.va.us).

## BOARDS OF NURSING AND MEDICINE

**July 16, 2002 - 1:30 p.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 2, Richmond, Virginia. 🗳

**August 2, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Boards of Nursing and Medicine are amending regulations entitled: **18 VAC 90-40. Regulations for Prescriptive Authority for Nurse Practitioners.** The purpose of the proposed action is to provide less burdensome requirements for site visits and chart reviews by supervising physicians, to make certain changes related to expanded prescriptive authority, and to clarify requirements or terminology that are not easily understood.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Public comments may be submitted until August 2, 2002, to Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail [elaine.yeatts@dhp.state.va.us](mailto:elaine.yeatts@dhp.state.va.us).

## BOARD OF OPTOMETRY

**July 12, 2002 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia. 🗳

**August 16, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled: **18 VAC 105-20. Regulations of the Virginia Board of Optometry.** The purpose of the proposed action is to revise certain requirements of licensure by endorsement, to reduce the burden of reinstatement, to add some miscellaneous fees consistent with other boards, and to clarify certain provisions related to the provision of patient records if a practice is to be terminated, and the use of professional designations. The board is recommending several changes in requirements for continuing education including an increase in the number of continuing education hours to the statutory limit of 16 but allowing two of those hours to be in recordkeeping and two in CPR.

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

Public comments may be submitted until August 16, 2002, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail [elaine.yeatts@dhp.state.va.us](mailto:elaine.yeatts@dhp.state.va.us).

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**July 12, 2002 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 1, Richmond, Virginia. 🗳

**August 16, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled: **18 VAC 105-30. Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents.** The purpose of the proposed action is to reduce the burden of reinstating an expired certification, reduce the late renewal fee and add some miscellaneous fees consistent with other boards, and specify that two of the continuing education hours required for renewal of licensure must be directly related to prescribing and administration of prescription drugs.

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

Public comments may be submitted until August 16, 2002, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St.,

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# Calendar of Events

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Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail elaine.yeatts@dhp.state.va.us.

## BOARD OF PHARMACY

**July 9, 2002 - 9 a.m.** -- Open Meeting  
**July 12, 2002 - 9 a.m.** -- Open Meeting

NOTE: CHANGE IN MEETING TIME

† **July 22, 2002 - 10 a.m.** -- Open Meeting  
† **July 23, 2002 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 

The Special Conference Committee will discuss disciplinary matters. Public comments will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmbd@dhp.state.va.us.

† **August 19, 2002 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A public hearing to receive comments on proposed amendments to 18 VAC 110-20 and 18 VAC 110-30 to increase certain fees charged to applicants and regulated entities.

**Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail erussell@dhp.state.va.us.

## BOARD OF PHYSICAL THERAPY

**July 12, 2002 - 9 a.m.** -- Public Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

**July 19, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to amend regulations entitled: **18 VAC 112-20. Regulations Governing the Practice of Physical.** The purpose of the proposed action is to establish requirements to ensure continuing competency in accordance with a statutory mandate. Proposed regulations will replace emergency regulations currently in effect.

Statutory Authority: §§ 54.1-2400, 54.1-3474 and 54.1-3480.1 of the Code of Virginia.

Public comments may be submitted until July 19, 2002, to Elizabeth Young, Executive Director, Board of Physical Therapy, 6606 W. Broad St., Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St.,

Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

† **July 12, 2002 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

A general business meeting including consideration of legislative, regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth Young, Executive Director, Board of Physical Therapy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.

## POLYGRAPH EXAMINERS ADVISORY BOARD

† **September 18, 2002 - 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 meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail polygraph@dpor.state.va.us.

## BOARD OF PSYCHOLOGY

† **July 9, 2002 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A general business meeting, including but not limited to, regulatory and disciplinary matters as may be presented on the agenda. Public comment will be accepted at the beginning of the meeting.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail ebrown@dhp.state.va.us.

## REAL ESTATE BOARD

† **July 11, 2002 - 9 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.

**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, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

† **July 31, 2002 - 7 p.m.** -- Open Meeting  
Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to provide a public forum to address Community Association issues. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** 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, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

## BOARD OF REHABILITATIVE SERVICES

**July 25, 2002 - 10 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿

A meeting to conduct board business. Public comments will be received at approximately 10:15 a.m.

**Contact:** Barbara Tyson, Administrative Assistant, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7010, FAX (804) 662-7696, toll-free (800) 552-5019, (804) 662-9040/TTY ☎, e-mail tysonbg@drs.state.va.us.

## VIRGINIA RESOURCES AUTHORITY

**July 9, 2002 - 9 a.m.** -- Open Meeting  
**August 13, 2002 - 9 a.m.** -- Open Meeting  
Virginia Resources Authority, 707 East Main Street, 2nd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of any bonds; (vi) review the results of any bond sales; and (vii) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who

needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

**Contact:** Bonnie R.C. McRae, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bmcrae@vra.state.va.us.

## SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

† **July 10, 2002 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.

A meeting to hear appeals of health department denials of septic tank permits.

**Contact:** Susan C. Sherertz, Appeal Board Secretary, Sewage Handling and Disposal Appeal Review Board, P.O. Box 2448, Richmond, VA, telephone (804) 371-4236, FAX (804) 225-4003, e-mail ssherertz@vdh.state.va.us.

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **July 23, 2002 - 10 a.m.** -- Open Meeting  
Department of Business Assistance, 707 East Main Street, 3rd Floor, Richmond, Virginia. ♿

A meeting to review applications for loans submitted to the authority for approval and general business of the board. Meeting time is subject to change depending upon the agenda of the board.

**Contact:** Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254, FAX (804) 225-3384, e-mail sparsons@dba.state.va.us.

## STATE BOARD OF SOCIAL SERVICES

**July 19, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-705. Child Protective Services.** The purpose of the proposed action is to establish in the permanent regulations the provisions of the current emergency regulations, which allow for statewide implementation of a CPS differential response system. Other changes strengthen the regulations or reflect recent legislation.

Statutory Authority: §§ 63.1-25 and 63.1-248.6 of the Code of Virginia.

**Contact:** Betty Jo Zarris, CPS Policy Specialist, Department of Social Services, 730 E. Broad St., 2nd Floor, Richmond, VA 23219, telephone (804) 692-1220, FAX (804) 692-2215 or e-mail bjz900@dss.state.va.us.

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# Calendar of Events

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**August 2, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-71. Standards and Regulations for Licensed Assisted Living Facilities.** The purpose of the proposed action is to rename "adult care residence" to "assisted living facility," allow for a shared administrator for an assisted living facility and a nursing home, and establish requirements for special care units for residents with serious cognitive impairments due to dementia.

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

**Contact:** Judy McGreal, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1792, FAX (804) 692-2370 or e-mail [jzm7@dss.state.va.us](mailto:jzm7@dss.state.va.us).

† **September 20, 2002 - 10 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, 8th Floor, Conference Room, Richmond, Virginia. 

A regular business meeting of the Family and Children's Trust Fund Board of Trustees.

**Contact:** Nan McKenney, Executive Director, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1823, FAX (804) 692-1869.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **July 24, 2002 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general board meeting.

**Contact:** Werner Versch II, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-6946, e-mail [soilscientist@dpor.state.va.us](mailto:soilscientist@dpor.state.va.us).

## COMMONWEALTH TRANSPORTATION BOARD

† **July 17, 2002 - 2 p.m.** -- Open Meeting  
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

**Contact:** Carol Mathis, Administrative Assistant, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2713, FAX (804) 786-6683, e-mail [Mathis\\_ca@vdot.state.va.us](mailto:Mathis_ca@vdot.state.va.us).

† **July 18, 2002 - 10 a.m.** -- Open Meeting  
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A monthly meeting of the Commonwealth Transportation 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 VDOT Public Affairs at (804) 786-2715 for schedule.

**Contact:** Carol A. Mathis, Administrative Assistant, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2713, FAX (804) 786-6683, e-mail [Mathis\\_ca@vdot.state.va.us](mailto:Mathis_ca@vdot.state.va.us).

## VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

**July 10, 2002 - Noon** -- Open Meeting  
Richmond Plaza Building, 110 South 7th Street, Richmond, Virginia. 

A meeting of the full Board of Directors.

**Contact:** Nicholas DeVincenzo, Assistant to the Director, Virginia Information Providers Network Authority, 110 S. 7th St., Richmond, VA 23219, telephone (804) 786-4583, FAX (804) 371-2795, e-mail [ndevincenzo@vipnetboard.state.va.us](mailto:ndevincenzo@vipnetboard.state.va.us).

## VIRGINIA VOLUNTARY FORMULARY BOARD

**July 8, 2002 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor Conference Room, Richmond, Virginia. 

A public hearing to consider the adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Virginia Voluntary Formulary add drugs to the Formulary that became effective April 9, 2001, and the most recent supplement to that revision. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, 101 North 14th Street, Room S-45, P.O. Box 2448, Richmond, Virginia 23218. Written comments sent to the above address and received prior to 5 p.m. on July 8, 2002, will be made a part of the hearing record and considered by the Formulary Board.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, 101 N. 14th St., Room S-45, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-4326.

**August 8, 2002 - 10:30 a.m.** -- Open Meeting  
Washington Building, 1100 Bank Street, 2nd Floor Conference Room, Richmond, Virginia. 

A meeting to consider public hearing comments and evaluate data submitted by pharmaceutical manufacturers and distributors for products being considered for inclusion in the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, 101 N. 14th St., Room S-45, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-4326.

## VIRGINIA WASTE MANAGEMENT BOARD

† **July 31, 2002 - 2 p.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A meeting to receive comments on the Virginia Waste Management Board's intent to amend 9 VAC 20-60, Hazardous Waste Management Regulations, and consider increasing the fee amounts set forth in the regulation.

**Contact:** Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, e-mail rgwickline@deq.state.va.us.

† **July 31, 2002 - 2 p.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A meeting to receive comments on the Virginia Waste Management Board's notice of intent to amend 9 VAC 20-90, Solid Waste Facility Permit Applications Fees regulation, establishing fees for permitting solid waste management facilities.

**Contact:** Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, e-mail mjdieter@deq.state.va.us.

## BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **July 9, 2002 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Conference Room 5W, Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ♿, e-mail wastemgt@dpor.state.va.us.

## STATE WATER CONTROL BOARD

**July 8, 2002 - Noon** -- Open Meeting  
**July 9, 2002 - Noon** -- Open Meeting  
Roanoke, Virginia. ♿

A special meeting of the board will be held on July 8. This is primarily a planning session with a limited action agenda. There will be a public forum on this day for anyone who

wishes to address the board in accordance with the board's policy for public comments. On July 9 the board will tour a local reservoir and an outstanding state resource water. An agenda will be available in the near future.

**Contact:** Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.state.va.us.

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**July 8, 2002** - Public comments will be received until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-180. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Storm Water from Construction Activities.** The purpose of the proposed action is to amend the existing construction general permit regulation to add coverage for storm water discharges from small construction activities. A question and answer period will be held one half hour prior to the public hearing at each location.

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

**Contact:** Burton Tuxford, Storm Water Coordinator, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4086, FAX (804) 698-4032, e-mail brtuxford@deq.state.va.us.

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**July 8, 2002** - Public comments will be received until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAC 25-750. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems.** The purpose of the proposed action is to adopt a general permit regulation to authorize storm water discharges from small regulated municipal separate storm sewer systems. A question and answer period will be held one half hour prior to the public hearing at each location.

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

**Contact:** Burton Tuxford, Storm Water Coordinator, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4086, FAX (804) 698-4032, e-mail brtuxford@deq.state.va.us.

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† **August 7, 2002 - 2 p.m.** -- Public Hearing  
Department of Forestry, 900 Natural Resources Drive, Fontaine Research Park, 1st Floor Training Room, Charlottesville, Virginia. ♿

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# Calendar of Events

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**August 30, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-195. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concentrated Aquatic Animal Production Facilities.** The purpose of the proposed action is to reissue the general permit for animal production facilities that establishes limitations and monitoring requirements for point source discharges from fish farms or other aquatic animal production facilities.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

**Contact:** Michael Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

## VIRGINIA BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **September 19, 2002 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ☎

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail waterwasteoper@dpor.state.va.us.

## INDEPENDENT

### VIRGINIA RETIREMENT SYSTEM

**August 13, 2002 - Noon** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ☎

A regular meeting of the Optional Retirement Plan Advisory Committee.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

**August 14, 2002 - Noon** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ☎

Meetings of the following committees:

Audit and Compliance Committee - Noon  
Benefits and Actuarial Committee - 1 p.m.  
Administration and Personnel Committee - 2:30 p.m.

Investment Advisory Committee - 3 p.m.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

**August 15, 2002 - 9 a.m.** -- Open Meeting  
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ☎

A regular meeting of the Board of Trustees.

**Contact:** Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

## LEGISLATIVE

### STANDING JOINT COMMITTEE ON BLOCK GRANTS

**July 10, 2002 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ☎

A regular meeting. Individuals requiring interpreter services or other assistance should contact Tommy Gilman.

**Contact:** Tommy Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

### DISABILITY COMMISSION

† **July 11, 2002 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ☎

A regular meeting. Questions about the agenda should be addressed to Brian Parsons, Virginia Board for People with Disabilities, telephone (804) 786-0016.

**Contact:** Hudaidah F. Bhimdo, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

### JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **July 8, 2002 - 9 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.

A work session will be held at 9 a.m., followed at 10 a.m. by a regular meeting and staff briefing on VRS oversight and workforce training: interim report.

**Contact:** Philip A. Leone, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

## VIRGINIA UNIFORM LAWS COMMISSIONERS

† **July 10, 2002 - 10 a.m.** -- Open Meeting  
 General Assembly Building, 9th and Broad Streets, 4th Floor  
 West Conference Room, Richmond, Virginia. ☎

A review of Uniform Acts to be considered by the National Conference Commissioners on Uniform State Laws at its annual meeting.

**Contact:** Jescey French, Senior Attorney, Division of Legislative Services, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jfrench@leg.state.va.us.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### July 2

Hopewell Industrial Safety Council

#### July 8

† Legislative Audit and Review Commission, Joint Water Control Board, State

#### July 9

Child Fatality Review Team, State Pharmacy, Board of

- Special Conference Committee

† Psychology, Board of

Resources Authority, Virginia

- Board of Directors

† Waste Management Facility Operators, Board for Water Control Board, State

#### July 10

Block Grants, Standing Joint Subcommittee on Labor and Industry, Department of

- Virginia Migrant and Seasonal Farmworkers Board Medicine, Board of

- Informal Conference Committee

† Nursing Home Administrators, Board of

† Sewage Handling and Disposal Appeal Review Board

† Uniform Laws Commissioners, Virginia

Virginia Information Providers Network Authority

- Board of Directors

#### July 11

† Aging, Department of the  
 - Alzheimer's Disease and Related Disorders Commission

† Auctioneers Board

† Child Day-Care Council

† Conservation and Recreation, Department of

- Falls of the James Scenic River Advisory Board

- Sky Meadows State Park Master Plan Technical

Advisory Committee

† Disability Commission

† Real Estate Board

#### July 12

Art and Architectural Review Board

Pharmacy, Board of

- Special Conference Committee

† Physical Therapy, Board of

#### July 15

† Mines, Minerals and Energy, Department of

† Motor Vehicle Dealer Board

- Advertising Committee

- Dealer Practices Committee

- Finance Committee

- Franchise Law Committee

- Licensing Committee

- Personnel Committee

- Transaction Recovery Fund Committee

Nursing, Board of

#### July 16

† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for

- Regulatory Review Committee

Asbestos, Lead, and Home Inspectors, Virginia Board for

† Blind and Vision Impaired, Board for the

† Conservation and Recreation, Department of

- Smith Mountain Lake State Park Master Plan Planning Committee

Environmental Quality, Department of

- Ground Water Protection Steering Committee

† Funeral Directors and Embalmers, Board of

† Independent Living Council, Statewide

† Nursing, Board of

#### July 17

† Community Colleges, State Board for

- Academic and Student Affairs Committee

- Audit Committee

- Budget and Finance Committee

- Facilities Committee

- Personnel Committee

† Contractors, Board for

† Higher Education for Virginia, State Council of

Nursing, Board of

† Transportation Board, Commonwealth

#### July 18

† Agriculture and Consumer Services, Department of

- Pesticide Control Board

- Virginia Winegrowers Advisory Board

† Community Colleges, State Board for

Design-Build/Construction Management Review Board

Game and Inland Fisheries, Board of

Medicine, Board of

- Informal Conference Committee

Nursing, Board of

† Transportation Board, Commonwealth

#### July 19

† Conservation and Recreation, Department of

- Staunton River State Park Master Plan Steering

Committee

#### July 22

† Pharmacy, Board of

- Special Conference Committee

#### July 23

Agriculture and Consumer Services, Department of

- Virginia Small Grains Board

† Compensation Board

† Pharmacy, Board of

- Special Conference Committee

† Small Business Financing Authority, Virginia

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# Calendar of Events

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## July 24

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for
  - Land Surveyors Section
- † Chesapeake Bay Local Assistance Board
- † Health, Department of
  - Biosolids Use Regulations Advisory Committee
- † Housing Development Authority, Virginia
  - Board of Commissioners
- Innovative Technology Authority
  - Board of Directors
- Medicine, Board of
  - Informal Conference Committee
- † Soil Scientists, Board for Professional

## July 25

- Education, Board of
- Rehabilitative Services, Board of

## July 30

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for
  - Landscape Architects Section
- † Branch Pilots, Board for
- Nursing, Board of
  - Special Conference Committee

## July 31

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for
  - Architects Section
- † Branch Pilots, Board for
- † Real Estate Board
- † Waste Management Board, Virginia

## August 1

- † Branch Pilots, Board for
- Nursing, Board of
  - Special Conference Committee

## August 2

- Art and Architectural Review Board

## August 5

- Nursing, Board of
  - Special Conference Committee

## August 6

- Hopewell Industrial Safety Council
- Nursing, Board of
  - Special Conference Committee

## August 7

- Game and Inland Fisheries, Board of

## August 8

- Land Evaluation Advisory Council, State
- † Medical Assistance Services, Department of
  - Medicaid Drug Utilization Review Board
- Motor Vehicles, Department of
  - Digital Signature Implementation Workgroup
- Voluntary Formulary Board, Virginia

## August 9

- † Agriculture and Consumer Services, Department of
  - Virginia Soybean Board

## August 12

- Nursing, Board of
  - Special Conference Committee

## August 13

- Nursing, Board of
  - Special Conference Committee
- Resources Authority, Virginia
  - Board of Directors
- Retirement System, Virginia
  - Optional Retirement Plan Advisory Committee

## August 14

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for
  - Professional Engineers Section
- † Motor Vehicles, Department of
  - Retirement System, Virginia
    - Administration and Personnel Committee
    - Audit and Compliance Committee
    - Benefits and Actuarial Committee
    - Investment Advisory Committee

## August 15

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for
  - Interior Designer Section
- Design-Build/Construction Management Review Board
- Medicine, Board of
  - Informal Conference Committee
- Retirement System, Virginia

## August 21

- Agriculture and Consumer Services, Department of
  - Virginia Egg Board
- Medicine, Board of
  - Informal Conference Committee

## August 28

- † Milk Commission, State

## August 29

- Nursing, Board of
  - Special Conference Committee

## September 3

- Hopewell Industrial Safety Council

## September 4

- † Medicine, Board of
  - Informal Conference Committee

## September 6

- Art and Architectural Review Board

## September 10

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, Board for

## September 18

- † Polygraph Examiners Advisory Board

## September 19

- † Design-Build/Construction Management Review Board
- † Waterworks and Wastewater Works Operators

## September 20

- † Social Services, State Board of
  - Family and Children's Trust Fund Board of Trustees

## September 23

- † Library of Virginia
  - Archival and Information Systems
  - Collection Management Services Committee
  - Legislative and Finance Committee
  - Publications and Educational Services Committee

- Public Library Development Committee
- Records Management Committee

† Nursing, Board of

**September 25**

† Nursing, Board of

**September 26**

† Education, Board of

† Nursing, Board of

## **PUBLIC HEARINGS**

**July 1**

† Environmental Quality, Department of

**July 2**

Air Pollution Control Board, State

† Environmental Quality, Department of

**July 3**

† Environmental Quality, Department of

**July 8**

Voluntary Formulary Board, Virginia

**July 10**

† Environmental Quality, Department of

**July 11**

† Environmental Quality, Department of

**July 12**

Optometry, Board of

**July 16**

Medicine Board, of

Nursing, Board of

**July 22**

Deaf and Hard-of-Hearing, Department for the

**July 25**

† Education, Board of

**July 30**

Health, State Board of

**August 7**

† Water Control Board, State

**August 19**

† Pharmacy, Board of

**August 21**

† Contractors, Board for