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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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2004 VAC Supplement includes final regulations published through *Virginia Register* Volume 20, Issue 11, dated February 9, 2004). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 55-20-10	Repealed	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-20	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-30	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-40	Amended	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-50	Repealed	20:20 VA.R. 2159	7/16/04
1 VAC 55-20-60 through 1 VAC 55-20-90	Amended	20:20 VA.R. 2159-2161	7/16/04
1 VAC 55-20-110	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-120	Repealed	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-130	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-160	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-210	Amended	20:20 VA.R. 2161	7/16/04
1 VAC 55-20-230 through 1 VAC 55-20-260	Amended	20:20 VA.R. 2161-2162	7/16/04
1 VAC 55-20-280	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-290	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-300	Amended	20:20 VA.R. 2162	7/16/04
1 VAC 55-20-320 through 1 VAC 55-20-410	Amended	20:20 VA.R. 2162-2164	7/16/04
1 VAC 55-20-420	Repealed	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-430	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-450	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20-460	Amended	20:20 VA.R. 2164	7/16/04
1 VAC 55-20 (Forms)	Amended	20:20 VA.R. 2164	--
Title 2. Agriculture			
2 VAC 5-440-10 through 2 VAC 5-440-60	Amended	20:12 VA.R. 1471-1474	3/25/04
2 VAC 5-440-80	Repealed	20:12 VA.R. 1474	3/25/04
2 VAC 5-440-90	Repealed	20:12 VA.R. 1474	3/25/04
2 VAC 5-440 (Forms)	Amended	20:12 VA.R. 1474	--
2 VAC 20-30-20	Amended	20:23 VA.R. 2541	8/26/04
2 VAC 20-30-30	Amended	20:23 VA.R. 2541	8/26/04
2 VAC 20-30-40	Amended	20:23 VA.R. 2541	8/26/04
Title 4. Conservation and Natural Resources			
4 VAC 5-36-20	Amended	20:13 VA.R. 1604	4/7/04
4 VAC 5-36-50 through 4 VAC 5-36-150	Amended	20:13 VA.R. 1604-1621	4/7/04
4 VAC 5-36-170 through 4 VAC 5-36-210	Amended	20:13 VA.R. 1621-1632	4/7/04
4 VAC 5-36-220	Added	20:13 VA.R. 1632	4/7/04
4 VAC 15-50-81	Amended	20:23 VA.R. 2542	8/25/04
4 VAC 15-50-91	Amended	20:23 VA.R. 2543	8/25/04
4 VAC 15-90-231	Amended	20:23 VA.R. 2543	8/25/04
4 VAC 15-90-241	Amended	20:23 VA.R. 2544	8/25/04
4 VAC 15-240-81	Amended	20:23 VA.R. 2544	8/25/04
4 VAC 15-240-91	Amended	20:23 VA.R. 2545	8/25/04
4 VAC 20-20-50	Amended	20:14 VA.R. 1709	3/1/04
4 VAC 20-270-20	Amended	20:19 VA.R. 2058	5/1/04
4 VAC 20-270-30	Amended	20:19 VA.R. 2058	5/1/04

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-490-10 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-20 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-35 emer	Repealed	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-35	Repealed	20:21 VA.R. 2230	6/1/04
4 VAC 20-490-40 emer	Amended	20:18 VA.R. 2024	5/1/04-5/30/04
4 VAC 20-490-40	Amended	20:21 VA.R. 2230	6/1/04
4 VAC 20-490-45 emer	Repealed	20:18 VA.R. 2025	5/1/04-5/30/04
4 VAC 20-490-45	Repealed	20:21 VA.R. 2230	6/1/04
4 VAC 20-620-50	Amended	20:16 VA.R. 1863	3/26/04
4 VAC 20-620-60	Amended	20:16 VA.R. 1863	3/26/04
4 VAC 20-720-20	Amended	20:14 VA.R. 1710	3/1/04
4 VAC 20-720-40	Amended	20:14 VA.R. 1710	3/1/04
4 VAC 20-720-48 emer	Added	20:14 VA.R. 1714	3/1/04-3/31/04
4 VAC 20-720-50	Amended	20:14 VA.R. 1711	3/1/04
4 VAC 20-720-60	Amended	20:14 VA.R. 1711	3/1/04
4 VAC 20-720-80	Amended	20:14 VA.R. 1712	3/1/04
4 VAC 20-750-10	Amended	20:19 VA.R. 2058	5/1/04
4 VAC 20-750-20	Repealed	20:19 VA.R. 2059	5/1/04
4 VAC 20-750-30	Amended	20:19 VA.R. 2059	5/1/04
4 VAC 20-750-40	Amended	20:19 VA.R. 2059	5/1/04
4 VAC 20-910-45	Amended	20:16 VA.R. 1864	4/1/04
4 VAC 20-920-20	Amended	20:15 VA.R. 1778	3/5/04
4 VAC 20-920-40	Amended	20:15 VA.R. 1778	3/5/04
4 VAC 20-950-45	Amended	20:16 VA.R. 1864	4/1/04
4 VAC 20-1040-20	Amended	20:19 VA.R. 2060	5/1/04
4 VAC 25-20-20	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-30	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-40	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-50	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-70	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-90	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-100	Amended	20:23 VA.R. 2547	8/25/04
4 VAC 25-20-110	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-140	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-190	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-200	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-210	Amended	20:23 VA.R. 2548	8/25/04
4 VAC 25-20-220	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-250	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-255	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-259	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-390	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-410	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-20-430	Amended	20:23 VA.R. 2549	8/25/04
4 VAC 25-31 (Forms)	Amended	20:15 VA.R. 1784-1792	--
4 VAC 25-35-10 through 4 VAC 25-35-40	Amended	20:23 VA.R. 2549-2550	8/25/04
4 VAC 25-35-75	Added	20:23 VA.R. 2550	8/25/04
4 VAC 25-35-80	Amended	20:23 VA.R. 2550	8/25/04
4 VAC 25-35-100	Amended	20:23 VA.R. 2551	8/25/04
4 VAC 25-35-110	Amended	20:23 VA.R. 2551	8/25/04
4 VAC 25-35-120	Amended	20:23 VA.R. 2551	8/25/04
4 VAC 25-125-10 through 4 VAC 25-125-40	Added	20:23 VA.R. 2552-2553	8/25/04
4 VAC 25-130-801.17	Amended	20:23 VA.R. 2625	10/12/04
4 VAC 25-130-801.18	Amended	20:23 VA.R. 2626	10/12/04
4 VAC 25-130 (Forms)	Amended	20:19 VA.R. 2081-2083	--

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 6. Criminal Justice and Corrections			
6 VAC 20-210-10 through 6 VAC 20-210-110	Added	20:23 VA.R. 2554-2555	8/26/04
6 VAC 35-160-10 through 6 VAC 35-160-390	Added	20:23 VA.R. 2555-2562	8/25/04
Title 8. Education			
8 VAC 20-340-10	Amended	20:23 VA.R. 2562	8/25/04
8 VAC 20-340-20	Added	20:23 VA.R. 2562	8/25/04
8 VAC 20-340-30	Added	20:23 VA.R. 2562	8/25/04
8 VAC 40-130-10	Amended	20:23 VA.R. 2562	7/26/04
8 VAC 40-130-25	Amended	20:23 VA.R. 2563	7/26/04
Title 9. Environment			
9 VAC 5-20-21	Amended	20:12 VA.R. 1476	3/24/04
9 VAC 5-20-204	Amended	20:23 VA.R. 2564	8/25/04
9 VAC 5-20-205	Amended	20:23 VA.R. 2564	8/25/04
9 VAC 5-20-206 (Rev. G02)	Amended	20:12 VA.R. 1498	3/24/04
9 VAC 5-20-206 (Rev. C03)	Amended	20:12 VA.R. 1498	3/24/04
9 VAC 5-40-240	Amended	20:12 VA.R. 1499	3/24/04
9 VAC 5-40-310	Erratum	20:15 VA.R. 1809	--
9 VAC 5-40-310	Amended	20:12 VA.R. 1499	3/24/04
9 VAC 5-40-3260	Amended	20:12 VA.R. 1479	3/24/04
9 VAC 5-40-5200	Amended	20:12 VA.R. 1500	3/24/04
9 VAC 5-40-5220	Amended	20:12 VA.R. 1501	3/24/04
9 VAC 5-40-5700 through 9 VAC 5-40-5770	Added	20:12 VA.R. 1480	3/24/04
9 VAC 5-40-6820 through 9 VAC 5-40-7230	Added	20:12 VA.R. 1480-1497	3/24/04
9 VAC 5-40-6840	Erratum	20:18 VA.R. 2027	--
9 VAC 5-50-400	Amended	20:16 VA.R. 1865	6/1/04
9 VAC 5-50-405	Added	20:16 VA.R. 1865	6/1/04
9 VAC 5-50-410	Amended	20:16 VA.R. 1865	6/1/04
9 VAC 5-60-60	Amended	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-65	Added	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-90	Amended	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-95	Added	20:16 VA.R. 1871	6/1/04
9 VAC 5-60-100	Amended	20:16 VA.R. 1872	6/1/04
9 VAC 5-60-120 through 9 VAC 5-60-180	Amended	20:16 VA.R. 1877-1889	7/1/04
9 VAC 5-80-2250 through 9 VAC 5-80-2300	Added	20:23 VA.R. 2566-2567	7/1/04
9 VAC 5-91-20 emer	Amended	20:12 VA.R. 1507	1/28/04-1/27/05
9 VAC 5-91-160 emer	Amended	20:12 VA.R. 1513	1/28/04-1/27/05
9 VAC 5-91-180 emer	Amended	20:12 VA.R. 1513	1/28/04-1/27/05
9 VAC 5-91-750 emer	Amended	20:12 VA.R. 1515	1/28/04-1/27/05
9 VAC 5-91-760 emer	Amended	20:12 VA.R. 1515	1/28/04-1/27/05
9 VAC 5-140-550	Amended	20:12 VA.R. 1504	3/24/04
9 VAC 20-60-18	Amended	20:23 VA.R. 2568	7/1/04
9 VAC 20-60-262	Amended	20:23 VA.R. 2568	7/1/04
9 VAC 20-60-270	Amended	20:23 VA.R. 2568	7/1/04
9 VAC 20-60-315	Amended	20:23 VA.R. 2570	7/1/04
9 VAC 20-60-1260	Amended	20:23 VA.R. 2571	7/1/04
9 VAC 20-60-1270	Amended	20:23 VA.R. 2571	7/1/04
9 VAC 20-60-1280	Amended	20:23 VA.R. 2573	7/1/04
9 VAC 20-60-1283	Added	20:23 VA.R. 2573	7/1/04
9 VAC 20-60-1284	Added	20:23 VA.R. 2573	7/1/04
9 VAC 20-60-1285	Amended	20:23 VA.R. 2574	7/1/04
9 VAC 20-60-1286	Added	20:23 VA.R. 2575	7/1/04
9 VAC 20-90-10	Amended	20:23 VA.R. 2576	7/1/04
9 VAC 20-90-30	Amended	20:23 VA.R. 2576	7/1/04
9 VAC 20-90-50	Amended	20:23 VA.R. 2576	7/1/04
9 VAC 20-90-60	Amended	20:23 VA.R. 2577	7/1/04

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9 VAC 20-90-65	Added	20:23 VA.R. 2577	7/1/04
9 VAC 20-90-70	Amended	20:23 VA.R. 2578	7/1/04
9 VAC 20-90-90	Amended	20:23 VA.R. 2579	7/1/04
9 VAC 20-90-100	Amended	20:23 VA.R. 2579	7/1/04
9 VAC 20-90-110	Amended	20:23 VA.R. 2580	7/1/04
9 VAC 20-90-115	Added	20:23 VA.R. 2580	7/1/04
9 VAC 20-90-117	Added	20:23 VA.R. 2581	7/1/04
9 VAC 20-90-120	Amended	20:23 VA.R. 2581	7/1/04
9 VAC 20-90-130	Added	20:23 VA.R. 2583	7/1/04
9 VAC 25-20-10 through 9 VAC 25-20-80	Amended	20:23 VA.R. 2584-2586	7/1/04
9 VAC 25-20-100 through 9 VAC 25-20-130	Amended	20:23 VA.R. 2586-2591	7/1/04
9 VAC 25-20-140	Repealed	20:23 VA.R. 2591	7/1/04
9 VAC 25-20-142	Added	20:23 VA.R. 2591	7/1/04
9 VAC 25-20-145	Added	20:23 VA.R. 2592	7/1/04
9 VAC 25-151-10	Amended	20:16 VA.R. 1889	7/1/04
9 VAC 25-151-40 through 9 VAC 25-151-370	Amended	20:16 VA.R. 1889-1890	7/1/04
9 VAC 25-151-65	Added	20:16 VA.R. 1889	7/1/04
9 VAC 25-180-10	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-20	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-40	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-50	Amended	20:16 VA.R. 1891	7/1/04
9 VAC 25-180-55	Amended	20:16 VA.R. 1892	7/1/04
9 VAC 25-180-60	Amended	20:16 VA.R. 1892	7/1/04
9 VAC 25-180-65	Added	20:16 VA.R. 1893	7/1/04
9 VAC 25-180-70	Amended	20:16 VA.R. 1894	7/1/04
9 VAC 25-180 (Forms)	Amended	20:16 VA.R. 1906	--
9 VAC 25-190-10	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-20	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-50	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-60	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-190-70	Amended	20:16 VA.R. 1906	7/1/04
9 VAC 25-580-10	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-50	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-130	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-270	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-290	Repealed	20:12 VA.R. 1505	3/24/04
9 VAC 25-580-320	Amended	20:12 VA.R. 1505	3/24/04
9 VAC 25-590-60	Erratum	20:17 VA.R. 1984	--
9 VAC 25-770-10 through 9 VAC 25-770-180	Added	20:23 VA.R. 2593-2596	8/25/04
9 VAC 25-790	Erratum	20:12 VA.R. 1526	--
Title 10. Finance and Financial Institutions			
10 VAC 5-40-40	Added	20:14 VA.R. 1713	3/1/04
10 VAC 5-200-100	Added	20:22 VA.R. 2403	6/15/04
Title 11. Gaming			
11 VAC 10-20-220	Amended	20:23 VA.R. 2596	8/25/04
11 VAC 10-20-190	Amended	20:23 VA.R. 2598	8/25/04
11 VAC 10-45-10 through 11 VAC 10-45-70	Added	20:22 VA.R. 2413-2417	9/27/04
Title 12. Health			
12 VAC 5-90-10	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-40	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-80	Amended	20:21 VA.R. 2231	7/28/04
12 VAC 5-90-90	Amended	20:21 VA.R. 2234	7/28/04
12 VAC 5-90-100	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-110	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-160	Amended	20:21 VA.R. 2237	7/28/04

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12 VAC 5-90-180	Amended	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-225	Added	20:21 VA.R. 2237	7/28/04
12 VAC 5-90-280 through 12 VAC 5-90-360	Added	20:21 VA.R. 2238	7/28/04
12 VAC 5-125-10 through 12 VAC 5-125-120 emer	Added	20:21 VA.R. 2252-2264	6/1/04-5/31/05
12 VAC 5-200-10 through 12 VAC 5-200-50	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-70	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-80 through 12 VAC 5-200-190	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-105	Added	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-210	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-220	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-230	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-270	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-280	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 5-200-290	Added	20:22 VA.R. 2403	8/11/04
12 VAC 5-210-10	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 5-210-20	Repealed	20:22 VA.R. 2403	8/11/04
12 VAC 30-40-235	Added	20:19 VA.R. 2060	8/1/04
12 VAC 30-40-280	Amended	20:22 VA.R. 2420	9/25/04
12 VAC 30-40-290	Amended	20:22 VA.R. 2420	9/25/04
12 VAC 30-40-345	Amended	20:22 VA.R. 2422	9/25/04
12 VAC 30-50-130 emer	Amended	20:23 VA.R. 2630	7/1/04-6/30/05
12 VAC 30-50-140	Amended	20:19 VA.R. 2062	7/1/04
12 VAC 30-50-150	Amended	20:19 VA.R. 2063	7/1/04
12 VAC 30-50-180	Amended	20:19 VA.R. 2064	7/1/04
12 VAC 30-50-210 emer	Amended	20:19 VA.R. 2075	5/11/04-1/3/05
12 VAC 30-60-40	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-60-61 emer	Amended	20:23 VA.R. 2632	7/1/04-6/30/05
12 VAC 30-60-320	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-70-271	Amended	20:19 VA.R. 2068	7/1/04
12 VAC 30-70-291	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-70-301	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-70-331	Amended	20:22 VA.R. 2403	8/11/04
12 VAC 30-80-20	Amended	20:19 VA.R. 2068	7/1/04
12 VAC 30-80-30	Amended	20:19 VA.R. 2064	7/1/04
12 VAC 30-80-200	Added	20:19 VA.R. 2071	7/1/04
12 VAC 30-90-264	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-90-271	Amended	20:19 VA.R. 2067	7/1/04
12 VAC 30-130-620	Amended	20:19 VA.R. 2061	8/1/04
12 VAC 30-130-860 through 12 VAC 30-130-890 emer	Amended	20:23 VA.R. 2633-2638	7/1/04-6/30/05
12 VAC 30-130-1000 emer	Amended	20:19 VA.R. 2077	5/11/04-1/3/05
12 VAC 30-141-500 emer	Amended	20:17 VA.R. 1974	6/1/04-5/31/05
Title 14. Insurance			
14 VAC 5-90-30	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-60	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-70	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-130	Erratum	20:17 VA.R. 1984	--
14 VAC 5-90-170	Erratum	20:17 VA.R. 1984	--
14 VAC 5-321-10 through 14 VAC 5-321-60	Added	20:16 VA.R. 1906-1909	7/1/04
14 VAC 5-335-10 through 14 VAC 5-335-60	Added	20:21 VA.R. 2240-2242	1/1/05
Title 16. Labor and Employment			
16 VAC 25-85-1910.139	Repealed	20:19 VA.R. 2071	7/1/04
16 VAC 25-90-1910.401	Amended	20:19 VA.R. 2073	7/1/04
16 VAC 25-90-1910.402	Amended	20:19 VA.R. 2073	7/1/04
16 VAC 25-145-10 through 16 VAC 25-145-50	Added	20:12 VA.R. 1505-1506	4/1/04
16 VAC 25-90-1910, Appendix C of Subpart T of Part 1910	Added	20:19 VA.R. 2073	7/1/04

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Title 18. Professional and Occupational Licensing			
18 VAC 30-20-80	Amended	20:23 VA.R. 2598	8/25/04
18 VAC 30-20-150	Amended	20:23 VA.R. 2598	8/25/04
18 VAC 30-20-160	Amended	20:23 VA.R. 2598	8/25/04
18 VAC 30-20-290 emer	Added	20:23 VA.R. 2638	8/25/04-8/24/05
18 VAC 30-20-320	Amended	20:23 VA.R. 2598	8/25/04
18 VAC 41-30-10 through 18 VAC 41-30-250 emer	Added	20:23 VA.R. 2639-2650	7/1/04-6/30/05
18 VAC 41-40-10 through 18 VAC 41-40-260	Added	20:19 VA.R. 2074	7/1/04
18 VAC 41-50-10 through 18 VAC 41-50-220 emer	Added	20:23 VA.R. 2651-2662	7/1/04-6/30/05
18 VAC 62-20-10 through 18 VAC 62-20-180	Added	20:12 VA.R. 1515-1518	2/2/04-2/1/05
18 VAC 60-20-17 emer	Added	20:23 VA.R. 2663	8/25/04-8/24/05
18 VAC 65-30-50	Amended	20:21 VA.R. 2242	7/28/04
18 VAC 76-40-10	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40-20	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40-30	Added	20:21 VA.R. 2243	7/28/04
18 VAC 76-40 (Forms)	Amended	20:21 VA.R. 2243	7/28/04
18 VAC 80-10-10 through 18 VAC 80-10-90	Amended	20:23 VA.R. 2628-2629	10/9/04
18 VAC 85-20-22	Amended	20:20 VA.R. 2165	7/14/04
18 VAC 85-20 (Forms)	Amended	20:20 VA.R. 2165	--
18 VAC 85-120-10 through 18 VAC 85-120-150	Amended	20:23 VA.R. 2599-2601	8/25/04
18 VAC 90-20-10 emer	Amended	20:22 VA.R. 2424	6/24/04-6/23/05
18 VAC 90-20-30	Amended	20:20 VA.R. 2166	7/14/04
18 VAC 90-20-181 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-182 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-183 emer	Added	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 90-20-300 emer	Amended	20:22 VA.R. 2425	6/24/04-6/23/05
18 VAC 110-20-10 through 18 VAC 110-20-40	Amended	20:23 VA.R. 2602-2604	8/25/04
18 VAC 110-20-60	Amended	20:23 VA.R. 2604	8/25/04
18 VAC 110-20-70	Amended	20:23 VA.R. 2604	8/25/04
18 VAC 110-20-80	Amended	20:23 VA.R. 2604	8/25/04
18 VAC 110-20-90	Amended	20:23 VA.R. 2604	8/25/04
18 VAC 110-20-105	Amended	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-110	Amended	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-120	Amended	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-121	Added	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-130 through 18 VAC 110-20-220	Amended	20:23 VA.R. 2605	8/25/04
18 VAC 110-20-240	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-250	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-280	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-285	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-330	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-350	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-355	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-360	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-370	Repealed	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-380	Repealed	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-410	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-412	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-415	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-420	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-440	Amended	20:23 VA.R. 2606	8/25/04
18 VAC 110-20-450	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-460	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-470	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-480	Repealed	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-490	Amended	20:23 VA.R. 2607	8/25/04

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18 VAC 110-20-500	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-510	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-530	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-540	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-550	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-555	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-590	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-680 through 18 VAC 110-20-710	Amended	20:23 VA.R. 2607	8/25/04
18 VAC 110-20-720	Amended	20:18 VA.R. 2021	7/1/04
18 VAC 112-20-26 emer	Added	20:23 VA.R. 2664	8/25/04-8/24/05
18 VAC 115-15-10 emer	Added	20:23 VA.R. 2665	8/25/04-8/24/05
18 VAC 115-15-20 emer	Added	20:23 VA.R. 2665	8/25/04-8/24/05
18 VAC 115-15-30 emer	Added	20:23 VA.R. 2665	8/25/04-8/24/05
18 VAC 120-10-100	Erratum	20:13 VA.R. 1644	--
18 VAC 135-20-80	Amended	20:23 VA.R. 2608	9/1/04
18 VAC 135-20-120	Amended	20:23 VA.R. 2608	9/1/04
18 VAC 135-20-140	Amended	20:23 VA.R. 2608	9/1/04
18 VAC 135-20-370	Amended	20:23 VA.R. 2608	9/1/04
18 VAC 140-20-171 emer	Added	20:23 VA.R. 2665	8/25/04-8/24/05
18 VAC 145-30-10 through 18 VAC 145-30-160	Added	20:20 VA.R. 2167-2170	7/14/04
18 VAC 145-30 (Forms)	Amended	20:20 VA.R. 2170	--
18 VAC 150-20-15 emer	Added	20:23 VA.R. 2666	8/25/04-8/24/05
Title 20. Public Utilities and Telecommunications			
20 VAC 5-309-15	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-20	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-40	Amended	20:15 VA.R. 1781	3/12/04
20 VAC 5-309-70	Amended	20:15 VA.R. 1782	3/12/04
20 VAC 5-309-110	Amended	20:15 VA.R. 1782	3/12/04
20 VAC 5-309-140	Amended	20:15 VA.R. 1783	3/12/04
20 VAC 5-425-10 through 20 VAC 5-425-50	Added	20:23 VA.R. 2611-2613	7/1/04
Title 22. Social Services			
22 VAC 30-50-30	Amended	20:18 VA.R. 2022	6/18/04
22 VAC 40-32	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-180 (Forms)	Amended	20:21 VA.R. 2265-2268	--
22 VAC 40-190	Erratum	20:12 VA.R. 1526	--
22 VAC 40-191	Erratum	20:12 VA.R. 1526	--
22 VAC 40-191-40	Amended	20:22 VA.R. 2404	9/1/04
22 VAC 40-191-50	Amended	20:22 VA.R. 2407	9/1/04
22 VAC 40-290-10	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-293-10	Added	20:21 VA.R. 2245	7/28/04
22 VAC 40-293-20	Added	20:21 VA.R. 2245	7/28/04
22 VAC 40-295-10 through 22 VAC 40-295-170	Added	20:23 VA.R. 2614-2620	9/1/04
22 VAC 40-300	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-310	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-320	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-330-10	Amended	20:23 VA.R. 2620	9/1/04
22 VAC 40-330-20	Amended	20:23 VA.R. 2620	9/1/04
22 VAC 40-340-10	Amended	20:23 VA.R. 2621	9/1/04
22 VAC 40-350	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-360	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-370	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-380	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-390	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-420	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-430	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-440	Repealed	20:23 VA.R. 2613	9/1/04

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22 VAC 40-450	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-460	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-490	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-500	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-510	Repealed	20:23 VA.R. 2613	9/1/04
22 VAC 40-520	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-530	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-550	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-580	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-590	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-610	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-620	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-650	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-740-10 through 22 VAC 40-740-60	Amended	20:20 VA.R. 2175-2178	8/1/04
22 VAC 40-740 (Forms)	Amended	20:20 VA.R. 2178	--
22 VAC 40-750	Repealed	20:23 VA.R. 2614	9/1/04
22 VAC 40-760	Repealed	20:23 VA.R. 2614	9/1/04
Title 24. Transportation and Motor Vehicles			
24 VAC 20-100-10	Amended	20:21 VA.R. 2246	7/1/04
24 VAC 20-100-130	Amended	20:21 VA.R. 2247	7/1/04
24 VAC 20-100-160	Amended	20:21 VA.R. 2247	7/1/04
24 VAC 20-100-190 through 24 VAC 20-100-220	Amended	20:21 VA.R. 2247-2248	7/1/04
24 VAC 20-100-290 through 24 VAC 20-100-330	Amended	20:21 VA.R. 2248-2249	7/1/04
24 VAC 20-100-350	Amended	20:21 VA.R. 2249	7/1/04
24 VAC 20-100-370 through 24 VAC 20-100-460	Amended	20:21 VA.R. 2249-2250	7/1/04
24 VAC 20-100-490 through 24 VAC 20-100-540	Amended	20:21 VA.R. 2250-2251	7/1/04
24 VAC 20-100-550	Added	20:21 VA.R. 2251	7/1/04
24 VAC 20-100 (Forms)	Amended	20:21 VA.R. 2251	7/1/04
24 VAC 30-380-10	Amended	20:13 VA.R. 1633	2/12/04

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

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 20-30, Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Institutional Services**. The purpose of the proposed action is to conduct a periodic review with four additional goals to: (i) incorporate into the regulation greater opportunities to use electronic media to facilitate in-service training, (ii) provide cost savings to agencies and localities, (iii) provide consistency between the courses used for firearms training at entry-level and the courses used for in-service recertification with firearms, and (iv) include training on cultural diversity and the potential for bias-based policing as required by the addition of subdivision 40 to § 9.1-102 of the Code of Virginia.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public comments may be submitted until September 8, 2004.

Contact: John Byrd, Program Manager, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6375, FAX (804) 225-2398 or e-mail john.byrd@dcjs.virginia.gov.

VA.R. Doc. No. R04-247; Filed July 13, 2004, 10:33 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending regulations entitled **6 VAC 20-80, Rules Relating to Certification of Criminal Justice Instructors**. The purpose of the proposed action is to amend the rules to provide for an approach allowing certified criminal justice academies to formulate their own program for recertification of criminal justice instructors. Additionally, a change from radar instructor to speed measurement instructor is recommended.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public comments may be submitted until September 8, 2004.

Contact: John Byrd, Program Manager, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6375, FAX (804) 225-2398 or e-mail john.byrd@dcjs.virginia.gov.

VA.R. Doc. No. R04-248; Filed July 13, 2004, 10:32 a.m.

STATE BOARD OF JUVENILE JUSTICE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Juvenile Justice intends to consider amending regulations entitled **6 VAC 35-10, Public Participation Guidelines**. The purpose of the proposed action is to add a number of provisions that recognize the acceptance of Internet-based applications, e-mail and faxes as routine modes of communication.

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

Statutory Authority: §§ 2.2-4007 and 66-10 of the Code of Virginia.

Public comments may be submitted until September 10, 2004.

Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail carigndr@djj.state.va.us.

VA.R. Doc. No. R04-229; Filed July 20, 2004, 10:08 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled **9 VAC 5-80, Permits for Stationary Sources**. The purpose of the proposed action is to amend the regulations that govern permitting for new major stationary sources and major modifications in order to meet the new source reform requirements of 40 CFR Part 51.

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

Notices of Intended Regulatory Action

Statutory Authority: § 10.1-1308 of the Code of Virginia, federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) and 40 CFR Parts 51, 61, 63, 70 and 72.

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.virginia.gov.

VA.R. Doc. No. R04-189; Filed June 23, 2004, 7:59 a.m.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

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

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

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

12 VAC 30-130, Amount, Duration and Scope of Selected Services.

The purpose of the proposed action is to separate community-based residential care services into three levels based upon the intensity of the service. This provides more objective criteria to define each service level because a single level of service complicates decisions about which licensing agency has authority over a given program. Separating the services into three defined levels facilitates the placement of children into the most appropriate setting and provides for more efficient and accurate provider reimbursement.

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

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

Public comments may be submitted until August 26, 2004, to Catherine Hancock, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

VA.R. Doc. No. R04-194; Filed June 28, 2004, 4:11 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-70, Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services**. The purpose of the proposed action is to eliminate a separate DSH payment calculation for hospitals with state-recognized Neonatal Intensive Care Unit (NICU) programs and to increase Indirect Medical Education (IME) payments to offset any net reduction in net payments.

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

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

Public comments may be submitted until September 9, 2004, to Steve Ford, Manager, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Brian McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov or Brian.McCormick@dmas.virginia.gov.

VA.R. Doc. No. R04-246; Filed July 14, 2004, 11:14 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-70, Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services**. The purpose of the proposed action is to exclude freestanding psychiatric hospitals from the routine rate rebasing process in order to avoid reducing their rates.

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

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

Public comments may be submitted until September 9, 2004, to Steve Ford, Manager, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Brian McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov or Brian.McCormick@dmas.virginia.gov.

VA.R. Doc. No. R04-243; Filed July 14, 2004, 11:15 a.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care**. The purpose of the proposed action is to modify the method of payment for specialized care ancillary services.

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

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

Public comments may be submitted until August 25, 2004, to Paula Margolis, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Brian McCormick, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

VA.R. Doc. No. R04-210; Filed June 30, 2004, 3:15 p.m.

TITLE 13. HOUSING

VIRGINIA MANUFACTURED HOUSING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2-2-4007 of the Code of Virginia that the Virginia Manufactured Housing Board intends to consider amending regulations entitled **13 VAC 6-20, Manufactured Housing Licensing and Transaction Recovery Fund Regulations**. The purpose of the proposed action is to review issues related to licensing requirements for the manufactured housing industry members that will provide better protection to consumers without imposing unnecessary regulatory burdens on the licensees. The amended regulations will better define the parameters for warranties on the homes, provide when and what disclosures must be given to buyers, and define and implement a substantial identity of interest to restrict repeated violations and company name changes. The regulations currently restrict ownership of a retail location by a manufacturer. This carryover from the days the industry was regulated as a part of the motor vehicle industry will be proposed to be removed as an unnecessary restriction of business. The board will receive suggestions and review other requirements and restrictions in the regulations to address any perceived problems and improve the regulations for consumers and regulators.

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

Statutory Authority: § 36-85.18 of the Code of Virginia.

Public comments may be submitted until August 25, 2004.

Contact: Curtis McIver, Associate Director, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7161, FAX (804) 371-7092 or e-mail curtis.mciver@dhdcd.virginia.gov.

VA.R. Doc. No. R04-227; Filed July 7, 2004, 2:06 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to consider amending regulations entitled **18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations**. The purpose of the proposed action is to consider amending the entry requirements for those landscape architect applicants who possess an LAAB accredited degree in landscape architecture to require them to obtain three years of acceptable experience before being granted certification (they could still be approved to take, and sit for, the examination prior to obtaining the required three years of experience; however, certification would not be awarded until such time as the three years of acceptable experience is obtained, documented, submitted, reviewed and approved).

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

Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.

Public comments may be submitted until September 8, 2004.

Contact: Mark N. Courtney, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail APELSCIDLA@dpor.virginia.gov.

VA.R. Doc. No. R04-240; Filed July 15, 2004, 2:29 p.m.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending

Notices of Intended Regulatory Action

regulations entitled **18 VAC 15-20, Virginia Asbestos Licensing Regulations**. The purpose of the proposed action is to review the board's regulation of asbestos project monitors to identify any amendments that assure the presence of a project monitor on asbestos projects and examine whether the existing duties, responsibilities and functions should be amended to assure public protection. Also, the intent of the planned regulatory action is to review the existing regulations and propose amendments to empower the board to deny license and approval as well as to take disciplinary action against those acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensed or approved entity. In addition, the board will carefully evaluate its existing regulations for effectiveness and continued need, and will propose any amendments necessary to protect the public health, safety, and welfare, or to further the efficient and economical performance of important government functions.

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

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

Public comments may be submitted until October 15, 2004.

Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128 or e-mail alhi@dpor.virginia.gov.

VA.R. Doc. No. R04-241; Filed July 15, 2004, 2:30 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending regulations entitled **18 VAC 15-30, Lead-Based Paint Activities Regulations**. The purpose of the proposed action is to review the existing regulations and propose amendments to empower the board to deny license and approval as well as to take disciplinary action against those acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensed or approved entity. In addition, the board will carefully evaluate its existing regulations for effectiveness and continued need, and will propose any amendments necessary to protect the public health, safety, and welfare, or to further the efficient and economical performance of important government functions.

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

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

Public comments may be submitted until October 15, 2004.

Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128 or e-mail alhi@dpor.virginia.gov.

VA.R. Doc. No. R04-239; Filed July 15, 2004, 2:29 p.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to consider amending regulations entitled **18 VAC 30-20, Regulations of the Board of Audiology and Speech-Language Pathology**. The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9943 or e-mail elizabeth.young@dhp.virginia.gov.

VA.R. Doc. No. R04-198; Filed June 30, 2004, 11:37 a.m.

BOARD FOR CONTRACTORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Contractors intends to consider amending regulations entitled **18 VAC 50-30, Tradesman Rules and Regulations**. The purpose of the proposed action is to amend the regulations consistent with Chapter 188 of the 2004 Acts of Assembly regarding the certification of elevator mechanics by the Board for Contractors.

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

Statutory Authority: §§ 54.1-201 and 54.1-1142 of the Code of Virginia.

Public comments may be submitted until September 8, 2004.

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

VA.R. Doc. No. R04-257; Filed July 21, 2004, 9 a.m.

Notices of Intended Regulatory Action

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

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

VA.R. Doc. No. R04-200; Filed June 30, 2004, 11:36 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to implement Chapter 754 of the 2004 Acts of Assembly, which authorizes the board to adopt regulations for licensure of persons enrolled in advanced dental education programs.

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

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

Public comments may be submitted until 5 p.m. on September 8, 2004.

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

VA.R. Doc. No. R04-235; Filed July 15, 2004, 12:28 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled **18 VAC 65-20, Regulations of the Board of Funeral Directors and Embalmers**. The purpose of the proposed

action is to establish criteria for delegation of some informal fact-finding proceedings to an agency subordinate.

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

Statutory Authority: § 54.1-2400 and Chapter 28 (§ 54.1-2800 et seq.) of the Code of Virginia.

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9941, FAX (804) 662-9943 or e-mail elizabeth.young@dhp.virginia.gov.

VA.R. Doc. No. R04-254; Filed July 15, 2004, 12:32 p.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled **18 VAC 90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to set out regulations for implementation of the Nurse Licensure Compact including rules for issuance of a multistate licensure privilege, moving from one party state to another, notification of licensure denial to a former party state, limitations by disciplinary order on practice under a multistate privilege, a licensee's access to information in the licensure information system, and inclusion of the multistate privilege in the disciplinary provisions.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9943 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R04-193; Filed June 24, 2004, 3:25 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Boards of Nursing and Medicine intend to consider amending regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to require that the written protocol between the supervising physician and the nurse practitioner include the nurse practitioner's authority for signature on certain documents.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9943 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R04-233; Filed July 15, 2004, 12:29 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Boards of Nursing and Medicine intend to consider amending regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to amend regulations for consistency with the implementation of the Nurse Licensure Compact.

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

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

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9943 or e-mail jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R04-237; Filed July 15, 2004, 12:29 p.m.

BOARD OF OPTOMETRY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Board of Veterinary Medicine, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R04-230; Filed July 20, 2004, 9:28 a.m.

BOARD OF PHARMACY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to increase oversight of the wholesale distribution market in order to prevent opportunities for counterfeiting of drugs and ensure the integrity, safety and efficacy of drugs or devices distributed in the Commonwealth.

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

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

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9943 or e-mail scotti.russell@dhp.virginia.gov.

VA.R. Doc. No. R04-242; Filed July 15, 2004, 12:31 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to establish criteria for delegation of some informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9943 or e-mail scotti.russell@dhp.virginia.gov.

VA.R. Doc. No. R04-252; Filed July 15, 2004, 12:32 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to allow pharmacies in hospital or retail settings to possibly outsource data entry, the drug utilization review (DUR) and other aspects of dispensing prescription drugs.

Notices of Intended Regulatory Action

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

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

Public comments may be submitted until 5 p.m. on September 8, 2004.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9943 or e-mail scottl.russell@dhp.virginia.gov.

VA.R. Doc. No. R04-251; Filed July 15, 2004, 12:31 p.m.

BOARD OF PHYSICAL THERAPY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to consider amending regulations entitled **18 VAC 112-20, Regulations Governing the Practice of Physical Therapy**. The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9941, FAX (804) 662-9943 or e-mail elizabeth.young@dhp.virginia.gov.

VA.R. Doc. No. R04-202; Filed June 30, 2004, 11:38 a.m.

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider promulgating regulations entitled **18 VAC 115-15, Regulations Governing Delegation to an Agency Subordinate**. The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Ben Foster, Deputy Executive Director, Board of Counseling, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9575, FAX (804) 662-7250 or e-mail ben.foster@dhp.virginia.gov.

VA.R. Doc. No. R04-204; Filed June 30, 2004, 11:39 a.m.

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, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Ben Foster, Deputy Executive Director, Board of Social Work, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-9943 or e-mail ben.foster@dhp.virginia.gov.

VA.R. Doc. No. R04-206; Filed June 30, 2004, 11:38 a.m.

BOARD OF VETERINARY MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending regulations entitled **18 VAC 150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to set out the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

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

Public comments may be submitted until 5 p.m. on August 25, 2004.

Contact: Elizabeth A. Carter, Ph.D., Deputy Executive Director, Board of Veterinary Medicine, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R04-208; Filed June 30, 2004, 11:36 a.m.



Notices of Intended Regulatory Action

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC 40-740, Adult Protective Services**. The purpose of the proposed action is to conform the regulation to Chapter 1011 and Chapter 749 of the 2004 Acts of Assembly. The new legislation establishes enhanced protections for Virginia's vulnerable adult population and best practices in Adult Protective Services (APS) for the Commonwealth. Recommendations are based on those from an APS Advisory Committee that was established to assess Virginia's APS program and a legislative report issued in December 2002 entitled Adult Protective Services: Identifying and Preventing Adult Abuse, Neglect, and Exploitation, which included a comprehensive review of other states' APS programs and suggestions received from interested persons.

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

Statutory Authority: §§ 63.2-217 and 63.2-1603 through 63.2-1610.

Public comments may be submitted until September 8, 2004.

Contact: Marjorie Marker, Adult Services Program Consultant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895 or e-mail marjorie@marker@dss.virginia.gov.

VA.R. Doc. No. R04-249; Filed July 20, 2004, 12:53 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC-40-901, Community Block Grant Program**. The purpose of the proposed action is to provide guidelines for the Department of Social Services to use in evaluating organizations for designation as a community action agency. The guidelines will be used by the department in making its recommendations to the Governor for designation and funding of new community action agencies.

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

Statutory Authority: §§ 63.2-217 and Chapter 54 (§ 2.2-5400 et seq.) of Title 2.2 of the Code of Virginia.

Public comments may be submitted until September 8, 2004.

Contact: J. Mark Grigsby, Director, Office of Community Services, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7922, FAX (804) 726-7946 or e-mail James.Grisby@dss.virginia.gov.

VA.R. Doc. No. R04-250; Filed July 20, 2004, 12:52 p.m.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

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.

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

Title of Regulation: **2 VAC 20-40. Rules and Regulations Governing Licensing of Pesticide Businesses by the Department of Agriculture and Consumer Services Operating Under Authority of the Virginia Pesticide Control Act (amending 2 VAC 20-40-10, 2 VAC 20-40-20, 2 VAC 20-40-40, 2 VAC 20-40-60 through 2 VAC 20-40-110; repeal 2 VAC 20-40-120).**

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Public Hearing Date: October 14, 2004 - 9 a.m.

Public comments may be submitted until November 1, 2004.

(See Calendar of Events section for additional information)

Agency Contact: W. Wayne Surlles, Program Manager, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 371-8598, toll-free 1-800-552-9963, or e-mail wsurlles@vdacs.state.va.us.

Basis: Section 3.1-249.30 of the Code of Virginia authorizes the Pesticide Control Board to promulgate regulations in regards to pesticide businesses as follows: "...the Board may promulgate regulations... including but not limited to the following: 1. Licensing of businesses that manufacture, sell, store, recommend for use, mix or apply pesticides. ... 3. Requiring reporting and recordkeeping related to licensing and registration. ... 5. Revoking, suspending or denying licenses (business), registration (products), and certification or certificate (applicators or technicians)."

Purpose: The purpose of the proposed action is to review the regulation for effectiveness and continued need. The regulation establishes standards and procedures in regards to pesticide businesses as defined in § 3.1-249.27 of the Virginia Pesticide Control Act.

The need for the regulation is to (i) protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (ii) establish standards for the licensure of pesticide businesses (and for the denial, suspension, or revocation of the license); and (iii) establish recordkeeping requirements for licensed pesticide businesses, as a means of ensuring that pesticides are stored and used safely.

The regulation is necessary to protect the health, safety and welfare of citizens because it ensures that all businesses applying pesticides for compensation employ an individual who is knowledgeable of (i) pesticide laws and regulations, (ii) potential hazards of pesticides to man and the environment and (iii) the safe distribution, use and disposal of pesticides. In addition, the regulation requires that pesticide businesses (i)

maintain a minimum amount of liability insurance and (ii) keep and maintain records of the sale of restricted use pesticides and the application of all (restricted and nonrestricted use) pesticides to protect the citizens of the Commonwealth from any pesticide misapplications or accidents.

Substance: Substantive changes to existing sections include:

1. Deleting the definition of bond to be compatible with 1993 amendments to the Pesticide Control Act in § 3.1-249.49 of the Code of Virginia.
2. Modifying the definition of pest management consultant to include anyone making any pesticide recommendations commercially in Virginia.
3. Defining a pesticide business location to clarify what is a separate outlet or location of a pesticide business.
4. Changing the renewal date for pesticide business licenses to be compatible with the 1993 amendments to the Pesticide Control Act in § 3.1-249.47 that deleted references to the renewal of pesticide business licenses 60 days prior to their expiration.
5. Deleting the recordkeeping requirement by commercial applicators for the application of restricted use pesticides.
6. Deleting surety bond and self-insurance as evidence of financial responsibility to be compatible with 1993 amendments to the Pesticide Control Act in § 3.1-249.49.

New substantive provisions require that pesticide businesses keep records of all pesticide applications.

Issues: The primary advantage of the proposed amendments to the public is that their health and safety will be better protected by the pesticide application recordkeeping requirements for pesticide businesses. Requiring pesticide businesses to keep records of all pesticide applications will ensure that the pesticides are properly applied, as the records will be available for inspection by state enforcement personnel. The recordkeeping requirement will be a disadvantage to the minority of pesticide businesses that currently do not keep records of general use pesticide applications. It is estimated that only 20% of licensed pesticide businesses do not keep these records. The main advantage to the agency is that pesticide application records for all pesticide applications, not solely restricted pesticide applications, will be available for inspection whenever an inspection is conducted or an investigation is conducted in response to a complaint. Another matter pertinent to the regulated community is that there will be less confusion regarding what constitutes a pesticide business location and the licensure requirements for a location.

There are no disadvantages to the public or the Commonwealth of Virginia.

Proposed Regulations

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

Summary of the proposed regulation. Section 3.1-249.30 of the Code of Virginia provides the Virginia Pesticide Control Board with the authority to promulgate regulations, including but not limited to, the licensing of businesses that manufacture, store, recommend for use, mix, or apply pesticides, reporting and recordkeeping requirements related to licensing and registration, and revoking, suspending, or denying licenses to businesses, registration for products, and certification to commercial applicators or technicians.

The proposed regulation requires licensed pesticide businesses to keep records of restricted and general use pesticide applications. The proposed regulation also makes changes to the existing regulation in order to make it compatible with the 1993 amendments to the Pesticide Control Act. These changes include removing the provision allowing licensed pesticide businesses to use surety bonds and self-insurance when demonstrating financial responsibility and not requiring that licensed pesticide businesses renew their license two months prior to expiration in order to avoid being assessed late fees.

The proposed regulation also updates references, adds clarifying language, removes redundant language, and includes changes that make the regulation consistent with the Code of Virginia and with current practice.

Estimated economic impact. The proposed regulation requires licensed pesticide businesses to maintain records relating to pesticide applications of restricted use and general use pesticides. Under the existing regulation, businesses were only required to keep records of restricted use pesticide applications. The proposed change extends the recordkeeping requirement to general use pesticide applications.

According to the Virginia Department of Agriculture and Consumer Services (VDACS), there are approximately 2,179 licensed pesticide businesses. Of these, about 1,925 apply pesticides. VDACS estimates that approximately 16% (or 308) of these businesses do not currently maintain records relating to general use pesticide applications. Assuming that the hourly wage is \$10 and that each record takes one minute to create (assumptions made by VDACS), the cost of generating one record is \$0.17. Moreover, assuming an average of 10 pesticide applications a day and 254 workdays a year, the proposed change will cost approximately \$132,994 a year or

\$431 per year for each licensed pesticide business not currently complying with these requirements.

The proposed change is also likely to produce some economic benefits. By requiring licensed pesticide businesses to maintain records on general use pesticide applications, the proposed change will make it easier for the agency to investigate complaints relating to such applications. According to VDACS, there have been complaints regarding general use pesticide applications that the agency has been unable to investigate thoroughly. The additional recordkeeping requirement is intended to address the problem. By better ensuring that general use pesticides are applied in a manner that is not dangerous to public health or the environment, the proposed change is likely to produce economic benefits.

The net economic impact of the proposed change will depend on whether the additional cost to businesses not currently complying with the proposed recordkeeping requirement is greater than or less than the benefits of being able to ensure that general use pesticides are being applied in a manner that does not endanger public health or the environment. It will cost businesses approximately \$431 per year in order to comply with the requirement. A precise estimate of the benefits to public health and the environment from the proposed change is not available at this time.

The proposed regulation also makes changes to the existing regulation that make it compatible with the 1993 amendments to the Pesticide Control Act. These changes include removing the provision in the existing regulation allowing licensed pesticide businesses to use surety bonds and self-insurance to demonstrate financial responsibility and not requiring that licensed pesticide businesses renew their license two months prior to expiration in order to avoid being assessed late fees. These changes are not likely to produce a significant economic impact as they have been required under the Code of Virginia since 1993. The proposed changes simply make the regulation consistent with current practice.

The remaining changes include changes that update references, add clarifying language, remove redundant language, and that make the regulation consistent with the Code of Virginia and with current practice. These changes are intended to improve understanding and implementation of the regulation and to the extent that they do so, they are likely to produce some economic benefits.

Businesses and entities affected. The proposed regulation will affect all licensed pesticide businesses that apply general use pesticides. These businesses will now be required to maintain records relating to their application of general use pesticides. VDACS estimates that it will cost such businesses an additional \$431 a year to meet the new recordkeeping requirements.

According to VDACS, there are approximately 2,179 licensed pesticide businesses, of which 1,925 apply pesticides. The proposed change is expected to impact approximately 16% (or 308) of licensed pesticide businesses that apply pesticides.

Localities particularly affected. The proposed regulation applies to all localities in the Commonwealth. However, it is not likely to impose any additional costs on localities.

Projected impact on employment. The proposed regulation is not likely to have a significant impact on employment.

Effects on the use and value of private property. The proposed regulation requires all licensed pesticide businesses that apply pesticides to maintain records relating to applications of general use pesticides. For businesses not currently complying with this requirement, the proposed change is likely to impose additional costs, raising operating costs and lowering the asset value of these businesses.

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

Summary:

The proposed amendments (i) define a pesticide business location; (ii) modify the date for a late fee assessment in regards to pesticide business license renewal; (iii) modify the proof of financial responsibility; and (iv) modify recordkeeping requirements for pesticide businesses.

2 VAC 20-40-10. Definition of terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. An asterisk following a definition denotes that the definition has been taken from Article 1 (§ 3.1-249.27 et seq.) of Chapter 14.1 of Title 3.1 of the Code of Virginia.

"Act" means the Virginia Pesticide Control Act.

"Board" means the Pesticide Control Board.*

~~"Bond" means a written instrument issued or executed by a bonding, surety, or insurance company licensed to do business in the Commonwealth, or otherwise approved by the board, guaranteeing the fulfillment of the agreement between the licensee and the customer.*~~

"Bulk pesticide" means any registered pesticide concentrate which is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or greater than 100 pounds net dry weight.

"Certification" or "certified" means the recognition granted by the Pesticide Control Board to an applicator upon satisfactory completion of board approved requirements.*

~~"Commercial applicator" means any applicator person who has completed the requirements for certification as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses to use or supervises supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.*~~

"Commissioner" means the Commissioner of Agriculture and Consumer Services.*

"Department" means the Department of Agriculture and Consumer Services.*

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means The Federal Insecticide, Fungicide, and Rodenticide Act as amended, and herein incorporated by reference.

"Licensed" or "licensee" means those businesses which, upon meeting the requirements established by the Pesticide Control Board, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.*

"Limited quantities" means purchases, at cost, for resale, of less than \$50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

"Pest management consultant" means any person, who may or may not apply pesticides himself, who has obtained a business license in accordance with the requirements listed below, and who is authorized by this chapter to provide technical advice, supervision or aid, or recommendations for ~~restricted use~~ pesticide application commercially in Virginia.

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses *or bacteria*, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest, (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (iii) any substance which is intended to become an active ingredient ~~thereof~~ *in any substance defined in clauses (i) and (ii) of this definition.**

"Pesticide business" means any person engaged in the business of distributing, applying, or recommending the use of a product; *or storing, selling, or offering for sale pesticides for distribution directly to the user.* The term "pesticide business" does not include (i) wood treaters not for hire; (ii) *seed treaters not for hire;* (iii) *operations that produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) of this definition are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions;* or (iv) businesses exempted by regulations adopted by the board.*

"Pesticide business location" means any fixed location of a pesticide business with either a telephone that is used to transact business or give advice, or where products, supplies or business mail is delivered. Residences of service technicians who are employed by a licensed pesticide business are exempt, if no business solicitation is conducted from that location.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.*

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"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the United States Environmental Protection Agency.*

2 VAC 20-40-20. General requirements for all pesticide businesses; exemptions.

A. Any person or business operating in Virginia, which, in exchange for compensation, sells, stores, distributes, mixes, applies or recommends for use pesticides, shall obtain a valid pesticide business license pursuant to this chapter. Each ~~separate outlet or location~~ of a pesticide business *location* shall be licensed.

B. Exempted from the provisions of this chapter are the following:

1. Merchants of limited quantities of nonrestricted use pesticides who sell pesticides primarily intended for limited household use;
2. Federal, state and local governmental agencies;
3. Certified applicators not for hire; including, ~~but not limited to, employees of golf courses, hotels, apartment complexes, and office complexes~~ those who use or supervise the use of pesticides as part of their job duties only on property owned or leased by themselves or their employer; and
4. Providers of janitorial, cleaning or sanitizing services if the providers use no pesticides other than sanitizers, disinfectants and germicides.

C. Application for a pesticide business license is made by submitting to the department (i) a completed application form and (ii) a check or money order in the amount of the annual business license fee established by the board.

D. Each applicant for a pesticide business license, or an employee designated by the applicant, shall demonstrate to the commissioner his knowledge of (i) pesticide laws and regulations; (ii) potential hazards of pesticides to man and the environment; and (iii) safe distribution, use, and disposal of pesticides by passing a written examination prior to his being issued a business license. If the applicant is already certified as a commercial applicator, he shall be exempt from the initial examination requirement.

E. All licensed pesticide businesses shall maintain written records pertaining to their operations, as required in this chapter.

F. All licensed pesticide business locations or outlets which sell restricted use pesticides, or distribute restricted use pesticides for purposes of selling, shall have a certified commercial applicator present who shall bear immediate responsibility for the correct and safe operation of the location or outlet. Each business shall notify the department of the name of the commercial applicator assigned to each location or outlet, and shall also notify the department ~~promptly~~ *within three business days* of any change in the applicator assignments during the license period.

G. All licensed pesticide businesses ~~which that~~ store, repack and distribute bulk pesticides shall meet the requirements

established by the board for the storage, repackaging and distribution of bulk pesticides.

H. All pesticide business licenses shall expire at midnight on March 31 of each year. Licensees shall renew their licenses annually by application to the department and payment of the annual fee on or before close of business ~~January~~ *March* 31. The department shall charge a 20% penalty in addition to the regular fee for renewal applications filed after ~~January~~ *March* 31.

2 VAC 20-40-40. Business licensing requirements for pest management consultants.

A. Any person or business which recommends any pesticide for use commercially in Virginia shall obtain a valid pesticide business license issued pursuant to 2 VAC 20-40-20 A ~~of this chapter~~. This provision shall exclude sales personnel of a licensed pesticide business, company training, technical and sales representatives certified in the demonstration pesticide applicator category, and governmental employees while performing in an official capacity.

B. The specialty categories for a pest management consultant shall conform to the commercial applicator categories established pursuant to the Act. The pest management consultant shall meet the requirements of the specific category or subcategory in which he is making recommendations for pesticide use prior to being issued a business license.

2 VAC 20-40-60. Recordkeeping of restricted use pesticide sales by licensed pesticide businesses.

Pesticide businesses ~~which that~~ sell restricted use pesticides shall maintain a record of each restricted use pesticide sold. Each sales record shall contain the following:

1. Name, address, certified applicator number or business license number, and certificate or license expiration date of the person to whom the restricted use pesticide was sold or delivered;
2. Date of sale;
3. Brand or common product name;
4. EPA registration number; and
5. Quantity of pesticide sold or delivered.

B. The restricted use pesticide sales record keeping requirement may be satisfied by invoices, if (i) such invoices are kept separate from the licensee's other sales records, and (ii) the invoices contain the above information.

2 VAC 20-40-70. Recordkeeping of pesticide applications by commercial applicators pesticide businesses.

~~Commercial applicators~~ *Pesticide businesses* shall maintain a record of each ~~restricted use~~ pesticide applied. *This shall apply to both general use and restricted use pesticides.* Each record shall contain the:

1. Name, address, and telephone number of customer and address or location, if different, of site of application;

- 2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
- 3. Day, month and year of application;
- 4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
- 5. Acreage, area, or number of plants or animals treated;
- 6. Brand name or common product name;
- 7. EPA registration number;
- 8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and
- 9. Type of application equipment used.

2 VAC 20-40-80. Evidence of financial responsibility required of a licensed pesticide business.

A. Prior to being issued a pesticide business license, a business shall furnish evidence of financial responsibility, consisting either of: (i) a surety bond to the benefit of the board from a person authorized to do business in Virginia; (ii) a liability insurance policy from a person authorized to do business in Virginia, or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant; or (iii) a plan of self insurance which meets the requirements set forth below and is approved by the board.

~~B. If the evidence of financial responsibility consists of a surety bond, the bond shall be in an amount specified in subsection E of this section, and shall cover liability arising out of handling, storage, application, use or misuse, or disposal of any pesticide; it shall also cover liability relating to completed operations.~~

~~C. If the evidence of financial responsibility consists of a B. The liability insurance policy, the shall meet the following conditions shall be met:~~

- 1. The certificate of insurance shall include the name of the insurance company, policy number, insurance amount, type of coverage afforded, any exclusions relating to damage arising from the use of pesticides, and expiration date of the policy. The policy shall cover liability arising out of the handling, storage, application, use or misuse, or disposal of any pesticide; it shall also cover liability relating to completed operations.
- 2. The policy shall be in an amount specified in subsection E C of this section.
- 3. The licensee shall forward a current certificate of insurance to the board at each insurance renewal date.

~~D. If the evidence of financial responsibility consists of a plan of self insurance, the following conditions shall be met:~~

~~1. The self insurer shall submit a written proposal of self insurance to the board for approval. The proposal shall include a master self insurance and security agreement and a balance sheet and income statement which reflects the actual financial condition of the business as of the last complete calendar or fiscal year preceding the date of the proposal.~~

~~These documents shall be certified by a certified public accountant.~~

~~2. The self insurer shall post collateral with the board in the amount of at least \$400,000. The collateral shall consist of the following: (i) negotiable instruments of the United States Government; (ii) escrow deposits established for the sole purpose of providing security for self insurance purposes; (iii) irrevocable letters of credit; or (iv) other security approved upon petition to the board.~~

~~3. If the self insurer is unable to fulfill his obligations under the Act, he may petition the board to release the collateral posted. If such a withdrawal is necessary, the self insurer shall replace the security within 72 hours from the time of withdrawal in order to retain his certificate as a self insurer.~~

~~4. A certificate of self insurance, to be issued by the board, shall be renewed annually following appropriate review by the board. If his financial responsibility furnished no longer complies with this section, the self insurer shall immediately provide other evidence of financial responsibility.~~

~~E. C. The amount of financial responsibility as provided for in this section shall be a minimum of (i) \$200,000 for property damage, subject to a \$1,000 deductible provision in the case of licensees holding liability insurance policies, and \$200,000 for personal injury; or (ii) a combined single limit of \$400,000 with a \$1,000 deductible. The board may require additional evidence of financial responsibility based upon annual gross revenue of the applicant, if self employed, or his employer's business, if not, and an assessment of the risks of the applicant or his employer's business to persons, property, and the environment. The licensee shall maintain at least the minimum coverage at all times during the license period, and shall notify the board at least 10 days prior to any reduction at the request of the licensee or cancellation of such financial responsibility by the surety or insurer. If the deductible of an applicant for a business license is greater than \$1,000, evidence of financial responsibility shall be furnished to the board to satisfy the difference between the applicant's deductible and the \$1,000 deductible. This evidence may consist of a financial statement or a personal bond.~~

2 VAC 20-40-90. Revocation of a business license.

In addition to the violative acts listed under § 3.1-249.63 B of the Act, the following are grounds for revocation by the board of a business license:

- 1. Failure to (i) submit records to the commissioner upon written request; or (ii) to permit any person designated by the commissioner to have access to, and to copy such records of business transactions as may be essential to carrying out the purposes of the Act.
- 2. Operation of a pesticide business location or outlet without a certified commercial applicator assigned to the location or outlet as required by this chapter.
- 3. Failure of a self insurer to provide, within 72 hours, other evidence of financial responsibility if the financial responsibility previously furnished no longer complies with the requirements of the Act or regulations promulgated thereunder.

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~~4.~~3. Interference with the commissioner or his duly authorized agents in carrying out the duties imposed by the Act.

~~5.~~4. Conduct by a licensee, as determined during the course of a hearing, which has or might have resulted at any time in substantial danger to, or in unreasonable adverse effects on, the public health, safety, or the environment.

~~6.~~5. Failure of a licensee to notify the department of any change in financial responsibility as specified in 2 VAC 20-40-80 ~~E of this chapter~~ C.

~~7.~~6. Multiple violations of the Act or regulations pursuant thereto within a three-year period.

2 VAC 20-40-100. Summary suspension by commissioner.

A. The commissioner may suspend the pesticide business license of any person, without a hearing, simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial danger to the public health, safety, or the environment ~~which that~~ warrants this action. Situations ~~which that~~ may warrant suspension include, but are not limited to, the following:

1. Operating a pesticide business or pesticide business outlet without a certified commercial applicator on site as required by this chapter, when absence of the applicator presents a substantial danger to the public health, safety, or the environment, as determined by the commissioner.

2. Refusal by a pesticide business, after receipt of a written request, to permit the commissioner or his agent access to and to copy records of business transactions, when such refusal presents a substantial danger to the public health, safety, or the environment, as determined by the commissioner.

B. The commissioner shall institute proceedings for a hearing pursuant to ~~§ 9-6-14:12~~ § 2.2-4020 of the Code of Virginia simultaneously with any summary suspension. Subject to any provision of procedure or chapter of the board for the processing of violations not inconsistent with this chapter:

1. The hearing shall be held within 60 days after the suspension; and

2. The hearing officer conducting the hearing shall have the authority to consider and address all matters relating to the summary suspension, including but not limited to the withdrawing, sustaining, or modifying thereof.

The commissioner or a conference officer appointed by the commissioner shall offer the person whose license has been summarily suspended (hereinafter "the respondent") an opportunity to appear in an informal conference, authorized by ~~§ 9-6-14:14~~ § 2.2-4019 of the Code of Virginia, to be held within three days after the summary suspension. The informal conference may consider, subject to any provision of the board for the processing of violations, all matters relating to the summary suspension, including but not limited to the withdrawal, sustaining, or modifying thereof. Nothing in this section authorizing consideration of matters by an informal

conference shall be construed to deny a respondent's right to a hearing.

C. No person may operate a pesticide business at any time when his license is suspended.

2 VAC 20-40-110. Denial of license by the commissioner.

A. The commissioner shall deny a business license to any applicant who does not submit all the information required on the license application form, or who does not fully comply with all requirements for licensing set forth in this chapter.

B. The commissioner may, after notice to a pesticide business applicant and after opportunity for hearing, deny a pesticide business license to an applicant who has violated the pesticide law or regulations of any state or competent authority so as to evidence a disregard for proper and safe pesticide use; or if his license has been denied, suspended, nullified, withdrawn, revoked, or otherwise terminated by any state or other competent authority.

C. Any applicant for a pesticide business license shall not engage in the activity for which he is requesting a license until ~~it shall have been issued by the commissioner~~ shall have issued it.

2 VAC 20-40-120. ~~Regulations superseded or repealed.~~ (Repealed.)

~~The provisions of this chapter supersede 2 VAC 20-20-230, "Records," and 2 VAC 20-20-260, "Evidence of Financial Responsibility," of Chapter 20, Rules and Regulations for Enforcement of the Virginia Pesticide Law, which are hereby repealed.~~

<p>NOTICE: The forms used in administering 2 VAC 20-40, Rules and Regulations Governing Licensing of Pesticide Businesses by the Department of Agriculture and Consumer Services Operating Under Authority of the Virginia Pesticide Control Act, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>

FORMS

Application for Virginia Pesticide Business License, Form VDACS-07209, ~~eff. 10/94~~ rev. 2/02.

Certificate of Insurance, Form VDACS-07214, ~~eff. 7/1/93~~ rev. 4/96.

Request to take the Virginia Pesticide Business License Examination, eff. 11/98.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

P. O. Box 526
Richmond, Virginia 23218-0526

APPLICATION FOR VIRGINIA PESTICIDE BUSINESS LICENSE
to sell, distribute, store, apply, or recommend pesticides for use.

The annual business license fee is \$50.00. Please make check payable to: **Treasurer of Virginia**. Mail (1) application, (2) check, and (3) evidence of financial responsibility to the above address.

Licenses expire on March 31 each year. Licenses renewed after March 31 each year are subject to a 20 percent late fee.

Please type or print the following information:

LEGAL NAME OF BUSINESS: _____

TRADING AS: _____

FEDERAL IDENTIFICATION NUMBER: _____

MAILING ADDRESS: _____ CITY: _____

COUNTY: _____ STATE: _____ ZIP CODE: _____

NAME OF AUTHORIZED REPRESENTATIVE: _____

TITLE: _____ BUSINESS PHONE NO. _____

I certify that I understand my legal responsibilities for the use, supervision of use, sale, distribution, or storage of pesticides, and that if I sell pesticides, I will sell restricted use pesticides only to individuals who possess a valid pesticide applicators certificate, or to their representative.

SIGNATURE OF REPRESENTATIVE: _____ DATE: _____

This business will engage in the following (CHECK ALL THAT APPLY):

- SELLING GENERAL USE PESTICIDES
- STORAGE
- RECOMMENDING FOR USE ANY PESTICIDE*
- DISTRIBUTION
- BULK STORAGE
- SELLING RESTRICTED USE PESTICIDES*
- APPLYING PESTICIDES*

***Requires a certified commercial applicator to be employed; provide information below:**

Name of Applicator: _____ Certificate Number: _____

ATTACH A COPY OF THE LIABILITY INSURANCE CERTIFICATE TO THE APPLICATION

BUSINESS PHYSICAL LOCATION ADDRESS:

STREET: _____ CITY: _____

COUNTY: _____ STATE: _____ ZIP CODE: _____

BUSINESS BILLING ADDRESS IF DIFFERENT FROM ABOVE:

STREET: _____ CITY: _____

COUNTY: _____ STATE: _____ ZIP CODE: _____

HOW DID YOU LEARN ABOUT THIS REQUIREMENT (CHECK ALL THAT APPLY):

- CALL TO VDACS*
- EXTENSION
- PESTICIDE SUPPLIER
- VDACS* INVESTIGATOR
- RETAIL DISPLAY
- VIRGINIA DEPT OF AGRICULTURE & CONSUMER SERVICES
- VDACS WEB PAGE
- OTHER

FOR DEPARTMENT USE ONLY:

Business License No. _____

Date Keyed/by: _____

AMOUNT TO REMIT: \$50.00
VDACS ACCT. 757-02-02438
VDACS-07209 2/02

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******* CERTIFICATE OF INSURANCE *******

To the Virginia Department of Agriculture and Consumer Services:

I hereby certify that Policy # _____ provides coverage, in the form of a general liability policy from a person authorized to do business in Virginia or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant. This policy is in a **minimum** of:

\$ _____ for property damage, \$ _____ for personal injury and
\$ _____ per occurrence.

\$ _____ deductible amount (see reverse for deductible requirements)

Exclusions (please specify): _____

This policy has been issued to:

(Name of Insured)

(Address)

(Trading As, or D.B.A.)

(Address)

Policy term: Effective date: _____ Expiration date: _____

In the event of cancellation, the insurer agrees to advise the VDACS Office of Pesticide Services, by written notice, at least 10 days prior to the effective date of cancellation.

(Insurance Company Providing Coverage)

(Agency Issuing Policy)

(Company Seal or Stamp)

(Street)

(City)

(State)

(Zip)

X

(Signature - Authorized Representative)

(Date of Certificate)

For acceptance by the Virginia Department of Agriculture and Consumer Services, this form must be properly completed, validated and signed by the issuing insurance agency. Mail completed certificate to the address below.

Certificate Holder: Office of Pesticide Services

Virginia Department of Agriculture and Consumer Services

P. O. Box 1163

Richmond, Virginia 23218

4-5-96

(see reverse side)

VDACS-07214

EVIDENCE OF FINANCIAL RESPONSIBILITY REQUIRED OF

A LICENSED PESTICIDE BUSINESS

DEFINITION: "Pesticide business" means any person engaged in the business of distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations which produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operations in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the Board.

Prior to being issued a pesticide business license, a business shall furnish evidence of financial responsibility consisting of a liability insurance policy, or certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticides by the applicant. Such financial responsibility need not apply to damages or injury to agricultural crops, plants or property being worked upon by the applicant.

Minimum Insurance Requirements

\$100,000 for property damage
\$100,000 for personal injury and \$300,000 per occurrence.

A deductible clause in an amount which is usual and customary in the industry, with the provision that the insurer shall pay all claims in full and that the amount of the deductible shall be recoverable only from the insured, may be accepted.

The business licensee shall maintain at least the minimum coverage at all times during the license period, and shall provide a current certificate of insurance to the Office of Pesticide Services at each insurance renewal date.

Note - This certificate is for use only in providing proof of liability insurance coverage.

Revised form - This form supersedes all previous certificate of insurance forms issued by the VDACS Office of Pesticide Services.

**VIRGINIA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES**

Office of Pesticide Services
P. O. Box 1163
Richmond, VA 23218

REQUEST TO TAKE THE VIRGINIA PESTICIDE BUSINESS LICENSE EXAMINATION

Before this request to take the Virginia Pesticide Business License examination can be processed, the (1) **application for Pesticide Business License** must be completed and submitted to the Virginia Department of Agriculture and Consumer Services along with the (2) **\$50.00 annual business license fee** and (3) **evidence of financial responsibility**.

PLEASE TYPE OR PRINT THE FOLLOWING INFORMATION:

Person taking the Virginia Pesticide Business License Exam:	
SOCIAL SECURITY NO.: _____ - _____ - _____	HOME PHONE NO.: _____ (Area Code)
NAME OF APPLICANT: _____ (Last) (First) (M.I.)	COUNTY: _____
MAILING ADDRESS: _____ (Street or RFD)	CITY: _____ STATE: _____ ZIP CODE: _____
SIGNATURE: _____	
Business Name:	
LEGAL NAME OF BUSINESS: _____	
TRADING AS: _____	
BUSINESS PHONE NO: _____ (Area Code)	
Business Mailing Address:	
MAILING ADDRESS: _____	CITY: _____
COUNTY: _____	STATE: _____ ZIP CODE: _____
Business Physical Location Address:	
STREET: _____	CITY: _____
COUNTY: _____	STATE: _____ ZIP CODE: _____

FOR DEPARTMENT USE ONLY: Business License No. Date Keyed: Keyed to Database by:
--

11/98

**TITLE 6. CRIMINAL JUSTICE AND
CORRECTIONS**

STATE BOARD OF JUVENILE JUSTICE

Title of Regulation: **6 VAC 35-140. Standards for Juvenile Residential Facilities (amending 6 VAC 35-140-10 through 6 VAC 35-140-90, 6 VAC 35-140-110 through 6 VAC 35-140-150, 6 VAC 35-140-170 through 6 VAC 35-140-230, 6 VAC 35-140-250 through 6 VAC 35-140-350, 6 VAC 35-140-400, 6 VAC 35-140-440 through 6 VAC 35-140-500, 6 VAC 35-140-530 through 6 VAC 35-140-630, 6 VAC 35-140-660 through 6 VAC 35-140-700, 6 VAC 35-140-730 through 6 VAC 35-140-770; adding 6 VAC 35-140-22, 6 VAC 35-140-23, 6 VAC 35-140-24, 6 VAC 35-140-45, 6 VAC 35-140-192, 6 VAC 35-140-275, 6 VAC 35-140-295, 6 VAC 35-140-385 through 6 VAC 35-140-389, 6 VAC 35-140-545, 6 VAC 35-140-615, 6 VAC 35-140-685, 6 VAC 35-140-701 through 6 VAC 35-140-709, 6 VAC 35-140-711 through 6 VAC 35-140-715, 6 VAC 35-140-810 and repealing 6 VAC 35-140-510).**

Statutory Authority: §§ 16.1-309.9, 66-10 and 66-25.1 of the Code of Virginia.

Public Hearing Date: September 9, 2004 - 10 a.m.

Public comments may be submitted until 5 p.m. on October 15, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743, FAX (804) 371-0773, or e-mail carigndr@djj.state.va.us.

Basis: The general authority of the Board of Juvenile Justice to promulgate regulations is found in § 66-10 of the Code of Virginia, which provides that the board shall have the power and duty "[t]o promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

The specific legal authority of the board to promulgate regulations governing local juvenile residential facilities is § 16.1-309.9 A of the Code of Virginia, which directs that "The State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation and evaluation of the range of community-based programs, services and facilities authorized by this article." In addition, § 16.1-248.1 D of the Code of Virginia provides that "A juvenile may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements. Standards for these facilities shall have regard for reasonable utilization of these facilities and the requirements of § 16.1-309.4, consistent with the intent of this section."

Purpose: The regulation establishes operational standards for residential facilities housing juveniles in Virginia's juvenile justice system. The public safety is enhanced by providing residential placements for juveniles whose delinquent

behavior makes them a threat to persons or property. In addition, the regulation sets standards to ensure that such juveniles are provided a safe and humane environment, are appropriately and adequately supervised, and receive meaningful programs and services.

Substance: Throughout the regulation, amendments or additions are made to conform more closely to nationally recognized standards. In addition, 6 VAC 35-140-20 commits the board to consider standards of the American Correctional Association in developing Virginia's regulation, and 6 VAC 35-140-22 provides that accreditation by the American Correctional Association will be deemed compliance with this regulation.

Important clarifications are made throughout the regulation, including the indication of which standards apply to which types of facilities (6 VAC 35-140-30); the disciplinary process for residents (6 VAC 35-140-550); what permission must be obtained before a juvenile may be questioned by certain authorities (6 VAC 35-140-570); the removal of any reference to tear gas or mace (6 VAC 35-140-660); and who is intended by the term "regulatory authority" and the inclusion of a "mobile restraint chair" as a possible restraint (6 VAC 35-140-670).

6 VAC 35-140-192, Provision of health care, is modeled on standards of the National Commission on Correctional Health Care.

Important terminology changes are made throughout the regulation (e.g., "health record" in 6 VAC 35-140-220, "qualified medical or mental health professional" in 6 VAC 35-140-250, "American Pediatric Society" at 6 VAC 35-140-400, and "mental health professional" at 6 VAC 35-140-700).

Several new or amended sections address the facility's workforce, including background investigations and the supervision of nonstaff workers in the facility (6 VAC 35-140-260); annual physical exams of employees (6 VAC 35-140-270); an employee Code of Ethics (6 VAC 35-140-275); staff training on the rules of juvenile conduct (6 VAC 35-140-280); staff political activities (6 VAC 35-140-295); supervision of residents of the opposite sex, control of the movement of juveniles, transportation of juveniles and supervision of outside personnel working in the facility (6 VAC 35-140-540); and staff-to-resident ratios (6 VAC 35-140-545, which adopts the standard currently in effect in the Standards for the Interdepartmental Regulation of Children's Residential Facilities).

Several amendments are intended to enhance programs and services, including provisions for informal communication and physical contact during facility visitation (6 VAC 35-140-90); the addition of hygiene and nutrition to the curriculum of independent living programs (6 VAC 35-140-350); youth access to publications (6 VAC 35-140-500); recreational space, activities and equipment (6 VAC 35-140-530); 15-minute checks of residents in room confinement or isolation, and living conditions in isolation or room confinement (6 VAC 35-140-560); and the limited use of restraints for medical and mental health purposes (6 VAC 35-140-685).

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Several new or amended sections are intended to enhance facility security, including the inspection and censoring of mail (6 VAC 35-140-75); alternate power source for secure facilities (6 VAC 35-140-615); control of facility perimeter (6 VAC 35-140-630); and quarterly testing of emergency and communications systems (6 VAC 35-140-310).

6 VAC 35-140-385 through 6 VAC 35-140-389 are added, applying to halfway houses. The standards require a written statement of the facility's mission and role; a triennial review of its population's needs; a program to reinforce positive behavior of residents; compliance with agency reporting requirements and agency financial procedures.

Several amendments are intended to give facilities administrative flexibility in fulfilling the regulations requirements, including the authorization of outcome-based and performance-based standards (6 VAC 35-140-23); disposition of residents' property (6 VAC 35-140-480); and the provision of off-site medical treatment (6 VAC 35-140-230). The requirement to report felonies that occur off premises is deleted (6 VAC 35-140-130); and relaxation of the medical examination requirement under certain conditions (6 VAC 35-140-450).

Current language in 6 VAC 35-140-510 is moved to 6 VAC 35-140-707, where it becomes part of a series of standards relating to postdispositional detention programs. The standards require that such programs be approved by the board, have a written program description, and have written arrangements with court service units from which juveniles are placed in the facility. The standards require that such facilities be available for predispositional detention, and that staff verify that service providers are appropriately licensed. The standards also permit paid employment (work programs) for residents and permit the facility to limit contacts by persons who might jeopardize residents' safety. The standards authorize each facility to determine its policy regarding self-medication by residents. Finally, the standards address the statutorily required assessment as to whether a juvenile is an appropriate candidate for postdispositional placement, and list the specific Standards for the Interdepartmental Regulation of Children's Residential Facilities that apply to postdispositional detention programs.

6 VAC 35-140-711 through 6 VAC 35-140-715 are new, applying to juvenile correctional centers. The standards set staff training requirements, require library and reference services to supplement the training program, and require that all employees receive an annual performance review. Each juvenile correctional center must have a written document describing its organization and must have a community-facility advisory committee.

There are minimum requirements for administrators to visit various areas of the facility, meet with staff, and send reports to the department's central administration. New 6 VAC 35-140-805 provides a process within the certification audit for facilities to demonstrate compliance with guidance from the department's central administration.

Existing standards for juvenile correctional centers are amended to remove reference to "personal control unit" and require single occupancy room for certain wards (6 VAC 35-

140-730), require an annual review of post orders and that employees who are permanently assigned to a post read and sign the post orders (6 VAC 35-140-740), and suggest that institutional operating procedures are required only when it is necessary to elaborate upon or deviate from standard operating procedures (6 VAC 35-140-760).

Issues: The regulation governs the operation of juvenile residential facilities. The primary advantage to the general public in adopting these revised standards is to protect the public safety by providing secure facilities in which to confine juveniles who may be a threat to others or to property.

There may be significant advantages to individual citizens, particularly to the juveniles who are placed in such residential facilities and their families, inasmuch as the regulation sets standards that provide for residents' safety, health care, educational and vocational programming, psychological and other treatment programs, etc.

The primary advantage to the department and to local and regional operators of juvenile residential facilities in adopting the proposed amendments is that the facilities will be better able to demonstrate, through the board's certification process, compliance with nationally recognized standards for the operation of juvenile correctional facilities. Demonstrated compliance with national standards can be a significant advantage in litigation over agency policies, procedure and practice and should reduce the facilities' liability exposure.

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

Summary of the proposed regulation. The proposed regulations will modify or establish numerous healthcare, personnel, resident safety, physical environment, and operating standards for the juvenile residential facilities.

Estimated economic impact. These regulations contain many operating standards or procedural requirements for juvenile residential facilities. Residential facilities include juvenile correctional centers, detention homes, group homes, boot camps, and halfway houses. If a juvenile is found guilty of a criminal offense, a number of alternatives are available and a decision is made as to whether (i) to impose community sanctions such as warnings, restitution, or fines, (ii) to impose a conditional disposition such as probation, referral to local services or facilities, to other agencies, to private or boot camp placement, or to postdispositional detention, or (iii) to commit the juvenile to state care. Juveniles committed to state care are placed into a juvenile correctional center where

they receive 24-hour supervision, education, treatment services, recreational services, and a variety of special programs. The other residential facilities (detention homes, group homes, boot camps, and halfway houses) are community based and are operated locally. The detention homes provide temporary safe, secure, and physically restricted custody for juveniles charged with or found guilty of criminal offenses. The detention homes may offer educational, recreational, counseling, and social services to juveniles. The residential group homes provide family counseling, education programs, referral services, transportation, and recreation services to juveniles with delinquent behavior. Boot camps provide short-term military-style disciplining and physical conditioning in a secure or nonsecure environment.¹ Halfway houses provide residency for juveniles in transition from direct care.

The proposed amendments will add new requirements to or modify existing requirements in over ninety sections of these regulations. A number of amendments are related to standards for postdispositional detention homes. Juvenile and Domestic Relations District Courts may now order the juvenile confined in a detention home or other secure facility for a period up to six months. Previously, juveniles were placed into a detention home temporarily for a period less than 30 calendar days. Currently, detention homes may be used for post-dispositional placements over 30 days and up to six months. Pursuant to § 16.1-284.1 of the Code of Virginia, the Board of Juvenile Justice proposes new standards that will apply to these postdispositional detention homes hosting juveniles with placements over 30 days. The proposed changes under this group establish requirements for obtaining board certification, requesting a written agreement with the court services unit, developing a program description, allowing and setting standards for paid employment, checking license status of professionals in private practice, limiting employee contact with juveniles, developing written program policies and procedures for pre-dispositionally and postdispositionally detained juveniles, developing self-medication procedures, and complying with other procedures for health care, medical examination and treatment, management of resident behavior, work and employment, visitations, and for many other operations.

Some of the changes are general requirements for all residential facilities. A number of standards in this second category are new or expanded standards adopted from national accrediting organizations such as American Correctional Association and National Commission on Correctional Health Care and tailored for facilities in Virginia while some others are substantially the same standards that were rescinded from regulations prior to January 1998 to give residential facilities greater operational flexibility at the time. The main changes with overall applicability include deeming compliance with national accreditation when these regulations are followed and providing authority that the board may experiment with performance standards in lieu of the standards in this regulation. The standards that will apply to all residential facilities are related to inspection and censoring

of ward mail for security purposes, permitting informal communication in visiting areas, providing authorized treatment by nursing personnel, expanding treatment requirement to include treatment outside the facility, establishing procedures for new employee fingerprint checks and Child Protective Services registry checks, requiring annual physical examination of employees who are in direct contact with juveniles, requiring training on rules of juvenile conduct and sanctions, developing policy for code of ethics, campaigning, lobbying, and political activities; and requiring quarterly testing of emergency and communication systems.

Several changes will apply to halfway houses. These changes will require development of a mission statement and role, triennial review of service needs of the juveniles housed, encouragement of positive behavior, and compliance with department's policies with respect to reporting incidents, population data, employee vacancies, and financial practices.

A number of changes are proposed for all secure facilities. These include clarifying that a medical exam upon admission is not required if a results of a recent exam is already available, allowing disposal of unclaimed personal property, developing a policy to provide youth access to published materials, adding a requirement to provide an indoor recreation area and equipment, establishing rules for staff supervision of residents, control of the movement of juveniles, supervised transportation, supervision of service personnel; clarifying the rules for staffing pattern and the disciplinary process, reducing the frequency of visual checks of juveniles in confinement, clarifying that permission must be obtained for questioning of residents, requiring an alternate power source, clarifying what is meant by the control of the facility perimeter, removing the specific authorization to use tear gas and mace, and allowing the use of restraints for medical purposes.

All of the other changes apply to juvenile correctional centers and are related to staff training, providing performance review to employees, describing organizational structure, creating a community-facility advisory committee, establishing organizational communication requirements for facility administrators, requiring single occupancy rooms for certain wards in need of such an arrangement, requiring annual review of post orders and requiring assignment awareness from staff who are permanently assigned to a security post, and requiring compliance with administrative guidance documents of the department's central office.

The department indicates that, of the 24 currently operating detention homes, almost half already established "post-d programs" for detainees serving six months and already have in place procedures similar to those proposed. It is expected that all of the facilities will have postdispositional programs in the future. Similarly, the juvenile correctional centers and all other residential facilities are believed to follow in practice, for the most part, similar standards to those proposed. However, it is not known which standards will introduce a change in practice and may be significant to create additional costs or benefits. Only general statements can be made on potential economic effects.

Potential costs of the proposed changes include costs associated with the level of increase in the quality of service

¹ Currently, there are no operating boot camps due to statewide expenditure reductions.

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received by juveniles, administrative costs to comply with increased inspections, documentations, and reports, costs associated with additional equipment repair, and maintenance that may be necessary to comply with the proposed requirements, and costs associated with reduced operational flexibility.

On the other hand the benefits may include improving the quality of services provided to juveniles, increasing the ability of the department to evaluate actual operations at residential facilities based on the standards established in the regulations, making juveniles at different facilities subject to the same set of standards which may improve the distribution of available resources among juveniles, broadening the standards for which the public may provide valuable input, and potentially reducing liability of the department against losses from litigation.

Businesses and entities affected. The proposed regulations apply to juvenile residential facilities. Currently, there are eight juvenile correctional centers, three state operated halfway houses, 24 detention homes, approximately 38 group homes, and no operating boot camps. Juveniles living in these facilities as well as voluntary and paid employees may also be affected. According to department, approximately 1,035 juveniles are currently placed at correctional centers, 630 placed in group homes, and none currently are placed in boot camps. In addition to these, detention capacity in the Commonwealth is estimated to be 1,356. The total number of employees working at these facilities is estimated at 2,780.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth.

Projected impact on employment. There may be an increased demand for labor employed by the facilities because of the probable increase in the quality or the quantity of services offered, increase in required inspections, documentations, reports, equipment repair, and maintenance that may be necessary to comply with the proposed requirements. Facilities may be able to meet a portion of increased demand by utilizing unpaid volunteers, which would reduce the demand for paid employees by some amount.

Effects on the use and value of private property. The proposed regulations are not expected to affect the value of private property unless these changes significantly increase the profits of service providers, equipment repair and maintenance businesses.

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

Summary:

The regulation sets operating standards for residential facilities in Virginia's juvenile justice system, including group homes, detention homes, juvenile correctional centers and boot camps. Two broad categories of amendments are proposed. The first category includes new or expanded standards governing postdispositional detention programs as required by § 16.1-284.1 D of the Code of Virginia.

The second category of amendments includes new or expanded standards closely tracking those of national accrediting organizations. Generally, the proposed standards follow those of the American Correctional Association, but in a few places relating to health care, the proposed standards follow the language of the National Commission on Correctional Health Care. Most of the proposed new standards will affect only juvenile correctional centers and halfway houses operated by the department. Many of the proposed "new" standards, or substantially similar requirements, were in effect and applicable to juvenile correctional centers prior to January 1998, when the regulation was simplified to give juvenile residential facilities greater operational flexibility. While the department has generally continued to operate in accordance with many of those nationally recognized standards, their removal from Virginia regulations has meant that those historical standards have also been removed from the certification audit process, which is the primary means by which the board exercises its statutory oversight responsibilities. As a consequence, the department cannot always demonstrate that it continues to operate in accordance with the nationally recognized standards. By reinstating some of those historical standards into the regulation, the board is affirming that it is the policy of the Commonwealth to operate its juvenile correctional facilities in accordance with nationally recognized standards in juvenile corrections and is providing a routine means to document and demonstrate compliance with those national standards.

6 VAC 35-140-10. Definitions.

Unless the context clearly indicates otherwise, terms that are defined in Standards for the Interdepartmental Regulation of Residential Facilities for Children shall have the same meaning when used in this chapter, and the following words and terms have the following meanings:

"Board" means Board of Juvenile Justice.

"Boot camp" means a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training, such as drill and ceremony.

"Department" means the Department of Juvenile Justice.

"Detention home" means a secure facility ~~which~~ *that* houses juveniles who are ordered detained pursuant to the Code of Virginia.

"Family ~~operated~~ *oriented* group home" means a private home in which juveniles may reside upon placement by a lawful child-placing agency.

"Halfway house" means a residential facility housing juveniles in transition from direct care.

"Health authority" means a physician, health administrator or health agency designated responsible for arranging all levels of health care in a facility, consistent with law and medical ethics.

"Health record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including all findings,

diagnoses, treatments, dispositions, prescriptions and their administration.

"Health-trained staff person" means a *staff* person who is trained by a licensed health care provider to provide assistance to a physician, physician's assistant, or other professional medical staff by performing such perform duties such as preparing or reviewing screening forms for needed follow up, preparing residents and their records for sick call, and assisting in the implementation of medical orders regarding diets, housing and work assignments.

"Independent living program" means a residential program designed to help residents obtain skills which will allow them to become self-sufficient adults and which provides limited supervision by adults and encourages independent decision making.

"Informed consent" means the agreement by a patient to a treatment, examination, or procedure after the patient receives the material facts regarding the nature, consequences and risks of the proposed treatment, examination, or procedure, and the alternatives to it. For an invasive procedure where there is some risk to the patient, informed consent is documented on a written form containing the juvenile's signature or that of the legal guardian if required.

"Infraction" or "rule violation" means a violation of the program's rules of conduct, in one of the following degrees of severity:

"Major rule violation" means any action which that threatens the life, safety or security of persons or property and requires due process for resolution.

"Moderate infraction" or "intermediate infraction" means a violation of the program's rules of conduct requiring use of due process procedures for resolution.

"Minor infraction" means a violation of the program's rules of conduct that staff may resolve informally.

"Isolation" means the confinement of a resident, after due process, in a single self-contained cell for a specified period of time as a disciplinary sanction for rule infractions. During isolation, all activities with the exception of eating, sleeping, personal hygiene, reading and writing are restricted and the resident is not permitted to participate in activities with other residents.

"Juvenile correctional center" means a secure facility operated by, or under contract with, the Department of Juvenile Justice to house and treat persons committed to the department. Unless the context clearly indicates otherwise, the term includes the reception and diagnostic center.

"Juvenile residential facility" means a publicly or privately operated facility where 24-hour-per-day care is provided to children within Virginia's juvenile justice system. As used in this regulation, the term includes, but is not necessarily limited to, group homes, family-oriented group homes, halfway houses, secure detention facilities, boot camps, wilderness work camps and juvenile correctional centers.

"Legal correspondence and mail" means that which is sent to or received from a designated class of correspondents, as

defined in the particular standard, such as a court, legal counsel, administrators of the grievance system, or administrators of the department.

"Main control center" means the central point within a secure facility where security activities are monitored and controlled 24 hours a day.

"Master file" means the complete record of a committed resident which that is retained at the reception and diagnostic center.

"Medical record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including all findings, diagnoses, treatments, dispositions, prescriptions and their administration.

"Military style discipline" means a system whereby staff in a boot camp, Junior ROTC program or other military-style program are authorized to respond to minor infractions at the moment they notice the infraction being committed by imposing immediate sanctions. The offender may be directed immediately to perform some physical feat, such as pushups or some other sanction as provided for in the facility's written policies and procedures.

"Personal control room" means a sleeping room with locked doors, where residents are housed who have serious behavior problems which threaten self, others or facility security.

"Resident" means a juvenile or other person who is legally placed in or formally admitted to the facility. In some facilities, residents may be referred to as wards, cadets, inmates or detainees.

"Room confinement" means restricting a resident to his room.

"Secure facility" means a local, regional or state publicly or privately operated residential facility for children which that has construction fixtures designed to prevent escape and to restrict the movement and activities of juveniles held in lawful custody.

"Segregation" means the placement of a resident, after proper administrative process, in a special housing unit or designated individual cell that is reserved for special management of residents for purposes of protective care or custodial management.

"Shall" means that an obligation to act is imposed.

"Transfer file" means the complete record of a committed resident which that accompanies the resident to whatever facility the resident is transferred to while in direct state care.

"Volunteer" means any individual or group who of their own free will, and without any financial gain, provides goods or services to the program without compensation.

"Wilderness work camp" means a secure residential facility in a remote wilderness setting providing a program of therapeutic hard work to increase vocational skills.

6 VAC 35-140-20. Other applicable standards.

A. These standards will be applied in conjunction with Standards for the Interdepartmental Regulation of Residential

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Facilities for Children, jointly issued by the Board of Juvenile Justice, the State Board of Education, the State Mental Health, Mental Retardation and Substance Abuse Services Board, and the Board of Social Services.

B. This regulation and revisions hereto will be developed in consideration of standards adopted by the American Correctional Association for the accreditation of various classes of juvenile residential facilities.

6 VAC 35-140-22. National accreditation is deemed compliance with these standards.

The board will accept a juvenile residential facility's accreditation by the American Correctional Association (ACA) as evidence of compliance with the substantial requirements of this regulation and will grant certification pursuant to 6 VAC 35-20 for a period of time consistent with the term of the facility's accreditation. Where Virginia has established standards for which the ACA has no parallel standard, the board retains its statutory right and responsibility to monitor compliance with the Virginia regulations and will publish a list of such standards.

6 VAC 35-140-23. Outcome-based and performance-based standards authorized.

The board may, in its discretion on a case-by-case basis and for a specified time, exempt individual facilities from specific standards set out in this chapter and authorize the facility to implement on an experimental basis one or more substitute standards that measure performance or outcomes.

6 VAC 35-140-24. Regulation establishes policy.

The standards embodied in this regulation also establish, individually and collectively, programmatic and fiscal policies that the board is directed to develop pursuant to § 66-10 of the Code of Virginia. Nothing in this regulation shall be construed to limit the board's authority to establish additional or separate programmatic and fiscal policies for residential facilities or programs in accordance with § 66-10 of the Code of Virginia.

6 VAC 35-140-30. Applicability.

~~A. All residential programs must meet the applicable standards in Parts I (6VAC35-140-10 et seq.) and II (6VAC35-140-50 et seq.) of this chapter.~~

~~B. Detention homes, juvenile correctional centers, wilderness work camps and boot camps operated as secure facilities must also meet the applicable standards in Part III (6VAC35-140-430 et seq.) of this chapter.~~

The applicability of each standard to various types of juvenile residential facilities is indicated in the section title or in the body of the standard.

6 VAC 35-140-40. Previous regulations terminated.

This chapter replaces the following: Standards for Juvenile Correctional Centers (6 VAC 35-70-10 et seq.); Standards for Secure Detention (6 VAC 35-100-40 et seq.); Standards for Family Group Homes (6 VAC 35-120-40 et seq.); Standards for Post Dispositional Confinement for Secure Detention and Court Service Units (6 VAC 35-90-40 et seq.), and

Predispositional and Postdispositional Group Home Standards (6 VAC 35-40-40 et seq.).

PART II.
STANDARDS FOR ALL JUVENILE RESIDENTIAL FACILITIES.

Article 1.
Program Operation.

6 VAC 35-140-45. General requirement.

All juvenile residential facilities shall comply with all applicable laws and regulations.

6 VAC35-140-50. Nondiscrimination.

Written policy, procedure and practice *in all juvenile residential facilities* shall provide that:

1. Youth are not discriminated against based on race, national origin, color, creed, religion, sex or sexual orientation, or disability;
2. Males and females in coeducational programs have equal access to all programs and activities; they may be housed in the same unit, but not the same sleeping room;
3. Reasonable accommodation is made to integrate residents with disabilities ~~with~~ *into* the general population and grant them access to program and service areas, provided such accommodation is consistent with facility security and is unlikely to place the resident or others into situations of direct threat to health or safety; and
4. Youth are not subjected to corporal or unusual punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping.

6 VAC 35-140-60. Residents' Admission and orientation.

Written policy, procedure and practice governing the admission and orientation of residents *to the juvenile residential facility* shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate;
3. ~~Medical~~ *Health* screening;
4. Notification of family including admission, visitation, and general information;
5. Interview with resident to answer questions and obtain information;
6. Explanation to resident of program services and schedules; and
7. Assignment of resident to a housing unit or room.

6 VAC 35-140-65. Orientation to facility rules and disciplinary procedures.

A. During the orientation to the *juvenile residential facility*, residents shall be given written information describing facility

rules, the punishments for rule violations, and the facility's disciplinary procedures. These shall be explained to the resident and documented by the dated signature of resident and staff.

B. Where a language or literacy problem exists ~~which that~~ can lead to a resident misunderstanding *the juvenile residential facility rules and regulations*, staff or a qualified person under the supervision of staff shall assist the resident.

6 VAC 35-140-70. Resident's Grievance procedure.

Written policy, procedure and practice shall provide that residents *of the juvenile residential facility* are oriented to and have continuing access to a grievance procedure ~~which that~~ provides for:

1. Resident participation in the grievance process, with assistance from staff upon request;
2. Documented, timely responses to all grievances with the reasons for the decision;
3. At least one level of appeal;
4. Administrative review of grievances;
5. Protection of residents from reprisal for filing a grievance;
6. Retention of all documentation related to grievances for three years from the date of the filing of the grievance; and
7. Hearing of an emergency grievance within eight hours.

6 VAC 35-140-75. Residents' mail.

~~Written policy, procedure and practice shall provide that:~~

~~4. A. In the presence of a witness *and in accordance with written procedures*, staff may open and inspect incoming and outgoing *nonlegal* mail for contraband, but shall not read it; and .~~

~~2. Based on legitimate interests of facility order and security B. In accordance with written procedures, staff may ~~read, censor or reject~~ open and inspect residents' incoming and outgoing mail and shall notify residents for contraband. When based on legitimate facility interests of order and security, mail may be read, censored, or rejected. The juvenile shall be notified when incoming or outgoing letters are withheld in part or in full; .~~

~~3-C. In the presence of the recipient and in accordance with written procedures, staff shall ~~not~~ may open or to inspect for contraband, but shall not read, legal correspondence and mail: a. to or from a court, legal counsel, administrators of the grievance system or administrators of the department; or.~~

~~b-D. In accordance with written procedures, when permission has been obtained from a court of competent jurisdiction or from the juvenile, staff may, in the presence of a witness, read correspondence or mail addressed to parents, family, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public official or grievance administrators unless permission has been obtained from a court of competent jurisdiction or when there is a reasonable belief that the security of a facility is threatened as provided for by written procedures:.~~

~~4. E. Incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays;.~~

~~5. F. Cash, stamps and other specified items may be held for the resident;.~~

~~6. G. Upon request, each resident shall be given postage and writing materials for all legal correspondence and to mail at least two letters per week; and .~~

~~7. H. Residents shall be permitted to correspond at their own expense with any person or organization provided such correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.~~

~~I. First class letters and packages received for juveniles who have been transferred or released shall be forwarded.~~

~~J. Written policy and procedure governing correspondence of juveniles shall be made available to all staff and juveniles and shall be reviewed annually and updated as needed.~~

6 VAC 35-140-80. Telephone calls.

Residents *in all juvenile residential facilities* shall be permitted reasonable access to a telephone in accordance with policies and procedures that take into account the need for facility security and order, resident behavior, and program objectives.

6 VAC 35-140-90. Visitation.

A. Residents *in all juvenile residential programs* shall be permitted to have visitors, consistent with written policies and procedures that take into account the need for facility security and order and the behavior of individual residents and visitors.

B. ~~The~~ Each juvenile residential facility shall have a designated visiting area.

C. *Visiting facilities in each juvenile residential facility permit informal communication between residents and visitors, including opportunity for physical contact.*

6 VAC 35-140-110. Residents' funds.

~~Written policy, procedure and practice shall provide that-~~ *In all juvenile residential facilities, residents' funds are shall be used only for their benefit; for payments ordered by a court of competent jurisdiction; or to pay restitution for damaged property or personal injury as determined by disciplinary procedures.*

6 VAC 35-140-120. Contraband.

In all juvenile residential facilities, written policy, procedure and practice shall provide for the control, detection and disposition of contraband.

6 VAC 35-140-130. Criminal activity.

In all juvenile residential facilities, written policy, procedure and practice shall require that: -1- staff report all known criminal activity by residents is reported or staff to the program administrator for appropriate action ; and .

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~~2. Any felony committed on or off the premises by residents or staff is reported to the program administrator and the appropriate state or local law enforcement agency.~~

6 VAC 35-140-140. Transportation.

It shall be the responsibility of the *juvenile residential facility* to have transportation available or to make the necessary arrangements for routine and emergency transportation.

6 VAC 35-140-150. Nonresidential programs and services.

Any nonresidential services offered by the *juvenile residential facility* shall comply with all applicable laws and regulations.

6 VAC 35-140-170. Computer security.

If the *juvenile residential facility records* log book type information is recorded on computer, all entries shall post the date, time and name of the person making an entry; the computer shall be so equipped as to prevent previous entries from being overwritten.

6 VAC 35-140-180. Release procedures.

Residents shall be released from a *juvenile residential facility* only in accordance with written policy and procedure.

6 VAC 35-140-190. Health screening at admission.

Written policy, procedure and practice of the *juvenile residential facility* shall require that:

1. To prevent newly-arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission undergo a preliminary health screening consisting of a structured interview and observation by health care personnel or health-trained staff, using a health screening form that has been approved by the facility's health authority.
2. Youth admitted to the *juvenile residential facility* who pose a health or safety threat to themselves or others are not admitted to the facility's general population but provision shall be made for them to receive comparable services.
3. Immediate health care is provided to residents who need it.

6 VAC 35-140-192. Provision of health care.

Written policy and defined procedure require, and actual practice evidences, that treatment is performed by nursing personnel pursuant to written or verbal orders signed by personnel authorized by law to give such orders.

6 VAC 35-140-200. Training regarding special medical needs of residents.

Written policy, procedure and practice shall provide that staff of the *juvenile residential facility* shall be trained in universal precautions regarding HIV and shall follow procedures for dealing with residents who have infectious or communicable diseases.

6 VAC 35-140-210. Informed consent as to health care.

Written policy, procedure and practice of the *juvenile residential facility* shall provide that:

1. The informed consent to health care shall be obtained from the resident, parent, guardian or legal custodian as required by law.
2. Residents may refuse, in writing, medical treatment and care.
3. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

6 VAC 35-140-220. Residents' medical record Health records.

A. Written policy, procedure and practice of the *juvenile residential facility* shall provide that residents' active medical health records shall be:

1. Kept confidential from unauthorized persons and in a file separate from the case record;
2. Readily accessible in case of emergency; and

Made available to authorized staff consistent with applicable state and federal laws.

B. Residents' inactive ~~medical health~~ records shall be retained and disposed of as required by The Library of Virginia.

6 VAC 35-140-230. Hospitalization and other outside medical treatment of residents.

When a resident of a *juvenile residential facility* needs hospital care or other medical treatment outside the facility:

1. The resident shall be transported safely and in a timely manner; and
2. A parent or legal guardian, a staff member, or a law-enforcement officer, as appropriate, shall accompany the resident and stay at least during admission and, in the case of securely detained or committed residents, until appropriate security arrangements are made.

6 VAC 35-140-250. Suicide prevention.

Written policy, procedure and practice of the *juvenile residential facility* shall provide that there is a suicide prevention and intervention program developed in consultation with a ~~local or state~~ qualified medical or mental health authority professional, and all direct care staff are trained in it the implementation of the program.

6 VAC 35-140-260. Background checks on personnel.

A. Except as provided in subsection C of this section, all persons selected for employment in a *juvenile residential facility* after January 1, 1998, all family-oriented group home parents staff, all persons who teach in the facility or provide professional services on a regular basis, and all volunteers and interns who work one-on-one with residents shall immediately, prior to assuming their duties, undergo a check, as specified in department procedures, of references, criminal

records, central registry and, if appropriate, driving record. to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of juveniles in the program. The background check shall include a fingerprint check with the Virginia State Police and FBI if the State Police determine that the requesting agency is a qualified entity, or a criminal history request or a noncriminal justice interface with the Virginia State Police if the State Police determine that the requesting agency is not a qualified entity to receive fingerprint-based criminal information.

B. The facility shall have procedures for supervising nonstaff persons who have contact with residents.

~~B. If C. To minimize vacancy time when a fingerprint check has been requested, direct care staff are may be hired pending the completion of background checks, they results of the fingerprint checks, provided:~~

1. The CPS check and criminal background check have been completed;
2. The applicant is given written notice that continued employment is contingent on the fingerprint check results; and
3. Staff hired under this exception shall always work with staff whose background checks have been completed.

6 VAC 35-140-270. Physical examination.

When the qualifications for a position in a juvenile residential facility require a given level of health or set of physical ability abilities, all persons selected for such positions shall be examined by a physician at the time of employment to ensure that they have the level of medical health or physical ability required to perform assigned duties. Persons hired after [the effective date of this regulation] into positions that require a given set of physical abilities may be reexamined annually in accordance with written procedures.

6 VAC 35-140-275. Code of ethics.

A written code of ethics that is available to all employees shall prohibit employees of the juvenile residential facility from using their official positions to secure privileges for themselves or others and from engaging in activities that constitute a conflict of interest.

6 VAC 35-140-280. Training.

A. Initial orientation and annual training shall be provided to all staff, relief staff, volunteers, and interns of juvenile residential facilities, and family-oriented group home parents staff, in accordance with each position's job description and annual training plan.

B. Prior to assuming their duties, juvenile residential facility staff who are responsible for supervising residents shall receive an orientation that addresses at least the following items:

1. The facility's program philosophy and services;
2. Residents' rules and the facility's behavior management program;
3. Residents' rights and responsibilities;

4. Residents' disciplinary and grievance procedures;
5. Security and emergency procedures; and
6. Documentation requirements.

C. In addition to the orientation required by subsection B of this section, juvenile residential facility staff who work with juveniles shall receive sufficient training so that they are thoroughly familiar with the rules of juvenile conduct, the rationale for the rules, and the sanctions available.

~~C. D.~~ All full-time staff of juvenile residential facilities who provide direct services or supervision to residents or families shall receive at least 40 hours of training annually, ~~not including in addition to~~ initial orientation. As applicable to the individual's position, this training shall include the training required by:

1. The Standards for the Interdepartmental Regulation of Residential Facilities for Children; and
2. The standards in this regulation dealing with:
 - a. Suicide prevention (6 VAC 35-140-250);
 - b. Special medical needs of residents (6 VAC 35-140-200);
 - c. Health screenings at admission (6 VAC 35-140-190); and
 - d. Mechanical restraints (6 VAC 35-140-680).

6 VAC 35-140-290. Outside personnel working in the facility.

A. Juvenile residential facility staff shall monitor all situations in which outside personnel perform any kind of work in the immediate presence of youth in the facility.

B. Adult inmates or persons assigned to perform services as a result of a conviction in an adult court shall not work in areas of the any juvenile residential facility where youth are present.

6 VAC 35-140-295. Political activity.

The juvenile residential facility shall have written policy regarding campaigning, lobbying and political activities by employees, consistent with applicable statutes and state or local policies. The policy shall be known by and made available to all employees.

6 VAC 35-140-300. Showers.

Residents of the juvenile residential facility shall have the opportunity to shower daily.

6 VAC 35-140-310. Inspections.

All safety, emergency and communications systems of the juvenile residential facility shall be inspected by designated staff according to a schedule which that is approved by the facility administrator and which meets all applicable regulations tested at least quarterly and more often if indicated by the manufacturer's recommendations or instruction manuals.

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6 VAC 35-140-320. Repair or replacement of defective equipment.

Whenever equipment of the juvenile residential facility is found to be defective, immediate steps shall be taken to rectify the situation and to repair or replace the defective equipment.

6 VAC 35-140-330. Lighting in housing and activity areas.

A. Sleeping and activity areas in the juvenile residential facility shall provide natural lighting.

B. In all juvenile residential facilities there shall be night lighting sufficient to observe residents.

6 VAC 35-140-340. Fire prevention.

A. There shall be a fire prevention plan in each juvenile residential facility that provides for an adequate fire protection service.

B. The juvenile residential facility shall have receptacles for disposing of flammable materials.

C. All flammable, toxic and caustic materials within the juvenile residential facility shall be stored and used in accord with federal, state and local requirements.

D. Flame retardant and nontoxic materials shall be used in construction and furnishings of the juvenile residential facility.

6 VAC 35-140-350. Independent living programs.

Independent living programs shall have a written description of the curriculum and methods used to teach living skills, which shall include finding and keeping a job, managing personal finances, household budgeting, hygiene, nutrition, and other life skills.

Article 6.1.

Standards for Halfway Houses.

6 VAC 35-140-385. Administration and organization.

Each halfway house shall have a document describing its mission and role within the context of the total direct care system. Each halfway house shall demonstrate that its programs and services are consistent with the described mission and role, or document approval by the appropriate authority for any variance from the stated mission and role.

6 VAC 35-140-386. Review of collective service needs.

At least once every three years, the halfway house shall review the collective service needs of its juvenile population, evaluate the effectiveness of existing programs and services in meeting the needs of its population, and implement special programs to meet the needs of youth with specific types of problems identified through the process.

6 VAC 35-140-387. Program to reinforce positive behavior.

Consistent with department policies and procedures, each halfway house shall implement a system of rewarding the positive behavior of individual youth.

6 VAC 35-140-388. Organizational communications.

The halfway house shall demonstrate compliance with department procedures requiring reports concerning major

incidents, population data, employee vacancies and other information determined by the central administration.

6 VAC 35-140-389. Financial practices.

Each halfway house shall demonstrate compliance with department procedures and state policy concerning procurement, control of property, accounting practices, petty cash, signature control on checks, and reimbursement of employees for approved expenses incurred in the performance of their duties.

6 VAC 35-140-400. Residents' physical qualifications.

The boot camp shall have written policies and procedures that govern:

1. Admission, including a required written statement from a physician that the juvenile meets the American Pediatric Council's Society's guidelines to participate in contact sports and from a licensed mental health professional that the juvenile is an appropriate candidate for a boot camp program; and

2. Discharge, should a resident be physically unable to keep up with the program.

6 VAC 35-140-440. Classification plan.

Residents of the secure facility shall be assigned to sleeping rooms and living units according to a written plan that takes into consideration facility design, staffing levels, and the behavior and characteristics of individual residents.

6 VAC 35-140-450. Resident's physical examination; responsibility for preexisting conditions.

A. Within five days of admission to the secure facility, all residents who are not directly transferred from another secure juvenile residential facility shall be medically examined by a physician or a qualified health care practitioner operating under the supervision of a physician to determine if the resident requires medical attention or poses a threat to the health of staff or other residents. A full medical examination is not required if there is documented evidence of a complete health appraisal within the previous 90 days; in such cases, a physician or qualified health care practitioner shall review the juvenile's health record and update as necessary.

B. ~~The secure custody facility~~ A detention home shall not accept financial responsibility for preexisting medical, dental, psychological or psychiatric conditions except on an emergency basis.

6 VAC 35-140-460. Health authority.

A physician, health administrator or health agency shall be designated the health authority responsible for arranging all levels of health care in the secure facility, consistent with law and medical ethics.

6 VAC 35-140-470. Medical space and equipment.

~~There~~ The secure facility shall ~~be~~ have a central medical room with medical examination facilities equipped in consultation with the health authority.

6 VAC 35-140-480. Residents' personal possessions.

~~A. Each detention home and juvenile correctional center shall inventory residents' personal possessions shall be inventoried and documented in the case file upon admission and either document the information in the case file. When a juvenile arrives at a secure facility with items that the juvenile is not permitted to possess in the secure facility, staff of the facility shall:~~

- ~~1. Dispose of contraband items in accordance with written procedures;~~
- ~~2. If the items are nonperishable property that the juvenile may otherwise legally possess, securely stored and returned store the property and return it to the resident upon release; or~~
- ~~2. Given to the resident's parents or guardians; or~~
- ~~3. Make reasonable documented efforts to return the property to the resident, parent or legal guardian.~~
- ~~3. Shipped to the resident's last known address.~~

~~B. Personal property that remains unclaimed 90 days after a documented attempt to return the property may be disposed of in accordance with written policies and procedures.~~

6 VAC 35-140-490. Area and equipment restrictions.

- ~~A. Written procedures shall govern access to all areas in the secure facility where food or utensils are stored.~~
- ~~B. All security, maintenance, educational, recreational, culinary, and medical equipment of the secure facility shall be inventoried and controlled.~~
- ~~C. Residents of a secure detention home shall not be permitted to work in the detention home food service.~~

6 VAC 35-140-500. Reading materials.

~~A. Reading materials that are appropriate to residents' ages and levels of competency shall be available to all residents of the secure facility and shall be coordinated by a designated person.~~

~~B. Each detention home and juvenile correctional center shall have and follow written policy and procedure governing youth access to publications.~~

6 VAC 35-140-510. ~~Postdispositional placements.~~ (Repealed.)

~~A. If a detention home accepts postdispositional placements, it shall have written policies, procedure and practice governing the postdispositional program which shall have regard for reasonable utilization of the facility.~~

~~B. When a juvenile is ordered by a court, pursuant to § 16.1-284.1 B of the Code of Virginia, into a facility that houses postdispositionally detained youth, the facility shall:~~

- ~~1. Obtain from the supervising agency a copy of the court order, the resident's most recent social history, and any other written information considered by the court during the sentencing hearing; and~~

~~2. Have a written plan with the court service unit within five days to enable such youth to take part in one or more locally available treatment programs appropriate for their rehabilitation which may be provided in the community or at the facility.~~

6 VAC 35-140-530. Outdoor Recreation.

~~There A. Each detention home and juvenile correctional center shall be an have appropriate indoor and outdoor area in which residents are permitted to recreation areas. An opportunity for large muscle exercise shall be provided daily. Outdoor recreation will be available according to the secure facility's recreation plan, which must provide at least one hour of planned outdoor recreation at least three times per week, unless prevented by documented adverse weather conditions or threat to facility security.~~

~~B. Each detention home and juvenile correctional center shall provide a variety of fixed and movable equipment for each indoor and outdoor recreation period.~~

6 VAC 35-140-540. Supervision of residents by staff.

~~A. Staff of the secure facility shall provide 24-hour awake supervision seven days a week.~~

~~B. When both males and females are housed in the same living unit of a secure facility, at least one male and one female staff member shall be actively supervising at all times.~~

~~C. Staff shall always be in plain view of another staff of the opposite sex person when entering an area of the secure facility occupied by residents of the opposite sex.~~

~~D. Staff shall regulate the movement of juveniles within the secure facility in accordance with written procedures.~~

~~E. Each detention home and juvenile correctional center shall have and follow written policies and procedures governing the transportation of juveniles outside the facility and from one jurisdiction to another.~~

~~F. Service personnel shall not perform work in any area of the secure facility that permits contact with residents, except under the direct and continuous supervision of facility staff.~~

~~G. No detention home or juvenile correctional center shall permit an individual youth or group of youths to exercise control or authority over other youths except when practicing leadership skills as part of an approved program under the direct and immediate supervision of staff.~~

6 VAC 35-140-545. Staffing pattern.

~~A. During the hours that residents are scheduled to be awake, there shall be at least one child care staff member awake, on duty and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, facility-sponsored activities except that independent living programs shall have at least one child care staff member awake, on duty and responsible for supervision of every 15 children on the premises or participating in off-campus, facility-sponsored activities.~~

~~B. During the hours that residents are scheduled to sleep there shall be no less than one child care staff member on~~

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duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one child care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping. This requirement does not apply to approved independent living programs.

D. On each floor where children are sleeping, there shall be at least one child care staff member awake and on duty for every 30 children or portion thereof.

6 VAC 35-140-550. Due Disciplinary process.

A. ~~In each~~ Each secure detention facility, when a rule violation occurs which is punishable by confinement for 48 hours or less, and juvenile correctional center shall have written policy, procedure and practice shall provide for: guidelines for resolving minor juvenile misbehavior. Before room restriction or privilege restriction is imposed as a sanction, the reason for the restriction shall be explained to the juvenile and the juvenile shall be given an opportunity to explain the behavior that led to the restriction. Room restriction for minor misbehavior shall serve only as a "cooling off" period and shall not exceed 60 minutes.

- ~~1. Reporting major rule violations to supervisory personnel;~~
- ~~2. Conducting a timely, impartial investigation and hearing including provisions for the youth to participate in and to be represented at the hearing;~~
- ~~3. Recording and notifying the parties of the hearing's findings and any action taken;~~
- ~~4. Expunging all reference to the charges if the youth is found innocent;~~
- ~~5. Reviewing the hearing record to ensure conformity with policy and regulations; and~~
- ~~6. Permitting the juvenile to appeal the decision.~~

B. ~~In~~ Each secure detention facility, ~~when and juvenile correctional center shall have and follow a written process for handling instances when a resident is charged with a major rule violation occurs which is punishable by confinement for more than 48 hours, and in all other secure custody facilities when a major or moderate rule violation occurs, written policy, procedure and practice shall provide the following:~~

- ~~1. Staff shall prepare a disciplinary report when a resident has committed a major or moderate violation of facility rules.~~

C. A resident may admit to the charge to a facility administrator or designee who was not involved in the incident, accept the sanction prescribed for the offense, and waive his right to a formal process. If the resident denies the charge or there is reason to believe that the resident's admission is coerced or that the resident does not understand the charge or the implication of the admission, the formal process for resolving the matter shall be followed.

2- D. When it is necessary to place the juvenile in confinement to protect the facility's security or the safety of the resident or others, a resident who is charged with a rule violation the charged juvenile may be confined pending a due process

hearing for up to 24 hours; Confinement for longer than 24 hours must be reviewed at least once every 24 hours by an administrator or designee who was not involved in the incident ~~must approve any longer confinement.~~

3. E. In each secure detention facility and juvenile correctional center, when staff have reason to believe a resident has committed a rule violation that cannot be resolved through the facility's informal process:

1. Staff shall prepare a disciplinary report;
2. ~~A~~ The resident who is charged with a major or moderate rule violation shall be: ~~a.~~ given a written copy of the charge within 24 hours of the infraction;
- ~~b.~~ ~~Scheduled for a~~ 3. If a hearing is required under subsection C of this section, the hearing shall be scheduled to occur no later than 48 hours after the infraction ~~excluding in a detention facility and no later than seven days after the infraction in a juvenile correctional center. These timeframes do not include weekends and holidays; and~~
- ~~e.~~ ~~Given~~ 4. The charged resident shall be given at least 24 hours notice of the time and place of the hearing, but the hearing may be held within 24 hours with the resident's written consent. ;

4. 5. Disciplinary hearings on rule violations shall be conducted by an impartial person or panel of persons; a record of the proceedings shall be made and shall be kept for six months. ;

5. 6. Residents charged with rule violations shall be present at *throughout* the hearing unless they waive that right in writing or through their behavior but may be excluded during the testimony of any resident whose testimony must be given in confidence. The reason for the resident's absence or exclusion shall be documented. ;

6. 7. Residents shall be permitted to make a statement and present evidence at the hearing and to request witnesses on their behalf. The reasons for denying such requests shall be documented. ;

7. 8. At the resident's request, a staff member shall represent the resident at the hearing and question witnesses. A staff member shall be appointed to help the resident when it is apparent that the resident is not capable of effectively collecting and presenting evidence on his own behalf. ;

8. 9. A written record shall be made of the hearing decision and given to the resident. The hearing record shall be kept in the resident's file and in the disciplinary committee's records. ;

9. 10. The disciplinary report shall be removed from the file of a resident who is found not guilty. ;

10. 11. The facility administrator or designee shall review all disciplinary hearings and dispositions to ensure conformity with policy and regulations. ; and

11. 12. The resident shall have the right to appeal the disciplinary hearing decision to the facility administrator or designee within 24 hours of receiving the decision. The

appeal shall be decided within 24 hours of its receipt, and the resident shall be notified in writing of the results within three days. These time frames do not include weekends and holidays.

6 VAC 35-140-560. Room confinement and isolation.

A. Written policy, procedures and practice shall govern how and when residents of a secure facility may be confined to a room ~~and shall provide for:~~ .

~~4. B. Whenever a resident of a secure facility is confined to a locked room, including but not limited to being placed in isolation, staff checks shall check the resident visually at least every 30 15 minutes and more often if indicated by the circumstances;~~ .

~~2. Staff checks at least every 15 minutes when the resident is on suicide watch~~

~~3. C. Residents of a secure facility who are confined to a room, including but not limited to being placed in isolation, shall be afforded the opportunity for at least one hour of physical exercise daily.~~

~~B. D. If a resident in secure detention or a juvenile correctional center is confined to his room for more than 24 hours, the superintendent or designee shall be notified. If the confinement extends to more than 72 hours, the confinement shall be immediately reported to the regional manager designated department staff person who has oversight responsibility for the facility, along with the steps being taken or planned by the facility to resolve the situation, and followed immediately with a written, faxed, copy of the or secure e-mail report to the regional manager in accordance with established department procedures.~~

~~C. If a resident in a juvenile correctional center is confined for more than 24 hours, the superintendent or designee shall be notified. If the confinement extends to 72 hours the Chief of Operations for Juvenile Correctional Centers, or designee, must approve the continued confinement. Residents who are confined to their rooms shall be given an opportunity to exercise daily.~~

~~D. E. Room confinement as a sanction in a secure facility, or isolation, shall not exceed five days.~~

~~E. The director or designee F. An administrator of the secure facility shall make personal contact with the each resident who is confined to a locked room, including being placed in isolation, each day of confinement.~~

~~G. Residents of detention homes and juvenile correctional centers who are placed in administrative confinement or in isolation shall be afforded living conditions and privileges approximating those available to the facility's general population. Exceptions may be made in accordance with established procedures when justified by clear and substantiated evidence.~~

6 VAC 35-140-570. Questioning of residents.

The secure detention facility shall have written policy, procedure and practice ~~governing the requiring~~ permission ~~required to be obtained~~ from the committing agency, attorney,

parent or guardian or other person standing in loco parentis before permitting any local, state or federal authority to question a resident.

6 VAC 35-140-580. Facility area searches.

Written policy, procedure and practice shall provide for regular searches of the secure facility and shall provide for respecting residents' rights to their own property.

6 VAC 35-140-590. Searches of residents.

Each secure facility's written policy, procedure and practice shall provide for searches of residents' persons to maintain facility security and control contraband and shall specify that:

1. The resident shall not be touched any more than is necessary to conduct a comprehensive search.
2. Only qualified medical personnel conduct body cavity searches and only when specifically authorized by the facility director or a court. Inspections are to be fully documented in the resident's medical file.
3. Strip searches are performed visually by staff of the same sex as the resident in an area that ensures privacy.
4. Any witness to a body cavity search or strip search is of the same gender as the resident.

6 VAC 35-140-600. Control center.

To maintain the internal security of the secure facility, a control center that is secured from residents' access shall be staffed 24 hours a day to integrate all external and internal security functions and communications networks.

6 VAC 35-140-610. Communications systems.

A. In each secure facility, there shall be a means for communicating between the control center and living areas.

B. The secure facility shall be able to provide communications in an emergency.

C. A secure custody facility shall have a communications system linked to the community, and written procedures governing its use.

6 VAC 35-140-615. Alternate power source for secure facilities.

Each detention home and juvenile correctional center shall have access to an alternate power source to maintain essential services in an emergency.

6 VAC 35-140-620. Keys.

A. The secure facility shall have a written key control plan to keep keys secure at all times.

B. Fire and emergency keys shall be instantly identifiable by sight and touch.

C. There shall be different masters for the interior security and outer areas.

6 VAC 35-140-630. Control of perimeter.

~~There shall be~~ A. In accordance with a written plan to, each detention home and juvenile correctional center shall control

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~~the~~ its perimeter, by appropriate means to contain provide that residents remain within the perimeter and to prevent unauthorized access by the public.

B. Pedestrians and vehicles shall enter and leave at designated points in the perimeter of the detention home or juvenile correctional center.

6 VAC 35-140-660. Chemical agents.

~~Tear gas, mace,~~ Pepper spray and related chemical agents for security may be used by staff only when the board has approved the use of a specific chemical agent in an individual facility based on a demonstrated compelling security need and the establishment of adequate safeguards in accordance with guidelines issued by the board.

6 VAC 35-140-670. Mechanical restraints.

Written policy, procedure and practice shall govern the use of mechanical restraints in each secure custody facility. Such policies and procedures shall be approved by the ~~regulatory authority~~ department administrator who has oversight responsibility for the facility and shall specify:

1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs ~~and~~, leather restraints ~~and mobile restraint chair~~ may and may not be used; .
2. That the ~~approval of the~~ facility director or designee shall be ~~obtained~~ notified immediately upon using restraints in an emergency situation.
3. That restraints shall never be applied as punishment.
4. That residents shall not be restrained to a fixed object or restrained in an unnatural position.
5. That each use of mechanical restraints, except when used to transport a resident, shall be recorded in the resident's case file or in a central log book.
6. *That the facility maintains a written record of routine and emergency distribution of restraint equipment.*

6 VAC 35-140-680. Training required to use mechanical restraints.

If a secure facility uses mechanical restraints, written policy, procedure and practice shall provide that all staff who are authorized to use restraints shall receive department-approved training in their use, including how to check the resident's circulation and how to check for injuries; only properly trained staff shall use restraints.

6 VAC 35-140-685. Restraints for medical and mental health purposes.

In each detention home and juvenile correctional center, written policy, procedure, and practice shall govern the use of restraints for medical and mental health purposes. Written policy should identify the authorization needed; when, where, and how restraints may be used; for how long; and what type of restraint may be used.

6 VAC 35-140-690. Monitoring restrained residents.

Written policy, procedure and practice shall provide that when a resident of a secure facility is ~~mechanically restrained~~ placed in restraints staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals and toilet, and;
2. Make a direct personal check on the resident at least every 15 minutes and more often if the resident's behavior warrants; and
3. If the resident exhibits self-injurious behavior keep the youth under constant visual supervision along an uninterrupted line of sight, either directly, or through windows, or via video monitoring.

6 VAC 35-140-700. Consultation with mental health professional.

In each secure facility, written policy and procedure developed in consultation with a mental health ~~authority~~ professional, and facility practice shall provide that:

1. When a resident is restrained for more than two hours cumulatively in any 24-hour period, except when being transported, trained staff shall make and document a determination, arrived at in accordance with those policies and procedures, as to whether a mental health problem is indicated; and
2. If a mental health problem is indicated, staff shall immediately consult with, and document that they have consulted with, a licensed mental health professional or the local community services board.

Article 2.

Postdispositional Detention Programs.

6 VAC 325-140-701. Approval of postdispositional detention programs.

A detention home that accepts postdispositional placements exceeding 30 consecutive calendar days pursuant to § 16.1-284.1 of the Code of Virginia must be approved by the board to operate a postdispositional program. The certificate issued by the board pursuant to 22 VAC 42-10-40 ("Licenses/certificates" in Standards for Interdepartmental Regulation of Children's Residential Facilities) shall state that the facility is approved to operate a postdispositional program and the maximum number of residents that may be included in the postdispositional program. The board will base its approval of the postdispositional program on the program's compliance with standards in 6 VAC 35-140-701 through 6 VAC 35-140-709.

6 VAC 35-140-702. Agreement with court services unit.

The postdispositional program shall request a written agreement with the court services unit of the committing court, defining working relationships and responsibilities in the implementation and utilization of the postdispositional program.

6 VAC 35-140-703. Program description.

The postdispositional detention program or service shall have a written statement of its:

1. Purpose and philosophy;
2. Treatment objectives;
3. Criteria and requirements for accepting juveniles into the postdispositional program;
4. Criteria for measuring a juvenile's progress;
5. General rules of juvenile conduct and the behavior management program within the postdispositional program, with specific expectations for behavior and appropriate consequences;
6. Criteria and procedures for terminating services, including terminations prior to the juvenile's successful completion of the program;
7. Methods and criteria for evaluating program effectiveness; and
8. Provisions for appropriate custody, supervision and security when programs or services are delivered outside the facility.

6 VAC 35-140-704. Paid employment of postdispositional residents.

A. Paid employment may be part of the rehabilitation and treatment plan for a postdispositional resident. Such work must be in a setting that the facility administrator has determined to be appropriate.

B. Paid employment for any juvenile whose ordered period of confinement in a secure detention facility exceeds 30 consecutive days must be in accordance with 22 VAC 42-10-910 (Work and employment).

6 VAC 35-140-705. Services by licensed professionals.

When a postdispositional detention program refers a juvenile to a licensed professional in private practice, the program shall check with the appropriate licensing authority's Internet web page or by other appropriate means to verify that the individual is appropriately licensed.

6 VAC 35-140-706. Limitation of contact with juveniles.

When there are indications that an individual who is providing postdispositional programs or services has a physical, mental or emotional condition that might jeopardize the safety of juveniles, the administrator of the postdispositional program or department personnel may immediately require that the individual be removed from contact with juveniles until the situation is resolved.

6 VAC 35-140-707. Postdispositional placements.

A. A detention home that accepts postdispositional placements exceeding 30 consecutive calendar days shall have written policies, procedure and practice ensuring reasonable utilization of the facility for both predispositional detention and the postdispositional program.

B. When a court orders a juvenile detained postdispositionally for a period exceeding 30 consecutive days, pursuant to § 16.1-284.1 B of the Code of Virginia, the facility shall:

1. Obtain from the court service unit a copy of the court order, the resident's most recent social history, and any other written information considered by the court during the sentencing hearing; and
2. Develop a written plan with the court service unit within five business days to enable such youth to take part in one or more locally available treatment programs appropriate for their rehabilitation that may be provided in the community or at the facility.

C. When a detention facility accepts postdispositional placements exceeding 30 consecutive days pursuant to § 16.1-284 of the Code of Virginia, the facility shall:

1. Provide programs or services for such postdispositional residents that are not routinely available to detained youth who are awaiting disposition. This requirement for separate programs or services does not prohibit postdispositional residents from participating in predispositional services or programs in addition to postdispositional services or programs.
2. Establish a schedule clearly identifying the times and locations of programs and services available to postdispositional residents.

D. Upon the referral of the probation officer or the order of the court, the detention facility shall conduct the statutorily required assessment as to whether a juvenile is an appropriate candidate for placement in a postdispositional program exceeding 30 consecutive days. The assessment shall assess the juvenile's need for services using a process that is outlined in writing, approved by the department, and agreed to by both the detention home superintendent and the director of the court service unit. Based on these identified needs, the assessment shall indicate the appropriateness of the available postdispositional programs or services for the juvenile's rehabilitation.

E. When a postdispositional resident would have to be released from the secure facility to access programs or services in the community, both the detention home and the court service unit shall agree in writing as to the suitability of the juvenile to be temporarily released for this purpose. Juveniles who present a significant risk to themselves or others shall not be considered suitable candidates for paid employment outside the facility nor for programs or services offered outside the facility; they may, however, participate in programs or services within the facility, if appropriate programs or services are available.

6 VAC 35-140-708. Delivery of medication.

A detention facility that accepts postdispositional placements exceeding 30 consecutive days pursuant to § 16.1-284 of the Code of Virginia shall have and follow written policy and procedure, approved by the facility's health authority, that either permits or prohibits self-medication by postdispositional residents. The procedures may distinguish between juveniles who receive postdispositional services entirely within the

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confines of the secure detention facility and those who receive any postdispositional services outside the secure detention facility. The procedures shall conform to the specific requirements of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

6 VAC 35-140-709. Other applicable standards.

Detention facilities that provide postdispositional programs and services for juveniles whose ordered period of confinement exceeds 30 consecutive days must comply with all applicable requirements established by the Standards for the Interdepartmental Regulation of Residential Facilities for Children (22 VAC 42-10), including at least the following standards:

1. 22 VAC 42-10-620, Initial objectives and strategies.
2. 22 VAC 42-10-630, Service plan.
3. 22 VAC 42-10-670, Social services.
4. 22 VAC 42-10-690, Structured program of care.
5. 22 VAC 42-10-700, Health care procedures.
6. 22 VAC 42-10-710, Medical examinations and treatment.
7. 22 VAC 42-10-780, Management of resident behavior.
8. 22 VAC 42-10-880 B, Community relationships.
9. 22 VAC 42-10-910, Work and employment.
10. 22 VAC 42-10-920, Visitation at the facility and to the resident's home.

Article 2 3.
Wilderness Work Camps.

Article 3 4.
Juvenile Correctional Centers.

6 VAC 35-140-711. Staff training in juvenile correctional centers.

A. All staff of juvenile correctional centers who supervise residents shall receive at least 120 hours of training during their first year of employment in addition to orientation training, and at least an additional 40 hours of training each subsequent year.

B. Professional specialists employed by the juvenile correctional center (including but not limited to case managers, counselors, social workers, psychologists, medical personnel and recreation specialists) who have contact with youth shall receive at least 120 hours of training during their first year of employment in addition to orientation training, and at least an additional 40 hours of training each subsequent year.

C. All administrative and managerial staff, and all support employees of the juvenile correctional center who have regular or daily contact with juveniles, shall receive at least 40 hours of training in addition to orientation training during their first year of employment and at least 40 hours of training each year thereafter, in areas relevant to their positions.

D. All clerical and support employees of the juvenile correctional center who have no contact or only minimal contact with juveniles shall receive, in addition to their first year orientation, at least 16 hours of training during the first year of employment and at least 16 hours of training each year thereafter.

E. Library and reference services shall be available to complement the training and staff development program.

6 VAC 35-140-712. Performance review.

Consistent with state personnel policies and procedures, the juvenile correctional center shall provide for an annual written performance review of each employee. The review shall be based on defined criteria, and the results discussed with the employee.

6 VAC 35-140-713. Administration and organization.

Each juvenile correctional center shall have a written document describing its organization. The description shall include an organizational chart that groups similar functions, services, and activities in administrative subunits. This document shall be reviewed and updated as needed.

6 VAC 35-140-714. Community-facility advisory committee.

Each juvenile correctional center shall have a community advisory committee or representative of the community that serves as a link between the program and the community.

6 VAC 35-140-715. Organizational communications.

A. The juvenile correctional center shall comply with department procedures requiring reports concerning major incidents, population data, employee vacancies and other information determined by the central administration.

B. The superintendent of the juvenile correctional center, or designee, shall meet at least monthly with all department heads and key staff members.

C. The juvenile correctional center superintendent or designee, assistant facility superintendent, and designated department heads shall visit the facility's living and activity areas at least weekly to encourage informal contact with staff and juveniles and to observe informally living and working conditions.

6 VAC 35-140-730. Isolation and segregation.

A. Residents of juvenile correctional centers who are placed in isolation shall be housed no more than one to a room.

B. Residents of juvenile correctional centers who are placed in ~~personal control units~~ or segregation units shall be housed no more than two to a room.

C. In juvenile correctional centers, single occupancy rooms shall be available when indicated for wards with severe medical disabilities, wards suffering from serious mental illness, sexual predators, wards who are likely to be exploited or victimized by others, and wards who have other special needs for single housing.

6 VAC 35-140-740. Post orders or shift duties.

A. For each security post in the facility juvenile correctional center, there shall be post orders or shift duties that provide details for carrying out daily operations. *These instructions shall be reviewed at least annually and updated if necessary.*

B. Juvenile correctional center personnel who are permanently assigned to security posts shall read, sign and date the appropriate shift assignment each time they assume a new position.

6 VAC 35-140-750. Population count.

In each juvenile correctional center, there shall be a system for each shift to count residents and notify designated staff of any changes in resident population. All housing moves, school and work assignments, admissions and releases shall be reflected on a daily master count sheet.

6 VAC 35-140-760. Institutional Operating procedures.

When it is necessary to provide institution-specific guidance for implementing standard operating procedures, institutional operating procedures shall be in place that are consistent with standard operating procedures. *The institutional operating procedures shall be approved by the Chief of Operations for Juvenile Correctional Centers Deputy for Institutions.*

6 VAC 35-140-770. Transfer file.

A. In each juvenile correctional center, a separate transfer file shall be kept for each resident, documenting all treatment and significant events. All transfer files shall be kept current and in a uniform manner.

B. An exact copy of all material added to the transfer file shall be sent to the reception and diagnostic center for inclusion in the resident's master file.

6 VAC 35-140-810. Compliance with central administration guidance.

As part of the certification audit, an assessment will be made of the juvenile correctional center's compliance with policies, procedures, directives or other official guidance from the department's central administration. A summary of the findings will be included in the certification audit report to the board.

DOCUMENTS INCORPORATED BY REFERENCE

~~"Guidelines for Transporting Juveniles in Detention," Board of Youth and Family Services, June 13, 1991.~~

VA.R. Doc. No. R02-43; Filed July 20, 2004, 10:09 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Titles of Regulations: Consumer Products (Rev. G03).

9 VAC 5-20. General Provisions (amending 9 VAC 5-20-21).

9 VAC 5-40. Existing Stationary Sources (adding 9 VAC 5-40-7240 through 9 VAC 5-40-7360).

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

Public Hearing Date: September 9, 2004 - 11 a.m.

Public comments may be submitted until 5 p.m. on October 8, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510, or e-mail ggraham@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the regulation is to require owners to limit emissions of air pollution from consumer products to the level necessary for (i) the protection of public health and welfare and (ii) the attainment and maintenance of the air quality standards. The proposed amendments are being made to help provide emissions reductions sufficient to achieve the ozone standard in Northern Virginia.

Substance: The proposed regulatory action will add a new rule, Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4-50). The provisions of this rule apply to those persons who sell, supply, offer for sale, or manufacture for sale any consumer product that contains volatile organic compounds. Exempted from the regulation is any consumer product manufactured in the Northern Virginia volatile organic compound (VOC) emissions control area for shipment and use outside of this area. The provisions of this regulation shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the Northern Virginia volatile organic compound emissions control area, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the Northern Virginia volatile organic compound emissions control area. A number of product-specific exemptions are also allowed. The rule specifies a compliance deadline of January 1, 2005.

Issues: The primary advantage to the public is that the adoption of these regulations will significantly decrease emissions of VOCs in the Northern Virginia area, thus benefiting public health and welfare. There are no disadvantages to the public.

The primary advantages to the department are that the adoption of these regulations will allow Virginia (i) to avoid federal sanctions that would be imposed for violating the SIP provisions of the Clean Air Act and (ii) to uphold its promise to

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its jurisdictional neighbors (Maryland and Washington, D.C.). There are no disadvantages to the department.

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

Summary of the Proposed Regulation. The General Assembly mandates in §10.1-1308 of the Code of Virginia that the State Air Pollution Control Board promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth.

The proposed regulatory action adds a new section to existing regulations for the control and abatement of air pollution. It establishes new emission limits for consumer products ranging from cosmetics and antiperspirants to aerosol adhesives and charcoal lighter fluids. It also establishes a number of administrative and other requirements to be met by manufacturers of these consumer products. The new standards and requirements being proposed only apply to persons and sources in the Northern Virginia volatile organic compounds (VOC) emissions control area (Counties: Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; Cities: Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park). The compliance deadline is established as January 1, 2005.

Estimated Economic Impact.

Rationale: The federal Clean Air Act requires the Environmental Protection Agency (EPA) to prescribe primary and secondary air quality standards (developed for the protection of public health and public welfare, respectively) for each air pollutant for which air quality criteria were issued before the enactment of the Clean Air Act in 1970. These standards are known as the national ambient air quality standards (NAAQS) and they establish the maximum limits of pollutants that are permitted in the outside ambient air.

The Clean Air Act also requires each state to adopt and submit to EPA a plan (the state implementation plan or SIP) that provides for the implementation, maintenance, and enforcement of NAAQS within each air quality control region in the state. The Clean Air Act establishes a process for evaluating air quality in each region and identifying and classifying non-attainment areas according to the severity of the air pollution problem. Non-attainment areas are classified as marginal, moderate, serious, severe, and extreme and subject to more stringent measures as the classification moves from marginal non-attainment to extreme non-attainment. The Clean Air Act requires EPA to propose

geographic boundaries and pollution classification levels for all non-attainment areas in each state based on air quality data from that state. Following the establishment of non-attainment areas, each state is then required to submit a SIP demonstrating how it intends to achieve NAAQS in each non-attainment area. The SIP specifies how the state intends to reduce air pollution concentrations to a level at or below these standards. Once the pollution levels are at or below NAAQS levels, the SIP also demonstrates how the state intends to maintain air pollution concentrations at the reduced levels.

Effective July 1, 2003, parts of northern Virginia were classified as severe non-attainment areas for ozone and its precursors, volatile organic compounds or VOCs. The Northern Virginia VOC emissions control area includes the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The area was classified as a severe non-attainment area following deterioration in air quality and change in the federal ozone standard. The changes being proposed are additional measures to be incorporated into the SIP to bring VOC emissions to a level at or below NAAQS for ozone in northern Virginia. Failure to prepare such a plan and/or failure to obtain EPA approval for such a plan could result in sanctions such as the loss of federal funds for highways and other projects and EPA promulgating and implementing an air quality plan for Virginia.

Description of the Regulation and Estimated Economic Impact:

The proposed regulatory action adds a new section to the existing regulation for the control and abatement of air pollution. The new section is intended to limit VOC emissions from consumer products. The requirements of the section apply to all individuals and businesses manufacturing, selling, or supplying consumer products containing VOCs in the northern Virginia VOC emissions control area. Some of the exemptions to the rule are manufacturers and distributors who can demonstrate that the consumer product is for sale or shipment outside the Northern Virginia VOC emissions control area and that they have taken reasonable precautions to prevent its distribution in northern Virginia, fragrances up to 2% by weight contained in a consumer product, adhesives sold in containers of one fluid ounce or less, and fresheners and insecticides containing at least 98% paradichlorobenzene.

The proposed regulatory action establishes VOC emission limits for consumer products ranging from antiperspirants and cosmetics to aerosol adhesives and charcoal lighter fluids. Apart from ensuring that their products comply with the VOC emission limits, manufacturers are also required to date-code all consumer products subject to this regulation. They are also required to meet some additional record-keeping requirements such as retaining all documents related to the alternative control plan (ACP) agreement¹ for at least three years and providing the State Air Pollution Control Board with any documentation related to the ACP product within 90 days of

¹ An ACP agreement allows manufacturers to sell consumer products in the Northern Virginia VOC emissions control area as long as they meet the requirements of the proposed regulatory action.

the request. In addition, manufacturers of aerosol adhesive products are required to meet labeling requirements specified in the regulation. In the case of innovative products, the regulation allows manufacturers to seek and be granted an exemption from the requirements of the regulation.

The proposed regulatory action allows for the issuance, use, and trading of surplus reduction credits. The State Air Pollution Control Board will issue surplus reduction certificates to manufacturers operating under an ACP agreement based on the emission reductions achieved by the manufacturer greater than those required by the established limits. Manufacturers generating surplus emission reductions can use their surplus reduction certificates against future emission exceedances or sell their certificates to small or one-product businesses operating under a consumer products ACP. The regulation also provides for limited-use surplus reduction credits for early reformulation of ACP products. These limited-use credits can only be used by the manufacturer of the consumer product and cannot be traded. Allowing for trading of surplus reduction credits is likely to encourage manufacturers to achieve emissions reduction in excess of that required by regulation and mitigate some of the compliance costs associated with this regulation.

The proposed regulatory action establishes test methods and procedures to be used to determine compliance with the requirements of the consumer products rule. Alternative test methods can be used, but only after they have been approved by the State Air Pollution Control Board. The regulation also establishes a number of administrative requirements. It specifies procedures and requirements for the granting of waivers by the State Air Pollution Control Board. It also establishes procedures and requirements dealing with an ACP for consumer products. These include when manufacturers are required to submit an ACP, the procedure for submitting and maintaining an ACP, what constitutes a violation of the ACP agreement (or of the regulation), and the procedure for modifying, canceling, or transferring an ACP.

Finally, in order to take into account the new standards and requirements being proposed, the proposed regulatory action incorporates by reference the relevant documents and parts of the Code of Federal Regulations.

The standards being proposed are identical to those in the model rules established by the Ozone Transport Commission (OTC)² and standards implemented by other states such as California. According to a study by the OTC³, the California Air Resources Board estimated the cost of compliance with their consumer product rule to be \$800 per ton of VOC reduced. However, because more products fall under the ACP in the OTC area than in California, the compliance costs are spread over a larger portion of sales in the OTC than in California. Thus, the costs incurred by manufacturers in the supplying consumer products to the OTC area are expected to be lower than \$800 per ton. The OTC report estimates that the

model rule benefit for northern Virginia is VOC emissions reduction of 3 tons per day. Daily VOC emissions reductions of 3 tons would mean annual VOC emissions reductions of 1,095 tons. At \$800 per ton of VOC reduced, the proposed change would cost an estimated \$876,000 on an annualized basis.

DEQ has proposed the above rule, along with several other control measures, as a possible means by which to reduce VOC emissions in the Northern Virginia VOC emissions control area. The Metropolitan Washington Air Quality Committee (MWAQC)⁴, based on projected future emissions and other regional data, determined that the proposed measures were necessary for the area to meet its emissions reductions and attainment requirements. MWAQC decided on January 23, 2002 that Washington, D.C., Maryland, and Virginia would adopt the proposed measures. On August 19, 2003, the MWAQC approved the submitted plan for the attainment and maintenance of ozone air quality standard in the Northern Virginia area. The proposed regulatory action is part of the plan approved by the MWAQC. Maryland and Washington, D.C. are in the process of promulgating and adopting a similar rule. Many states in the Northeast and the mid-Atlantic regions have promulgated or are in the process of promulgating a regulation along the lines of the regulation being proposed in Virginia, so much so that the OTC produced a study providing estimates of the emissions reductions for each state within the OTC jurisdiction associated with the implementation of the rule (based on current federal and state regulations and SIP assumptions) as well as the costs associated with implementing the rule.

DEQ estimates that the proposed regulatory action will affect 193 manufacturers of consumer products. Once full emissions reductions are achieved, the annualized cost associated with implementing the consumer products rule is \$876,000. DEQ expects that full reductions for the consumer products rule will most likely be achieved within a year of the effective date of the rule.

Implementing the proposed changes will also result in some economic benefits. The adoption of this rule is likely to reduce emissions of VOCs in the Northern Virginia VOC emissions control area. The emissions reductions are likely to be beneficial to public health and welfare. According to EPA, exposure to ozone at the ground level can cause a number of respiratory problems such as irritation of the respiratory system, reduced operation of the lungs, inflammation and damage to the cells lining the lungs, and aggravation of existing lung problems. Repeated ozone exposure can cause permanent damage to children's developing lungs and accelerate the decline in lung function with age in adults. According to the U.S. Global Change Research Program, the best estimate of human health effects of ground-level ozone in the United States over the past 15 years is approximately \$7 billion per year. Thus, reducing the level of ozone will provide economic benefits in the future in terms of respiratory health problems and fatalities prevented (reflected in lower health

² The OTC was formed by Congress in 1990 to help coordinate plans for reducing ground-level ozone in the Northeast and mid-Atlantic states. Twelve states including Virginia are represented in the OTC.

³ E. H. Pechan and Associates, 2001. Control Measure Development Support Analysis of Ozone Transport Commission Model Rules. *Report prepared for the Ozone Transport Commission.*

⁴ A body of locally affected officials certified by the mayor of Washington, D.C. and the governors of Maryland and Virginia to prepare an air quality plan for the DC-Maryland-Virginia metropolitan statistical area.

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care and other costs) and increased productivity because of lower amounts of ground-level ozone. The emissions reductions achieved by the implementation of this rule would also help Virginia avoid federal sanctions that would be imposed for violating the SIP provisions of the Clean Air Act. The sanctions include the loss of federal funds for highways and other projects and/or more restrictive requirements for new industries. Moreover, the lack of an acceptable plan to get VOC emissions below NAAQS could also result in EPA promulgating and implementing an air quality plan for Virginia. Implementing the proposed rule would produce economic benefits by allowing Virginia to continue to receive federal funds and letting Virginia run its own air quality program.

The net economic impact of the proposed regulatory action will depend on whether the economic benefits of implementing these rules is greater than or less than the costs of doing so. The estimated cost of the proposed regulatory action is approximately \$876,000. It is not possible at this time to estimate the number and severity of respiratory problems and fatalities that will be prevented as a result of implementing these regulations. The extent of federal funding retained as a result of implementing the proposed regulatory action is also not known. Moreover, there are no studies or data available at this time estimating the economic benefits of having air quality programs run by states rather than by the federal government. Even with the uncertainties involved in determining the precise economic benefits of the proposed rule, the costs associated with implementing the rule appear to be relatively small. Thus, it is likely that these costs will be outweighed by the benefits of implementing the proposed rule.

The above analysis is based on the assumption that the rule will be adequately implemented and enforced. Enforcement is a key component of the proposed rule and essential to ensuring that emissions reduction targets are met. One of the causes for concern is the bootlegging of products not meeting the VOC emissions limits from other parts of the state into the Northern Virginia VOC emissions control area. Manufacturers are likely to incur additional costs in reformulating consumer products to meet the prescribed VOC emissions limit. Some or all of these costs are likely to be passed on to consumers in the form of higher prices. Without adequate enforcement and a large enough price differential between consumer products sold in Northern Virginia and elsewhere, the issue of bootlegging is likely to become significant. Another cause for concern is the operation of the surplus trading scheme. The regulation does not provide any details about how the scheme is to operate. The surplus trading is intended to encourage larger manufacturers to reformulate products to below the emissions limits established in the regulation. At the same time, it is also intended to provide smaller manufacturers (for whom reformulation is a more expensive proposition) with an option of continuing to manufacture products that do not meet the emissions limits as long as they have the requisite number of credits. By not implementing the surplus trading scheme effectively, the proposed rule will not be able to reap all the intended benefits.

According to DEQ, the agency currently does not anticipate using any additional resources reviewing and approving ACPs. However, DEQ does plan to resolve any enforcement and implementation issues by 2007, when the last of the

products not meeting the emissions limits are to be phased out.

Alternative to the Proposed Regulatory Action: Alternatives to the proposed regulatory action considered by DEQ were to take no action or to make alternative regulatory changes to those required by provisions of the law and associated regulations and policies. Other means of meeting the stated purpose of the regulation were deemed more burdensome and intrusive than the proposed change. Market-based mechanisms such as emissions cap-and-trade programs were not explicitly stated as an alternative considered by DEQ. Such programs exist for reducing emissions of air pollutants such as nitrogen oxides (NOX), sulfur dioxide, and VOCs at the federal and state level. In fact, Virginia is currently implementing an emissions allowance-trading program for new sources producing NOX emissions. §10.1-1322.3 of the Code of Virginia authorizes DEQ to consider market-based mechanisms as an option when formulating regulatory actions for achieving and maintaining NAAQS.

The proposed consumer product rule is the fifth rule proposed in the last year to reduce VOC emissions in the Northern Virginia VOC emissions control area. The other four rules dealt with controlling VOC emissions from portable fuel containers, mobile equipment repair and refinishing operations, architectural and industrial maintenance coatings, and solvent metal cleaning operations. Rather than implementing numerous such rules, which are costly to implement and enforce and whose benefits are relatively small, market-based mechanisms such as emissions cap-and-trade programs have frequently been demonstrated to be a more cost effective way of achieving the desired emission reductions. According to EPA, cap-and-trade is a policy approach for controlling large amounts of emissions from a group of sources at lower cost than if the sources were regulated individually. The approach first sets an overall cap, or maximum amount of emissions per compliance period, that will achieve the desired environmental effects. Authorizations to emit in the form of emission allowances are then allocated to affected sources, and the total number of allowances cannot exceed the cap. Individual control requirements are not specified for sources. The only requirements are that sources completely and accurately measure and report all emissions and then turn in the same number of allowances as emissions at the end of the compliance period.

The market-based emissions reduction program implemented in the Chicago ozone non-attainment area is the closest model of a program that could be applied to the Northern Virginia VOC emissions control area. The Chicago ozone non-attainment area has an emissions allowance-trading program that covers a large number of sources producing VOC emissions in the region. Parts of northern Illinois in and around Chicago have been classified by EPA as severe ozone non-attainment area. Under provisions of the federal Clean Air Act, the area must attain NAAQS by 2007. Illinois already has a number of technology-based or command and control rules, similar to those being proposed in Virginia, to limit VOC emissions from stationary sources. In order to meet the additional VOC emissions reductions required by the federal Clean Air Act for the Chicago ozone non-attainment area, Illinois considered the implementation of further command and

control measures. However, because the less expensive command and control rules had already been implemented, the only options available were rules with a very high cost of implementation.

In order to minimize the cost of further VOC reductions, Illinois chose instead to pursue a market-based approach to reducing VOC emissions. The emissions reduction market system (ERMS) was introduced in 2000. The ERMS is a cap-and-trade program in which participating sources must hold trading units equivalent to their VOC emissions. Each participating source is given a baseline depending on their actual VOC emissions in previous years adjusted for their compliance or noncompliance with existing rules. They are then issued trading units based on their baseline and adjusted for a 12% reduction in VOC emissions. Exceptions are provided for some sources for which emissions cannot be further reduced. Including exceptions and contingencies the program is expected to produce an overall VOC emissions reduction of 9% compared to the baseline. The ERMS operates from May 1 to September 30 (the time ground-level ozone formation is at its maximum) and trading units are retired after each season in order to account for each source's VOC emissions during the season. Thus, participating sources can either limit their emissions (through emissions controls or changes in technology) to the number of trading unit allotted to them or buy additional trading units from other sources in order to cover their excess emissions. Total VOC emissions are capped by the number of trading units issued. Even while participating in the program, ERMS participants are subject to all existing state and federal rules to limit VOC emissions.

The ERMS has been operating for four years and appears to be meeting its emissions reduction objectives. In 2002, there were 172 participating sources (excluding exempt sources) in the ERMS program. According to the annual performance review report for 2002, the ERMS program has achieved desired emissions reductions. In fact participating sources were found to be performing significantly below the baseline and allotment levels (allotments show a 9.7% and 9.9% reduction from the original baseline for all participating sources in 2002 and 2001, respectively). Moreover, the report found that the market-based system operated effectively with sources able to find trading partners (there was a sufficient supply of available trading units and market prices were conducive to trading).

Market-based emissions reduction programs have several economic advantages over technology-based command and control regulations. (i) They increase the flexibility of affected sources in meeting the emissions reduction requirements. Sources can still choose to limit their emissions by placing emission controls and through changes in technology. In addition, under a market-based program, sources facing high cost options to limit their emissions can trade with other sources not using all of their allotted trading units or facing less costly ways of lowering their emissions. Sources not currently using their entire allotment of trading units will be able to receive compensation for surplus trading units that would otherwise have been worthless, sources exceeding their allotment will be able to continue to emit VOCs, and the entire area would continue to meet its aggregate emissions reduction target. Moreover, sources with low cost options for

reducing emissions will have an incentive to reduce their VOC emissions and sell the surplus trading units to other sources that would otherwise have to spend more money to reduce their own emissions. Thus, implementation of a market-based program provides more flexibility to sources emitting VOCs to choose the most cost-effective method of meeting emissions reduction targets and creates incentives for the adoption of low-cost emissions reduction technologies. (ii) Market-based programs are more likely to result in actual VOC emissions reductions than technology-based measures. A major problem with technology-based command and control measures has been enforcement. Better enforcement of emissions reduction targets is likely to lead to the attainment of NAAQS in a shorter time and produce economic benefits by reducing the number and severity of illnesses and fatalities from exposure to ground-level ozone. By requiring sources to monitor and report their emissions and by basing trading unit allotments on these emissions, a cap-and-trade program reduces the incentive for non-compliance and thus increases the chances for actual emissions reductions. According to an EPA analysis of the federal sulfur dioxide cap-and-trade program (or the acid rain program), compliance has been at a near-perfect 99%. Reductions in the early years of the program were 25% below allowable levels. In fact, according to EPA, the federal sulfur dioxide cap-and-trade program has achieved greater emissions reductions in the given time than any other single program to control air pollution. (iii) Market-based programs also tend to be less expensive to implement than technology-based command and control measures. The operation and design of market-based programs such as cap-and-trade programs are relatively simple and this helps keep compliance and administrative costs low. According to EPA, cost savings from implementing cap-and-trade programs have been significant, as expensive source-specific reductions no longer have to be imposed and enforced on each source. The federal sulfur dioxide trading program ended up costing 75% less than the amount estimated before the program was implemented. Moreover, emissions monitoring and reporting requirements of market-based programs are not likely to be any more burdensome than similar requirements of most technology-based measures. (iv) The design of programs, such as the ERMS program, provides additional economic benefits over technology-based measures. The ERMS program is implemented only during the times of the year when ozone concentrations at the ground level are the highest, i.e., between May and September. By running the program only during these times, ERMS creates an incentive for sources to reschedule activities that produce VOC emissions to times of the year when the ozone concentration is lower. Thus, sources of VOC emissions will choose to engage in such activities during the high ozone times only if the economic benefits are greater than the costs associated with doing so. It is likely that some sources will choose to postpone these activities to another time of the year when the costs associated with engaging in them is lower. By ensuring, based on cost, that these activities are undertaken during different times of the year, the design of the ERMS program will produce efficiency gains.

Overall, market-based programs are more likely to produce actual emissions reductions than technology-based command and control measures, reducing the number and extent of

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illnesses and fatalities resulting from exposure to ozone. Moreover, the emissions reductions are likely to be achieved at a lower cost. Thus, market-based program for reducing emissions are likely to produce maximum benefits for public health and welfare and do so in the most efficient manner and with the least waste of resources.

In formulating a plan for the Northern Virginia VOC emissions control area, the Illinois cap-and-trade program should have been considered and analyzed extensively. The Chicago area has been classified as a severe ozone non-attainment area for some years now despite having technology-based rules similar to those in Virginia. In addition, the Chicago ozone non-attainment area also has regulations in place for portable gas can spillage control, solvent cleaning, mobile equipment repair and refinishing, and architectural and industrial maintenance coatings such as the ones being promulgated for the Northern Virginia VOC emissions control area. Despite all these measures, the Chicago area continues to have problems in meeting NAAQS for ozone. While differences in factors such as growth in population and the number polluting industries located in the area may be an issue when evaluating the cost effectiveness market-based mechanisms for reducing VOC emissions, it is recommended that DEQ consider such programs for implementation in the Northern Virginia VOC emissions control area.

Businesses and Entities Affected. The proposed regulatory action will affect manufacturers of ACP consumer products supplying or selling these products in the Northern Virginia VOC emissions control area. DEQ estimates that the proposed regulatory action will affect 193 manufacturers of consumer products.

These manufacturers will now have to ensure that consumer products produced by them for sale in the Northern Virginia VOC emissions control area comply with the VOC limits specified in the regulation. They will also have to meet some additional requirements such as date-coding all consumer products subject to the regulation, maintaining and making available all records pertaining to the ACP agreement and the ACP product. Manufacturers of aerosol adhesive products will be required to meet labeling requirements specified in the regulation. Some of the cost associated with these additional requirements will be counter-balanced by the fact the regulation provides an exemption from the requirements of this regulation to manufacturers producing innovative products. In addition, the regulation also encourages emissions reductions in excess of the prescribed limits by allowing for the issuance, use, and trade of surplus reduction credits.

Localities Particularly Affected. The proposed regulation will only affect localities in the Northern Virginia VOC emissions control area consisting of the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford and the cities of Alexandria, Fairfax, Fauquier, Falls Church, Manassas, and Manassas Park.

Projected Impact on Employment. The proposed regulatory action is likely to have a negative impact on employment. Increasing the cost of operation for businesses manufacturing consumer products for sale in the Northern Virginia VOC

emissions control area could result in people being laid off at these facilities.

Effects on the Use and Value of Private Property. The proposed regulatory action is likely to have a negative impact on the use and value of private property in the Northern Virginia VOC emissions control area. By imposing additional requirements on facilities manufacturing consumer products for sale in the Northern Virginia VOC emissions control area, the proposed regulatory action will impose additional costs and lower the asset value of these businesses. The proposed regulatory action is also likely to have a positive impact the use and value of private property. Due to a reduction in the amount of ground-level ozone in northern Virginia, some residential properties in the northern Virginia area could see an increase in their market value. However, it is not possible at this time to estimate the exact extent of the increase in market value of these properties resulting from a reduction in ground-level ozone.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and disagrees with the "Alternative to the Proposed Regulatory Action" section. This regulatory action is not intended to address solely Virginia's ozone problem but the problem of ozone transport throughout the entire northeastern corridor of the United States. The suggestion that Virginia should implement a Chicago-style cap-and-trade program instead of adopting the proposed regulations ignores the large-scale regional directive behind the decision to adopt these regulations for the metropolitan Washington, D.C., area, a decision made by the Metropolitan Washington Air Quality Committee (not by Virginia alone) after it examined many other alternatives. The point of the rulemaking is for Virginia and Maryland and Washington, D.C. to develop programs that parallel those of the other states in the Ozone Transport Region in order to give sources a unified directive and a solid financial incentive to lower VOC emissions. Furthermore, because of the complexity of federal guidance and the stringency of federal oversight on emissions trading, the development of a cap-and-trade program would take years longer to develop and implement than will the regulations, with VOC emissions remaining unreduced in the meantime. Finally, while cap-and-trade programs are fairly easy to conceptualize for stationary sources, application of such a program to consumer products poses unique challenges requiring even more resources and time to conceptualize and establish.

Summary:

This action will add a new rule (Article 50) to Chapter 40 of Regulations for the Control and Abatement of Air Pollution. The regulation will apply only to sources in the Northern Virginia volatile organic compounds emissions control area designated in 9 VAC 5-20-206. The regulation will limit VOC emissions from consumer products such as adhesives, adhesive removers, aerosol products (like cooking and dusting sprays), air freshener, antiperspirants and deodorants, facial toners and astringents, waxes and polishes (for cars, floors, etc.), tile cleaners, tar removers,

bug sprays, rug cleaners, charcoal lighter fluid, disinfectants, cosmetics, soaps.

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

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

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

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

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (2002) in effect July 1, 2002. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

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

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

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

1. Code of Federal Regulations.
 - a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.
 - (1) 40 CFR Part 50--National Primary and Secondary Ambient Air Quality Standards.
 - (a) Appendix A--Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).
 - (b) Appendix B--Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).
 - (c) Appendix C--Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(d) Appendix D--Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(e) Appendix E--Reference Method for Determination of Hydrocarbons Corrected for Methane.

(f) Appendix F--Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(g) Appendix G--Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(h) Appendix H--Interpretation of the National Ambient Air Quality Standards for Ozone.

(i) Appendix I--Reserved.

(j) Appendix J--Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

(k) Appendix K--Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(2) 40 CFR Part 51--Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Appendix M--Recommended Test Methods for State Implementation Plans.

Appendix S--Emission Offset Interpretive Ruling.

Appendix W--Guideline on Air Quality Models (Revised).

(3) 40 CFR Part 58--Ambient Air Quality Surveillance.

Appendix B--Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(4) 40 CFR Part 60--Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9 VAC 5-50-400 et seq.) of Part II of Chapter 50, Rule 5-5, Environmental Protection Agency Standards of Performance for New Stationary Sources.

(5) 40 CFR Part 61--National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9 VAC 5-60-60 et seq.) of Part II of Chapter 60, Rule 6-1, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants.

(6) 40 CFR Part 63--National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9 VAC 5-60-90 et seq.) of Part II of Chapter 60, Rule 6-2, Environmental

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Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories.

(7) 40 CFR Part 59, Subpart D-National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A--"Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings."

(8) 40 CFR Part 64, Compliance Assurance Monitoring.

(9) 40 CFR Part 72, Permits Regulation.

(10) 40 CFR Part 73, Sulfur Dioxide Allowance System.

(11) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.

(12) 40 CFR Part 75, Continuous Emission Monitoring.

(13) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program.

(14) 40 CFR Part 77, Excess Emissions.

(15) 40 CFR Part 78, Appeal Procedures for Acid Rain Program.

(16) *40 CFR Part 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.*

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

2. U.S. Environmental Protection Agency.

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

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

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

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

3. U.S. government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).
- (20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).
- b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.
5. American Petroleum Institute (API).
- a. The following document from the American Petroleum Institute is incorporated herein by reference: *Evaporative Loss from Floating Roof Tanks*, API MPMS Chapter 19, April 1, 1997.
- b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.
6. American Conference of Governmental Industrial Hygienists (ACGIH).
- a. The following document from the ACGIH is incorporated herein by reference: *Threshold Limit Values for Chemical Substances 1991-1992 and Physical Agents and Biological Exposure Indices (ACGIH Handbook)*.
- b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.
7. National Fire Prevention Association (NFPA).
- a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.
- (1) NFPA 385, *Standard for Tank Vehicles for Flammable and Combustible Liquids*, 2000 Edition.
- (2) NFPA 30, *Flammable and Combustible Liquids Code*, 2000 Edition.
- (3) NFPA 30A, *Code for Motor Fuel Dispensing Facilities and Repair Garages*, 2000 Edition.
- b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.
8. American Society of Mechanical Engineers (ASME).
- a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.
- (1) ASME Power Test Codes: *Test Code for Steam Generating Units*, Power Test Code 4.1-1964 (R1991).
- (2) ASME Interim Supplement 19.5 on *Instruments and Apparatus: Application, Part II of Fluid Meters*, 6th edition (1971).
- (3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.
- b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.
9. American Hospital Association (AHA).
- a. The following document from the American Hospital Association is incorporated herein by reference: *An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities*, AHA Catalog no. W5-057007, 1993.
- b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.
10. Bay Area Air Quality Management District (BAAQMD).
- a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:
- (1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).
- (2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).
- b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.
11. South Coast Air Quality Management District (SCAQMD).
- a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:
- (1) Method 303-91, "Determination of Exempt Compounds," in *Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples"* (1996).
- (2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in *Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples"* (1996).
- (3) *Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991)*.
- b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.
12. California Air Resources Board (CARB).
- a. The following documents from the California Air Resources Board are incorporated herein by reference:

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

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

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

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

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

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

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

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

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

13. American Architectural Manufacturers Association.

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

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

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

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

14. American Furniture Manufacturers Association.

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

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

Article 50.

Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4-50).

9 VAC 5-40-7240. Applicability.

A. Except as provided in 9 VAC 5-40-7250, the provisions of this article apply to those persons who sell, supply, offer for sale, or manufacture for sale any consumer product that contains volatile organic compounds (VOCs) as defined in 9 VAC 5-10-20.

B. The provisions of this article apply throughout the Northern Virginia volatile organic compound emissions control area designated in 9 VAC 5-20-206.

9 VAC 5-40-7250. Exemptions.

A. This article shall not apply to any consumer product manufactured in the Northern Virginia volatile organic compound emissions control area for shipment and use outside of this area.

B. The provisions of this article shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards specified in 9 VAC 5-40-7270 A, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the Northern Virginia volatile organic compound emissions control area, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the Northern Virginia volatile organic compound emissions control area. This subsection does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the Northern Virginia volatile organic compound emissions control area.

C. The medium volatility organic compound (MVOC) content standards specified in 9 VAC 5-40-7270 A for antiperspirants or deodorants shall not apply to ethanol.

D. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to fragrances up to a combined level of 2.0% by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2.0% by weight contained in any antiperspirant or deodorant.

E. The requirements of 9 VAC 5-40-7270 A for antiperspirants or deodorants shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20 degrees Centigrade.

F. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to any LVP-VOC.

G. The requirements of 9 VAC 5-40-7300 A shall not apply to consumer products registered under FIFRA.

H. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to air fresheners that are composed entirely of

fragrance, less compounds not defined as VOCs or exempted under subsection F of this section.

I. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

J. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to adhesives sold in containers of one fluid ounce or less.

K. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5.0% active ingredients.

L. A person who cannot comply with the requirements set forth in 9 VAC 5-40-7270 because of extraordinary reasons beyond the person's reasonable control may apply in writing to the board for a waiver.

1. The application shall set forth:

- a. The specific grounds upon which the waiver is sought;
- b. The proposed dates by which compliance with the provisions of 9 VAC 5-40-7270 will be achieved; and
- c. A compliance report reasonably detailing the methods by which compliance will be achieved.

2. Upon receipt of an application containing the information required in subdivision 1 of this subsection, the board will hold a public hearing to determine whether, under what conditions, and to what extent, a waiver from the requirements in 9 VAC 5-40-7270 is necessary and will be permitted. A hearing shall be initiated no later than 120 days after receipt of a waiver application. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the Virginia Register. At least 30 days prior to the hearing, the waiver application shall be made available to the public for inspection. Information submitted to the board by a waiver applicant may be claimed as confidential, and such information will be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60. The board may consider such confidential information in reaching a decision on an exemption application. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

3. No waiver shall be granted unless all of the following findings are made:

- a. That, because of reasons beyond the reasonable control of the applicant, requiring compliance with 9 VAC 5-40-7270 would result in extraordinary economic hardship;

b. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the waiver; and

c. That the compliance report proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

4. Any waiver may be issued as an order of the board. The waiver order shall specify a final compliance date by which the requirements of 9 VAC 5-40-7270 will be achieved. Any waiver order shall contain a condition that specifies increments of progress necessary to assure timely compliance and such other conditions that the board, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of the Virginia Air Pollution Control Law and the regulations of the board.

5. A waiver shall cease to be effective upon failure of the party to whom the waiver was granted to comply with any term or condition of the waiver order.

6. Upon the application of anyone, the board may review and for good cause modify or revoke a waiver from requirements of 9 VAC 5-40-7270. Modifications and revocations of waivers are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

9 VAC 5-40-7260. Definitions.

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

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

C. Terms defined.

"ACP agreement" means the document signed by the board that includes the conditions and requirements of the board and that allows manufacturers to sell ACP products pursuant to the requirements of this article.

"ACP emissions" means the sum of the VOC emissions from every ACP product subject to an ACP agreement approving an ACP, during the compliance period specified in the ACP agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP \text{ Emissions} = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N$$

$$Emissions = \frac{(VOC \text{ Content}) \times (Enforceable \text{ Sales})}{100}$$

where

1,2,...N = each product in an ACP up to the maximum N.

Enforceable sales = (see definition in this section).

VOC content = one of the following:

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1. For all products except for charcoal lighter material products:

where

$$VOC\ Content = \frac{(B - C) \times 100}{A}$$

where

A = total net weight of unit (excluding container and packaging).

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit, as specified in 9 VAC 5-40-7250.

2. For charcoal lighter material products only:

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

where

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"ACP limit" means the maximum allowable ACP emissions during the compliance period specified in an ACP agreement approving an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \dots + (Limit)_N$$

where

$$Limit = \frac{(ACP\ Standard) \times (Enforceable\ Sales)}{100}$$

Enforceable sales = (see definition in this section).

ACP standard = (see definition in this section).

1,2,...N = each product in an ACP up to the maximum N.

"ACP product" means any consumer product subject to the VOC standards specified in 9 VAC 5-40-7270 A, except those products that have been exempted as innovative products under 9 VAC 5-40-7290.

"ACP reformulation" or "ACP reformulated" means the process of reducing the VOC content of an ACP product within the period that an ACP is in effect to a level that is less than the current VOC content of the product.

"ACP standard" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 9 VAC 5-40-7270 A, whichever is the lesser of the two.

"ACP VOC standard" means the maximum allowable VOC content for an ACP product, determined as follows:

1. The applicable VOC standard specified in 9 VAC 5-40-7270 A for all ACP products except for charcoal lighter material;

2. For charcoal lighter material products only, the VOC standard for the purposes of this article shall be calculated according to the following equation:

$$VOC\ Standard = \frac{(0.020\ pound\ CH_2\ per\ start \times 100)}{Certified\ Use\ Rate}$$

where

0.020 = the certification emissions level for the product, as specified in 9 VAC 5-40-7270 E.

Certified use rate = (see definition in this section).

"Adhesive" means any product that is used to bond one surface to another by attachment. Adhesives do not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For contact adhesive; construction, panel, and floor covering adhesive; and general purpose adhesive only, adhesive also does not include units of product, less packaging, which consist of more than one gallon. This limitation does not apply to aerosol adhesives.

"Adhesive remover" means a product designed exclusively for the removal of adhesives, caulk, and other bonding materials from either a specific substrate or a variety of substrates.

"Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

"Aerosol cooking spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food or both.

"Aerosol product" means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. Aerosol product does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. Agricultural use does not include the sale or use of pesticides in properly labeled packages or containers that are intended for home use, use in structural pest control, industrial use, or institutional use. For the purposes of this definition only:

1. "Home use" means use in a household or its immediate environment.

2. "Structural pest control" means a use requiring a license under the applicable state pesticide licensing requirement.

3. "Industrial use" means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

4. "Institutional use" means use within the perimeter of, or on property necessary for the operation of, buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

"Air freshener" means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors or freshening, cleaning, scenting, or deodorizing the air. Air fresheners do not include

products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional or industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. Air fresheners do include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

"All other carbon-containing compounds" means all other compounds that contain at least one carbon atom and are not an "exempt compound" or an "LVP-VOC."

"All other forms" means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, all other forms include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Alternative control plan" or "ACP" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity. Antimicrobial hand or body cleaner or soap includes, but is not limited to, antimicrobial hand or body washes or cleaners, food handler hand washes, healthcare personnel hand washes, preoperative skin preparations, and surgical scrubs. Antimicrobial hand or body cleaner or soap does not include prescription drug products, antiperspirants, astringent or toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, and rubbing alcohol.

"Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

"Architectural coating" means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

"ASTM" means the American Society for Testing and Materials.

"Astringent or toner" means any product not regulated as a drug by the United States Food and Drug Administration (FDA) that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product,

medicated astringent or medicated toner, cold cream, lotion, or antiperspirant.

"Automotive brake cleaner" means a cleaning product designed to remove oil, grease, brake fluid, brake pad material, or dirt from motor vehicle brake mechanisms.

"Automotive hard paste wax" means an automotive wax or polish that is:

1. Designed to protect and improve the appearance of automotive paint surfaces;
2. A solid at room temperature; and
3. Contains no water.

"Automotive instant detailer" means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant, or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. Automotive wax, polish, sealant, or glaze includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. Automotive wax, polish, sealant, or glaze does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. Automotive windshield washer fluid does not include fluids placed by the manufacturer in a new vehicle.

"Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. Bathroom and tile cleaners do not include products specifically designed to clean toilet bowls or toilet tanks.

"Bug and tar remover" means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish: (i) biological residues, such as insect carcasses and tree sap and (ii) road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaners" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. Carburetor or fuel-injection air intake cleaners do not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

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"Carpet and upholstery cleaner" means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics. Carpet and upholstery cleaners include, but are not limited to, products that make fabric protectant claims. Carpet and upholstery cleaners do not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Certified emissions" means the emissions level for products approved under 9 VAC 5-40-7270 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21), expressed to the nearest 0.001 pound CH₂ per start.

"Certified use rate" means the usage level for products approved under 9 VAC 5-40-7270 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, expressed to the nearest 0.001 pound certified product used per start.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. Charcoal lighter material does not include any of the following:

1. Electrical starters and probes,
2. Metallic cylinders using paper tinder,
3. Natural gas,
4. Propane, or
5. Fat wood.

"Colorant" means any pigment or coloring material used in a consumer product for an aesthetic effect or to dramatize an ingredient.

"Compliance period" means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP agreement approving an ACP.

"Construction, panel, and floor covering adhesive" means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

1. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or
2. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass.

Construction, panel, and floor covering adhesive does not include floor seam sealer.

"Consumer" means a person who purchases or acquires a consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

"Consumer product" means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products, but does not include other paint products, furniture coatings, or architectural coatings.

"Contact adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together,
2. Is allowed to dry before the two surfaces are placed in contact with each other,
3. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and
4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates.

"Container or packaging" means the part or parts of the consumer or institutional product that serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. Containers or packaging include any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed, or attached.

"Contact person" means a representative that has been designated by the responsible ACP party for the purpose of reporting or maintaining information specified in the ACP agreement approving an ACP.

"Crawling bug insecticide" means an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. Crawling bug insecticide does not include products designed to be used exclusively on humans or animals or a house dust mite product. For the purposes of this definition only:

1. "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.
2. "House dust mite" means mites that feed primarily on skin cells shed in the home by humans and pets and which

belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"Date-code" means the day, month, and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

"Deodorant" means a product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

"Device" means an instrument or contrivance (other than a firearm) that is designed for trapping, destroying, repelling, or mitigating a pest or other form of plant or animal life (other than human and other than bacteria, virus, or other microorganism on or in living human or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the FIFRA. Disinfectant does not include any of the following:

1. Products designed solely for use on humans or animals,
2. Products designed for agricultural use,
3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs, or
4. Products that, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Distributor" means a person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"Double phase aerosol air freshener" means an aerosol air freshener with the liquid contents in two or more distinct phases that require the product container to be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means a non-aqueous liquid product designed and labeled exclusively for use on:

1. Fabrics that are labeled "for dry clean only," such as clothing or drapery; or
2. S-coded fabrics.

Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, "S-coded fabric" means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the American Furniture Manufacturers Association Joint Industry Fabrics Standards

Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (see 9 VAC 5-20-21).

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. Dusting aid does not include products that consist entirely of compressed gases for use in electronic or other specialty areas.

"Electronic cleaner" means a product designed specifically for the removal of dirt, grease, or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

"Enforceable sales" means the total amount of an ACP product sold for use in the Northern Virginia volatile organic compound emissions control area during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

"Enforceable sales record" means a written, point-of-sale record or another board-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the Northern Virginia volatile organic compound emissions control area during the applicable compliance period can be accurately documented. For the purposes of this article, enforceable sales records include, but are not limited to, the following types of records:

1. Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;
2. Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method that can be used to verify data composing such summaries is submitted by the responsible ACP party and approved by the board; and
3. Other accurate product sales records acceptable to the board.

"Engine degreaser" means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

"Exempt compound" means acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), or perchloroethylene (tetrachloroethylene).

"Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. Fabric protectant does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. Facial cleaner or soap includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. Facial cleaner or

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soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. Fat wood does not include kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136-136y).

"Flea and tick insecticide" means an insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. Flea and tick insecticide does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

"Floor polish or wax" means a wax, polish, or other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor polish or wax does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

"Floor seam sealer" means a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers or by dissolving or emulsifying the polish or wax. Floor wax stripper does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or a moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture maintenance product" means a wax, polish, conditioner, or other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. Furniture maintenance products do not include dusting aids, products designed solely for the purpose

of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.

"Furniture coating" means a paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means a nonaerosol adhesive designed for use on a variety of substrates. General purpose adhesive does not include:

1. Contact adhesives,
2. Construction, panel, and floor covering adhesives,
3. Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls), or
4. Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General purpose cleaner includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means a product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. General purpose degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish or cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are (i) sold exclusively to establishments which manufacture or construct goods or commodities; and (ii) labeled "not for retail sale." Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyorized degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner

or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, and photocopying machines.

"Gross sales" means the estimated total sales of an ACP product in the Northern Virginia volatile organic compound emissions control area during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the board will provide an accurate sales estimate:

1. Apportionment of national or regional sales of the ACP product to sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the Northern Virginia volatile organic compound emissions control area's current population; or
2. Another documented method that provides an accurate estimate of the total current sales of the ACP product.

"Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. Hair shine does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair styling gel" means a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"Hair spray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure that will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. Heavy-duty hand cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are (i) for agricultural use, or (ii) restricted materials that require a permit for use and possession.

"High volatility organic compound" or "HVOC" means a volatile organic compound that exerts a vapor pressure greater than

80 millimeters of mercury (mm Hg) when measured at 20 degrees Centigrade.

"Household product" means a consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by people, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

1. For agricultural use;
2. For a use which requires a structural pest control license under applicable state laws or regulations; or
3. Restricted materials that require a permit for use and possession.

"Insecticide fogger" means an insecticide product designed to release all or most of its content as a fog or mist into indoor areas during a single application.

"Institutional product" or "industrial and institutional (I&I) product" means a consumer product that is designed for use in the maintenance or operation of an establishment that:

1. Manufactures, transports, or sells goods or commodities, or provides services for profit; or
2. Is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon a consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. Laundry starch product includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

"Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a

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Material is a Liquid or a Solid" (see 9 VAC 5-20-21). Liquid does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. Lubricant does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two-cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that are:

- 1. Sold exclusively to establishments which manufacture or construct goods or commodities, and*
- 2. Labeled "not for retail sale."*

"LVP content" means the total weight, in pounds, of LVP-VOC in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

"LVP-VOC" means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

- 1. Has a vapor pressure less than 0.1 mm Hg at 20 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21);*
- 2. Is a chemical compound with more than 12 carbon atoms, or a chemical mixture composed solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown;*
- 3. Is a chemical compound with a boiling point greater than 216 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21); or*
- 4. Is the weight percent of a chemical mixture that boils above 216 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21).*

For the purposes of the definition of LVP-VOC, "chemical compound" means a molecule of definite chemical formula and isomeric structure, and "chemical mixture" means a substrate composed of two or more chemical compounds.

"Manufacturer" means a person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

"Medicated astringent or medicated toner" means a product regulated as a drug by the FDA that is applied to the skin for the purpose of cleaning or tightening pores. Medicated astringent or medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products. Medicated astringent or medicated toner does not include hand, face, or body cleaner or soap products, astringent or toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound" or "MVOC" means a volatile organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20 degrees Centigrade.

"Metal polish or cleanser" means a product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To "improve the appearance" means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. Metal polish or cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. Metal polish or cleanser does not include automotive wax, polish, sealant, or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Missing data days" means the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data to the board, as specified in the ACP agreement.

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multi-purpose dry lubricant" means a lubricant that is:

- 1. Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces, and*
- 2. Designed for general purpose lubrication, or for use in a wide variety of applications.*

"Multi-purpose lubricant" means a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. Multi-purpose lubricant does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

"Multi-purpose solvent" means an organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing, or dissolving other organic materials. Multi-purpose solvent includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories. Multi-purpose solvent does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

"Nail polish" means a clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats, and top coats.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Nonaerosol product" means a consumer product that is not dispensed by a pressurized spray system.

"Noncarbon containing compound" means a compound that does not contain carbon atoms.

"Nonresilient flooring" means flooring of a mineral content that is not flexible. Nonresilient flooring includes but is not limited to terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

"Nonselective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"One-product business" means a responsible ACP party that sells, supplies, offers for sale, or manufactures for use in the Northern Virginia volatile organic compound emissions control area:

1. Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 9 VAC 5-40-7270; or
2. Only one distinct ACP product line subject to the requirements of 9 VAC 5-40-7270, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

"Oven cleaner" means a cleaning product designed to clean and to remove dried food deposits from oven walls.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. Paint remover or stripper does not include multi-purpose solvents, paint brush cleaners, products designed and labeled exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

"Penetrant" means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. Penetrant does not include multi-purpose lubricants that claim to have penetrating qualities but are not labeled primarily to loosen bonded parts.

"Pesticide" means and includes a substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating a pest, or a substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "pesticide" will not include a substance, mixture of substances, or device that the U.S. Environmental Protection Agency does not consider to be a pesticide.

"Pre-ACP VOC content" means the lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the board,

based on the data obtained from accurate records available to the board that yields the lowest VOC content for the product.

"Principal display panel" means that part of a label that is so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

"Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

"Product category" means the applicable category that best describes the product as listed in this section.

"Product line" means a group of products of identical form and function belonging to the same product category.

"Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

"Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.

"Reconcile or reconciliation" means to provide sufficient VOC emission reductions to completely offset shortfalls generated under the ACP during an applicable compliance period.

"Reconciliation of shortfalls plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the board pursuant to 9 VAC 5-40-7280 B 1 g (10).

"Responsible party" means the company, firm, or establishment which is listed on the product's label. If the label lists two companies, firms, or establishments, the responsible party is the party that the product was "manufactured for" or "distributed by," as noted on the label.

"Responsible ACP party" means the company, firm, or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the responsible ACP party is the party that the ACP product was "manufactured for" or "distributed by," as noted on the label.

"Restricted materials" means pesticides established as restricted materials under the Virginia Pesticide Control Act (§ 3.1-249.27 et seq. of the Code of Virginia).

"Retailer" means a person who sells, supplies, or offers consumer products for sale directly to consumers.

"Retail outlet" means an establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

"Roll-on product" means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber and vinyl protectant" means a product designed to protect, preserve or renew vinyl, rubber, and plastic on

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vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. Rubber and vinyl protectant does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear or paintable or water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings. Sealant and caulking compound also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. For the purposes of this definition only, "removable caulking compounds" means a compound that temporarily seals windows or doors for three- to six-month time intervals; and "clear or paintable or water resistant caulking compounds" means a compound that contains no appreciable level of opaque fillers or pigments, transmits most or all visible light through the caulk when cured, is paintable, and is immediately resistant to precipitation upon application.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

"Shaving cream" means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor or other wet-shaving system, in the removal of facial or other bodily hair.

"Shortfall" means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. Shortfall does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Silicone-based multi-purpose lubricant" means a lubricant which is:

1. Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane, and
2. Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

Silicone-based multi-purpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous

phase and which does not require that the product container be shaken before use.

"Small business" means any stationary source that: is owned or operated by a person that employs 100 or fewer individuals; is a small business concern as defined in the federal Small Business Act; is not a major stationary source; does not emit 50 tons or more per year of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.

"Solid" means a substance or mixture of substances which, either whole or subdivided (such as the particles composing a powder), is not capable of visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9 VAC 5-20-21).

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

1. "Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, or other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.
2. "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates. "Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9 VAC 5-20-21) or from product formulation data.
3. "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.
4. "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.
5. "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.
6. "Laminate repair or edgebanding adhesive" means an aerosol adhesive designed for:

- a. The touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or
- b. The touch-up, repair, or attachment of edgebanding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition, "high pressure laminate" means sheet materials that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265 degrees Fahrenheit and at pressures between 1,000 and 1,400 psi.

7. "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer

resistance, as well as high shear strength, at temperatures of 200-275 degrees Fahrenheit.

"Spot remover" means a product designed to clean localized areas or remove localized spots or stains on cloth or fabric, such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. Spot remover does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means an antiperspirant or a deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water and that conforms with the definition in the federal consumer products regulation, 40 CFR Part 59, Subpart C.

"Surplus reduction" means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in 9 VAC 5-40-7280 F 3, surplus reduction does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Surplus trading" means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

"Terrestrial" means to live on or grow from land.

"Tire sealant and inflation" means a pressurized product that is designed to temporarily inflate and seal a leaking tire.

"Total maximum historical emissions" or "TMHE" means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP party has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

$$MHE = \left(\frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

where

Highest VOC content = the maximum VOC content which the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all

required VOC Content data (for the entire compliance period), as specified in the ACP agreement.

Highest sales = the maximum one-year gross sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing Data Days = (see definition in this section).

1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement.

"Type A propellant" means a compressed gas such as CO₂, N₂, N₂O, or compressed air that is used as a propellant and is either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellant" means a halocarbon which is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means a propellant that is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound. Undercoating includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

"VOC content" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to 9 VAC 5-40-7340 B and C.

For charcoal lighter material products only,

$$VOC \text{ Content} = \frac{(\text{Certified Emissions} \times 100)}{\text{Certified Use Rate}}$$

where

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"Wasp and hornet insecticide" means an insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

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"Waterproofer" means a product designed and labeled exclusively to repel water from fabric or leather substrates. Waterproofer does not include fabric protectants.

"Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Web spray adhesive" means an aerosol adhesive which is not a mist spray or special purpose spray adhesive.

"Wood floor wax" means wax-based products for use solely on wood floors.

"Working day" means a day between Monday through Friday, inclusive, except for federal holidays.

9 VAC 5-40-7270. Standard for volatile organic compounds.

A. Except as provided in 9 VAC 5-40-7250, 9 VAC 5-40-7280, and 9 VAC 5-40-7290, no person shall sell, supply, offer for sale, or manufacture for sale a consumer product on or after January 1, 2005, that contains volatile organic compounds in excess of the limits specified in Table 4-50A.

TABLE 4-50A

Product Category: Percent VOC by Weight

Adhesives

Aerosol

Mist spray: 65

Web spray: 55

Special purpose spray adhesives

Mounting, automotive engine compartment, and flexible vinyl: 70

Polystyrene foam and automotive headliner: 65

Polyolefin and laminate repair/Edgebanding: 60

Contact: 80

Construction, panel, and floor covering: 15

General purpose: 10

Structural waterproof: 15

Air fresheners

Single-phase aerosols: 30

Double-phase aerosols: 25

Liquids/Pump sprays: 183

Solids/Gels: 183

Antiperspirants

Aerosol: 40 HVOC/10 MVOC

Nonaerosol: 0 HVOC/10 MVOC

Automotive brake cleaners: 45

Automotive rubbing or polishing compound: 17

Automotive wax, polish, sealant, or glaze

Hard paste waxes: 45

Instant detailers: 3

All other forms: 15

Automotive windshield washer fluids: 35

Bathroom and tile cleaners

Aerosols: 7

All other forms: 5

Bug and tar remover: 40

Carburetor or fuel-injection air intake cleaners: 45

Carpet and upholstery cleaners

Aerosols: 7

Nonaerosols (dilutables): 0.1

Nonaerosols (ready-to-use): 3.0

Charcoal lighter material: see subsection E of this section.

Cooking spray, aerosols: 18

Deodorants

Aerosol: 0 HVOC/10 MVOC

Nonaerosol: 0 HVOC/0 HVOC

Dusting aids

Aerosols: 25

All other forms: 7

Engine degreasers

Aerosol: 35

Nonaerosol: 5

Fabric protectants: 60

Floor polishes/Waxes

Products for flexible flooring materials: 7

Products for nonresilient flooring: 10

Wood floor wax: 90

Floor wax strippers, non-aerosol: see 9 VAC 5-40-7270 G

Furniture maintenance products

Aerosols: 17

All other forms except solid or paste: 7

General purpose cleaners

Aerosols: 10

Nonaerosols: 4

General purpose degreasers, aerosols and non-aerosols: 504

Glass cleaners

Aerosols: 12

Nonaerosols: 4

Hair mousses: 6

Hair shines: 55

Hair sprays: 55

Hair styling gels: 6

Heavy-duty hand cleaner or soap: 8

Insecticides

Crawling bug (aerosol): 15

Crawling bug (all other forms): 20

Flea and tick: 25

Flying bug (aerosol): 25

Flying bug (all other forms): 35

Foggers: 45

Lawn and garden (all other forms): 20
Lawn and garden (non-aerosol): 3
Wasp and hornet: 40

Laundry prewash
Aerosols/Solids: 22
All other forms: 5

Laundry starch products: 5

Metal polishes and cleansers: 30

Multi-purpose lubricant (excluding solid or semi-solid products): 50

Nail polish remover: 75

Nonselective terrestrial herbicide, non-aerosols: 3

Oven cleaners
Aerosols/Pump sprays: 8
Liquids: 5

Paint remover or strippers: 50

Penetrants: 50

Rubber and vinyl protectants
Nonaerosols: 3
Aerosols: 10

Sealants and caulking compounds: 4

Shaving creams: 5

Silicone-based multi-purpose lubricants (excluding solid or semi-solid products): 60

Spot removers
Aerosols: 25
Nonaerosols: 8

Tire sealants and inflators: 20

Undercoatings, aerosols: 40

B. No person shall sell, supply, offer for sale, or manufacture for sale an antiperspirant or a deodorant that contains a compound that has been defined as a toxic pollutant in 9 VAC 5-60-210 C.

C. Provisions follow concerning products that are diluted prior to use.

1. For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 4-50A shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "minimum recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

2. For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in Table 4-50A shall apply to the product only after the maximum recommended dilution has taken place.

D. For those consumer products that are registered under FIFRA, the effective date of the VOC standards is one year after the date specified in 9 VAC 5-40-7270 A.

E. The following requirements shall apply to all charcoal lighter material products:

1. Provisions follow concerning regulatory standards. No person shall sell, supply, or offer for sale after January 1, 2005, a charcoal lighter material product unless at the time of the transaction:

a. The manufacturer can demonstrate to the board's satisfaction that they have been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations (see 9 VAC 5-20-21). This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis must submit to the board a copy of the certification decision (i.e., the Executive Order), including all conditions established by CARB applicable to the certification.

b. The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to subdivision 2 of this subsection.

c. The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued pursuant to subdivision 2 of this subsection.

d. The product usage directions for the charcoal lighter material are the same as those provided to the board pursuant to subdivision 2 c of this subsection.

2. Provisions follow concerning certification requirements.

a. No charcoal lighter material formulation shall be certified under this subdivision unless the applicant for certification demonstrates to the board's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21). The provisions relating to LVP-VOC in 9 VAC 5-40-7250 F and 9 VAC 5-40-7260 C shall not apply to a charcoal lighter material subject to the requirements of 9 VAC 5-40-7270 A and E.

b. The board may approve alternative test procedures which are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21).

c. A manufacturer or distributor of charcoal lighter material may apply to the board for certification of a charcoal lighter material formulation in accordance with this subdivision. The application shall be in writing and shall include, at a minimum, the following:

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(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21); and

(2) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, or accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) for that product, unless:

(a) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

(b) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(3) For a charcoal lighter material which meets the criteria specified in subdivision 2 c (2) (a) of this subsection, the usage instructions provided to the board will accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) for that product.

(4) Physical property data, formulation data, or other information required by the board for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to subdivision 2 e of this subsection.

d. Within 30 days of receipt of an application, the board will advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the board will advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

e. If the board finds that an application meets the requirements of subdivision 2 of this subsection, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this subsection are met. The board will act on a complete application within 90 days after the application is deemed complete.

3. For charcoal lighter material for which certification has been granted pursuant to subdivision 2 of this subsection, the applicant for certification shall notify the board in writing within 30 days of: (i) a change in the usage directions, or (ii) a change in product formulation, test results, or other information submitted pursuant to subdivision 2 of this subsection which may result in VOC emissions greater than 0.020 pound of VOC per start.

4. If the board determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) and the statistical analysis procedures contained therein, the board will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start. Modifications and revocations of certifications are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

F. Requirements for aerosol adhesives.

1. The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in 9 VAC 5-40-7250 and 9 VAC 5-40-7290, no person shall sell, supply, offer for sale, use or manufacture for sale an aerosol adhesive which, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

2. a. In order to qualify as a "special purpose spray adhesive," the product must meet one or more of the definitions specified in 9 VAC 5-40-7260 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9 VAC 5-40-7260 C, then the product shall be classified as either a "web spray adhesive" or a "mist spray adhesive."

b. If a product meets more than one of the definitions specified in 9 VAC 5-40-7260 C for "special purpose spray adhesive," and is not classified as a "web spray adhesive" or "mist spray adhesive" under subdivision 2 a of this subsection, then the VOC limit for the product shall be the lowest applicable VOC limit specified in 9 VAC 5-40-7270 A.

3. Effective January 1, 2005, no person shall sell, supply, offer for sale, or manufacture for use an aerosol adhesive which contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

4. All aerosol adhesives must comply with the labeling requirements specified in 9 VAC 5-40-7300 D.

G. No person shall sell, supply, offer for sale, or manufacture for use a floor wax stripper unless the following requirements are met:

1. The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3.0% by weight or less.

2. If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

3. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required, as long as comparable terminology is used.

H. For a consumer product for which standards are specified under subsection A of this section, no person shall sell, supply, offer for sale, or manufacture for sale a consumer product which contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane);

CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane);

halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane);

HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane);

1,1,1-trichloroethane; or

carbon tetrachloride.

I. The requirements of subsection H of this section shall not apply to an existing product formulation that complies with Table 4-50A or an existing product formulation that is reformulated to meet Table 4-50A, provided the ozone-depleting compound content of the reformulated product does not increase.

J. The requirements of subsection H of this section shall not apply to ozone-depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

9 VAC 5-40-7280. Alternative control plan (ACP) for consumer products.

A. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names and addresses of the responsible ACP party which is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement;

b. A statement of whether the responsible ACP party is a small business or a one-product business;

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP;

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales, which is composed of enforceable sales;

(5) Determine which ACP products have enforceable sales which are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product;

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods, as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

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g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency;

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection;

(3) For a small business or a one-product business which will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP;

(4) For each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect;

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9 VAC 5-40-7260 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period;

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing

ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article;

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging;

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP;

(10) An operational plan ("reconciliation of shortfalls plan") which commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, which states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection D of this section, the board will issue an ACP agreement approving an ACP which meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9 VAC 5-40-7270 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales, as determined in subdivision B 1 d (5) of this section;

(2) A reconciliation of shortfalls plan meeting the requirements of this article;

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has

consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval time frames.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will act to approve or disapprove a complete application within 90 working days after the application is deemed complete.

2. Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

a. Immediately upon request, during an on-site visit to a responsible ACP party;

b. Within five working days after receipt of a written request from the board; or

c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such

requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement, within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement, within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period;

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows:

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(1) For the missing data days, the board will calculate the total maximum historical emissions, as specified in 9 VAC 5-40-7260 C;

(2) For the remaining portion of the compliance period which are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection;

(4) The board will calculate the ACP limit for the entire compliance period using the ACP Standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero;

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP \text{ emissions} - ACP \text{ limit})}{40 \text{ pounds}}$$

where

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another

person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9 VAC 5-40-7270 A may not be used to generate surplus reductions;

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP;

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 11 of this section;

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated;

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls

plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

- (1) The date the transfer is to become effective;
- (2) The date the surplus reductions being traded are due to expire;
- (3) The amount (in pounds of VOCs) of surplus reductions that are being transferred;
- (4) The total purchase price paid by the buyer for the surplus reductions;
- (5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions;
- (6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining non-traded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product which is reformulated to result in a reduction in the product's VOC content, and which is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products which are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

- (1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product, or below the applicable VOC standard specified in 9 VAC 5-40-7270 A, whichever is the lesser of the two;
- (2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;
- (3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section;
- (4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((\text{VOC Content})_{\text{initial}} - (\text{VOC Content})_{\text{final}})}{100}$$

where

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

VOC content_{initial} = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9 VAC 5-40-7270 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

VOC content_{final} = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

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(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and shall not be used for another purpose;

(2) Limited use surplus reduction credits shall not be transferred to, or used by, another responsible ACP party;

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading, as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period, as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board;

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. For modifications that do not require board pre-approval, the responsible ACP party shall notify the board, in writing, of a change in an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

a. The nature of the modification;

b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and

d. The effective date and corresponding date-codes for the modification.

2. For modifications that require board preapproval, the responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement approving the ACP. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party which may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, or (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit. Modifications of ACPs are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

2. If any applicable VOC standards specified in 9 VAC 5-40-7270 A are modified by the CARB in a future rule-making, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board, as provided in subsection H of this section;

c. The ACP is modified by the board, as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9 VAC 5-40-7270 A is modified by the board in a future rule-making, and the responsible

ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard;

e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship;

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more);

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP which is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9 VAC 5-40-7270 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to subsections H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. All other information submitted to the board to meet the requirements of this article shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and

submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, §§ 94540-94555, of Title 17 of the California Code of Regulations (see 9 VAC 5-20-21) may be exempt from Table 4-50A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products within the CARB ACP agreement are contained in Table 4-50A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision.

9 VAC 5-40-7290. Innovative products.

A. Manufacturers of consumer products may seek an innovative products exemption in accordance with the following criteria:

1. The board will exempt a consumer product from the VOC limits specified in 9 VAC 5-40-7270 A if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

a. The VOC emissions from a representative consumer product that complies with the VOC limits specified in 9 VAC 5-40-7270 A, or

b. The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in 9 VAC 5-40-7270 A. VOC emissions shall be calculated using the following equation:

$$E_R = \frac{E_{NC} \times VOC_{STD}}{VOC_{NC}}$$

where

E_R = The VOC emissions from the noncomplying representative product, had it been reformulated.

E_{NC} = The VOC emissions from the noncomplying representative product in its current formulation.

VOC_{STD} = the VOC limit specified in Table 4-50A.

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VOC_{NC} = the VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the board.

2. For the purposes of this subsection, "representative consumer product" means a consumer product that meets all of the following criteria:

a. The representative product shall be subject to the same VOC limit in 9 VAC 5-40-7270 A as the innovative product;

b. The representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made; and

c. The representative product shall have at least a similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

3. A manufacturer shall apply in writing to the board for an exemption claimed under subdivision A 1 of this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide the information necessary to enable the board to establish enforceable conditions for granting the exemption, including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted by a manufacturer pursuant to this section shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

4. Within 30 days of receipt of the exemption application, the board will determine whether an application is complete.

5. Within 90 days after an application has been deemed complete, the board will determine whether, under what conditions, and to what extent an exemption from the requirements of 9 VAC 5-40-7270 A will be permitted. The applicant and the board may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The board will notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in subdivision 1 of this subsection, and that such emissions reductions can be enforced.

6. In granting an exemption for a product, the board will establish enforceable conditions. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates, and other parameters

determined by the board to be necessary. The board will also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures.

7. For a product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the board in writing within 30 days of a change in the product formulation or recommended product usage directions and shall also notify the board within 30 days if the manufacturer learns of information which would alter the emissions estimates submitted to the board in support of the exemption application.

8. If the VOC limits specified in 9 VAC 5-40-7270 A are lowered for a product category through a subsequent rule-making, all innovative product exemptions granted for products in the product category, except as provided in this subdivision, shall have no force and effect as of the effective date of the modified VOC standard. This subdivision shall not apply to those innovative products that have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the board at least 60 days before the effective date of such limits.

9. If the board believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subdivision 1 of this subsection, the board may modify or revoke the exemption as necessary to assure that the product will meet these criteria. Modifications and revocations of exemptions are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

B. In granting an exemption under this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an Innovative Product exemption by the CARB under the Innovative Products provisions in Subchapter 8.5, Article 2, § 94511, or Subchapter 8.5, Article 1, § 94503.5 of Title 17 of the California Code of Regulations (see 9 VAC 5-20-21) may be exempt from Table 4-50A for the period of time that the CARB Innovative Products exemption remains in effect provided that all consumer products within the CARB Innovative Products exemption are contained in Table 4-50A. A manufacturer claiming such an exemption on this basis must submit to the board a copy of the CARB Innovative Product exemption decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision.

9 VAC 5-40-7300. Administrative requirements.

A. Each manufacturer of a consumer product subject to 9 VAC 5-40-7270 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured or a code indicating such date. The date or code shall be located on the container or inside the cover or cap so that it is readily observable or obtainable (by

simply removing the cap or cover) without disassembling a part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in 9 VAC 5-40-7270 A. No person shall erase, alter, deface, or otherwise remove or make illegible a date or code from a regulated product container without the express authorization of the manufacturer. The requirements of this provision shall not apply to products containing no VOCs or containing VOCs at 0.10% by weight or less.

B. If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to 9 VAC 5-40-7270, an explanation of the code must be filed with the board no later than twelve months prior to the effective date of the applicable standard specified in 9 VAC 5-40-7270 A.

C. Notwithstanding the definition of "product category" in 9 VAC 5-40-7260 C, if anywhere on the principal display panel of a consumer product, a representation is made that the product may be used as or is suitable for use as a consumer product for which a lower VOC limit is specified in 9 VAC 5-40-7270 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant or deodorant products.

D. Provisions follow concerning additional labeling requirements for aerosol adhesives.

1. In addition to the requirements specified in subsections A and C of this section and in 9 VAC 5-40-7360, both the manufacturer and responsible party for each aerosol adhesive product subject to this article shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2005.

a. The aerosol adhesive category as specified in 9 VAC 5-40-7270 A or an abbreviation of the category shall be displayed;

b. (1) The applicable VOC standard for the product that is specified in 9 VAC 5-40-7270 A, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the board, as provided in 9 VAC 5-40-7280;

(2) If the product is included in an alternative control plan approved by the board, and the product exceeds the applicable VOC standard specified in 9 VAC 5-40-7270 A, the product shall be labeled with the term "ACP" or "ACP product";

(3) If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed;

(4) If the manufacturer or responsible party uses an abbreviation as allowed by this subsection, an explanation of the abbreviation must be filed with the board before the abbreviation is used.

2. The information required in subdivision A 1 of this section shall be displayed on the product container such that it is readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

3. No person shall remove, alter, conceal, or deface the information required in subdivision 1 of this subsection prior to final sale of the product.

9 VAC 5-40-7310. Standard for toxic pollutants.

The provisions of Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60 (Emission Standards for Toxic Pollutants from Existing Sources, Rule 6-4) do not apply.

9 VAC 5-40-7320. Compliance.

The provisions of subsections B, D, F, and J of 9 VAC 5-40-20 (Compliance) apply. The other provisions of 9 VAC 5-40-20 do not apply.

9 VAC 5-40-7330. Compliance schedules.

Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than January 1, 2005.

9 VAC 5-40-7340. Test methods and procedures.

A. The provisions of 9 VAC 5-40-30 (Emission testing) apply.

B. 1. Testing to determine compliance with the requirements of this article shall be performed using CARB Method 310 (see 9 VAC 5-20-21). Alternative methods that can accurately determine the concentration of VOCs in a subject product or its emissions may be used consistent with the approval requirements of 9 VAC 5-40-20 A 2.

2. In sections 3.5, 3.6, and 3.7 of CARB Method 310 (see 9 VAC 5-20-21), a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content." Information submitted to the board may be claimed as confidential; such information will be handled in accordance with the confidentiality procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

C. For VOC content determinations using product formulation and records, testing to determine compliance with the requirements of this article may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

2. For the purposes of this subsection, the VOC content shall be calculated according to the following equation:

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$$\text{VOC Content} = \frac{(B - C) \times 100}{A}$$

where

A = total net weight of unit (excluding container and packaging).

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit, as specified in 9 VAC 5-40-7250.

3. If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310 (see 9 VAC 5-20-21), the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this article.

D. Testing to determine whether a product is a liquid or solid shall be performed using ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9 VAC 5-20-21).

E. Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21).

F. Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (see 9 VAC 5-20-21).

G. No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and other tests, processes, or records used in connection with product manufacture.

9 VAC 5-40-7350. Monitoring.

The provisions of 9 VAC 5-40-40 (Monitoring) apply.

9 VAC 5-40-7360. Notification, records and reporting.

A. The provisions of subsections D, E, F, and H of 9 VAC 5-40-50 (Notification, records and reporting) apply. The other provisions of 9 VAC 5-40-50 do not apply.

B. Upon 90 days written notice, the board may require a responsible party to report information for a consumer product the board may specify, including, but not limited to, all or part of the following information:

1. The name of the responsible party and the party's address, telephone number, and designated contact person;

2. A claim of confidentiality made pursuant to applicable state confidentiality requirements;

3. The product brand name for each consumer product subject to registration and, upon request by the board, the product label;

4. The product category to which the consumer product belongs;

5. The applicable product forms listed separately;

6. An identification of each product brand name and form as a "Household Product," "I&I Product," or both;

7. Separate sales in pounds per year, to the nearest pound, and the method used to calculate sales for each product form;

8. For registrations submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in subdivision 7 B of this section;

9. For each product brand name and form, the net percent by weight of the total product, less container and packaging, composed of the following, rounded to the nearest one-tenth of a percent (0.1%):

a. Total exempt compounds;

b. Total LVP-VOCs that are not fragrances;

c. Total all other carbon-containing compounds that are not fragrances;

d. Total all noncarbon-containing compounds;

e. Total fragrance;

f. For products containing greater than 2.0% by weight fragrance:

(1) The percent of fragrances that are LVP-VOCs; and

(2) The percent of fragrances that are all other carbon-containing compounds;

g. Total paradichlorobenzene;

10. For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

a. Each exempt compound; and

b. Each LVP-VOC that is not a fragrance;

11. If applicable, the weight percent composed of propellant for each product;

12. If applicable, an identification of the type of propellant.

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percent by weight of each ozone-depleting compound which is:

1. Listed in 9 VAC 5-40-7270 H; and

2. Contained in a product subject to registration under subsection A of this section in an amount greater than 1.0% by weight.

D. All information submitted by responsible parties pursuant to this section shall be handled in accordance with the

procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

E. Provisions follow concerning special reporting requirements for consumer products that contain perchloroethylene or methylene chloride.

1. *The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to 9 VAC 5-40-7270 A and contain perchloroethylene or methylene chloride. For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.*

2. *For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold during each calendar year, beginning with the year 2005, and ending with the year 2010:*

- a. The product brand name and a copy of the product label with legible usage instructions;*
- b. The product category to which the consumer product belongs;*
- c. The applicable product form, listed separately;*
- d. For each product form listed in subdivision 2 c of this subsection, the total sales during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating sales;*
- e. The weight percent, to the nearest 10%, of perchloroethylene and methylene chloride in the consumer product;*

3. *The information specified in subdivision 2 of this subsection shall be reported for each calendar year by March 1 of the following year. The first report shall be due on March 1, 2006, for calendar year 2005. A new report is due on March 1 of each year thereafter, until March 1, 2011, when the last report is due.*

VA.R. Doc. No. R03-197; Filed July 21, 2004, 9:44 a.m.

Title of Regulation: 9 VAC 5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (amending 9 VAC 5-91-20, 9 VAC 5-91-160, 9 VAC 5-91-180, 9 VAC 5-91-740, 9 VAC 5-91-750, and 9 VAC 5-91-760; adding 9 VAC 5-91-741, 9 VAC 5-91-742, and 9 VAC 5-91-743).

Statutory Authority: §§ 46.2-1178.1, 46.2-1178.2 and 46.2-1180 of the Code of Virginia; § 182 of the federal Clean Air Act; 40 CFR Part 51, Subpart S.

Public Hearing Date: September 9, 2004 - 11 a.m.

Public comments may be submitted until 5 p.m. on October 8, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, or e-mail mlmajor@deq.virginia.gov.

Basis: Sections 46.2-1176 through 46.2-1187.3 of the Virginia Motor Vehicle Emissions Control Law authorize the State Air Pollution Control Board to promulgate regulations for the control of motor vehicle emissions and for emissions testing including remote sensing. Specifically, § 46.2-1178.1 of the Code of Virginia authorizes the board to establish by regulation on-road testing requirements. The legal requirements governing the content of the regulations are found in §§ 46.2-1178.1, 46.2-1178.2 and 46.2-1179 of the Code of Virginia.

Purpose: The purpose of the regulation is to require that motor vehicles undergo periodic emissions inspection and be maintained in compliance with emission standards for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards. The proposed amendments are being made to conform to state law and federal Clean Air Act requirements for the testing of emissions, including remote sensing, from motor vehicles located or primarily operated in Northern Virginia.

Substance: The proposed amendments make a number of revisions to the remote sensing provisions of the regulation. These changes include: changes in some definitions, changes in some elements of the remote sensing testing applicability and program procedures and protocol as it pertains to gross polluters and clean car screening, changes to the remote sensing test standards, and changes in some enforcement and compliance procedures.

The new regulatory amendments would, in part, revise the existing provisions affecting the remote sensing of emissions from motor vehicles located in or primarily operated in Northern Virginia (including out of area commuters) and the subsequent testing of those motor vehicles. Vehicles in or that operate primarily in the program area will be subject to remote sensing emission standards that include limits for not only carbon monoxide and hydrocarbons, as was included in the previous regulation, but also nitric oxide. Vehicles found to be significantly out of compliance with the standards (known as "gross emitters") will be required to have an out-of cycle inspection and if warranted, have the vehicle repaired. Finding and repairing these very dirty vehicles will improve the air quality in Northern Virginia. The regulation amendments also establish a program to subsidize repair costs of some vehicles identified by remote sensing as gross emitters.

Issues:

A. Public: The primary advantage to the general public is that air quality will improve due to the technical improvements of remote sensing being able to identify gross emitters and require their repair prior to the normal in-cycle inspection requirement. The change to the definition of motor vehicle, for example, will result in a more effective program with the need to inspect, via remote sensing, 1968 and newer model vehicles. Changes in testing procedures will result in faster yet more thorough inspections that translate into shorter lines at the testing facilities. Changes in certification requirements will

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mean repairs to vehicles that fail the test will be more effective.

Changes have been made to the exhaust emission standards for remote sensing. The new standards also include a standard for nitric oxide, a prime component of ozone. Vehicles that violate the new standards will be required to receive an out-of-cycle inspection and, if necessary, repair the vehicle or face civil charges. This will impact a number of vehicle owners whose vehicles fail the new remote sensing exhaust standards. Although it is a disadvantage that there will be expenses for repairs, there are also advantages to the vehicle owners in that needed repairs will increase vehicle fuel efficiency and enhance vehicle life, not to mention the improvement in air quality.

To assist with the cost of repair to the vehicles that violate the exhaust standards for remote sensing, sections have been added to address financial assistance for those vehicles: how it works, eligibility and application process.

B. Department: Most of the issues affecting the department are a result of either technical change in program operation or state requirements. Amendments due to technical changes in program operation include: (i) changes in the wording of some definitions, (ii) changes in some elements of the remote sensing testing procedure, (iii) changes in the timing and flexibility of some test standards and (iv) changes in some permitting and licensing procedures.

Few disadvantages are associated with these regulatory changes. There will be additional data management as a result of the information generated by remote sensing testing; however, the current computer capabilities are more than adequate to address this issue.

The overwhelming advantage from remote sensing testing is the increased emission reductions and cleaner air for Virginia citizens and continued EPA approval of the Commonwealth's I/M program. Tightening the remote sensing exhaust emission standards will have a similar advantageous effect.

Comparison with Federal Requirements: The proposed regulation amendments are more restrictive than the applicable legal requirements. The exhaust standards for remote sensing include standards for nitric oxides; EPA requires only standards for carbon monoxide and hydrocarbons. In addition, the regulation provides for only one remote sensing measurement to constitute a violation beginning in 2005; previous requirements involved measurements from two different remote sensing locations.

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

the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation. Sections 46.2-1176 through 46.2-1187.3 of the Code of Virginia authorize the State Air Pollution Control Board to promulgate regulations for the control of motor vehicle emissions and for emissions testing including remote sensing. Section 46.2-1177 of the Code of Virginia mandates that the Department of Environmental Quality administer an emissions inspection program. The program is to require biennial inspections of motor vehicles at permitted emissions inspection stations and could require additional inspections of motor vehicles that have been shown by on-road testing to exceed established emissions standards. Section 46.2-1178 of the Code of Virginia lays out the administration and scope of the emissions inspection program. The State Air Pollution Control Board is authorized in § 46.2-1178.1 of the Code of Virginia to promulgate regulations establishing on-road motor vehicle emissions testing requirements and in § 46.2-1179 of the Code of Virginia to adopt emissions standards necessary to implement the emissions inspection program.

The proposed regulation was adopted with minor differences as an emergency regulation on January 1, 2004. The proposed regulation (i) establishes new and updated remote sensing exhaust emission standards, (ii) requires that vehicles in or operating primarily in the program area be subject to remote sensing emission standards not only for carbon monoxide and hydrocarbons, but also for nitric oxide, (iii) defines the phrase "operate primarily" for the purposes of remote sensing as a vehicle recorded in the program area by remote sensing equipment at least three times in a two-month period with no less than 30 days between the first and last reading, (iv) establishes that vehicles exceeding the standards two days in any 120-day period will be determined to have violated emissions standards, (v) allows for vehicles that have a high emitter index of greater than 75 and that exceed established standards once to be determined to have violated the emissions standards starting January 1, 2005, (vi) requires remote sensing measurements used to determine if a vehicle exceeds emissions standards to be taken at valid sites and only under conditions when the vehicle specific power indicator is between 3 and 22, (vii) amends the vehicle clean screening requirements of the existing regulation, and (viii) modifies operating procedures and the application of civil charges when a vehicle is determined to have violated emissions standards.

The proposed regulation also makes a number of Code of Virginia required changes such as establishing a program to subsidize the repair costs of some vehicles identified by remote sensing and expanding the model year coverage for vehicles subject to remote sensing to include 1968 and newer model vehicles. The regulation also includes additional language intended to clarify various aspects of the regulation.

Estimated economic impact.

Description of the regulation. The proposed regulation makes amendments to the existing regulation for the control of motor vehicle emissions in the Northern Virginia area (covering the

counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park). The current regulation requires vehicles in or operating primarily in the area to report for biennial emissions inspections at permitted emissions inspection stations. Vehicles that fail the test are denied registration until they pass a retest or spend at least \$450 on emissions-related repairs. The current program also allows for the random testing of vehicles through roadside pullovers or remote sensing devices. Failing vehicles are required to report to an emissions inspection station for an out-of-cycle test.

The proposed regulation updates the remote sensing emissions standards used to determine whether a vehicle is in violation. According to the Department of Environmental Quality (DEQ), remote sensing emissions standards in the existing regulation are approximately 10 years old. The new standards being proposed are based on new technology that has become available since then and on information collected through two remote sensing pilot studies conducted in Virginia. The standards being proposed include exhaust emission standards for nitric oxide. The existing regulation established remote sensing standards for carbon monoxide and hydrocarbons. The northern Virginia area has been classified by the Environmental Protection Agency (EPA) as a severe ozone nonattainment area. Ozone is formed by a chemical reaction between volatile organic compounds, nitrogen oxides, and sunlight. Thus, by including standards for nitric oxide, the proposed regulation is intended to identify vehicles emitting high amounts of nitric oxide, require them to receive an out-of-cycle inspection, and make the required repairs.

The new standards apply to all vehicles in or operated primarily in the northern Virginia area. The regulation defines operated primarily for the purposes of the remote sensing program as a vehicle recorded in the program area by remote sensing equipment at least three times in a two-month period, with no less than 30 days between the first and last reading. For the purposes of the biennial inspection, operated primarily is defined as a vehicle being recorded (through remote sensing and on-road testing) in the area at least three times in a two-week period. According to DEQ, applying the definition for biennial inspections would reduce the effectiveness of remote sensing in identifying dirty vehicles. Remote sensing would observe a very small sample of vehicles (and an even smaller sample of unique vehicles) three times in a two-week period. DEQ believes that expanding the time-period to two months will allow for the effective identification of high emitting vehicles and better enable the remote sensing program to meet its emissions reduction goals.

Vehicles will be determined to be in violation of the emissions standards if they exceed these standards two days in any 120-day period. Under the existing regulation, vehicles were determined to be in violation if they exceeded the standards two days in a 90-day period. The increase in time-period was based on concerns similar to those mentioned in the above paragraph. DEQ believes that requiring two readings exceeding the standards in a 90-day period reduces the effectiveness of the remote sensing program in identifying high emitters. Increasing the time-period to 120 days will allow for more effective identification of high emitters and more effective

implementation of the remote sensing program. Starting January 1, 2005, the regulation allows DEQ to consider vehicles exceeding the standards once and with a high emitter index of above 75 to be in violation of the emissions standards. The high emitter index categorizes the probable emissions inspection failure rates of engine families and is calculated based on historical failure rates once vehicles have been identified through remote sensing. The decision to include this provision was based on the fact that, starting January 1, 2005, DEQ would have a full year's worth of data on which to base the high emitter index. According to DEQ, research shows that the high emitter index combined with remote sensing is very reliable in terms of identifying potential failures.

Remote sensing measurements that are used to determine whether a vehicle is in violation of emission standards are to be taken only under conditions when the vehicle specific power indicator is between 3 and 22. The vehicle specific power indicator adjusts remote sensing measurements for factors such as vehicle speed, acceleration, drag coefficient, tire rolling resistance, and roadway gradient. Not adjusting for these factors could result in readings that temporarily exceed established standards. Thus, use of the vehicle specific power indicator will reduce the number of false positives (i.e., the number of vehicles identified as high emitters through remote sensing who subsequently pass the confirmation test) and allow for more efficient identification of high emitting vehicles.

The proposed regulation amends the clean screen requirements in the existing regulation. Starting January 1, 2005, the proposed regulation allows up to 5.0% of vehicles measured during a 30-day period to be identified as candidates for clean screening. These vehicles will not be required to report for their next biennial inspection. Based on conversations with DEQ, the clean screen requirements are to be further modified following public comment. (i) The agency plans to clean screen only vehicles of the 1995 model year and older. Vehicles of 1996 model year and newer are deemed unsuitable for clean screening as there is a high probability that some of them will qualify for clean screening when in fact the malfunction indicator light is illuminated due to an emissions-related problem being detected. Based on remote sensing data from Illinois, clean screening 5.0% of 1996 and newer vehicles would lead to 3.0% of on-board diagnostic failures being exempted from the biennial inspection requirement. (ii) Moreover, the agency intends to provide clean screens for up to 5.0% of the cleanest cars in each model year group observed during a 30-day period. These vehicles would have to be recorded at least three times on three different days during a 120-day period, with each measurement not exceeding any of the established standards. At the end of each year, if the emissions reduction loss due to clean screening is less than 10% of total program emissions reduction, the percentage of cars clean screened will be raised. If, on the other hand, the emissions reduction loss due to clean screening is more than 10% of total program emissions reduction, the percentage will be reduced appropriately.

The proposed regulation also modifies operating procedures and the application of civil charges when a vehicle is determined to have violated emissions standards. For

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example, motor vehicle owners will be required to furnish proof that their vehicle passed a confirmation test or received a waiver within 30 days of a notice of violation of remote sensing emission standards in order to avoid paying civil charges. The existing regulation allows 90 days between the notice of violation and the imposition of the civil charge. Other changes to the operating procedures and the application of civil charges include changes to how the degree of violation and hence the civil charges are calculated and a provision allowing DEQ to require 1996 and newer model year vehicles to pass an exhaust test in addition to the on-board diagnostic test.

Finally, the proposed regulation also makes a number of Code of Virginia required changes. It establishes a financial assistance program to subsidize the repair costs of some vehicles identified by remote sensing. Qualified individuals will be able to receive up to 50% of the cost of emissions-related repairs or 50% of the waiver amount, after a minimum co-payment of \$100. It also expands the model year coverage for vehicles subject to remote sensing to include 1968 and newer model vehicles.

Estimated economic impact: The proposed change is likely to impose additional costs on vehicle owners and emissions inspection stations in terms of requiring increased inspections. Apart from the regular biennial emissions inspection, vehicles identified through remote sensing as high emitters will be required to report for an out-of-cycle confirmation test at a permitted emissions inspection station (vehicles required to report for the biennial inspection within 90 days of the remote sensing violation or vehicles that have received a waiver in the 12 months prior to the violation will not be required to report for an out-of-cycle emissions test). The cost of the confirmation test is to be borne by the emissions inspection station or the vehicle owner depending on whether the vehicle passes or fails the test. If a vehicle identified as a high emitter through remote sensing passes the confirmation test, the cost is to be borne by the emissions inspection station. If, on the other hand, a vehicle fails the confirmation test, the cost of the test is to be borne by the vehicle owner. According to DEQ, most service stations currently charge \$28 for an emissions inspection (the Code of Virginia caps the inspection fee at \$28).

Based on the 2002 remote sensing pilot study conducted in Virginia, it is estimated that approximately 2.0% of all vehicles observed through remote sensing are likely to meet the definition of operated primarily and be determined to violate the emission standards. DEQ expects that between 250,000 and 300,000 unique vehicles per year are likely to be remote tested. Assuming 300,000 vehicles are remote tested each year and 2.0% of them are required to report for an out-of-cycle test, approximately 6,000 vehicles per year will be required to report for an out-of-cycle emissions test. Of these, approximately 9.0% (or 540 vehicles) are likely to be registered outside the northern Virginia area and not subject to the biennial inspection program.¹ Of the remaining 5,460 vehicles, we can expect 12.5% to be due for a biennial

inspection in the 90-day period following the remote sensing violation and thus be exempt from reporting for an out-of-cycle emissions inspection.² The number of vehicles applying and qualifying for waivers is not known. Assuming all vehicles registered outside the northern Virginia area and determined to be violating the remote sensing standards are required to report for an out-of-cycle inspection (540 vehicles) and 87.5% of all vehicles registered in the northern Virginia area and determined to be violating the remote sensing standards are required to report for an out-of-cycle inspection (4,778 vehicles), the proposed regulation will result in approximately 5,318 vehicles being required to report for an out-of-cycle inspection and additional inspection costs of \$148,904.

According to a study conducted by California, it is estimated that 8.0% (or 425 out of 5,318) of vehicles identified as high emitters through remote sensing are likely to pass the confirmation test.³ Thus, emissions inspection stations are likely to incur additional inspection costs of \$11,900 per year (the cost of 425 inspections at \$28 per inspection) and vehicle owners are likely to incur additional inspection costs of \$137,004 per year (the cost of 4,893 inspections at \$28 per inspection).

In addition to the cost of additional inspections, the proposed regulation is likely to impose additional repair costs on vehicle owners. Owners whose vehicles fail the confirmation test will be required to make appropriate repairs or undertake \$450 (in 1990 dollars) in repairs in order to qualify for a waiver. According to DEQ, the average cost of these repairs is approximately \$250. In the absence of this regulation, vehicles registered in the northern Virginia area would have to make these repairs during the course of the regular biennial inspection. By requiring the repairs to be made earlier, the proposed change is likely to impose some additional cost on vehicle owners. Repairs worth \$250 made a year early would cost the vehicle owner an additional \$11.35 (based on the average 1-year treasury rate over the past ten years of 4.54%). In the absence of this regulation, vehicles registered outside the northern Virginia area would not be required to make any emissions-related repairs. These vehicle owners will now have to incur the additional cost of making these repairs. As estimated above, approximately 540 (or 9.0%) of the 6,000 high emitting vehicles identified through remote sensing are likely to be registered outside the control area. Assuming an 8% rate of false positives, 497 of the 540 vehicles are likely to fail the confirmation test and be required to make appropriate repairs.⁴ Thus, the additional repair-related cost imposed by

² The 12.5% estimate is based on the assumption that the distribution of vehicles requiring inspections during any two-year period is uniform.

³ The 2002 Virginia remote sensing pilot study estimated the percentage of false positives at 35%-40%. However, this estimate is likely to overstate the number of false positives. Vehicles violating the remote sensing standards were not immediately given an emissions test. Instead, the estimate was based on the pass/fail rate on emissions tests conducted in the six months following a vehicle's remote sensing violation. Factors such as vehicles being repaired or receiving engine tune-ups prior to taking the emissions test are likely to have raised the number of false positives. The California estimate is likely to be more reliable as it is based on the pass/fail rate of vehicles on exhaust emissions test administered immediately following a vehicle's violation of the remote sensing standards.

⁴ In making these estimates, it is assumed that vehicles registered outside the northern Virginia area are just as likely to be identified as high emitters and fail the confirmation test as vehicles registered in the area. However, it is likely that

¹ The 2002 Virginia remote sensing pilot study estimated that approximately 9% of vehicles operating primarily in the northern Virginia area were registered outside the control area.

the regulation is \$49,895 on vehicles registered in northern Virginia (an average cost of \$11.35 on 4,396 vehicle owners) and \$124,250 on vehicles registered outside northern Virginia (an average cost of \$250 on 497 vehicle owners).

The proposed regulation will also impose additional costs on the state. DEQ estimates that the remote sensing program will cost approximately \$300,000 per year for data collection. This includes the cost of obtaining and setting up the remote sensing units, hiring trained operators, analyzing data, and providing the Department of Motor Vehicles with the requisite information. DEQ is also likely to incur additional costs in terms of staff time and resources in overseeing the program. DEQ expects that one full-time position will be dedicated to the remote sensing and economic assistance program.

The proposed regulation is also likely to produce economic benefits. The adoption of this rule is likely to reduce emissions of ozone-causing compounds in the Northern Virginia area. According to DEQ, the proposed changes are estimated to reduce hydrocarbons and nitrogen oxide emissions by one-half of a ton per day during the high ozone summer months. Apart from identifying high emitting vehicles registered in the northern Virginia area and requiring them to be fixed in a timely fashion, the proposed regulation will also help identify high emitters who are not registered in the northern Virginia control area but are operating primarily in the control area. As mentioned above, the 2002 Virginia remote sensing pilot study estimated that 9.0% of all vehicles falling under the definition of operated primarily were registered outside the control area. These vehicles do not fall under the biennial inspection program and would not be required to be emissions tested. Thus, the proposed regulation is likely to reduce emissions by identifying approximately 497 high emitting vehicles registered outside the northern Virginia but operating primarily in the area and requiring them to be fixed.

The emissions reductions are likely to be beneficial to public health and welfare. According to EPA, exposure to ozone at the ground level can cause a number of respiratory problems such as irritation of the respiratory system, reduced operation of the lungs, inflammation and damage to the cells lining the lungs, and aggravation of existing lung problems. Repeated ozone exposure can cause permanent damage to children's developing lungs and accelerate the decline in lung function with age in adults. According to the U.S. Global Change Research Program, the best estimate of human health effects of ground-level ozone in the United States over the past 15 years is approximately \$7 billion per year. Thus, reducing the level of ozone will provide economic benefits in the future in terms of respiratory health problems and fatalities prevented (reflected in lower health care and other costs) and increased productivity.

The emissions reductions achieved by the implementation of this rule would also help Virginia avoid federal sanctions that would be imposed for violating the SIP (state implementation plan) provisions of the Clean Air Act. Effective March 23, 2003, the northern Virginia area was classified by EPA as a severe ozone non-attainment area as a result of emissions

from both industrial sources and motor vehicles. The changes being proposed are additional measures to be incorporated into the SIP to bring emissions to a level at or below the ozone standard. Failure to prepare such a plan and/or failure to obtain EPA approval for such a plan could result in sanctions including the loss of federal funds for highways and other projects and/or more restrictive requirements for new industries. Moreover, the lack of an acceptable plan to get emissions below national ambient air quality standards could result in EPA promulgating and implementing an air quality plan for Virginia. Implementing the proposed rule would produce economic benefits by allowing Virginia to continue to receive federal funds and letting the state run its own air quality program.

The proposed change is also likely to produce additional benefits in terms of improved fuel efficiency and enhanced vehicle life. In the absence of the proposed regulation, vehicles identified as high emitters that are registered in the northern Virginia area would most likely have made the required repairs during the biennial inspection. Vehicles identified as high emitters that are registered outside the northern Virginia area would most likely not have made the required repairs until there were other problems that surfaced. According to DEQ, these repairs increase fuel efficiency and vehicle life. Thus, by requiring vehicles identified as high emitters to report for an out-of-cycle test and undertake all the necessary repairs in a timely manner, the proposed regulation is likely to provide economic benefits to vehicle owners.

Finally, the clean screen provisions in the proposed regulation are likely to produce economic benefits. The clean screen provision is likely to result in fewer vehicles requiring biennial testing. Vehicles that are clean screened will not be required to report for the next biennial inspection following their clean screen notice. This will result in savings for vehicle owners. DEQ intends to issue clean screens to up to 5.0% of vehicles in each model year group. Based on the 2002 remote sensing pilot study conducted in Virginia, approximately 12% of vehicles observed through remote sensing (or 36,000 vehicles out of 300,000 unique vehicles observed in a year) were seen three or more times in a 60-day period.⁵ Assuming 12% of vehicles are observed three or more times during a 120-day period (a conservative assumption) and 5.0% of these vehicles that are registered in northern Virginia are clean screened (assuming none of the measurements exceed established standards), it would result in 1,800 cars being exempted from the biennial inspection. Savings to vehicle owners would be \$50,400 per year. Moreover, to the extent that clean screening saves vehicle owners potential repair expenses and the time and effort spent in getting their vehicle emissions tested, the proposed change is likely to produce significant economic benefits. For example, the clean screen program operated by Missouri in the St. Louis area charges a clean screen fee that is equal to the emissions inspection fee. Despite this, Missouri had a clean screen notice redemption rate of 78% in 2002.

vehicles that have not been inspected on a biennial basis are more likely to be high emitters than those that are required to report for regular emissions testing.

⁵ In order to be eligible for a clean screen, vehicles are required to have been observed by remote sensing at least three different times on three different days during a 120-day period.

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The proposed regulation will also result in a transfer of resources between vehicle owners and the state. The subsidy program provided for under the proposed regulation will result in the state subsidizing a portion of the cost of repairs incurred by qualifying vehicle owners. If emissions-related repairs are made under the biennial inspection program, vehicle owners are not eligible for a subsidy. However, if the repairs are made under the remote sensing program, the state is required to provide a subsidy to qualified vehicle owners. The subsidy is up to 50% of the amount spent on emissions-related repairs or up to 50% of the waiver amount, after a \$100 co-payment. DEQ has currently budgeted between \$300,000 and \$350,000 for the subsidy program. The subsidy will defray some of the additional cost imposed on vehicle owners by the proposed regulation.

The net economic impact of the proposed change will depend on whether the additional costs of meeting the requirements of the proposed regulation are greater than or less than the benefits of doing so. The proposed regulation is likely to impose additional costs on vehicle owners, emissions inspection stations, and the state. Owners of vehicles registered in the northern Virginia area can expect to pay a total \$172,983 per year in additional inspection and repair-related costs. Owners of vehicles registered outside the northern Virginia area can expect to pay a total \$138,166 per year in additional inspection and repair-related costs. Some of the cost of emissions-related repairs will be subsidized by the state. Inspection stations are likely to incur additional costs of \$11,900 per year due to false positives. The state is likely to incur costs of \$300,000 per year and the cost of one full-time position in administering and implementing the remote sensing program. However, the proposed regulation is also likely to produce economic benefits. It is likely to reduce ground-level ozone in the northern Virginia area and reduce some of its negative human health effects. It is likely to ensure that the state avoids federal sanctions and continues to receive federal funds and run its own air quality program. It is also likely to produce economic benefits for vehicle owners through enhanced fuel efficiency and vehicle life and through clean screening. A precise estimate of these benefits, and hence of the net economic impact of the proposed change, is not available at this time.

Businesses and entities affected. The proposed regulation is likely to affect vehicle owners who operate primarily (as defined by the regulation) in the northern Virginia area. Owners whose vehicles are registered in the northern Virginia area are likely to incur additional costs of \$172,983 per year in inspection and repair-related expenses. However, some of these owners are likely to receive clean screens, producing cost savings of over \$50,400 per year. Owners whose vehicles are registered outside the northern Virginia area are likely to incur additional costs of \$138,166 per year in additional inspection and repair-related costs. Qualifying vehicle owners registered in and outside the northern Virginia area will be eligible to receive a subsidy (currently budgeted at between \$300,000 and \$350,000 per year) to defray some of the cost of emissions-related repairs. Finally, by making emissions-related repairs, vehicle owners are likely to benefit from improved fuel efficiency and enhanced vehicle life.

The proposed regulation is likely to affect permitted emissions inspection stations. Inspection stations are likely to incur additional costs of \$11,900 per year due to false positives. In addition, they are also likely to incur losses of approximately \$50,400 through the clean screen program. However, permitted emissions inspection stations are likely to receive additional revenues of approximately \$311,149 in inspection and repair-related services.

DEQ expects the remote sensing program to measure 300,000 vehicles a year, with an expected failure rate of 2.0% (or 6,000 vehicles). Of these, approximately 4,396 vehicles are likely to be registered in the northern Virginia area and 497 vehicles are likely to be registered outside the northern Virginia area. Moreover, DEQ estimates that there are currently 392 permitted emissions inspection stations.

Localities particularly affected. The proposed regulation will affect the northern Virginia area covering the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The localities are not expected to incur any additional costs in implementing the proposed regulation.

Projected impact on employment. The proposed regulation is not likely to have a significant impact on employment, especially as the labor market is not likely to be very slack in the northern Virginia area. To the extent that the proposed regulation encourages emissions inspection stations to hire more people, it is likely to shift some workers into these jobs and away from other jobs.

Effects on the use and value of private property. The proposed regulation is likely to increase the costs associated with operating motor vehicles in the northern Virginia area. However, some of these costs are likely to be counter-balanced by the clean screens allowed for under this regulation, the provision of subsidies for low-income vehicle owners, improved fuel efficiency, and enhanced vehicle life. The proposed regulation is likely to have a positive effect on the use and value of emissions inspection stations. While it is likely to impose some additional costs on emissions inspection stations, the estimated increase in revenue through increased vehicle inspections and repairs is likely to outweigh the increased costs. Finally, the proposed regulation is also likely to have a positive effect on the use and value of property in the northern Virginia area. By lowering the amount of ground-level ozone and improving air quality, the proposed regulation is likely to raise property values in the northern Virginia area. The net effect of the proposed change on the use and value of private property cannot be precisely estimated at this time.

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

Summary:

The proposed amendments make a number of revisions to conform to changes in Virginia law pertaining to remote sensing. In general, the regulation needs to be amended to reflect new emission standards for vehicles detected via remote sensing as well as criteria for conducting random

testing of motor vehicle emissions, procedures to notify owners of test results, and assessment of civil charges for noncompliance with emissions standards in the current regulation.

Two specific changes to the regulation as a result of changes to the Code of Virginia include the change in the model year coverage for vehicles subject to remote sensing to include model year 1968 and newer model vehicles, and the requirement to establish a program to subsidize repair costs of some vehicles identified by remote sensing.

9 VAC 5-91-20. Terms defined.

"Aborted test" means an emissions inspection procedure that has been initiated by the inspector but stopped and not completed due to inspector error or a vehicular problem that prevents completion of the test. Aborted tests are not tests that cannot be completed due to a "failed/invalid" result caused by an exhaust dilution problem or an engine condition that prevents the inspection from being completed.

"Access code" means the security phrase or number which allows authorized station personnel, the department, and analyzer service technicians to perform specific assigned functions using the certified analyzer system, as determined by the department. Depending on the assigned function, the access code is a personal password, a state password or a service password. Access code is not an identification number, but is used as an authenticator along with the identification number where such number is needed to perform specific tasks.

"Actual gross weight" means the gross vehicle weight rating (GVWR).

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

"Affected motor vehicle" means any motor vehicle which:

1. Was manufactured or designated by the manufacturer as a model year less than 25 calendar years prior to January 1 of the present calendar year according to the formula, the current calendar year minus 24, *except those identified by remote sensing as specified in subdivision 5 of this definition;*
2. Is designed for the transportation of persons or property;
3. Is powered by an internal combustion engine; ~~and~~
4. For the Northern Virginia Emissions Inspection Program, has an actual gross weight of 10,000 pounds or less.; *and*
5. *For vehicles subject to the remote sensing requirements of 9 VAC 5-91-180, was designated by the manufacturer as model year 1968 or newer.*

The term "affected motor vehicle" does not mean any:

1. Vehicle powered by a clean special fuel as defined in § 58.1-2101 of the Code of Virginia, provided the federal Clean Air Act permits such exemptions for vehicles powered by clean special fuels;
2. Motorcycle;

3. Vehicle ~~which,~~ *that* at the time of its manufacture, was not designed to meet emissions standards set or approved by the federal government;

4. Any antique motor vehicle as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia;

5. Firefighting equipment, rescue vehicle, or ambulance;

6. Vehicle for which no testing standards have been adopted by the board; or

7. Tactical military vehicle.

"Air intake systems" means those systems ~~which~~ *that* allow for the induction of ambient air (to include preheated air) into the engine combustion chamber for the purpose of mixing with a fuel for combustion.

"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 Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Air system" means a system for providing supplementary air to promote further oxidation of hydrocarbons and carbon monoxide gases and to assist catalytic reaction.

"Alternative fuel" means an internal combustion engine fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% volume of gasoline.

"Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference method, but that has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

~~"ASM" means Acceleration Simulation Mode testing which is~~ *(ASM) test" means* a dynamometer-based emissions test performed in one or more, discreet, simulated road speed and engine load modes, and equipment which can be used to perform any such test.

"Authorized personnel" means department personnel, an individual designated by analyzer manufacturer, station owner, licensed emissions inspector, station manager or other person as designated by the station manager.

"Basic engine systems" means those parts or assemblies which provide for the efficient conversion of a compressed air and fuel charge into useful power to include but not limited to valve train mechanisms, cylinder head to block integrity, piston-ring-cylinder sealing integrity and post-combustion emissions control device integrity.

"Bi-fuel" means any motor vehicle capable of operating on one of two different fuels, usually gasoline and an alternative fuel, but not a mixture of the fuels. That is, only one fuel at a time.

"Board" means the State Air Pollution Control Board or its designated representative.

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"Calibration" means establishing or verifying the response curve of a measurement device using several different measurements having precisely known quantities.

"Calibration gases" means gases of precisely known concentrations that are used as references for establishing or verifying the response curve of a measurement device.

"Canister" means a mechanical device capable of adsorbing and retaining hydrocarbon vapors.

"Catalytic converter" means a post combustion device ~~which~~ *that* oxidizes hydrocarbons, carbon monoxide gases, and may also reduce oxides of nitrogen.

"Certificate of emissions inspection" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this chapter, which indicates that (i) an affected motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this chapter; (ii) the requirement of compliance with the emissions standards has been temporarily waived; or (iii) the affected motor vehicle has failed the emissions inspection.

"Certified emissions repair facility" means a facility, or portion of a facility, that has obtained a certification in accordance with Part VII (9 VAC 5-91-500 et seq.) to perform emissions related repairs on motor vehicles.

"Certified emissions repair technician" means a person who has obtained a certification in accordance with Part VIII (9 VAC 5-91-550 et seq.) to perform emissions related repairs on motor vehicles.

"Certified enhanced analyzer system" or "analyzer system" means the complete system that samples and reads concentrations of hydrocarbon, carbon dioxide, ~~nitrogen~~ *nitric* oxides and carbon monoxide gases and that is approved by the department for use in the Enhanced Emissions Inspection Program in accordance with Part X (9 VAC 5-91-640 et seq.). The system includes the exhaust gas handling system, the exhaust gas analyzer, evaporative system pressure test equipment, associated automation hardware and software, data media, the analyzer system cabinet, the dynamometer and appurtenant devices, vehicle identification equipment, and associated cooling and exhaust fans and gas cylinders.

"Certified thermometer" means a laboratory grade ambient temperature-measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least 1°F with increments of 1°, with protective shielding.

"Chargeable inspection" means a completed inspection on an affected motor vehicle, for which the station owner is entitled to collect an inspection fee. No fee shall be paid for (i) inspections for which a certificate of emissions inspection has not been issued, (ii) inspections that are conducted by the department for referee purposes, (iii) inspections which were ordered due to on-road test failures but which result in an emissions inspection "pass" at an inspection station, or (iv) the first reinspection done at the same station that performed the initial inspection within 14 days. An inspection ordered by the department due to an on-road test failure ~~and~~ that results in

~~an emissions inspection~~ a confirmation test failure at the an emissions inspection station is a chargeable inspection.

"Confirmation test" means an emissions inspection required due to a determination that the vehicle exceeds the exhaust emissions standards prescribed in Table III-B in 9 VAC 5-91-180 for on-road testing through remote sensing. The confirmation emissions inspection procedure may include an exhaust test (ASM or TSI), OBD system test or both.

"Consent order" means a mutual agreement between the department and any owner, operator, emissions inspector, or emissions repair technician that such owner or other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this chapter. A consent order may include agreed upon civil charges. Such orders may be issued without a formal hearing.

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between 400 and 1,250 revolutions per minute (rpm), or at another idle speed if so specified by the manufacturer.

"Data handling system" means all the computer hardware, software and peripheral equipment used to conduct emissions inspections and manage the enhanced emissions inspection program.

"Data medium" or "data media" means the medium contained in the certified analyzer system and used to electronically record test data.

"Day" means a 24-hour period beginning at midnight.

"Dedicated alternative fuel vehicle" means a vehicle that was configured by the vehicle manufacturer to operate only on one specific fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% by volume of gasoline.

"Dedicated-fuel vehicle" means a vehicle that was designed and manufactured to operate and operates on one specific fuel.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dual fuel" means a vehicle ~~which~~ *that* operates on a combination of fuels, usually gasoline or diesel and an alternative fuel, at the same time. That is, the mixed fuels are introduced into the combustion chamber of the engine.

"Emissions control equipment" means any part, assembly or equipment originally installed by the manufacturer in or on a motor vehicle for the sole or primary purpose of reducing emissions.

"Emissions control systems" means any system consisting of parts, assemblies or equipment originally installed by the manufacturer in or on a motor vehicle for the primary purpose of reducing emissions.

"Emissions inspection" means an emissions inspection of a motor vehicle performed by an emissions inspector employed by or working at an emissions inspection station or fleet emissions inspection station, using the tests, procedures, and provisions set forth in this chapter.

"Emissions inspection station" means a facility or portion of a facility ~~which~~ *that* has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this chapter.

"Emissions inspector" means a person licensed by the department to perform inspections of vehicles required under the Virginia Motor Vehicle Emissions Control Law and is qualified in accordance with this chapter.

"Emissions standard" means any provision of Part III (9 VAC 5-91-160 et seq.) or Part XIV (9 VAC 5-91-790 et seq.) ~~which~~ *that* prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

"Empty weight (EW)" means that weight stated as the EW on a Virginia motor vehicle registration or derived from the motor vehicle title or manufacturer's certificate of origin. The EW may be used to determine emissions inspection standards.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection including procedures, emissions standards, and equipment required by 40 CFR Part 51, Subpart S or equivalent and consistent with applicable requirements of the federal Clean Air Act. The director ~~shall~~ *will* administer the enhanced emissions inspection program. Under the Virginia Motor Vehicle Emissions Control Law, the program requires that affected motor vehicles, unless otherwise exempted, receive biennial inspections at official emissions inspection stations, which may be test and repair facilities, in accordance with this chapter. Nothing in this program shall bar enhanced emissions inspection stations or facilities from also performing vehicle repairs.

"EPA" means the United States Environmental Protection Agency.

"Equivalent test weight (ETW)" or "emission test weight" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size, permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance and exhaust emissions standards for the conduct of an exhaust emissions inspection.

"Evaporative system pressure test" or "pressure test" means a physical test of the evaporative emission control system on a motor vehicle to determine whether the evaporative system vents emissions of volatile organic compounds from the fuel tank and fuel system to an on-board emission control device, and prevents their release to the ambient air under normal vehicle operating conditions. Such testing shall only be conducted at emissions inspection stations upon installation of approved equipment and software necessary for performing the test, as determined by the director.

"Exhaust gas analyzer" means an instrument ~~which~~ *that* is capable of measuring the concentrations of certain air pollutants in the exhaust gas from a motor vehicle.

"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, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC § 7401 et seq.

"Fleet" means 20 or more motor vehicles ~~which~~ *that* are owned, operated, leased or rented for use by a common owner.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

"Flexible-fuel vehicle" means any motor vehicle capable of operating on two or more fuels, either one at a time or any mixture of two or more different fuels.

"Formal hearing" means a board or department process that provides for the right of private parties to submit factual proofs as provided in § 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 2.2-4019 of the Administrative Process Act.

"Fuel control systems" means those mechanical, electro-mechanical, galvanic or electronic parts or assemblies which regulate the air-to-fuel ratio in an engine for the purpose of providing a combustible charge.

"Fuel filler cap pressure test" or "gas cap pressure test" means a test of the ability of the fuel filler cap to prevent the release of fuel vapors from the fuel tank under normal operating conditions.

"Gas span" means the adjustment of an exhaust gas analyzer to correspond with known concentrations of gases.

"Gas span check" means a procedure using known concentrations of gases to verify the gas span adjustment of an analyzer.

"Gross vehicle weight rating (GVWR)" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and is (i) expressed on a permanent identification label affixed to the motor vehicle; (ii) stated on the manufacturer's certificate of origin; or (iii) coded in the vehicle identification number. If the GVWR can be determined it shall be one element used to determine emissions inspection standards and test type. If the GVWR is unavailable, the department may make a determination based on the best available evidence including manufacturer reference, information coded in the vehicle identification number, or other available sources of information from which to make the determination.

"Heavy duty gasoline vehicle (HDGV)" means a heavy duty vehicle using gasoline as its fuel.

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"Heavy duty vehicle (HDV)" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a loaded vehicle weight or GVWR of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

"High emitter index" means the method of categorizing the probable emissions inspection failure-rates of engine families. Values within the index are determined by computing the percentile of the historical emissions inspection failure rate of a specific engine family, i.e., a specific group of vehicles with the same vehicle type, year, make and engine size, to the historical emissions inspection failure rate of all engine families in a specific model year group. Failure rates are based on the most recent full year of emissions inspection test data from the Virginia Motor Vehicle Emissions Control Program. Vehicles with an index value above 75 are considered "high-emitters."

"Identification number" means the number assigned by the department to uniquely identify department personnel, an emissions inspection station, a certified emissions repair facility, a licensed emissions inspector, a certified emissions repair technician or other authorized personnel as necessary for specific tasks.

"Idle mode" means a condition where the vehicle engine is warm and running at the rate specified by the manufacturer as curb idle, where the engine is not propelling the vehicle, and where the throttle is in the closed or idle stop position.

"Ignition systems" means those parts or assemblies which that are designed to cause and time the ignition of a compressed air and fuel charge.

"Implementation plan" means the plan, including any revision thereof, that has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and that implements the relevant requirements of the federal Clean Air Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 2.2-4019 of the Administrative Process Act.

"Initial inspection" means the first complete emissions inspection of a motor vehicle conducted in accordance with the biennial inspection requirement and for which a valid vehicle emissions inspection report was issued. Any test following the initial inspection is a retest or reinspection.

"Inspection area" means the area that is occupied by the certified analyzer system and the vehicle being inspected.

"Inspection fee" means the amount of money that the emissions inspection station may collect from the motor vehicle owner for each chargeable inspection.

"Light duty gasoline vehicle (LDGV)" means a light duty vehicle using gasoline as its fuel.

"Light duty gasoline truck (LDGT1)" means a light duty truck 1 using gasoline as its fuel.

"Light duty gasoline truck (LDGT2)" means a light duty truck 2 using gasoline as its fuel."

Light duty truck (LDT)" means any affected motor vehicle which (i) has a loaded vehicle weight or GVWR of 6,000 pounds or less and meets any one of the criteria below; or (ii) is rated at more than 6,000 pounds GVWR but less than 8,500 pounds GVWR and has a basic vehicle frontal area of 45 square feet or less; and meets one of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.
3. Equipped with special features enabling off-street or off-highway operation and use.

"Light duty truck 1" or " (LDT1)" means any affected motor vehicle which meets the criteria above and is light duty truck rated at 6,000 pounds GVWR or less. LDT1 is a subset of light duty trucks.

"Light duty truck 2" or " (LDT2)" means any affected motor vehicle which meets the criteria above and is light duty truck rated at greater than 6,000 pounds GVWR. LDT2 is a subset of light duty trucks.

"Light duty vehicle (LDV)" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"Loaded vehicle weight (LVW)" or "curb weight" means the weight of a vehicle and its standard equipment; i.e., the empty weight as recorded on the vehicle's registration or the base shipping weight as recorded in the vehicle identification number, whichever is greater; plus the weight of any permanent attachments, the weight of a nominally filled fuel tank, plus 300 pounds.

"Locality" means a city, town, or county created by or pursuant to state law.

"Mobile fleet emissions inspection station" means a facility or entity which that provides emissions inspection equipment or services to a fleet emissions inspection station on a temporary basis. Such equipment is not permanently installed at the fleet facility but is temporarily located at the fleet facility for the sole purpose of testing vehicles owned, operated, leased or rented for use by a common owner.

"Model year" means, except as may be otherwise defined in this chapter, the motor vehicle manufacturer's annual production period which includes the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year of manufacture. For the purpose of this definition, model year is applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

"Motor vehicle" means any motor vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle and that:

1. Is designed for the transportation of persons or property; and
2. Is powered by an internal combustion engine.

"Motor vehicle dealer" means a person who is licensed by the Department of Motor Vehicles in accordance with §§ 46.2-1500 and 46.2-1508 of the Code of Virginia.

"Motor vehicle inspection report" means a printed certificate of emissions inspection that is a report of the results of an emissions inspection. It indicates whether the motor vehicle has (i) passed, (ii) failed, or (iii) obtained a temporary emissions inspection waiver. It may also indicate whether the emissions inspection could not be completed due to an exhaust dilution or an engine condition that prevents the inspection from being completed. The report shall accurately identify the motor vehicle and shall include inspection results, recall information provided by the department, warranty and repair information, and a unique identification number.

"Motor vehicle owner" means any person who owns, leases, operates, or controls a motor vehicle or fleet of motor vehicles.

"Nonconforming vehicle" means a vehicle not manufactured for sale in the United States to conform to emissions standards established by the federal government.

"Normal business hours" for emissions inspection stations, means a daily eight-hour period Monday through Friday, between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, state holidays, temporary closures noticed to the department and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "normal business hours." Emissions inspection stations may, with the approval of the department, substitute a combined total of eight hours, between 8 a.m. and 6 p.m., over a weekend period for one weekday as their "normal business hours" for conducting emission inspections. Emissions inspection stations shall post inspection hours.

"Northern Virginia emissions inspection program" means the emissions inspection program required by this chapter in the Northern Virginia program area.

"Northern Virginia program area" or "program area" means the territorial area encompassed by the boundaries of the following localities: the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"On-board diagnostic system"~~—or—~~ (OBD system)" means the computerized emissions control diagnostic system installed on model year 1996 and newer affected motor vehicles.

"On-board diagnostic system test"~~—or—~~ (OBD) system test" means an evaluation of the OBD system pursuant to 40 CFR 86.094-17 according to procedures specified in 40 CFR 85.2222 and this chapter.

"On-board diagnostic vehicle"~~—or—~~ (OBD vehicle)" means a model year 1996 and newer model affected motor vehicle

equipped with an on-board diagnostic system and meeting the requirements of 40 CFR 85.2231.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Operated primarily" means vehicle operation that constitutes a significant use in the program area. For the purpose of ~~this definition~~ *compliance with the requirements of 9 VAC 5-91-160 and 9 VAC 5-91-170*, significant use shall be (i) mileage in excess of 6,000 miles per year or (ii) routine operation into or within the program area as evidenced by recordation of travel in the program area at least three times in a two-week period by remote sensing or on-road testing. *For the purpose of compliance with the requirements of 9 VAC 5-91-180, significant use shall be routine operation into or within the program area as evidenced by recordation by remote sensing equipment at least three times in a two-month period with no less than 30 days between the first and last recordation. The director may increase the number of observations required for compliance determination if, in his discretion, based on program experience, such an increase would not significantly adversely impact the objectives of this chapter.*

"Order" means any decision or directive of the board or the director, including orders, consent orders, and orders of all types rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of this chapter. Unless specified otherwise in this chapter, orders shall only be issued after the appropriate administrative proceeding.

"Original condition" means the condition of the vehicle, parts, and components as installed by the manufacturer but not necessarily to the original level of effectiveness.

"Owner" means any person who owns, leases, operates, controls or supervises a facility or motor vehicle.

"Party" means any person who actively participates in the administrative proceeding or offers comments through the public participation process and is named in the administrative record. The term "party" also means the department.

"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.

"Referee station" means those facilities operated or used by the department to (i) determine program effectiveness, (ii) resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in Appendix A of 40 CFR Part 60.

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"Reinspection" or "retest" means a type of inspection selected by the department or the emissions inspector when a request for an inspection is due to a previous failure. Any inspection that occurs 120 days or less following the most recent chargeable inspection is a retest.

"Rejected" or "rejected from testing" means that the vehicle cannot be inspected due to conditions in accordance with 9 VAC 5-91-420 C or 9 VAC 5-91-420 G 3.

"Remote sensing" means the observation, measurement, and recordation of motor vehicle exhaust emissions from motor vehicles while ~~travelling~~ *traveling* on roadways or in specified areas by specialized equipment. Such equipment may use light sensing and electronic stimuli in conjunction with devices, including videographic and digitized images, to detect and record vehicle identification information, such as registration or other identification numbers.

"Sensitive mission vehicle" means any vehicle which, for law enforcement or national security reasons, cannot be tested in the public inspection system and must not be identified through the fleet testing system. For such vehicles, an autonomous fleet testing system may be established by agreement between the controlling agency and the director.

"Span gas" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas analyzer that are approved by the department and are so labeled.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of H_g (29.92 inches of H_g).

"Standardized instruments" means laboratory instruments calibrated with precision gases traceable to the National Institute of Standards and Technology and accepted by the department as the standards to be used for comparison purposes. All candidate instruments are compared in performance to the standardized instruments.

"Tactical military vehicle" means any motor vehicle designed to military specifications or a commercially designed motor vehicle modified to military specifications to meet direct transportation support of combat, tactical, or military relief operations, or training of personnel for such operations.

"Tampering" means to alter, remove or otherwise disable or reduce the effectiveness of emissions control equipment on a motor vehicle.

"Test" means an emissions inspection of a vehicle, or any portion thereof, performed by an emissions inspector at an emissions inspection station, using the procedures and provisions set forth in this chapter.

"Test and repair" means motor vehicle emissions inspection stations ~~which that~~ perform emissions inspections and may also perform vehicle repairs. No provision of this chapter shall bar emissions inspection stations from also performing vehicle repairs.

"Thermostatic air cleaner" means a system that supplies temperature-regulated air to the air intake system during engine operation.

"True concentration" means the concentration of the gases of interest as measured by a standardized instrument ~~which that~~ has been calibrated with 1.0% precision gases traceable to the National Bureau of Standards.

"Two-speed idle test" ~~or~~ " (TSI)" means a vehicle exhaust emissions test, performed in accordance with section (II) of 40 CFR Part 51, Appendix B to Subpart S, which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

"*Vehicle specific power (VSP)*" means an indicator expressed as a function of vehicle speed, acceleration, drag coefficient, tire rolling resistance and roadway grade that is used to characterize the load a vehicle is operating under at the time and place a vehicle is measured by remote sensing equipment. It is calculated using the following formula:

$$VSP = 4.39 \times \text{Sine (Site Grade in Degrees/57.3)} \times \text{Speed} + K1$$

$$+ \text{Speed} \times \text{Acceleration} + K2 \times \text{Speed} + K3 \times \text{Speed}^3.$$

Where:

VSP = vehicle specific power indicator;

Sine = the trigonometric function that for an acute angle is the ratio between the side opposite the angle when it is considered part of a right triangle and the hypotenuse;

Site Grade in Degrees = slope of road where remote sensing measurement is taken;

K1, K2 and K3 = empirically determined coefficients specific to the weight class of the vehicle;

Speed = rate of motion in miles per hour of vehicle at the time remote sensing measurement is taken; and

Acceleration = change in speed in miles per hour per second.

For light duty vehicles the values for K1, K2 and K3 are respectively 0.22, 0.0954 and 0.0000272. Based on EPA guidance, the department may develop different values for K1, K2 and K3 that are applicable to heavy duty vehicles or to specific classes of light duty vehicles.

"Virginia Motor Vehicle Emissions Control Program" means the program for the inspection and control of motor vehicle emissions established by Virginia Motor Vehicle Emissions Control Law.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Visible smoke" means any air pollutant, other than visible water droplets, consisting of black, gray, blue or blue-black airborne particulate matter emanating from the exhaust system or crankcase. Visible smoke does not mean steam.

"Zero gas" means a gas, usually air or nitrogen, which is used as a reference for establishing or verifying the zero point of an exhaust gas analyzer.

9 VAC 5-91-160. Exhaust emission standards for two-speed idle testing in enhanced emissions inspection programs.

A. No motor vehicle subject to the two-speed idle test shall discharge carbon monoxide (CO), or hydrocarbons (HC) in its exhaust emissions in excess of standards set forth in Table III-A when measured with a certified analyzer system and in accordance with the two-speed idle inspection procedures prescribed in Part VI (9 VAC 5-91-410 et seq.).

B. The measured concentration of CO plus CO₂ shall be greater than or equal to 6.0%.

C. The standards in Table III-A may be adjusted by no more than one percentage point for CO and 150 ppm for HC in order to meet the requirements of the Environmental Protection Agency or the federal Clean Air Act.

TABLE III-A.
EXHAUST EMISSION STANDARDS FOR TWO-SPEED IDLE EMISSIONS INSPECTIONS TESTS.

Model Year	HC (ppm)	CO (%)
For idle test and 2500 RPM test for vehicles up to 8500 pounds GVWR:		
1996 & later	110	0.75
1990-95	125	1.0
1981-89	220	1.2
1980	220	2.0
1975-79	400	4.0
1970-74	600	6.0
1968-69	800	8.0
For vehicles from 8501 to 10000 pounds GVWR:		
1997 & later	125	0.75
1991-96	150	1.0
1981-90	220	1.2
1980	220	2.0
1975-79	400	4.0
1970-74	600	6.0
1968-69	800	8.0

9 VAC 5-91-180. Exhaust emissions standards for on-road testing through remote sensing.

A. No *affected* motor vehicle shall exceed the emissions standard for carbon monoxide (CO), the emission standard for hydrocarbons (HC) or nitric oxide (NO), whichever is selected for use, or both, set forth in Table III-B when measured with a remote sensing device and in accordance with the inspection procedures prescribed in Part XII (9 VAC 5-91-740 et seq.).

B. Any *affected* motor vehicle determined to have exceeded any emissions standards in Table III-B at least twice within 90 days when measured by a remote sensing device in accordance with the procedures of Part XII (9 VAC 5-91-740 et seq.) may be subject to an emissions inspection at an emissions inspection station in accordance with Part XII

(9 VAC 5-91-740 et seq.) or a civil charge in accordance with § 46.2-1178.1 B of the Code of Virginia, or both.

C. Beginning January 1, 2004, motor vehicles that exceed the emissions standards in Table III-B two days in any 120-day period shall be considered to have violated the emissions standards. In addition, the department may use the high emitter index as an additional screening requirement.

D. Beginning January 1, 2005, or later date based on analysis of remote sensing failure rates and confirmation test results, the department may determine that an affected vehicle is a high emitter if the vehicle exceeds the standards in Table III-B once and is also determined to have a high emitter index of greater than 75.

E. All remote sensing measurements used to determine if a vehicle exceeds emissions standards prescribed in Table III-B shall be taken at valid sites under conditions at which the vehicle specific power (VSP) indicator is between 3 and 22. Standards for NO shall be corrected for VSP using the following formula:

$$NO\ standard = Low\ Range\ Standard + (VSP-3) / 19 \times (High\ Range\ Standard - Low\ Range\ Standard).$$

Where:

Low Range Standard = the smaller values in Table III-B in the NO (ppm) Range column;

VSP = vehicle specific power indicator; and

High Range Standard = the larger values in Table III-B in the NO (ppm) Range column.

F. The department may adjust the standards in Table III-B if it is determined that the a standard is causing a false failure confirmation test pass rate in excess of 20% or less than 5.0% as measured by the results of emissions inspections at emissions inspection stations. Such adjustments may be for specific model years models within each model year group based on manufacturer's emissions control technology.

TABLE III-B.
EXHAUST EMISSION STANDARDS FOR REMOTE SENSING.

Model Year	CO (%)	HC (ppm)
1977-79, 6000 lb. and less	10.0	1600
1977-79, more than 6000 lb.	12.0	2000
1980-95, 8500 lb. and less	4.8	880
1980-95, more than 8500 lb.	6.0	880
1996-98, 6000 lb. and less	3.6	660
1996-98, more than 6000 lb.	5.0	660
1999 and newer, 6000 lb. and less	3.60	440
1999 and newer, more than 6000 lb.	5.0	440

Standards Beginning January 1, 2004			
Period/Model Year/ Vehicle Type	CO (%)	HC (ppm)	NO (ppm) Range ¹ Low to High
Pre-1981 – LDGT (1 or 2)	7.0%	1000	

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Pre-1981 – LDGV	7.0%	1000	
Pre-1981 – HDGV	7.0%	1000	
1981 to 1985 – LDGT (1 or 2)	6.0%	800	1500–2000
1981 to 1985 – LDGV	6.0%	750	1200–1800
1981 to 1985 – HDGV	7.0%	750	
1986 to 1990 – LDGT (1 or 2)	5.5%	700	1200–1800
1986 to 1990 – LDGV	5.5%	650	1000–1600
1986 to 1990 – HDGV	6.5%	750	
1991 to 1995 – LDGT (1 or 2)	5.0%	650	1200–1800
1991 to 1995 – LDGV	5.0%	600	1000–1600
1991 to 1995 – HDGV	6.0%	700	
1996 and newer LDGT (1 or 2)	4.0%	450	600–900
1996 and newer LDGV	4.0%	450	600–900
1996 and newer HDGV	5.0%	600	

Standards Beginning January 1, 2005, and later - Two or More On-Road Measurements

Period/Model Year/ Vehicle Type	CO (%)	HC (ppm)	NO (ppm) Range Low to High
Pre-1981 – LDGT (1 or 2)	7.0%	1000	
Pre-1981 – LDGV	7.0%	1000	
Pre-1981 – HDGV	7.0%	1000	
1981 to 1985 – LDGT (1 or 2)	6.0%	800	1500–2000
1981 to 1985 – LDGV	6.0%	750	1200–1800
1981 to 1985 – HDGV	7.0%	750	
1986 to 1990 – LDGT (1 or 2)	5.5%	700	1200–1800
1986 to 1990 – LDGV	5.5%	650	1000–1600
1986 to 1990 – HDGV	6.5%	750	
1991 to 1995 – LDGT (1 or 2)	4.0%	550	1000–1500
1991 to 1995 – LDGV	4.0%	500	900–1400
1991 to 1995 – HDGV	6.0%	700	
1996 and newer LDGT (1 or 2)	3.0%	350	500–800
1996 and newer LDGV	3.0%	350	500–800
1996 and newer HDGV	5.0%	600	

January 1, 2005 and later - Single On-Road Measurement Vehicle must have High Emitter Index of 75% or Higher

Period/Model Year/ Vehicle Type	CO (%)	HC (ppm)	NO (ppm) Range Low to High
Pre-1981 – LDGT (1 or 2)	7.0%	1000	
Pre-1981 – LDGV	7.0%	1000	
Pre-1981 – HDGV	7.0%	1000	
1981 to 1985 – LDGT (1 or 2)	6.0%	800	1500–2000
1981 to 1985 – LDGV	6.0%	750	1200–1800
1981 to 1985 – HDGV	7.0%	750	
1986 to 1990 – LDGT (1 or 2)	5.5%	700	1200–1800
1986 to 1990 – LDGV	5.5%	650	1000–1600
1986 to 1990 – HDGV	6.5%	750	
1991 to 1995 – LDGT (1 or 2)	4.0%	550	1000–1500
1991 to 1995 – LDGV	4.0%	500	900–1400
1991 to 1995 – HDGV	6.0%	700	
1996 + LDGT (1 or 2)	3.0%	350	500–800
1996 + LDGV	3.0%	350	500–800
1996 + HDGV	5.0%	600	

¹ NO standard = Low Range standard + (Actual VSP-3)/19 x (High Range standard – Low Range Standard)

D. For any 30-day period, up to 5.0% of the number of vehicles measured three times which have been detected as having the cleanest measurements, based on an average of three measurements using on-road testing equipment within the period, may, at the discretion of the director, be recorded

as having passed an emissions inspection and such result shall be entered into the emissions inspection record for that vehicle.

E. Remote sensing measurements used for such purposes shall be from at least two different on-road testing locations.

F. Remote sensing measurements obtained while a vehicle is decelerating shall not be used for the purpose described in this section.

G. Beginning January 1, 2005, clean screen vehicles will be identified using on-road testing equipment measurements based on all of the following criteria:

1. Up to 5.0% of the number of vehicles measured during any 30-day period may be identified as clean screen vehicles.

2. Vehicles that have the cleanest measurements based on an average of at least three measurements (taken on three different days) may be identified as clean screen vehicles.

3. Vehicles with no measurements exceeding the standards in Table III B may be identified as clean screen vehicles.

H. At the discretion of the director, vehicles identified as clean screen vehicles in accordance with subsection G of this section may be recorded as having passed the next emissions inspection required by § 46.2-1183 of the Code of Virginia and the result shall be entered into the emissions inspection record for that vehicle.

9 VAC 5-91-740. General requirements.

A. The on-road testing program shall conform, at a minimum, to the requirements of 40 CFR 51.371 and § 46.2-1178.1 of the Code of Virginia applicable to the program area in which it is employed.

B. The emissions standards for the on-road remote sensing program are those contained in Table III-B in 9 VAC 5-91-180.

C. The on-road testing program and the emissions standards applicable thereto shall apply to affected motor vehicles registered in the program area and any affected motor vehicles operated primarily in the program area.

9 VAC 5-91-741. Financial assistance program.

A. Vehicles identified by on-road testing that fail to meet emissions standards may qualify for financial assistance for emissions-related diagnostic and repair services.

B. Repairs shall be performed by, or under the supervision or approval of, a certified emissions repair technician at a certified emissions repair facility.

C. The department will notify owners of vehicles that violate the remote sensing requirements of 9 VAC 5-91-180. The notification will inform owners of the potential for financial assistance and how to apply for the assistance for repairs to vehicles identified via remote sensing if they meet the eligibility requirements in 9 VAC 5-91-742 and the subsidy percentage of total eligible repair costs.

D. For affected motor vehicles subject to a confirmation test, the department may provide a subsidy of up to 50% of the

amount spent on emissions related repairs up to a maximum of 50% of the waiver amount for repairs performed to comply with the emission standards prescribed in 9 VAC 5-91-160 and 9 VAC 5-91-170. The director may increase or decrease the subsidy percentage depending upon the number of applications received, average expenditure for repair, and availability of funds.

9 VAC 5-91-742. Eligibility requirements for financial assistance.

A. In order to qualify for financial assistance, a person shall meet the following requirements, as applicable:

1. Be the registered owner of an eligible vehicle for which all appropriate registration fees for the vehicle with the Department of Motor Vehicles have been paid.
2. Have a household income that is less than or equal to 133% of the federal Poverty Guidelines, as published by the United States Department of Health and Human Services; and
3. Spend a minimum copayment of one hundred dollars on emissions-related repairs at a certified vehicle emissions repair facility. Money spent to correct tampered emissions control systems or to make a vehicle test ready shall not be included in the copayment. Repairs shall meet the requirements of 9 VAC 5-91-741 B.

B. In order to qualify for financial assistance, a vehicle shall be an affected motor vehicle that:

1. Is subject to the provisions of § 46.2-1177 of the Code of Virginia;
2. Can be driven under its own power to the emissions repair facility;
3. Is currently registered or is operated primarily in the program area;
4. Has a current and valid Virginia Motor Vehicle Safety Inspection as provided in §§ 46.2-1157 and 46.2-1158 of the Code of Virginia; and
5. Has been issued a notice of violation under 9 VAC 5-91-750 B.

C. The owners of the following vehicles are not eligible for financial assistance:

1. A vehicle undergoing a transfer of ownership.
2. A vehicle being initially registered in Virginia.
3. A nonconforming vehicle.
4. A vehicle powered exclusively by a clean special fuel.
5. A vehicle owned or operated by a fleet.
6. A vehicle registered to a nonprofit organization.
7. A vehicle owned or leased by a commercial entity.
8. A vehicle owned or leased by a government entity.
9. A vehicle registered as an antique vehicle.

10. A vehicle that is unable to complete a motor vehicle emissions inspection according to 9 VAC 5-91-410 through 9 VAC 5-91-490.

9 VAC 5-91-743. Application and documentation requirements.

A. Persons seeking financial assistance shall submit a completed application to the department or its designee with original signature.

B. The application shall include copies of the following documents, as applicable:

1. Any invoices for emissions-related repairs performed pursuant to a notification of violation issued under 9 VAC 5-91-750 B prior to applying financial assistance.
2. Any emissions repair data forms from the certified emissions repair facility supporting the repair invoices.
3. Any other information as may be required by the department to determine eligibility and/or compliance.

9 VAC 5-91-750. Operating procedures; violation of standards.

A. Remote sensing equipment shall be operated in accordance with the remote sensing equipment manufacturers operating instructions and any contract or agreement between the department and the equipment operator.

B. Motor vehicles determined by remote sensing equipment to have exceeded the applicable emissions standard in Table III-B in 9 VAC 5-91-180 ~~twice within 90 days~~ shall be considered to have violated such emissions standards.

1. Owners of such motor vehicles ~~shall~~ will be issued a notice of violation and shall be subject to the civil charges in 9 VAC 5-91-760 unless waived pursuant to this section.
2. Upon a determination by the department that a violation has occurred, motorists ~~shall~~ will be informed by the department or its representative of the failure to comply with emissions standards and of the dates, times, and places such remote sensing *measurement* occurred.

C. Civil charges assessed pursuant to this part ~~shall~~ will be waived if, within ~~90~~ 30 days of the date of the notice of the violation, the motor vehicle owner provides proof to the department that since the date of the violation, (i) the vehicle has passed a vehicle emissions inspection, (ii) the vehicle has received an emissions inspection waiver, or (iii) the vehicle has qualified for a waiver within the 12 months prior to the violation. :

1. Since the date of the violation, the vehicle has passed, or received a waiver as the result of, a confirmation test, or
2. Within the 12 months prior to the violation, the vehicle had received an emissions inspection waiver.

D. The requirement for an emissions inspection or payment of civil charges, based on a remote sensing failure, may be waived by the department if the affected motor vehicle in question (i) is, by virtue of its registration date, required to have an emissions inspection within ~~90 days~~ three months of the date of the ~~notice of violation~~ remote sensing

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measurement that indicates the vehicle has exceeded the applicable standards in Table III-B in 9 VAC 5-91-180 or (ii) has received a waiver within the 12 months prior to the violation.

E. For 1996 and newer model vehicles with OBD, the director may require that the vehicle pass an exhaust test (ASM or two-speed idle) in addition to the OBD system test.

9 VAC 5-91-760. Schedule of civil charges.

A. No charge shall exceed an adjusted maximum charge of \$450 adjusted annually by using 1990 as the base year and applying the consumer price index.

B. For violations measured in accordance with 9 VAC 5-91-750 B to be up to 120% of the applicable standard, the charge shall not exceed 20% of the adjusted maximum charge in subsection A of this section.

C. For violations measured in accordance with 9 VAC 5-91-750 B to be more than 120% but not exceeding 140% of the applicable standard, the charge shall not exceed 40% of the adjusted maximum charge in subsection A of this section.

D. For violations measured in accordance with 9 VAC 5-91-750 B to be more than 140% but not exceeding 160% of the applicable standard, the charge shall not exceed 60% of the adjusted maximum charge in subsection A of this section.

E. For violations measured in accordance with 9 VAC 5-91-750 B to be more than 160% but not exceeding 180% of the applicable standard, the charge shall not exceed 80% of the adjusted maximum charge in subsection A of this section.

F. For violations measured in accordance with 9 VAC 5-91-750 B to be over 180% of the applicable standard, the charge shall not exceed the adjusted maximum charge in subsection A of this section.

G. Civil charges assessed pursuant to this part shall be paid into the state treasury according to § 46.2-1178.1 of the Code of Virginia.

H. For the purpose of applying a civil charge as prescribed in this section, the degree of violation shall be determined by averaging the readings *highest percentage by which the emissions standard was exceeded for each remote sensing measurement in which exceeded at least one of the standard applicable standards was exceeded.*

VA.R. Doc. No. R03-196; Filed July 21, 2004, 9:47 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Titles of Regulations: **12 VAC 5-390. Regulations for the Licensure of Hospice (REPEAL) (repealing 12 VAC 5-390-10 through 12 VAC 5-390-660).**

12 VAC 5-391. Regulations for the Licensure of Hospice (adding 12 VAC 5-391-10 through 12 VAC 5-391-500).

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 8, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Carrie Eddy, Center for Quality Health Care, Department of Health, 3600 West Broad Street, Suite 216, Richmond, VA 23230, telephone (804) 367-2100, FAX (804) 367-2206, or e-mail carrie.eddy@vdh.virginia.gov.

Basis: The regulation is promulgated by the Center for Quality Health Care Services and Consumer Protection of the Department of Health under the authority of § 32.1-162.5 of the Code of Virginia, which grants the Board of Health the legal authority "to prescribe such regulation governing the activities and services provided by hospices as may be necessary to protect the public health, safety and welfare." Therefore, this authority is mandated.

In 1998, the General Assembly adopted Senate Joint Resolution 164 (SJR164) requesting the Board of Health to begin the process of reviewing and revising the regulation governing hospice programs.

Purpose: The purpose of the proposed regulation is to protect and promote public health, safety and welfare through the establishment and enforcement of regulations that set minimum standards for the operation of hospice services. In addition, the purpose of the regulation is to assure quality health care through the appropriate review and inspection while protecting the right to privacy of patients without unreasonably interfering with the provision of that care. The intent of the proposed regulation is to be more reflective of the changes occurring in the industry in the last decade while providing the necessary consistency in the provision of services in order to assure safe, adequate and efficient program operation.

Substance: As provided in § 32.1-162.12 of the Code of Virginia, provisions of the proposed regulation include: (i) the qualifications of the licensed and nonlicensed personnel; (ii) the provision and coordination of inpatient care and home treatment and services; (iii) the management, operations, staffing and equipping of the hospice program; clinical and business records kept by the hospice; procedures for the review of utilization and quality of care. In addition, the department recognized the need to update the current regulation governing hospice programs to: (a) address in greater detail the services that are unique to the hospice program such as volunteer services, bereavement counseling, family-focused service rather than patient-centered service, palliative versus curative care, and the interdisciplinary team approach to service provision, (b) reorganize the regulation into a user-friendlier format, and (c) reconcile the state regulatory requirements with the federal regulations, where appropriate, to eliminate contradictions. The regulation governs the licensure of hospices except those programs "established or operated for the practice of religious tenets of any recognized church or denomination which provides care and treatment for the sick by spiritual means without the use

of any drugs or material remedy" pursuant to § 32.1-162.2 of the Code of Virginia.

Issues: The current regulation governing hospice providers was promulgated in 1990. With changes in the hospice industry, medical technology, the institution of palliative care as a valuable care option, and the Code of Virginia itself, the department recognized the need to update the regulation to be more reflective of those changes. Because services are rendered in a patient's residence, hospice providers are not subject to the same public scrutiny as more formal health care institutions, i.e., hospitals and nursing facilities, making regulatory oversight of hospice services an important governmental function. State licensure programs provide citizens with low cost quality assurance programs that licensees are delivering quality care. However, a critical component of any license program is that the licensure standards reflect currently accepted standards of practice. Since the hospice regulation was promulgated over a decade ago, it no longer reflects "state of the art" criteria. Simply revising the current regulation, however, would not achieve the desired goal of a document that could serve as a "customer service" manual for providers while providing the necessary regulatory controls.

In 1992, the General Assembly amended the hospice program to include criminal records checks for compensated employees. That amendment rendered the regulation out of step with the requirements of the law. However, the regulation contains other needed changes, including, but not limited to: (i) eliminating duplicative standards, (ii) reworking archaic language, (iii) expanding the licensure process explanation, and (iv) including standards for infection control, pain management, and volunteer services. Passage of HB 2772 of the 2003 General Assembly resolved the outstanding issue of dedicated hospice facilities, clearing the way for inclusion of facility standards and completion of the promulgation process.

Originally established as a service to individuals diagnosed with terminal cancer, today hospice providers offer services to individuals with a wide range of chronic terminal illnesses, thereby allowing those individuals to remain in their homes, where most Americans chose to spend their last days. In 2001, Last Acts, a national coalition to improve care and caring near the end of life, published the results of their national survey ranking states on their end of life care programs. In Virginia, only 18% of terminally ill persons have access to hospice services, either because of a lack of service availability or lack of knowledge of the availability of those services.

Responsible for implementing the medical care facilities and services regulatory program, the department recognized the need for stronger standards and a more user-friendly regulation to ensure the welfare and safety of individuals receiving hospice services. Much work was necessary in order to bring the entire regulation up to currently accepted standards and practice. The approach used in developing the proposed regulation was to (i) strive for simplicity, (ii) avoid being burdensome, (iii) meet the requirements of the law, and (iv) reflect the hospice industry's uniqueness regarding care of the terminally ill and bereavement services generally.

The primary advantage to the public and the provider community, as a result of that effort, is the enhancements made to the regulation that include:

1. Modifying the insurance or indemnity section of the regulation;
2. Adding "home visits" as part of the inspection protocol;
3. Establishing standards for dedicated hospice facilities, pain management, criminal records checks, and infection control;
4. Expanding the "General Information" section to provide better information regarding expectations of a licensed provider;
5. Implementing financial control standards and enhancing patient rights standards;
6. Adopting a biennial inspection protocol;
7. Updating the quality assurance criteria;
8. Coordinating standards to eliminate contradictions with federal certification requirements, i.e., Medicare;
9. Correcting the medical record criteria to remove mistaken references and to reflect correct recordkeeping practices;
10. Ensuring the regulation is clearly understandable by updating the language and eliminating ambiguities providing clearer guidance for providers; and
11. Reorganizing the regulation into a user-friendly format. The new arrangement is logical and orderly, facilitating use of the regulation.

In addition, the fees charged for licensure have been restructured. State general funds and licensure service fees fund the annual hospice licensure program. A goal of recent administrations has been to relieve the tax burden on Virginia's citizens. One way to achieve relief is to have state licensing programs become more self-sufficient. The existing fee structure is based on a hospice program's annual budget, and do not cover the costs of the licensing program. Therefore, it is necessary to increase certain fees and establish new fees, thus relieving the taxpayer's burden via the general fund. The proposed fee structure is based on the potential for action required by the department regarding a program's licensure status, i.e., issuing initial and renewal licenses or as an assurance against late filing of licensure application paperwork. The late fee is designed to be an incentive to file renewal applications on time and is not charged unless a complete and accurate application is received past the due date for filing a renewal application. The renewal period is timed to coincide with the expiration of the license. If a hospice fails to file a renewal application, it runs the risk of having its license expire.

The department acknowledges that the increases may seem dramatic; however, this is the first increase in the fees since the regulation was first promulgated in 1990. Historically, tax dollars have subsidized a disproportionate share of the hospice program and will continue to pay a major share of the cost of the program. As a further measure to alleviate the burden on the general fund, the department is adopting a

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biennial inspection protocol, i.e., each hospice program will be inspected periodically, but not less than biennially, allowing staff more time for provider consultations and technical advice to providers, and more timely responses to complaint and quality of care issues.

To determine the readiness of the proposed regulation for the public approval process and gauge its impact on providers, the department circulated preliminary drafts to all licensed entities and interested parties. Fourteen responses were received. Since no serious concerns or potential controversies were reflected in the responses, the department concluded general acceptance of the proposed regulation. Where necessary, adjustments in the text were made as a result of comments received. There are 75 hospice providers located statewide. The department employs seven full-time inspectors to conduct the annual licensure inspections, process Medicare certification, and investigate complaints, as well as to conduct the home care licensure and certification program. While the department anticipates that enforcement of the regulation requires no more inspection staff at present, future revisions to the Code of Virginia could very likely result in the need for additional staff and a corresponding need for additional increases in licensure fees.

No particular locality is affected more than another by this regulation. There are no disadvantages to the public, the Commonwealth, or the hospice community as a result of the proposed regulation. Every effort has been made to ensure the regulation protects the health and safety of patients receiving hospice services while allowing providers to be more responsive to the needs of their patients. Failure to implement the regulation would cause the current regulation, which is outdated and not reflective of the industry today, to remain in effect.

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

Summary of the proposed regulation. Due to the extensive nature of the changes occurring in practice since 1990 when this regulation was first promulgated, Virginia Department of Health proposes to replace the entire hospice regulation with a new updated set of rules and regulations. Most of the proposed changes are clarifications of the language to reflect procedures currently followed in practice and the changes in the Code of Virginia. The proposed substantive changes are (i) increasing license fees, (ii) switching from annual inspections to biennial inspections, and (iii) adding one year of

experience or training in direct health care delivery services to the back up administrator qualifications.

Estimated economic impact. These regulations apply to hospice service providers. Hospice programs provide palliative care to terminally ill patients, most of the time in their homes. The main purpose of a hospice program is to provide physical, psychological, and spiritual comfort during the final stages of a terminal illness and during dying and bereavement. Approximately 75 hospice providers are licensed by the Department of Health (the department).

The proposed changes will significantly increase the license fees. The fee changes are summarized in the following table.

Annual Budget	Type	Current Fee	Proposed Fee
Over \$200,000	Initial License	\$100	\$500
	Renewal License	\$50	\$500
\$100,000 to \$199,999	Initial License	\$75	\$500
	Renewal License	\$35	\$500
Less than \$100,000	Initial License	\$50	\$500
	Renewal License	\$25	\$500
All	License Reissue	\$25	\$250
All	License Extension/Late fee	\$25	\$50

According to the department, the fees have not been updated since 1990.¹ In fiscal year 2003, the annual budget for the hospice program was \$115,000, which covers surveyors' salaries, benefits, travel expenses, and all other miscellaneous expenses. The average cost of a survey was about \$1,690. However, the department collected only \$3,525 from all providers, or about \$47 per provider. Thus, approximately 93% of the total cost was financed through general fund revenues and only 7.0% through license fees. With the proposed fee structure, the department will collect approximately \$37,500 from hospice providers every year. In short, proposed changes will shift a higher proportion of costs to operate the licensing program from the general fund to providers.

On average, a provider will pay an additional \$453 per year. Most patients are known to be insured under Medicare, or a private insurance, which have predetermined reimbursement rates for the services provided. Thus, the ability of providers to pass on some of the costs to their patients seems to be limited. Higher license fees will more likely reduce the provider profits and may discourage, at the margin, the provision of some hospice services. The main benefit, on the other hand, is the reduction in the general fund monies needed to finance this program.

Another significant change is the proposal to conduct state inspections every two years rather than every year. The scope of the inspections covers the qualifications of the

¹ Consumer prices have increased by 45% on average since 1990.

personnel, provision and coordination of services, management, operations, staffing, equipment, clinical records, and quality of care. Almost all of these programs are Medicare providers and, therefore, subject to a federal inspection (in addition to the state inspection) conducted every five years by the department. The department notes that the complaint rate for the hospice program is nominal and indicates that complaints would be investigated when they are received regardless of the periodic inspections. Thus, there does not seem to be a good reason to expect significant adverse health and safety effects from less frequently conducted state inspections.

On the other hand, biennial inspections will provide significant savings in staff time. The department notes that the number of licenses has been increasing in the last four years. The biennial inspections are expected to relieve some of the increase in the workload, allow the current staff to meet the current periodic survey needs, and improve complaint investigations.

The proposed changes will also add a one-year training and experience requirement in direct health care delivery to the qualifications for the administrator. Also, the new language will specify that currently required supervisory experience be within the last five years. In the home care services area, a related type of service to hospice care, the department received applications from people who were not qualified for the position, for example, a person with restaurant management experience and experience in a position distantly related to health care. Also, in one of the cases a home health care provider with tenure in home care a long time ago, who later abandoned all of his patients, was a defendant in an investment scam litigation. The purpose of these requirements is to make sure that the administrators possess appropriate training and experience to manage a hospice business.

While the main purpose of more advanced administrator qualifications is increasing the health and safety protection afforded to patients, the actual costs and benefits of this requirement will depend on the current compliance level with the proposed standards. Communication with the licensed providers revealed that most providers will easily be able to find a back up administrator with the proposed qualifications, as most head nurses possess the proposed training and experience requirements. Therefore, the proposed administrator qualifications are not expected to introduce significant industry wide costs.

However, in a few instances, the possibility of a provider facing significant costs to meet this standard cannot be completely ruled out. It is also unclear whether the same level of qualifications is necessary for the back up administrators as their responsibility is temporary by definition. It appears that allowing a person with lower level qualifications to be a back up administrator would actually add to the economic benefits.

The remaining changes are not likely to produce any significant economic effects. They are mainly clarifications of the current practice and updating of language to incorporate statutory changes that have occurred since 1990. These changes include clarifying the type of insurance coverage

required, clarifying that home visits are part of the inspection protocol, referencing the facility standards for dedicated hospice providers, updating pain management and infection control standards, updating social worker qualifications, establishing financial control standards for initial licensure, updating standards for patients rights, updating quality assurance criteria, removing mistaken references in recordkeeping standards, removing references that are in conflict with Medicare requirements, and incorporating the statutory criminal background check requirements.

Businesses and entities affected. The proposed regulations apply to approximately 75 licensed hospice care providers.

Localities particularly affected. No localities are expected to be affected any more than others.

Projected impact on employment. Although the proposed changes could have some small employment effects, they are not expected to be significant. For example, increases in license fees could reduce the profitability of a provider and reduce employment. Or, increased qualifications for back up administrators, may force a provider to hire an additional person. However, the effect on profitability for an individual provider seems to be too small to affect employment. Similarly, there is a lack of evidence that the proposed requirement for the back up administrator will affect a significant number of providers.

Effects on the use and value of private property. The proposed regulations may reduce the value of businesses providing hospice services marginally. The reduction would be approximately the present value of the additional compliance costs such as higher license fees and, if any, wages for the additional position to meet the back up administrator requirement.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health, the Center for Quality Health Care Services and Consumer Protection agrees with the economic impact analysis as prepared by the Department of Planning and Budget.

Summary:

The proposed regulation is a comprehensive revision of the current regulation addressing hospice programs. In addition to the provisions as required by § 32.1-162.12 of the Code of Virginia, the proposed regulation also addresses (i) the services unique to a hospice program such as volunteer services, bereavement counseling, family-focused service, palliative versus curative care, and the interdisciplinary team approach to service provision; (ii) reorganization of the regulation into a user-friendlier format; and (iii) reconciling the state regulatory requirements with the federal regulations, where appropriate, to eliminate contradictions. Because of the extensive revision to the current regulation (12 VAC 5-390), the department chose to replace the current regulation and promulgate a new regulation in its place. To accomplish this, it is necessary to repeal the current regulation as the proposed regulation is promulgated.

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CHAPTER 391.
REGULATIONS FOR THE LICENSURE OF HOSPICE.

PART I.
DEFINITIONS AND GENERAL INFORMATION.

12 VAC 5-391-10. Definitions.

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

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient by (i) a practitioner or by his authorized agent and under his supervision or (ii) the patient at the direction and in the presence of the practitioner as defined in § 54.1-3401 of the Code of Virginia.

"Administrator" means a person designated, in writing, by the governing body as having the necessary authority for the day-to-day management of the hospice program. The administrator must be a full-time member of the hospice staff. The administrator and the director of nursing may be the same individual if that individual is dually qualified.

"Attending physician" means a physician licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, or licensed in an adjacent state and identified by the patient as having the primary responsibility in determining the delivery of the patient's medical care.

"Available at all times during operating hours" means an individual is available on the premises or by telecommunications.

"Barrier crimes" means certain offenses specified in § 32.1-162.9:1 of the Code of Virginia that automatically bar an individual convicted of those offenses from employment with a hospice program.

"Bereavement service" means counseling and support offered to the patient's family after the patient's death.

"Commissioner" means the State Health Commissioner.

"Coordinated program" means a continuum of palliative and supportive care provided to a terminally ill patient and his family, 24 hours a day, seven days a week.

"Core services" means those services that must be provided by a hospice program. Such services are: (i) nursing services, (ii) physician services, (iii) counseling services, (iv) bereavement and spiritual support, (v) medical social services, and (vi) dietary services.

"Criminal record report" means the statement issued by the Central Criminal Records Exchange, Department of State Police.

"Dedicated hospice facility" means an institution, place, or building providing room, board, and appropriate patient care 24 hours a day, seven days a week to individuals diagnosed with a terminal illness requiring such care pursuant to a physician's orders.

"Dispense" means to deliver a drug to the ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery as defined in § 54.1-3401 of the Code of Virginia.

"Employee" means an individual who is appropriately trained and performs a specific job function for the hospice program on a full or part-time basis with or without financial compensation.

"Governing body" means the individual, group or governmental agency that has legal responsibility and authority over the operation of the hospice program.

"Home attendant" means a nonlicensed individual performing personal care and environmental services, under the supervision of the appropriate health professional, to a patient in the patient's residence. Home attendants are also known as home care aides, home health aides, and personal care aides.

"Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration providing palliative and supportive medical and other health services to terminally ill patients and their families. A hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs that are experienced during the final stages of illness, and during dying and bereavement. Hospice care shall be available 24 hours a day, seven days a week.

"Immediately" means within 24 consecutive hours.

"Inpatient" means services provided to a hospice patient who is admitted to a hospital or nursing facility on a short-term basis.

"Interdisciplinary group" means the group responsible for assessing the health care and special needs of the patient and the patient's family. Providers of special services, such as mental health, pharmacy, and any other appropriate associated health services may also be included on the team as the needs of the patient dictate. The interdisciplinary group is often referred to as the IDG.

"Licensee" means a licensed hospice program provider.

"Medical director" means a physician currently licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, and responsible for the medical direction of the hospice program.

"Medical record" means a continuous and accurate written account of services provided to a patient, including the prescription and delivery of the treatment or care.

"Nursing services" means the patient care performed or supervised by a registered nurse according to a plan of care.

"Operator" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity responsible for

the day-to-day administrative management and operation of the hospice.

"Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process. Palliative care means treatment to enhance comfort and improve the quality of a patient's life during the last phase of his life.

"Patient" means a diagnosed terminally ill patient, with an anticipated life expectancy of six months or less, who, alone or in conjunction with designated family members or representatives, has voluntarily requested admission and been accepted into a licensed hospice program.

"Patient's family" means the hospice patient's immediate kin, including spouse, brother, sister, child or parent. Other relations and individuals with significant personal ties to the hospice patient may be designated as members of the patient's family by mutual agreement among the patient, the relation or individual.

"Patient's residence" means the place where the individual or patient makes his home.

"Person" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity that operates a hospice.

"Plan of care" means a written plan of services developed by the interdisciplinary group to maximize patient comfort by symptom control to meet the physical, psychosocial, spiritual and other special needs that are experienced during the final stages of illness, during dying, and bereavement.

"Primary caregiver" means an individual that, through mutual agreement with the patient and the hospice program, assumes responsibility for the patient's care.

"Progress note" means a written statement contained in a patient's medical record, dated and signed by the person delivering the care, treatment or service, describing the treatment or services delivered and the effect of the care, treatment or services on the patient.

"Quality improvement" means ongoing activities designed to objectively and systematically evaluate the quality of care and services, pursue opportunities to improve care and services, and resolve identified problems. Quality improvement is an approach to the ongoing study and improvement of the processes of providing services to meet the needs of patients and their families.

"Staff" means an employee who receives financial remuneration.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular face-to-face guidance and instruction.

"Terminally ill" means a medical prognosis that life expectancy is six months or less if the illness runs its usual course.

"The Center" means the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health.

"Volunteer" means an employee who receives no financial remuneration.

12 VAC 5-391-20. Responsibility of the department.

A. The Virginia Department of Health, pursuant to Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, is charged with the responsibility for ensuring that hospice programs provide patient care according to the requirements specified by the Code and the regulations adopted by the Board of Health.

B. The center acts as agent for the department in administering the hospice licensing program, which includes investigating complaints made against hospice programs.

C. Section 32.1-162.5 of the Code of Virginia requires the Board of Health to adopt standards and regulations for the licensure of hospice programs. The department is the authorized agent for the board.

D. In developing or revising licensing regulations for hospice programs, the department adheres to the requirements of the Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia) and the public participation process. The department solicits input from providers, industry associations, experts in related fields, advocacy programs, consumers and the general public in the development or revision of state licensing regulations through informal and formal comment periods and may hold public hearings as appropriate.

12 VAC 5-391-30. License.

A. A license to operate a hospice program is issued to a person.

B. The State Health Commissioner shall issue or renew a license to establish or operate a hospice program if the commissioner finds that the hospice program is in compliance with the law and this chapter.

C. A separate license shall be required for hospice programs maintained at separate locations, even though they are owned or are operated under the same management.

D. Every hospice program shall be designated by an appropriate name. The name shall not be changed without first notifying the center.

E. Licenses shall not be transferred or assigned.

F. Any person establishing, conducting, maintaining, or operating a hospice program without a license shall be guilty of a Class 1 misdemeanor according to § 32.1-27 of the Code of Virginia.

12 VAC 5-391-40. Exemption from licensure.

A. According to § 32.1-162.2 of the Code of Virginia, this chapter is not applicable to a hospice established or operated for the practice of religious tenets of any recognized church or denomination that provides care and treatment for the sick by spiritual means without the use of any drug or material

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remedy, whether gratuitously or for compensation. Such a hospice shall comply with the statutes and regulations governing environmental protection and life safety.

B. The hospice program must file a request for exemption from licensure in writing to the Director of the Center for Quality Health Care Services and Consumer Protection. The request shall contain documentation explaining the hospice program's relationship to the practice of religious tenets of a recognized church or denomination.

C. The hospice program shall be notified in writing that the exemption from licensure has been registered.

D. Exempt hospice programs shall remain subject to complaint investigations in keeping with state law.

12 VAC 5-391-50. License application; initial and renewal.

A. The center will provide precicensure consultation and technical assistance to any person regarding the licensure process. The purpose of such consultation is to explain the regulation and to review an applicant's proposed hospice program plans, forms, and other documents, as they relate to the regulation. Precicensure consultations can be arranged after an initial application has been filed.

B. Licensure applications are obtained from the center. The center shall consider an application complete when all requested information and the appropriate fee, stated in 12 VAC 5-391-70, are submitted. If the center finds the application incomplete, the applicant will be notified in writing of the incomplete application.

An incomplete application shall become inactive six months after it is received by the center. Applicants must reapply for licensure with a completed application and application fee. An application for a license may be withdrawn at any time.

C. A completed application for initial licensure must be submitted at least 60 days prior to the organization's planned opening date to allow the center time to act on the application.

D. The activities and services of each applicant or licensee of a hospice license shall be subject to an inspection by the center to determine if the hospice program is in compliance with the provisions of this chapter and state law. Hospice programs submitting an initial application shall receive an announced inspection prior to accepting patients.

E. Licenses are renewed annually. The center shall send a renewal application at least 60 days prior to the expiration date of the current license.

F. The hospice program shall submit the completed renewal application form along with any required attachments and the application fee by the date indicated in the cover letter. Providers operating dedicated hospice facilities shall include a copy of the facility deficiency report and plan of correction from their latest facility licensure inspection when applying to renew their hospice program license.

G. It is the hospice program's responsibility to complete and return the renewal application to assure timely processing. Should a current license expire before a new license is issued,

the current license shall remain in effect provided a complete and accurate application was filed on time.

H. Providers operating a dedicated hospice facility shall maintain compliance with the applicable licensure regulations described in 12 VAC 5-391-120. Failure to maintain compliance may be taken into consideration in the center's decision to renew a hospice program license.

12 VAC 5-391-60. Changes to or reissuance of a license.

A. It is the responsibility of the hospice program's governing body to maintain a current and accurate license, including appropriate facility licensure if the hospice program operates a dedicated hospice facility.

B. A hospice program shall give written notification 30 working days in advance of any proposed changes that may require the reissuance of the license. Notices shall be sent to the attention of the Director of the Center for Quality Health Care Services and Consumer Protection.

The following circumstances require the reissuance of a license and payment of a fee:

1. A change in ownership or operator;
2. A change in hospice program name; or
3. Relocation of the hospice program's administrative office.

C. The center will evaluate written information about any planned changes in operation that affect the terms of the license or the continuing eligibility for a license. A licensing representative may inspect the hospice program during the process of evaluating a proposed change.

D. The hospice program will be notified in writing whether a license can be reissued or a new application is needed.

12 VAC 5-391-70. Fees.

A. The center shall collect a fee of \$500 for each initial and renewal license. Fees shall accompany the licensure application and are not refundable.

B. A processing fee of \$250 shall be collected for each reissuance or replacement of a license and shall accompany the written request for reissuance or replacement.

C. In addition, a late fee of \$50 shall be collected for a hospice program's failure to file a renewal application by the date specified.

12 VAC 5-391-80. On-site inspections.

A. A center representative shall make unannounced on-site inspections of the hospice program. The hospice program shall be responsible for correcting any deficiencies found during any on-site inspection, including deficiencies found during announced initial inspections. Compliance with all standards will be determined by the center. The administrator will be notified whenever any item in the plan of correction is determined to be unacceptable.

B. The hospice program shall make available to the center representative any necessary records and shall allow access

to interview the agents, employees, contractors, and any person under its control, direction or supervision.

C. After the on-site inspection, the center representative shall discuss the findings of the inspection with the administrator or designee.

D. The administrator shall submit, within 15 working days from the date of the deficiency report, an acceptable plan for correcting any deficiencies found during an on-site inspection. The plan of correction shall contain:

1. A description of the corrective action or actions to be taken and the personnel to implement and monitor the corrective action;
2. The expected correction date;
3. A description of the measures implemented to prevent a recurrence of the violation; and
4. The signature of the hospice program's administrator.

E. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

F. Completion of corrective actions shall not exceed 45 working days from the last day of the inspection.

12 VAC 5-391-90. Home visits.

A. As part of any inspection, a center representative may conduct home visits.

B. The hospice program shall be responsible for arranging in-home visits with patients, family members, and caregivers for the center representative.

C. The hospice program shall explain clearly to the patient, patient's family or caretaker, that a home visit is voluntary and that refusal to consent to a home visit will in no way affect the patient's care.

12 VAC 5-391-100. Complaint investigation.

A. The center has the responsibility to investigate any complaints regarding alleged violations of this chapter and applicable law.

B. Complaints may be received in written or oral form and may be anonymous.

C. When the investigation is complete, the licensee and the complainant, if known, will be notified in writing of the findings of the investigation.

D. The administrator shall submit an acceptable plan for correcting any deficiencies found during a complaint investigation.

E. The administrator will be notified in writing whenever any aspect of the plan of correction is determined to be unacceptable.

F. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

12 VAC 5-391-110. Criminal records checks.

A. Section 32.1-162.9:1 of the Code of Virginia requires hospice providers, as defined in § 32.1-162.1 of the Code of Virginia, to obtain a criminal record report on applicants for compensated employment from the Virginia Department of State Police. Section 32.1-162.9:1 also requires that all applicants for compensated employment in a hospice program provide a sworn statement regarding their criminal history.

B. The criminal record report shall be obtained within 30 days of compensated employment. It is the hospice program's responsibility to ensure that its compensated employees have not been convicted of any of the barrier crimes listed in § 32.1-162.9:1 of the Code of Virginia.

C. The hospice program shall not accept a criminal record report dated more than 90 days prior to the date of compensated employment.

D. Only the original criminal record report shall be accepted. An exception is permitted for hospice programs using temporary staffing agencies for the provision of substitute staff. The hospice program shall obtain a letter from the temporary staffing agency containing the following information:

1. The name of the substitute staffing person;
2. The date of employment by the temporary staffing agency; and
3. A statement verifying that the criminal record report has been obtained within 30 days of employment, is on file at the temporary staffing agency, and does not contain any barrier crimes listed in § 32.1-162.9:1 of the Code of Virginia.

E. A criminal record report remains valid as long as the compensated employee remains in continuous service with the same hospice program.

F. A new criminal record report shall be required when an individual terminates compensated employment at one hospice program and begins compensated employment at another hospice program. The following exceptions are permitted:

1. When an employee transfers, within 30 days, to a hospice program owned and operated by the same entity. The employee's file shall contain a statement indicating that the original criminal record report has been transferred or forwarded to the new work location.
2. A criminal record report for an individual who takes a leave of absence will remain valid as long as the period of separation does not exceed six consecutive months. If a period of six consecutive months has passed, a new criminal record report and sworn disclosure statement are required.

G. The sworn disclosure statement shall be completed by all applicants for compensated employment. The sworn disclosure statement shall be attached to and filed with the criminal record report.

Proposed Regulations

H. Any applicant denied compensated employment because of convictions appearing on his criminal record report shall be provided a copy of the report by the hiring hospice program.

I. All criminal records reports shall be confidential and maintained in locked files accessible only to the administrator or designee.

J. Further dissemination of the criminal record report and sworn disclosure statement information is prohibited other than to the commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

12 VAC 5-391-120. Dedicated hospice facilities.

A. Providers seeking to operate a dedicated hospice facility shall comply with the appropriate facility licensing regulation as follows:

1. Up to five patient beds, facilities shall be licensed as:
 - a. An assisted living facility pursuant to 22 VAC 40-71-10;
 - b. A hospital pursuant to 12 VAC 5-410; or
 - c. A nursing facility pursuant to 12 VAC 5-371; or
2. Six or more patient beds, facilities shall be licensed as
 - a. An assisted living facility, pursuant to 22 VAC 40-71 with a classified Use Group of I-2;
 - b. A hospital pursuant to 12 VAC 5-410; or
 - c. A nursing facility pursuant to 12 VAC 5-371.

Facilities to be licensed as a hospital or a nursing facility shall obtain the applicable Certificate of Public Need (COPN).

B. Only patients diagnosed terminally ill shall be admitted to a dedicated hospice facility. The facility shall admit only those patients whose needs can be met by the accommodations and services provided by the facility.

C. Admission to a dedicated hospice facility shall be the decision of the patient in consultation with the patient's physician. No patient shall be admitted to a hospice facility at the discretion of, or for the convenience of, the hospice provider.

D. No hospice facility shall receive for care, treatment, or services patients in excess of the licensed bed capacity. However, facilities licensed as a nursing facility may provide temporary shelter for evacuees displaced due to a disaster. In those cases, the facility may exceed the licensed capacity for the duration of that emergency only provided the health, safety, and well being of all patients is not compromised and the center is notified.

E. No hospice facility provider shall add additional patient beds or renovate facility space without first notifying the center and the applicable facility licensing authority. Center notifications must be in writing to the Director of the Center for Quality Health Care Services and Consumer Protection.

F. The center will not accept any requests for variances to this section.

12 VAC 5-391-130. Variances.

A. The center can authorize variances only to its own licensing regulations, not to regulations of another agency or to any requirements in federal, state, or local laws.

B. A hospice program may request a variance to a particular regulation or requirement contained in this chapter when the standard or requirement poses a special hardship and when a variance to it would not endanger the safety or well-being of patients. The request for a variance must describe the special hardship to the hospice program and to the patients it serves. When applicable, the request should include proposed alternatives to meet the purpose of the requirements that will ensure the protection and well-being of patients. At no time shall a variance approved for one individual be extended to general applicability. If a variance is denied, expires, or is rescinded, routine enforcement of the regulation or portion of the regulation shall be resumed. The hospice program may at any time withdraw a request for a variance.

C. The center shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these regulations provided safety, patient care and services are not adversely affected. The center may attach conditions to the granting of the variance in order to protect persons in care.

D. The center may rescind or modify a variance when (i) conditions change; (ii) additional information becomes known that alters the basis for the original decision; (iii) the hospice program fails to meet any conditions attached to the variance; or (iv) results of the variance jeopardize the safety, comfort, or well-being of persons in care.

E. Consideration of a variance is initiated when a written request is submitted to the Director of the Center for Quality Health Care Services and Consumer Protection. The center shall notify the hospice program in writing of the receipt of the request for a variance.

F. When the decision is to deny a variance, the licensee shall be notified in writing.

G. The hospice program shall develop procedures for monitoring the implementation of any approved variance to assure the ongoing collection of any data relevant to the variance and the presentation of any later report concerning the variance as requested by the center.

12 VAC 5-391-140. Revocation or suspension of a license.

A. The commissioner is authorized to revoke or suspend any license if the licensee fails to comply with the provisions of Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia or the regulations of the board.

Providers operating a dedicated hospice facility shall also maintain compliance with the applicable licensure regulations as described in 12 VAC 5-391-120. Failure to maintain compliance may be taken into consideration when the commissioner decides to revoke or suspend a hospice program license.

B. If a license is revoked, the commissioner may issue a new license when the conditions upon which revocation was based

have been corrected and compliance with all provisions of the law and this chapter has been achieved.

C. Suspension of a license shall in all cases be for an indefinite time. The suspension may be lifted and rights under the license fully or partially restored at such time as the commissioner determines that the interests of the public will not be jeopardized by resumption of services.

D. When a license is revoked or suspended, the hospice program shall cease operations. If the hospice program continues operating, the commissioner may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the hospice program is located for an injunction to cause such hospice program to cease operations.

12 VAC 5-391-150. Surrender of a license.

A. The circumstances under which a license must be surrendered include, but are not limited to (i) change in ownership or operator, (ii) change in hospice program name, (iii) relocation of the administrative office, (iv) discontinuation of any core services, and (v) establishment of a dedicated hospice facility.

B. The licensee shall notify its patients and the center in writing 30 days prior to discontinuing any services.

C. If the hospice program is no longer operational, or the license is revoked or suspended, the license shall be returned to the center within five working days. The licensee is responsible for notifying its patients and the center where all medical records will be located.

PART II. ADMINISTRATIVE SERVICES.

12 VAC 5-391-160. Management and administration.

A. No person shall establish or operate a hospice program, as defined in § 32.1-162.1 of the Code of Virginia, without having obtained a license.

B. The hospice program must comply with:

1. This chapter (12 VAC 5-391);
2. Other applicable federal, state or local laws and regulations; and
3. The hospice program's own policies and procedures.

When applicable regulations are similar, the more stringent regulation shall take precedence.

C. The hospice program shall submit or make available reports and information necessary to establish compliance with this chapter and applicable law.

D. The hospice program shall permit representatives from the center to conduct inspections to:

1. Verify application information;
2. Determine compliance with this chapter;
3. Review necessary records and documents; and
4. Investigate complaints.

E. The hospice program shall notify the center 30 working days in advance of changes effecting the hospice program, including the:

1. Location of the administrative office or mailing address of the hospice program;
2. Ownership or operator;
3. Services provided;
4. Administrator;
5. Hospice program name;
6. Establishment of a dedicated hospice facility; and
7. Closure of the hospice program.

F. The current license from the department shall be posted for public inspection.

G. Service providers or individuals under contract must comply with the hospice program's policies and this chapter, as appropriate.

H. The hospice program shall not use any advertising that contains false, misleading or deceptive statements or claims, or false or misleading disclosures of fees and payment for services.

I. The hospice program shall have regular posted business hours and be fully operational during business hours. Patient care services shall be available 24 hours a day, seven days a week.

J. The hospice program shall accept a patient only when the hospice program can adequately meet that patient's needs in the patient's residence.

K. The hospice program must have an emergency preparedness plan in case of inclement weather or natural disaster to include contacting and providing essential care to patients, coordinating with community agencies to assist as needed, and maintaining current information on patients who would require specialized assistance.

12 VAC 5-391-170. Governing body.

A. The hospice program shall have a governing body that is legally responsible for the management, operation and fiscal affairs of the hospice program. The governing body of the hospital, nursing facility or home health agency that operates a hospice shall include in its internal organizational structure an identifiable unit of hospice services.

B. The governing body shall adopt written by-laws describing the hospice program structure, including the:

1. Hospice program's objectives;
2. Scope of services;
3. Relationship of the hospice program's services to other services operated by the governing body, if applicable, or by written agreement with the governing body of an affiliated medical service provider; and
4. Establishment of a quality improvement committee.

Proposed Regulations

At least every two years, the governing body shall review and approve necessary changes to the program's by-laws.

C. The governing body shall review annually and approve the recommendations of the quality improvement committee, when appropriate.

12 VAC 5-391-180. Administrator.

A. The governing body shall appoint as administrator an individual who has evidence of at least one year of training and experience in direct health care service delivery with at least one year, within the last five years, of supervisory or administration management experience in hospice care or a related health care delivery system.

B. The administrator shall be responsible for the day-to-day management of the hospice program, including but not limited to:

1. Organizing and supervising the administrative functions of the hospice program;
2. Maintaining an on-going liaison with the governing body, the professional personnel and staff;
3. Employing qualified personnel and ensuring adequate employee orientation, training, education and evaluation;
4. Ensuring the accuracy of public information materials and activities;
5. Implementing an effective budgeting and accounting system;
6. Maintaining compliance with applicable laws and regulations and implementing corrective action in response to reports of hospice program committees and regulatory agencies;
7. Arranging and negotiating services provided through contractual agreement; and
8. Implementing the policies and procedures approved by the governing body.

C. An individual who meets the qualifications of subsection A of this section shall be designated in writing to perform the duties of the administrator when the administrator is absent from the hospice program.

Hospice programs shall have one year from the effective date of this chapter to ensure that the individuals currently designated meet the qualifications of subsection A of this section.

D. The administrator or alternate shall be available at all times during operating hours and for emergency situations.

12 VAC 5-391-190. Written policies and procedures.

A. The hospice program shall implement written policies and procedures approved by the governing body.

B. All policies and procedures shall be reviewed at least annually, with recommended changes submitted to the governing body for approval, as necessary.

C. Administrative and operational policies and procedures shall include, but are not limited to:

1. Administrative records;
2. Admission and discharge criteria;
3. Informed consent;
4. Advance directives, including Durable Do Not Resuscitate Orders;
5. Patient rights;
6. Pain assessment and management;
7. Medical supplies and appliances including drugs and biologicals, disposal of controlled drugs when no longer needed by patients, and handling of medications procured from a pharmacy of the patient's choice;
8. Contract services;
9. Transfer of patients to an inpatient facility including arrangements for an ambulance and the patient escort, when appropriate, to the facility by a professional staff member of the hospice program;
10. Medical social services;
11. Quality improvement;
12. Communicable and reportable diseases;
13. Post-mortem activities;
14. Mandated reporting of abuse, neglect, and exploitation pursuant to § 63.2-106 of the Code of Virginia;
15. Medical records, including confidentiality;
16. Record retention, including termination of services;
17. Supervision and delivery of services;
18. Interdisciplinary group duties and responsibilities;
19. Bereavement and spiritual services;
20. Volunteer services;
21. Infection control;
22. Special services;
23. Emergency preparedness;
24. Handling consumer complaints; and
25. Approved variances.

D. Financial policies and procedures shall include, but are not limited to:

1. Admission agreements;
2. Data collection and verification of services delivered;
3. Methods of billing for services by the hospice program and contractors;
4. Patient notification of changes in fees and charges;

5. Refund policy and correction of billing errors; and
6. Collection of delinquent patient accounts.

E. Personnel policies and procedures shall include, but are not limited to, a:

1. Written job description specifying responsibility, qualifications, and authority for each job classification;
2. Process for obtaining a criminal background check;
3. Process for maintaining an accurate, complete and current personnel record for each employee;
4. Process for verifying current professional credentials and training of employees, or independent contractors;
5. Process for annually evaluating employee performance and competency;
6. Process for verifying that contractors and their employees meet the personnel qualifications of the hospice program; and
7. Process for reporting licensed and certified medical personnel for violations of the licensing or certification to the appropriate Board within the Department of Health Professions.

F. Admission and discharge policies and procedures shall include, but are not limited to:

1. Criteria for accepting patients;
2. The process for assessing a patient and maintaining a plan of care;
3. Criteria for determining discharge from hospice and referral to other agencies or community services; and
4. Process for notifying patients of intent to discharge or refer, including:
 - a. Oral and written notice and explanation of the reason for discharge or referral;
 - b. The name, address, telephone number and contact name at the referral hospice program; and
 - c. Documentation in the medical record of the referral or notice.

G. Policies shall be made available for review, upon request, to patients and their designated representatives.

H. Policies and procedures shall be readily available for staff use at all times.

12 VAC 5-391-200. Financial controls.

A. The hospice program shall document financial resources to operate based on a working budget showing projected revenue and expenses.

Hospice programs operating dedicated hospice facilities shall have financial resources to operate based on a working budget showing projected revenue and expenses.

B. All financial records shall be kept according to generally accepted accounting principles (GAAP).

C. All financial records shall be audited at least triennially by an independent certified public accountant or audited as otherwise provided by law.

D. The hospice program shall have documented financial controls to minimize risk of theft or embezzlement.

12 VAC 5-391-210. Personnel practices.

A. Personnel management and employment practices shall comply with applicable state and federal laws and regulations.

B. The hospice program shall design and implement a staffing plan that reflects the types of services offered and shall provide qualified staff in sufficient numbers to meet the assessed needs of all patients, including those patients residing in the provider's hospice facility, if applicable.

C. Employees and contractors shall be licensed or certified as required by the Department of Health Professions.

D. The hospice program shall implement a mechanism to verify professional credentials.

E. Any person who assumes the responsibilities of any staff position or positions shall meet the minimum qualifications for that position or positions. Professional staff may be assigned multiple job responsibilities provided the individual is appropriately qualified.

F. The hospice program shall obtain the required sworn statement and criminal record check for each compensated employee as specified in § 32.1-162.9:1 of the Code of Virginia.

G. Each employee position shall have a written job description that includes:

1. Job title;
2. Duties and responsibilities required of the position;
3. Job title of the immediate supervisor; and
4. Minimum knowledge, skills, and abilities or professional qualifications required for entry level.

H. Employees shall have access to their current position description. There shall be a mechanism for advising employees of changes to their job responsibilities.

I. New employees and contract individuals shall be oriented commensurate with their function or job-specific responsibilities. Orientation shall include:

1. Objectives and philosophy of the hospice program;
2. Confidentiality practices;
3. Patient rights;
4. Mandated reporting of abuse, neglect and exploitation;
5. Applicable personnel policies;
6. Emergency preparedness procedures;
7. Infection-control practices and measures; and

Proposed Regulations

8. Applicable laws, regulations, and other policies and procedures that apply to specific positions and specific duties and responsibilities.

J. The hospice program shall implement a policy for evaluating employee performance.

K. Individual staff development needs and plans shall be a part of the performance evaluation.

L. The hospice program shall provide opportunities for and record participation in staff development activities designed to enable staff to perform the responsibilities of their positions.

M. All individuals who enter a patient's home for or on behalf of the hospice program shall be readily identifiable by employee nametag.

N. The hospice program shall maintain an organized system to manage and protect the confidentiality of personnel files and records.

O. Employee personnel records, whether hard-copy or electronic, shall include:

1. Identifying information;
2. Education and training history;
3. Employment history;
4. Results of the verification of applicable professional licenses or certificates;
5. Results of reasonable efforts to secure job-related references and reasonable verification of employment history;
6. Results of performance evaluations;
7. A record of disciplinary actions taken by the hospice program, if any;
8. A record of adverse action by any licensing bodies and hospice programs, if any;
9. A record of participation in staff development activities, including orientation;
10. The criminal record check; and
11. A signed job description.

P. Each employee personnel record shall be retained in its entirety for a minimum of three years after termination of employment.

Q. Personnel record information shall be safeguarded against loss and unauthorized use.

R. Employee health-related information shall be maintained separately within the hospice program's personnel files, but may be maintained in a separate secure section for confidentiality.

12 VAC 5-391-220. Indemnity coverage.

A. The governing body shall ensure the hospice program and its contractors have appropriate indemnity coverage to compensate patients for injuries and losses resulting from services provided.

B. To protect the interests of patients, employees, and the hospice program from risks of liability, there shall be indemnity coverage to include:

1. General liability insurance covering personal property damages, bodily injuries, product liability, libel and slander of at least \$1 million comprehensive general liability per occurrence; and
2. Blanket malpractice insurance for all nursing and medical professional employees consistent with § 8.01-581.15 of the Code of Virginia.

12 VAC 5-391-230. Contract services.

A. If the hospice program contracts for services, there shall be a written agreement for the provision of those services.

B. The written agreement shall include, but is not limited to:

1. The services to be furnished by each party to the contract;
2. The contractor's responsibility for participating in developing plans of care;
3. The manner in which services will be controlled, coordinated, and evaluated by the hospice program;
4. The procedures for submitting clinical and progress notes, scheduling of visits, and periodic patient evaluation;
5. The process for payment for services furnished under the contract; and
6. Adequate indemnity coverage.

C. The hospice program shall have procedures for providing patient services in the event the contractor is unable to comply with the plan of care.

D. The contractor shall conform to applicable hospice program policies and procedures as specified in the contract, including the required sworn statement and criminal record check.

12 VAC 5-391-240. Patient rights.

A. The hospice program shall establish and implement written policies and procedures regarding the rights of patients. A copy of the patient's rights shall be displayed in the hospice office for public review.

B. Written procedures to implement the policies shall ensure that each patient is:

1. Treated with courtesy, consideration and respect;
2. Assured the right to privacy;
3. Assured confidential treatment of his medical and financial records as provided by law;
4. Free from mental and physical abuse and property exploitation;
5. Assured the right to participate in the planning of his care, including appropriate assessment and management of pain and the right to refuse services;
6. Served by individuals who are properly trained and competent to perform their duties;

7. Assured the right to voice grievances and complaints related to hospice program services without fear of reprisal;

8. Advised, before care is initiated, of the extent to which payment for services may be expected from federal or state hospice programs, and the extent to which payment may be required from the patient;

9. Advised orally and in writing of any changes in fees for services that are the patient's responsibility. The hospice program shall advise the patient of these changes as soon as possible but no later than 30 calendar days from the date the hospice program became aware of the change;

10. Provided with advance directive and Durable Do Not Resuscitate Order information prior to start of services; and

11. Given five days oral and written notice when the hospice program determines to terminate services.

C. At the time of admission, patient rights shall be reviewed with patients and primary caregivers who shall receive a written summary of the policies. The review shall be documented in the patient's record.

D. Before care is initiated, the hospice program shall inform the patient, orally and in writing, of the general nature of hospice care and policies of the hospice program, including, but not limited to:

1. The type and frequency of service or services to be delivered, the purpose of the service or services, and the name of the individual supervising the service or services;

2. Any anticipated effects of treatment, as applicable;

3. A schedule of charges for services;

4. The method of billing and payment for services, including the:

a. Services to be billed to third party payers;

b. Extent to which payment may be expected from third party payers known to the hospice program; and

c. Services that may not be covered by third party payers;

5. The charges that the individual may have to pay;

6. The requirements of notice for cancellation or reduction in services by the hospice program and the patient; and

7. The refund policies of the hospice program.

12 VAC 5-391-250. Complaints.

A. The hospice program shall establish and maintain complaint handling procedures that specify the:

1. System for logging receipt, investigation and resolution of complaints;

2. Format of the written record;

3. Method in which the local social services department Adult Protective Services unit is to be informed and for what complaints; and

4. Description of the appeal rights if a complainant is not satisfied with the resolution.

B. The hospice program shall designate staff responsible for complaint resolution, including:

1. Complaint intake, including acknowledgment of complaints;

2. Investigation of the complaint;

3. Review of the investigation of findings and resolution of the complaint; and

4. Written notification to the complainant of the proposed resolution within 30 days from the date of receipt of the complaint.

C. The patient or his designee shall be given a copy of the hospice program's procedures for filing a complaint at the time of admission to service. The hospice program shall provide each patient or his designee with the name, mailing address, and telephone number of the:

1. Hospice program contact person;

2. State Ombudsman; and

3. Center for Quality Health Care Services and Consumer Protection.

D. The hospice program shall maintain documentation of all complaints received and the status of each complaint from date of receipt through its final resolution. Records shall be maintained from the date of the last licensure inspection and for no less than three years.

12 VAC 5-391-260. Quality improvement.

A. The hospice program shall implement an on-going, comprehensive, integrated, self-assessment program of the quality and appropriateness of care provided, including services provided under contract. The quality improvement program shall address actual patient outcomes (results of care), clinical, administrative, and cost-of-care issues. The findings shall be used to correct identified problems and revise policies and practices, as necessary. Exclusive concentration on administrative or cost-of-care issues does not fulfill this requirement.

B. The following areas shall be evaluated to identify unacceptable or unexpected trends or occurrences that influence patient outcomes (results of care):

1. Staffing patterns and clinical performance;

2. Admissions and discharges;

3. Supervision appropriate to the level of service;

4. Emergency preparedness plan;

5. Medical records;

6. Appropriateness and effectiveness of pain management;

7. Patient satisfaction and complaint resolution;

8. Infection control;

9. Staff concerns; and

10. Provision of services appropriate to patient needs.

Proposed Regulations

C. The administrator or governing body shall designate a quality improvement committee, which is responsible for the oversight and supervision of the quality improvement program. The committee shall consist of:

1. A physician with association with the hospice program;
2. A member of the administrative staff;
3. Representatives of each of the services provided by the hospice program, including contracted services; and
4. An individual with demonstrated ability to represent the rights and concerns of patients. The individual may be a member of the hospice program's staff, a patient, or a patient's family member.

In selecting members of this committee, consideration shall be given to a candidate's abilities and sensitivity to issues relating to quality of care and services provided to hospice patients.

D. Measures shall be implemented to resolve important problems or concerns that have been identified. Health care practitioners, as well as administrative staff, shall participate in the resolution of the problems or concerns that are identified.

E. Results of the quality improvement program shall be reported annually in writing to the governing body and the administrator, and to the staff as appropriate. The report shall be acted upon by the governing body and the hospice program. All corrective actions shall be documented.

12 VAC 5-391-270. Infection control.

A. The hospice program shall implement a program to reduce the risk of infection.

B. Infection control activities shall include, but are not limited to:

1. Staff, patient, patient family or caregiver education regarding infection risk-reduction behaviors;
2. Use of universal precautions;
3. Handling, storing, processing and transporting of regulated medical waste according to applicable procedures;
4. Handling, storing, processing and transporting supplies and equipment in a manner that prevents the spread of infection; and
5. Monitoring of staff performance of infection control practices.

C. Accumulated waste, including all contaminated sharps, dressings, or similar infectious waste, shall be disposed of in a manner compliant with the OSHA Bloodborne Pathogens standard (29 CFR 1910.1030).

D. Dedicated hospice facilities shall have provisions for isolating patients with infectious diseases.

12 VAC 5-391-280. Medical record system.

A. The hospice program shall maintain an organized medical record system according to accepted standards of practice. Written policies and procedures shall specify retention,

reproduction, access, storage, content, and completion of the record.

B. Medical record information shall be safeguarded against loss or unauthorized use.

C. Medical records shall be confidential. Only authorized personnel shall have access as specified in state and federal law.

D. Provisions shall be made for the safe storage of the original record and for accurate and legible reproductions of the original.

E. Policies shall specify arrangements for retention and protection of records if the hospice program discontinues operation and shall provide for notification to the center and the patient of the location of the records.

F. An accurate and complete medical record shall be maintained for each patient receiving services and shall include, but shall not be limited to:

1. Patient identifying information;
2. Identification of the attending physician;
3. Admitting information, including a patient history;
4. A psychosocial and spiritual assessment, including information regarding composition of the household, safety issues in the physical environment, coping skills of the family and the patient, and identification of the individuals to be instructed in the care of the patient;
5. Physical assessment;
6. Documentation and results of all medical tests ordered by the physician or other health care professionals and performed by the hospice program's staff;
7. Physician's orders;
8. The plan of care including, but not limited to, the type and frequency of each service to be delivered by hospice program or contract service personnel and appropriate assessment and management of pain;
9. Medication sheets that include the name, dosage, frequency of administration, route of administration, date started, changed or discontinued for each medication, and possible side effects;
10. Copies of all summary reports sent to the attending physician;
11. Documentation of patient rights review;
12. Services provided, including any volunteer services; and
13. A discharge summary that includes continuing symptom management needs.

G. Signed and dated progress notes by each individual delivering service shall be written on the day the service is delivered and incorporated in the medical record within seven working days.

H. All services provided to the patient by the hospice program shall be documented in the patient's medical record.

I. Entries in the medical record shall be current, legible, dated and authenticated by the person making the entry. Errors shall be corrected by striking through and initialing.

J. Verbal orders shall be immediately documented in the medical record by the health care professional receiving the order and shall be countersigned by the health professional initiating the order according to the procedures of the hospice program.

K. Originals or reproductions of individual patient medical records shall be maintained in their entirety for a minimum of five years following discharge or date of last contact unless otherwise specified by state or federal requirements. Records of minors shall be kept for at least five years after the minor reaches 18 years of age.

12 VAC 5-391-290. Discharge.

A. Patients shall receive five days oral and written notice of a transfer or discharge initiated by the hospice program except under the following circumstances:

- 1. When a medical emergency exists;*
- 2. For the welfare of the patient or the welfare of employees; or*
- 3. The welfare of other patients in a dedicated hospice facility operated by the hospice program.*

B. The hospice program shall make all arrangements necessary to assure continuing care and services including a discharge summary for the receiving hospice or provider.

PART III.
HOSPICE PROGRAM SERVICES.

Article 1.
Hospice Services.

12 VAC 5-391-300. Hospice services.

A. Each hospice shall provide a coordinated program of services encompassing the hospice philosophy that:

- 1. The unit of care consists of the patient, the primary caregiver, and the patient's family;*
- 2. Emphasizes in-home care;*
- 3. A designated interdisciplinary group supervises the patient's care;*
- 4. A patient's physical pain will be appropriately assessed and managed;*
- 5. Services are available 24 hours a day, 7 days a week;*
- 6. Inpatient care is provided in an atmosphere as home-like as practical;*
- 7. Bereavement services are available to the family after the death of the patient; and*
- 8. Trained volunteers are utilized to perform specific job functions in the hospice service delivery system.*

B. Specific services provided according to the plan of care shall include:

- 1. Nursing services;*
- 2. Spiritual support or counseling services;*
- 3. Bereavement support;*
- 4. Medical social services;*
- 5. Physician services;*
- 6. Physical therapy, occupational therapy, speech-language pathology;*
- 7. Home attendant services;*
- 8. Short-term inpatient care;*
- 9. Dietary or nutritional counseling;*
- 10. Medical appliances and supplies, including drugs and biologicals, relevant to the patient's terminal illness.*

C. Inpatient services shall be provided in a licensed hospital or nursing facility.

D. There shall be written agreement with an inpatient facility for the transfer of patients if medical complications arise. Such agreement shall include, but is not limited to, interagency communication processes and coordination of the patient's plan of care, and shall clearly identify the services to be provided by the facility and the hospice while the patient is at the inpatient facility.

E. All prescription drugs shall be prescribed and properly dispensed to patients according to the provisions of Chapter 33 and 34 of Title 54.1 of the Code of Virginia and the regulations of the Virginia Board of Pharmacy, except for the prescription drugs authorized by § 54.1-3408 of the Drug Control Act, such as epinephrine for emergency administration, normal saline and heparin flushed for the maintenance of IV lines, and adult immunizations, which may be given by a nurse pursuant to established protocol.

12 VAC 5-391-310. Interdisciplinary group or IDG.

A. The hospice program shall designate an interdisciplinary group or groups to provide or supervise the care and services offered by the hospice program. The IDG shall consist of:

- 1. The patient, the patient's primary caregiver, and patient's family;*
- 2. The attending physician;*
- 3. The medical director;*
- 4. A registered nurse;*
- 5. The social worker;*
- 6. The pastoral or other counselor; and*
- 7. Volunteers, if applicable.*

B. The IDG shall:

- 1. Establish a coordinated plan of care for the services, supplies and medical appliances required for each patient;*
- 2. Provide or supervise the care and services delivered; and*

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3. Periodically reassess each patient and update the patient's plan of care, as needed.

C. The IDG shall establish policies governing the day-to-day provision of the care and services. If the hospice program utilizes multiple IDGs, one IDG shall be designated in advance as responsible for establishing those policies.

12 VAC 5-391-320. Plan of care.

A. At the time of a patient's admission to the hospice program, the IDG shall develop and maintain a plan of care, including but not limited to:

1. Identification of the primary caregiver, or an alternative in the absence of a primary caregiver, to ensure the patient's needs will be met;
2. The patient's diagnosis and prognosis;
3. Assessment of the patient's family medical, physical, psychosocial, spiritual and bereavement needs, identification of the services required to meet those needs and plans for providing the services through the IDG, contractual providers, and community resources;
4. A comprehensive assessment of pain, as warranted by the patient's condition and the scope of services provided by the hospice program;
5. Services to be provided, including (i) specific procedures, (ii) treatment modalities, and (iii) frequency and duration of the services ordered;
6. Special dietary or nutritional needs, when applicable;
7. Medical equipment, supplies, medications, and specialized therapies when applicable;
8. Identification of the members of the staff designated to carry out the plan of care; and
9. Physician orders, including any orders to change the plan when appropriate.

B. Services shall be provided according to the patient's plan of care. The plan of care shall be updated at intervals determined by the IDG and specified in the plan.

C. The plan of care shall be reviewed, approved and signed by the patient's attending physician or the hospice program's medical director after consultation with the patient's attending physician.

D. The attending physician shall be notified immediately of any changes in the patient's condition that indicates a need to alter the plan of care.

12 VAC 5-391-330. Medical direction.

A. There shall be a medical director, who shall be a physician licensed by the Virginia Board of Medicine, responsible for the overall direction and management of the medical component of care. The individual shall have training and experience in the psychological and medical needs of the terminally ill.

B. The medical director shall have clinical privileges at one or more hospitals and nursing facilities that provide inpatient service to the hospice program's patients.

C. The duties and responsibilities of the medical director shall include at least the following:

1. Consulting with attending physicians regarding pain and symptom management;
2. Reviewing patient eligibility for hospice services according to the law and the hospice program's admission policies;
3. Acting as a medical resource to the IDG;
4. Coordinating with attending physicians to assure a continuum of medical care in cases of emergency or in the event the attending physician is unable to retain responsibility for the patient's care;
5. Acting as medical liaison with physicians in the community; and
6. Determining, in consultation with the patient's physician, when a patient can no longer remain at home and should be moved to a congregate living facility of the patient's choosing.

12 VAC 5-391-340. Nursing services.

A. All nursing services shall be provided directly or under the supervision of a registered nurse, currently licensed by the Virginia Board of Nursing, who has education and experience in the needs of the terminally ill. Duties and responsibilities of the supervising nurse shall include:

1. Assuring that nursing services delivered are provided according to established hospice program policies;
2. Assuring that nursing services are available 24 hours a day, 7 days a week and that licensed practical nurses and home attendants work under the direct supervision of a registered nurse;
3. Participating in the development and implementation of orientation and in-service training hospice programs for all levels of nursing staff employed by the hospice program;
4. Acting as nurse liaison with staff and other agencies, hospice programs and individuals that have contractual agreements to provide nursing services;
5. Participating in quality improvement reviews and evaluations of the nursing services provided; and
6. Directing or supervising the delivery of nursing services.

B. Nursing services shall include, but are not limited to:

1. Assessing a patient's needs and admission for service as appropriate;
2. Working with the IDG to develop a plan of care;
3. Implementing the plan of care;
4. Obtaining physician's orders when necessary;
5. Providing those services requiring substantial and specialized nursing skill;
6. Educating the patient and patient's family in the care of the patient, including pain management;

7. *Evaluating the outcome of services;*
8. *Coordinating and communicating the patient's physical or medical condition to the IDG;*
9. *Preparing clinical notes; and*
10. *Supervising licensed practical nurses and home attendants providing delegated nursing services.*

C. *A registered nurse shall coordinate the implementation of each patient's plan of care.*

D. *If nursing duties are delegated, the hospice program shall develop and implement an organizational plan pursuant to 18 VAC 90-20-420 through 18 VAC 90-20-460 of the Virginia Administrative Code.*

E. *Licensed practical nurses shall be currently licensed by the Virginia Board of Nursing.*

F. *The services provided by a licensed practical nurse may include, but are not limited to:*

1. *Delivering nursing services according to the hospice program's policies and standard nursing practices;*
2. *Assisting the registered nurse in performing specialized procedures;*
3. *Assisting the patient with activities of daily living, including the teaching of self-care techniques;*
4. *Preparing equipment and supplies for treatment that requires adherence to sterile or aseptic techniques; and*
5. *Preparing clinical notes.*

12 VAC 5-391-350. Home attendant services.

A. *Services of the home attendants may include, but are not limited to:*

1. *Assisting patients with (i) activities of daily living; (ii) ambulation and prescribed exercise; (iii) other special duties with appropriate training and demonstrated competency;*
2. *Assisting with oral or topical medications that the patient can normally self-administer;*
3. *Taking and recording vital signs as indicated in the plan of care;*
4. *Measuring and recording fluid intake and output;*
5. *Recording and reporting to the health care professional changes in the patient's physical condition, behavior or appearance;*
6. *Documenting services and observations in the medical record; and*
7. *Performing any other duties that the attendant is qualified to do by additional training and demonstrated competency, within state and federal guidelines.*

B. *Prior to the initial delivery of services, the home attendant shall receive specific written instructions for the patient's care from the appropriate health care professional responsible for the care.*

C. *Home attendants shall work under the supervision of the appropriate health care professional responsible for the patient's care.*

D. *The nurse responsible for supervising the home attendant shall make visits to the patient's home as frequently as necessary, but not less than every two weeks. The results of each visit shall be documented in the medical record.*

E. *Relevant in-service education or training for home attendants shall consist of at least 12 hours annually. In-service training may be in conjunction with on-site supervision.*

F. *Home attendants shall be able to speak, read and write English and shall meet one of the following qualifications:*

1. *Have satisfactorily completed a nursing education hospice program preparing for registered nurse licensure or practical nurse licensure;*
2. *Have satisfactorily completed a nurse aide education hospice program approved by the Virginia Board of Nursing;*
3. *Have certification as a nurse aide issued by the Virginia Board of Nursing;*
4. *Be successfully enrolled in a nursing education hospice program preparing for registered nurse or practical nurse licensure and have currently completed at least one nursing course that includes clinical experience involving patient care; or*
5. *Have satisfactorily passed a competency evaluation hospice program that meets the criteria of 42 CFR 484.36 (b).*

12 VAC 5-391-360. Medical social services.

A. *Social services shall be provided according to the plan of care under the direction of a qualified social worker who holds, at a minimum, a bachelor's degree with major studies in social work, sociology, or psychology from a four-year college or university accredited by the Council on Social Work Education and has at least three years experience in case work or counseling in a health care or social services delivery system.*

The hospice program has one year from the effective date of this chapter to ensure the designated individual meets the qualifications of this standard.

B. *The duties of the social worker may include, but are not limited to:*

1. *Conducting a complete psychosocial assessment of the patient and family and participating in the development of the plan of care at the time of the patient's admission;*
2. *Delivering or supervising the delivery of social services to the patient or the patient's family;*
3. *Reviewing and updating the plan of care as often as necessary;*
4. *Obtaining physician's orders for services, as necessary;*
5. *Assisting the patient and family with identifying and accessing community resources;*

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6. Reporting any changes in the emotional, social, or financial condition of the patient or family to the attending physician;

7. Acting as consultant to hospice program staff;

8. Participating in the quality improvement reviews and evaluation of social services;

9. Preparing clinical notes; and

10. Participating in discharge planning.

12 VAC 5-391-370. Spiritual counseling and bereavement services.

A. The hospice program shall provide for the delivery of spiritual counseling and bereavement services that reflect the family's needs and desires and are delivered according to the overall plan of care.

B. Spiritual counseling may be provided through a working arrangement with individual clergy, clergy associations and other religious programs in the community or by clergy employed by the hospice program.

C. The hospice program shall provide bereavement services to the family for a minimum of one year after the patient's death.

D. The hospice program shall maintain a list of individuals who provide spiritual and bereavement services. The list shall be made available, upon request to patients, families, hospice program employees and contractors.

E. Arrangements for and delivery of spiritual counseling and bereavement services shall be documented in the patient's record.

12 VAC 5-391-380. Dietary or nutritional counseling

Dietary or nutritional counselors shall meet the requirements of 18 VAC 75-30 pursuant to Chapter 27.1 (§ 54.1-2730 et seq.) of Title 54.1 of the Code of Virginia and have at least two years experience in a health care food or nutrition delivery system.

12 VAC 5-391-390. Therapy services.

A. Physical therapy, occupational therapy, or speech therapy services shall be provided under the direction of an appropriately qualified therapist licensed or certified as required in Virginia. The therapy services provided may include, but are not limited to:

1. Assessing patient needs;
2. Participating, as necessary, in developing a patient's plan of care;
3. Implementing therapy services as documented in a patient's plan of care;
4. Evaluating the outcome of the services provided;
5. Educating the patient and family regarding the therapy services provided;
6. Providing therapy service consultation to other health care professionals;

7. Coordinating and communicating with the IDG regarding changes in the patient's needs;

8. Supervising therapy assistants and home attendants as appropriate;

9. Preparing clinical notes; and

10. Obtaining physician orders, when necessary.

B. The occupational therapy assistant shall practice under the supervision of a licensed occupational therapist.

C. The physical therapy assistant shall be currently licensed by the Virginia Board of Physical Therapists and shall practice under the supervision of a licensed physical therapist.

D. Duties of therapy assistants shall include, but are not limited to:

1. Performing services planned, delegated, and supervised by the appropriately licensed or certified therapist; and

2. Preparing clinical notes.

12 VAC 5-391-400. Volunteer services.

A. The hospice program shall utilize trained volunteers to provide patient and family care and support.

B. The hospice program shall have a plan delineating training, responsibilities, and supervision of all volunteers.

C. The hospice program shall demonstrate evidence of ongoing continuing education and recruitment activities for volunteers.

Article 2. Other Special Services.

12 VAC 5-391-410. Other special services.

A. Other special services may be offered at the option of the hospice program and may include, but are not limited to:

1. Respiratory therapy; and
2. Pharmacy therapy.

B. Special services may be provided by hospice program employees or through contractual arrangements with individuals or programs that are licensed or certified as required by law.

C. A patient's need for special services shall be documented in the plan of care prepared by the IDG.

D. The special service provider shall assess the patient's need, assist in the development of the plan of care, and provide services according to the plan of care.

E. The special service provider shall participate in the review and update of the plan of care.

F. The special service provider shall instruct the patient, family members, and hospice staff, as appropriate, in assisting with the treatments.

G. Special services provided shall be documented in the medical record.

H. The special service provider shall provide consultative services and in-service training to hospice program staff as needed.

12 VAC 5-391-420. Respiratory therapy.

Respiratory therapy services shall be provided by a respiratory therapist licensed in Virginia. The duties of the respiratory therapist shall include:

1. Assessing patient needs;
2. Participating with the IDG in developing a plan of care;
3. Implementing a plan of care and revising as necessary;
4. Evaluating the outcome of the care provided;
5. Educating the patient and family;
6. Providing consultation to other health care professionals;
7. Coordinating and communicating with the IDG regarding changes in the patient's needs;
8. Preparing clinical notes; and
9. Obtaining physician orders, when necessary.

12 VAC 5-391- 430. Pharmacy services.

A. All prescription drugs shall be prescribed and properly dispensed to the patient according to the provisions of Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the Virginia Board of Pharmacy, except for prescription drugs authorized by § 54.1-3408 of the Drug Control Act, such as epinephrine for emergency administration, normal saline and heparin flushes for the maintenance of IV lines, and adult immunizations, which may be given by a nurse pursuant to established protocol.

B. Home attendants may assist only with those topical and oral medications that the patient would normally self administer. Any other drug shall be administered only by a licensed nurse or physician assistant.

C. The hospice program shall develop written policies and procedures for the administration of infusion therapy medications that include, but are not limited to:

1. Developing a plan of care;
2. Initiation of medication administration based on a prescriber's order and monitoring of the patient for response to the treatment and any adverse reactions or side effects;
3. Assessment of any factors related to the home environment that may affect the prescriber's decisions for initiating, modifying, or discontinuing medications;
4. Communication with the prescriber concerning assessment of the patient's response to therapy, any other patient specific needs, any significant change in the patient's condition;
5. Communication with the patient's provider pharmacy concerning problems or needed changes in a patient's medication.

6. Maintaining a complete and accurate record of medications prescribed, medication administration data, patient assessments, any laboratory tests ordered to monitor response to drug therapy and results, and communications with the prescriber and pharmacy provider;

7. Educating or instructing the patient, family members, or other caregivers involved in the administration of infusion therapy in the proper storage of medication, in the proper handling of supplies and equipment, in any applicable safety precautions, in recognizing potential problems with the patient, and actions to take in an emergency; and

8. Initial training and retraining of all hospice program staff providing infusion therapy.

D. The hospice program shall employ a registered nurse who holds a current active license with the Virginia Board of Nursing, has completed training in infusion therapy and has the knowledge, skills, and competencies to safely administer infusion therapy to supervise medication administration by staff. This person shall be responsible for ensuring compliance with applicable laws and regulations, adherence to the policies and procedures related to administration of medications, and conducting periodic assessments of staff competency in performing infusion therapy.

PART V. DEDICATED HOSPICE FACILITIES.

12 VAC 5-391-440. General facility requirements.

A. In addition to the facility licensure requirements in 12 VAC 5-391-120, providers of dedicated hospice facilities shall maintain compliance with the standards of this section.

B. All construction of new buildings and additions, renovations or alterations of existing buildings for occupancy as a dedicated hospice facility shall comply with applicable state and federal laws and regulations.

All buildings shall be inspected and approved as required by the appropriate regional state fire marshal's office or building and fire regulatory official. Approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose.

C. The facility shall provide 24-hour nursing services sufficient to meet the total nursing needs according to individual plans of care, including treatments, medication, and diet as prescribed, of the patients and shall keep patients comfortable, clean, well-groomed, and protected from accident, injury, and infection.

D. The facility must have space for private patient family visiting and accommodations for family members after a patient's death. Patients shall be allowed to receive guests, including small children, at any hour.

E. Patient rooms must be at grade level or above, enclosed by four ceiling-high walls, and able to house one or more patients. Each room shall be equipped for adequate nursing care, the comfort and privacy of patients, and with a device for calling the staff member on duty.

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F. Designated guest rooms for family members or patient guests and beds for use by employees of the facility shall not be included in the bed capacity of a hospice facility provided such beds and locations are identified and used exclusively by staff, volunteers or patient guests.

Employees shall not utilize patient rooms nor shall bedrooms for employees be used by patients.

G. Waste storage shall be located in a separate area outside or easily accessible to the outside for direct pickup or disposal. The use of an incinerator shall require a permit from the Department of Environmental Quality.

H. The facility shall assist in obtaining transportation, when necessary, to obtain medical and psychiatric care, routine and emergency dental care, diagnostic or other services outside the facility.

I. The facility shall provide or arrange for under written agreement, laboratory, x-ray, and other diagnostic services, as ordered by the patient's physician.

J. There shall be a plan implemented to assure the continuation of essential patient support services in case of power outages, water shortage, or in the event of the absence from work of any portion of the workforce resulting from inclement weather or other causes.

12 VAC 5-391-450. Required staffing.

A. Each shift must include at least one registered nurse providing direct patient care.

B. Minimum staffing for a hospice facility with five patient beds shall consist of one registered nurse and one additional direct care staff member on duty at all times. Staffing for hospice facilities with six or more beds shall have two or more registered nurses and two or more direct care staff, as appropriate to the needs of the patients, on duty at all times.

Additional staff members may be required if it is determined by the center that the minimum staff requirements are inadequate to provide appropriate care, treatment, services, and supervision to the patients in the facility.

12 VAC 5-391-460. Pharmacy services.

A. Provision shall be made for the procurement, storage, dispensing, and accounting of drugs and other pharmacy products. This may be by arrangement with an off-site pharmacy, but must include provisions for 24-hour emergency service.

B. The dedicated facility shall comply with the Virginia Board of Pharmacy regulations related to pharmacy services in long-term care facilities, i.e., Part XII (18 VAC 110-20-530 et seq.) of the Virginia Board of Pharmacy Regulations.

C. Each dedicated hospice facility shall develop and implement policies and procedures for the handling of drugs and biologicals, including procurement, storage, administration, self-administration and disposal of drugs.

D. Each facility shall have a written agreement with a qualified pharmacist to provide consultation on all aspects of the provision of pharmacy services in the facility.

The consultant pharmacist shall make regularly scheduled visits, at least monthly, to the facility for a sufficient number of hours to carry out the function of the agreement.

E. Each prescription container shall be individually labeled by the pharmacist for each patient or provided in an individualized unit dose system.

F. No drug or medication shall be administered to any patient without a valid verbal order or a written, dated and signed order from a physician, dentist or podiatrist, nurse practitioner or physician assistant, licensed in Virginia.

G. Verbal orders for drugs or medications shall only be given to a licensed nurse, pharmacist or physician.

H. Drugs and medications not limited as to time or number of doses when ordered shall be automatically stopped, according to the written policies of the facility, and the attending physician shall be notified.

I. Each patient's medication regimen shall be reviewed by a pharmacist licensed in Virginia. Any irregularities identified by the pharmacist shall be reported to the physician and the director of nursing, and their response documented.

J. Medication orders shall be reviewed at least every 60 days by the attending physician, nurse practitioner, or physician's assistant.

K. Prescription and nonprescription drugs and medications may be brought into the facility by a patient's family, friend or other person provided:

1. The individual delivering the drugs and medications assures timely delivery, in accordance with the facility's written policies, so that the patient's prescribed treatment plan is not disrupted;

2. Each drug or medication is in an individual container; and

3. Delivery is not allowed directly to an individual patient.

In addition, prescription medications shall be:

4. Obtained from a pharmacy licensed by the state or federal authority; and

5. Securely sealed and labeled by a licensed pharmacist according to 18 VAC 110-20-330 and 18 VAC 110-20-340.

12 VAC 5-391-470. Restraints.

A. Periodic or continuous mechanical or physical restraints during routine care of a patient shall not be permitted, nor shall patients be restrained for employee convenience or as a substitute for care, treatment, or services. In cases of extreme emergencies, when a patient is a danger to himself or others, mechanical or physical restraints may be used as ordered by a physician or other health care provider.

B. Only those devices specifically designed as restraints may be used. Makeshift restraints shall not be used under any circumstances.

12 VAC 5-391-480. Food service.

A. The facility shall provide dietary services to meet the daily nutritional needs of patients.

B. If the facility has patients requiring medically prescribed special diets, the menus for such diets shall be planned by a dietitian qualified according to Chapter 27.1 (§ 54.1-2730 et seq.) of Title 54.1 of the Code of Virginia, or shall be reviewed and approved by a physician. The facility shall provide supervision of the preparation and serving of any special diets.

C. When meals are catered to a hospice facility, such meals shall be obtained from a food service establishment licensed by the Virginia Department of Health. There shall be a current written contract with the food service establishment.

12 VAC 5-391-490. Laundry services.

A. A quantity of linens shall be available at all times to provide for proper care and comfort of residents.

B. Linens and other laundry must be handled, stored and processed to control the spread of infection.

C. Clean linen shall be stored in a clean and dry area accessible to patient rooms.

D. Soiled linen shall be stored in covered containers in separate, well-ventilated areas and shall not accumulate in the facility.

E. Soiled linen shall not be sorted, laundered, rinsed or stored in bathrooms, patient rooms, kitchens or food storage areas.

F. Soiled linen shall not be placed on the floor.

G. Arrangement for laundering patient's personal clothing shall be provided. If laundry facilities are not provided on premises, commercial laundry services shall be utilized.

H. Laundry facilities shall include:

1. A soiled laundry receiving, holding, and sorting room with hand-washing lavatory; and
2. A clean laundry storage, issuing, and holding room or area.

I. On-premise laundry service facilities shall include:

1. A laundry processing room with commercial-type equipment capable of processing seven days needs within a regularly scheduled workweek and a hand-washing lavatory;
2. A storage space for laundry supplies; and
3. A clean laundry inspection and mending room or area.

12 VAC 5-391-500. Pet care.

If the facility chooses to permit pets, then healthy animals that are free of fleas, ticks and intestinal parasites, that have been screened by a veterinarian prior to entering the facility, that have received required inoculations and that represent no apparent threat to the health, safety, and well-being of the patients may be permitted provided they are properly cared for and the pet and its housing or bedding are kept clean.

Pets shall not be allowed near patients with pet allergies or patients choosing not to be disturbed by animals. Pets shall

not be allowed in dining and kitchen areas when food is being prepared or served.

NOTICE: The forms used in administering 12 VAC 5-391, Regulations for the Licensure of Hospice, are listed and published below.

FORMS

Virginia Department of Health, Center for Quality Health Care Services and Consumer Protection, Application for Licensure, Hospice Organization (eff. 7/04).

Proposed Regulations



Virginia Department of Health

Center for Quality Health Care Services and Consumer Protection

APPLICATION FOR LICENSURE Hospice Organization

In accordance with § 32.1-162.3 of the Code of Virginia: "No person shall establish or operate a home care organization without a license unless he is exempt from licensure pursuant to § 32.1-162.2" of the Code of Virginia. Applications must be received 60 days in advance of effective date to allow for processing of the application. Application fees must accompany an application and are not refundable.

This application must be completed in its entirety -
Incomplete applications will not be processed.

ANY CHANGES DURING THE LICENSURE PERIOD AFFECTING THE INFORMATION CONTAINED
IN THIS APPLICATION MUST BE REPORTED TO THE CENTER 30 DAYS PRIOR TO THE EFFECTIVE DATE
OF THE PROPOSED CHANGE.

Initial License

Renewal License

License Re-issue:

Organization Name:		
Legal Name:		
Street Address: City/County/Zip		
Mailing address: City/County/Zip		
Business Phone Number:	FAX Number:	
Administrator of Record:		
E-Mail address:		
Owner Name:		
Operator Name:		

7/23/2004

Page 2, cont'd.
Application for Licensure

Service Area – List all counties and independent cities served by the hospice.

Services provided by the organization. Check all that apply.

Services	Provided by	
	Hospice Staff	Contract Personnel
Nursing Services	<input type="checkbox"/>	<input type="checkbox"/>
Home Attendant Services	<input type="checkbox"/>	<input type="checkbox"/>
Short-term inpatient care		
Hospital - # of beds:	<input type="checkbox"/>	<input type="checkbox"/>
Nursing Facility - # of beds:	<input type="checkbox"/>	<input type="checkbox"/>
Spiritual support/ Counseling services	<input type="checkbox"/>	<input type="checkbox"/>
Pharmaceutical Services		
Parenteral	<input type="checkbox"/>	<input type="checkbox"/>
Intravenous	<input type="checkbox"/>	<input type="checkbox"/>
Therapy Services		
Occupational	<input type="checkbox"/>	<input type="checkbox"/>
Physical	<input type="checkbox"/>	<input type="checkbox"/>
Respiratory	<input type="checkbox"/>	<input type="checkbox"/>
Speech	<input type="checkbox"/>	<input type="checkbox"/>
Physician services	<input type="checkbox"/>	<input type="checkbox"/>
Dietary/nutritional counseling	<input type="checkbox"/>	<input type="checkbox"/>
Medical social services	<input type="checkbox"/>	<input type="checkbox"/>
Bereavement services	<input type="checkbox"/>	<input type="checkbox"/>
Medical appliances/supplies	<input type="checkbox"/>	<input type="checkbox"/>
Other, please specify:	<input type="checkbox"/>	<input type="checkbox"/>

For Dedicated Hospice Providers ONLY: Attach a copy of the plan of correction in response to the *most* recent facility licensure survey.

I certify that all information contained in this application is accurate and true.

Signature of Administrator

Date

VA.R. Doc. Nos. R02-37 and R02-40; Filed July 21, 2004, 10:25 a.m.



Proposed Regulations

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Titles of Regulations: 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, 18 VAC 50-30-120 and 18 VAC 50-30-130).

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

Public Hearing Date: August 25, 2004 - 2 p.m.

Public comments may be submitted until October 8, 2004.
(See Calendar of Events section for additional information)

Agency Contact: Eric Olson, Executive Director, Board for Contractors, 3600 West Broad Street, Richmond, VA 23230, telephone (84) 367-2785, FAX (804) 367-2474 or e-mail contractor@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the board evaluates its current and projected financial position and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

1. Section 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

2. Section 54.1-201 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..."

3. Section 54.1-304.3 describes the power and duty of the director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

4. Section 54.1-308 provides for compensation of the director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

5. Section 54.1-1102 provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is left to the discretion of the board, but shall not be in conflict with the purposes of the statutory authority.

Purpose: The intent of the proposed changes in regulations 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 Board for Contractors provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a contractor or tradesman license. The board is also tasked with ensuring that its regulants meet standards of conduct that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest contractor, waiting for action to be taken by the board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for licensure, 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.

Substance: The existing regulations are being amended to increase the fees applicable to several licensing items.

18 VAC 50-22-100. Fees.

The fee for Class C initial licensure is increased from \$125 to \$150.

The fee for Class B initial licensure is increased from \$150 to \$175.

The fee for Class A initial licensure is increased from \$175 to \$200.

The fee for the declaration of a designated employee at the time of application is increased from \$30 to \$40.

The dishonored check fee will be removed from the regulations.

18 VAC 50-22-140. Renewal fees.

The fee for Class C renewal is increased from \$100 to \$110.

The fee for Class B renewal is increased from \$135 to \$150.

The fee for Class A renewal is increased from \$150 to \$165.

The dishonored check fee will be removed from the regulations.

18 VAC 50-22-170. Reinstatement fees.

The fee for Class C reinstatement is increased from \$225 to \$260.

The fee for Class B reinstatement is increased from \$285 to \$325.

The fee for Class A reinstatement is increased from \$325 to \$365.

The dishonored check fee will be removed from the regulations.

The reinstatement period will change from six months to one year.

18 VAC 50-22-250. Fees.

The fee to change a designated employee is increased from \$30 to \$40.

The fee to change a qualified individual is increased from \$30 to \$40.

The fee to add a classification or specialty designation is increased from \$30 to \$40.

The dishonored check fee will be removed from the regulations.

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

1. The dishonored check fee will be removed from the regulations.

2. The fee for an initial tradesman license is increased from \$75 to \$90, whether the license is obtained by examination or through successful completion of an appropriate apprenticeship program offered through the Virginia Voluntary Apprenticeship Act.

3. The fee for the tradesman card exchange application and processing is increased from \$20 to \$40.

4. The fee for the backflow prevention device worker certification card exchange application and processing is increased from \$20 to \$40. The term of certification will be for a period of 24 months.

5. The fee for the liquefied petroleum gas fitter and natural gas fitter provider initial license is increased from \$75 to \$90.

18 VAC 50-30-120. Renewal.

The fee for renewal of a tradesman license is increased from \$35 to \$40.

The fee for renewal of a backflow prevention device worker certification card is increased from \$35 to \$40.

18 VAC 50-30-130. Reinstatement.

The fee for reinstatement of a tradesman license is increased from \$75 to \$90, in addition to the renewal fee.

The reinstatement fee for a backflow prevention device worker certification card is increased from \$75 to \$90, in addition to the renewal fee.

Issues: The primary issue for the proposed fee increase is the department's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required 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 2000-02 biennium with a deficit of \$930,483 and a Callahan Act percentage of -12.3%. By the close of the 2002-04 biennium the board is expected to incur a deficit of \$1,473,083 and a Callahan Act percentage of -15.6%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to the amount cited previously. To avoid increasing the deficit the new fees will need to become effective by the beginning of the 2004-06 biennium. Otherwise, the board's deficit will increase to the point that the new fees would 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 their level of income.

The removal of the dishonored check fee from the regulations is in response to the determination by DPOR that the fee is one that should be set by the agency as a result of the cost of processing dishonored checks. Since this fee is an administration fee and not a licensing fee, it should not be in the regulations of a specific board.

The reinstatement period of regulants issued contractor licenses is being extended from six months to one year. This change brings the Tradesman and Contractor licensing programs into agreement (Tradesman currently has a one-year reinstatement period) and, in the opinion of the board, does not have an adverse affect on the consumer. Extending the reinstatement period to one year will result in less of a burden to the regulant, by extending the time they can continue their license with the payment of a reinstatement fee versus the submission of a new application, while protecting the consumer by providing that the contractor was continually licensed during the reinstatement period (see 18 VAC 50-22-180).

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities

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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 (board) proposes to raise licensing fees, remove the dishonored check fee from these regulations, and increase the license reinstatement period from six months to 12 months.

Estimated economic impact. Fees. The Department of Professional and Occupational Regulation (DPOR) expects that the board's revenues for the 2002-2004 biennium will finish at 3.1% less than expenses. Additionally, DPOR anticipates that the board's ending cash balance for 2002-2004 will be negative \$1,214,525.¹ 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 expenses. The Board of Contractors (board) attempts to set each fee to approximately match the cost of regulating each respective function. The board proposes to raise fees by the following amounts:

Contractors

Class C Initial License: increase from \$125 to \$155

Class C License Renewal: increase from \$100 to \$110

Class C License Reinstatement: increase from \$225 to \$260

Class B Initial License: increase from \$150 to \$175

Class B License Renewal: increase from \$135 to \$150

Class B License Reinstatement: increase from \$285 to \$325

Class A Initial License: increase from \$175 to \$200

Class A License Renewal: increase from \$150 to \$165

Class A License Reinstatement: increase from \$325 to \$365

Declaration of Designated Employee: increase from: \$30 to \$40

Change a Designated Employee or Qualified Individual: increase from \$30 to \$40

Tradesmen

Tradesman Initial License: increase from \$75 to \$90

Tradesman License Renewal: increase from \$35 to \$40

Tradesman License Reinstatement: \$75 to \$90

Tradesman Card Exchange Application and Processing: increase from \$20 to \$40

Backflow Prevention Device Worker Certification Card Exchange Application and Processing: increase from \$20 to \$40

Backflow Prevention Device Worker Certification Card Renewal: increase from \$35 to \$40

Backflow Prevention Device Worker Certification Card Reinstatement: increase from \$75 to \$90

Liquefied petroleum gas fitter and natural gas fitter provider initial licensure: increase from \$75 to \$90

A major factor in the increase in expenses relative to fees collected is a projected 21% increase in enforcement costs from the 2000-2002 biennium to the 2002-2004 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 the benefit of increased enforcement may exceed the cost of higher licensing fees for contractors and tradesmen.

The current contractor regulations list a "Dishonored Check Fee" of \$25. The board proposes to remove the dishonored check fee language from the regulations. The board intends to charge individuals who submit dishonored checks the actual fee that the bank charges DPOR. This proposed change will more precisely align the assessed fee with the actual cost of regulation.

Reinstatement. Under the current contractor regulations, licensees may not reinstate their license if more than six months has passed since the expiration date of their license. After six months have passed, the contractor must apply for a new license. If a license is reinstated, then work performed after the license expiration is considered to be performed under license. If the license is not reinstated, then work performed after the license expiration is considered unlicensed work, which can be criminally prosecuted. The board proposes to permit licensees to reinstate their license up to one year after their license has lapsed. Some contractors whose license has been expired for greater than six months, but less than or equal to a year, will benefit from this proposed amendment.

On the other hand, some contractors, particularly those that have been inactive since their license expired, may still prefer to obtain a new license rather than reinstatement. It is actually less costly in fees to apply for a new license than to reinstate a license. Reinstatement of Class A, Class B, and Class C licenses cost \$365, \$325, and \$260, respectively under the proposed regulations. If the pertinent examination has not changed since the contractor initially obtained

¹ The anticipated -\$1,214,525 cash balance represents -13.3 percent of the expected \$9,162,564 board expenditures in the 2002-2004 biennium (source: DPOR).

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licensure, the applicant does not have to retake the exam and only pays the initial licensure fee of \$200, \$175, or \$150,² for the Class A, Class B, and Class C license, respectively. If the pertinent examination has changed since the contractor initially obtained licensure, then the applicant will have to retake the licensure exam. The exam fees are \$60 and \$40, respectively, for the Class A and Class B licenses. There is no Class C examination. Thus, even if the contractor must retake the exam, the cost in fees will still be more than \$100 less to apply for a new license than to reinstate the current license.³

Businesses and entities affected. The proposed regulations affect the 84,000⁴ contractors and 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 Response to Economic Impact Analysis Performed by the Virginia Department of Planning and Budget: The agency concurs with the economic impact analysis submitted by the Department of Planning and Budget.

Summary:

The proposed amendments increase licensing fees, remove the dishonored check fee from the regulations and provide that the department will establish this charge, and increase the license reinstatement period from six months to one year.

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~~ *an* additional processing charge ~~specified below~~ *set by the department*.

Fee Type	When Due	Amount Due
Class C Initial License	with license application	\$125 \$150
Class B Initial License	with license application	\$150 \$175

² These are the fees that are currently being proposed.

³ Calculations: Class A initial licensure fees are \$200 + \$60 = \$260, versus \$365 for reinstatement; Class B initial licensure fees are \$175 + \$40 = \$215, versus \$325 for reinstatement; and Class C initial fee is \$150, versus \$260 for reinstatement.

⁴ Source: DPOR

Class A Initial License	with license application	\$175 \$200
Declaration of Designated Employee	with license application	\$30 \$40
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 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~~ *an* additional processing charge ~~specified below~~ *set by the department*.

Fee Type	When Due	Amount Due
Class C Renewal	with renewal application	\$100 \$110
Class B Renewal	with renewal application	\$135 \$150
Class A Renewal	with renewal application	\$150 \$165
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~~ *an* additional processing charge ~~specified below~~ *set by the department*.

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Fee Type	When Due	Amount Due
Class C Reinstatement	with reinstatement application	\$225* \$260*
Class B Reinstatement	with reinstatement application	\$285* \$325*
Class A Reinstatement	with reinstatement application	\$325* \$365*
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~~ *one year* 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~~ *an* additional processing charge ~~specified below~~ *set by the department*.

Fee Type	When Due	Amount Due
Change of Designated Employee	with change form	\$30 \$40
Change of Qualified Individual	with change form	\$30 \$40
Addition of Classification or Specialty	with addition application	\$30 \$40
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 due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Introduction, 27INTRO (6/00).

Trade-Related Examinations and Qualifications Information, 27EXINFO (6/00).

License Application, 27LIC (rev. ~~5/02~~ 7/04).

Financial Statement, 272IC (7/04).

Sample.

Sample Guidelines.

Additional License Classification/Specialty Designation Application, 27ADDCL (rev. ~~5/02~~ 7/04).

Change of Qualified Individual Application, 27CHQI (rev. ~~5/02~~ 7/04).

Change of Designated Employee Application, 27CHDE (rev. ~~5/02~~ 7/04).

Change of Corporate Officers Form, 27CHCO (6/00).

Experience Reference, 27EP (6/00).

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 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~~ *an* additional processing charge of ~~\$25~~ *set by the department*.

C. Tradesman license--original fee--by examination. The fee for an initial tradesman license shall be ~~\$75~~ \$90.

D. Tradesman license--original fee--without an examination, through successful completion of an appropriate apprenticeship program offered through the Virginia Voluntary Apprenticeship Act. The fee for an initial tradesman license shall be ~~\$75~~ \$90.

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

In order to obtain the tradesman card issued by the Board for Contractors, the individual must use the current application form provided by the Department of Professional and Occupational Regulation. The fee for card exchange application and processing is ~~\$20~~ \$40. As a matter of administrative necessity, the department will assign expiration

dates in a manner that will stagger renewals for these applicants. Once the initial period ends, all renewals will be for a period of 24 months.

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

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

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

H. Commencing on November 1, 2001, the Department of Professional and Occupational Regulation will add the trades of liquefied petroleum gas fitter and natural gas fitter provider to the trades regulated by the Board for Contractors. The fee for the initial licensure shall be ~~\$75~~ \$90.

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 ~~\$35~~ \$40. The fee for renewal of a backflow prevention device worker certification card is ~~\$35~~ \$40. 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 (§ 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 ~~\$75~~ \$90 (this is in addition to the ~~\$35~~ \$40 renewal fee, which makes the total fee for reinstatement ~~\$110~~ \$130). The reinstatement fee for a backflow prevention device worker certification card is ~~\$75~~ \$90 (this is in addition to the ~~\$35~~ \$40 renewal fee, which makes the total reinstatement fee ~~\$110~~ \$130). 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 (§ 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.

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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 Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Tradesman License Application, 2710LIC (rev. 42/04 7/04).

Backflow Prevention Device Worker Certification Application, 2710BPD (rev. 44/04 7/04).

~~Liquefied Petroleum/Natural Gas Fitting Tradesman License Application, 2710LNG (eff. 12/01 7/04).~~

VA.R. Doc. No. R03-241; Filed July 21, 2004, 9:01 a.m.

BOARD FOR GEOLOGY

Title of Regulation: 18 VAC 70-20. Rules and Regulations for the Virginia Board for Geology (amending 18 VAC 70-20-10, 18 VAC 70-20-30, 18 VAC 70-20-50 through 18 VAC 70-20-90, 18 VAC 70-20-110, 18 VAC 70-20-140, 18 VAC 70-20-150; adding 18 VAC 70-20-105; and repealing 18 VAC 70-20-20).

Statutory Authority: §§ 54.1-201 and 54.1-1402 of the Code of Virginia.

Public Hearing Date: September 23, 2004 - 10 a.m.

Public comments may be submitted until October 8, 2004.
(See Calendar of Events section for additional information)

Agency Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128, or e-mail geology@dpor.virginia.gov.

Basis: These amendments to the board's current regulations implement § 54.1-1402 of the Code of Virginia, which mandates that the Board for Geology establish regulations necessary for the reasonable administration of Chapter 14 of Title 54.1 of the Code of Virginia.

Purpose: The board proposes to delete the section providing for a board vote on the qualifications of each applicant for certification because it is redundant to the board's statutory authority. Removing a redundancy will have no impact on public protection. The board may be able to identify tasks appropriate for delegation to staff, which could result in faster service to applicants and fewer board meetings.

The section establishing the dollar amount of the certification examination and providing authority for the board to establish the certification examination fee in accordance with the terms of a contract competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act is being amended to delete the examination dollar amount as no longer necessary. Public protection is assured through

compliance with the Virginia Public Procurement Act and by removing language that is outdated. A confusing redundancy will be eliminated.

The section establishing entry standards for certification is being amended to include the education and experience requirements. Currently, the board uses the standards established under its statutory authority found in § 54.1-1403 of the Code of Virginia. The proposed education and experience standards will be the subject of public comment and may be modified by the board in response to that public comment within the limits of its statutory authority. The current regulations are silent on this issue. Clear and specific standards are essential to protect the health, safety and welfare of Virginia's citizens.

The section establishing certification by reciprocity standards is being amended to focus the regulation's attention on the standards met by an applicant to qualify for a license in another jurisdiction rather than on just the examination. Examinations can be difficult, if not impossible, to evaluate from the standpoint of substantial equivalency. Focusing on the examination exclusively ignores the other entry standards that should also be evaluated in order to determine that the applicant has met an entry standard in the other jurisdiction that is substantially equivalent to Virginia's. Clear and specific standards that provide for a full evaluation of applicant qualifications are essential to protect the health, safety and welfare of Virginia's citizens.

A new section is being added to assure that applicants and regulants notify the board of any change in name or address. Regulatory programs work only if those regulated can be reliably identified and located to investigate any allegation of regulations violation filed by a member of the public. The current regulation is silent; therefore, the board has no effective means of assuring that its records are accurate and up to date. Those failing to comply may be subject to disciplinary action. Identifying and being able to contact those regulated is essential to the operation of any regulatory program that protects the health, safety and welfare of Virginia's citizens.

Other amendments have been proposed to add to clarity.

Substance: The definition section (18 VAC 70-20-10) is being amended to add three definitions that will add to clarity.

The section requiring a majority vote (18 VAC 70-20-20) of the board to issue a geology certification is being repealed as redundant to the Code of Virginia and to enable delegation of some tasks to staff.

The fee section (18 VAC 70-20-30) is being amended to delete language establishing a specific fee for the certification examination. The remaining language mandates that the examination fee be set through a contact with a vendor in compliance with the Virginia Public Procurement Act. The public is protected through the board's compliance with the Virginia Public Procurement Act in setting the examination fee.

The reinstatement section (18 VAC 70-20-50) is being amended to remove language requiring a reinstatement applicant to give the reasons that he allowed his certificate to expire as a condition of reinstatement. A certificate may not

have been renewed for any number of reasons not related to public protection. The remaining language enabling the board to require requalification, reexamination or both before reinstating is sufficient to assure only qualified individuals have their certificate reinstated.

The section establishing entry standards (18 VAC 70-20-80) is being amended to include the education and experience requirements used by the board currently under its statutory authority found in § 54.1-1403 of the Code of Virginia. These are based on the standards currently provided to individuals requesting eligibility information and currently used by the board in determining eligibility.

The waiver of examination section (18 VAC 70-20-90) is being amended to more precisely focus on the examination waiver authority granted to the board by § 54.1-1404 of the Code of Virginia.

A new section is being added (18 VAC 70-20-105) to require certificate holders to report a change in their name or address to the board within 30 days. The current regulations are silent on this matter. Efficient regulation is not possible without the correct names and addresses of regulants.

The disciplinary section (18 VAC 70-20-140) is being amended to accurately reflect the enabling statute's requirement for a formal hearing as opposed to an informal fact finding in order for the board to take disciplinary actions; to include fraud or deceit in renewing as well as applying for a certificate as a ground for disciplinary action; and to clarify that gross, rather than ordinary, negligence is a ground for disciplinary action. An amendment is also made to make clear that the conviction of a felony that would adversely affect the practice of geology is a ground for disciplinary action.

Issues: No disadvantages to the public or the Commonwealth have been identified.

The primary advantages to the public, both those seeking geologist certification and those seeking the services of a certified geologist, are the clarification of entry standards for applicants to sit for the examination and for applications for examination waiver; the potential to streamline board operations by delegating tasks to DPOR staff; the authority to maintain current names and addresses of those certified to practice; and the citation of the board's authority under the Code of Virginia to deny certification to those with criminal records.

Department of Planning and Budget's Economic Impact

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

property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board for Geology (board) proposes to (i) insert language from the Code of Virginia directly into the regulations to help inform the public, (ii) eliminate a requirement that effectively requires the board to meet and vote on every certification application, (iii) eliminate the requirement that reinstatement applicants state why they let their certification expire, (iv) amend the language describing when reinstated certificates expire, (v) specify course subject areas within the geological sciences, (vi) specify areas of work considered to be geology work, (vii) specify the numbers of hours of work necessary to constitute a work year, and (viii) specify that the board may discipline an individual who used fraud or deceit to renew his certification.

Estimated economic impact. The current regulations require that "In determining the qualifications of an applicant for certification, a majority vote of members of the board shall be required." The board proposes to remove this language from the regulations. This will permit the board to delegate clear-cut decisions on applicant qualifications to Department of Professional and Occupational Regulation (department) staff. This may allow the board to meet one or two fewer times per year. The board currently meets four times per year. The department estimates that board meetings cost on average \$886. The costs of board meetings are paid through fees for certificate holders. Thus, this proposal could potentially save Virginia geologists up to \$1,772 per year.

Under the current regulations, a certification reinstatement applicant must state why she let her certification expire. The board proposes to eliminate this requirement. The board makes certification reinstatement decisions based on the applicant's qualifications at the time of reinstatement application, and does not in practice use the explanation for certification expiration as a consideration. There will be no cost to eliminating this requirement, and the applicant will save the time associated with formulating and explaining why her certification expired without renewal.

The current regulations state that reinstated certifications "shall be assigned an expiration date two years from the previous expiration date of the certification." If more than two years have passed since the previous expiration date of the certification, then the reinstated certification will be immediately out of date (expired). To prevent this from happening, the board proposes to amend the regulations to state that the reinstated certifications "shall expire on August 31 of the odd-numbered year following the date of reinstatement." According to the department, reinstated certifications have been dated this way in practice. The proposal to amend the determination of expiration dates for reinstated certifications will create a net benefit, since otherwise reinstated certifications could never be made current (assuming that the regulations were followed in practice).

Section 54.1-1403 of the Code of Virginia states that in order to be eligible for certification as a professional geologist, the applicant must "Have a baccalaureate or higher degree from an accredited college or university with either a major in

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geology, engineering geology, geological engineering, or related geological sciences; or have completed at least thirty semester hours or the equivalent in geological science courses leading to a major in geology." ¹ The current regulations do not specify what course subjects qualify as geological science courses that lead to a major in geology. The proposed regulations state that at least 12 of the required 30 semester hours be completed in four of seven subjects listed. The seven subjects are stratigraphy, structural geology, mineralogy, paleontology, petrology, geomorphology, and field geology. According to the department, this represents what the board has required in practice. Thus, the proposed additional language is useful for clarity, but does not otherwise have a significant impact.

Section 54.1-1403 of the Code of Virginia further requires the following for certification eligibility:

at least seven years of geological work which shall include either a minimum of three years of geological work under the supervision of a qualified or certified professional geologist, or a minimum of three years of experience in responsible charge of geological work. The adequacy of the position and the required supervision and experience shall be determined by the Board in accordance with standards set forth in its regulations.

The current regulations do not set forth standards for required supervision and experience. The board proposes to define "supervision" to mean "quality control review of all significant data collection, interpretation and conclusions," and "responsible charge" to mean "the direct control and supervision of the practice of geology." These definitions are consistent with how the board has interpreted the terms in practice. Thus, expressing the definitions directly in the regulations is beneficial for the sake of clarity, but otherwise will not have a significant impact.

The board also proposes to require that the geology work experience "include, but not be limited to, one or more ..." of seven listed areas² of geology. The proposed regulations include work descriptions for each area. This proposed requirement is quite flexible. In effect, it just requires that some of the seven years of work experience be within one of the seven listed categories. The proposed additional language will not likely have a significant effect beyond providing clarity since: (i) the board already determines whether an applicant's work experience qualifies as geology work, and (ii) given the broad nature of the seven work area descriptions, it appears unlikely that a geologist would be unable to find an activity description that matches part of her work experience.

The current regulations are silent in terms of how many days or hours constitute a year of work. The board proposes to specify that:

A year of full-time employment is a minimum of 1,760 hours or 220 workdays in a 12-month period. More than 1,760

hours or 220 workdays during a 12-month period shall not be considered as more than one year of full-time experience. Partial credit may be given for actual hours of work or workdays experience if the applicant works as a geologist less than full time.

Expressing how much work time comprises a work year in the regulations is beneficial for clarity and consistency. The public can be better assured that applicants will be treated equally in terms of amount of qualifying work experience, and will become more aware of how much work per year is needed in practice to meet the board's certification standard.

The current regulations state that the board may suspend, revoke, or refuse to renew the certification of any geologist who is found to have committed fraud or deceit in obtaining certification. The current regulations do not specify that the board may take disciplinary action if the geologist is found to have committed fraud or deceit in renewing certification. The board proposes to add language to allow disciplinary action to be taken if fraud or deceit is found to have been committed in certification renewal, as well as in initial certification. This has been the board's intent all along. By inserting the new language the board may lessen the probability that a geologist who has obtained certification renewal through fraud or deceit may successfully avoid board discipline through a court challenge to the board's legal right to enforce discipline in renewal cases. According to the department, this situation has yet to occur. It is not likely to occur in the future either, since: (i) certification is not required in order to receive payment for geological services in Virginia, and (ii) individuals may use the title of geologist without certification. Lacking certification only restricts an individual from calling herself a "Virginia certified professional geologist." Thus, this proposed amendment will likely not have any impact.

Businesses and entities affected. The proposed regulations affect the 850³ professional geologists certified in Virginia.

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

Projected impact on employment. The proposed changes are not projected to significantly affect employment.

Effects on the use and value of private property. The proposed changes 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 agrees with the Department of Planning and Budget's Economic Impact Analysis.

Summary:

The proposed amendments (i) delete language redundant to the statutory authority of the Board for Geology; (ii) amend the language establishing the fee for the certification examination; (iii) amend the qualifications for certification to more clearly articulate the requirements that must be fulfilled prior to qualifying for certification; (iv) amend the certification by reciprocity standards; (v) add a section

¹ There are additional eligibility requirements.

² Work areas: 1) mineralogy, 2) petrography/petrology, 3) geochemistry, 4) hydrogeology, 5) engineering geology, 6) mining geology, and 7) petroleum geology.

³ Source: Department of Professional and Occupational Regulation

requiring the board to be notified in the event of a change in name or address of a regulant; and (vi) amend the grounds for certification denial or disciplinary action as the result of a criminal conviction.

18 VAC 70-20-10. Definitions.

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

"Board" means the Board for Geology.

"Geologist" means a person engaged in the public practice of geology.

"Geology" means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases and other natural materials.

"Practice of geology" means the performance of any service or work for the general public wherein the principles and methods of geology are applied.

"Qualified geologist" means an uncertified person who possesses all the qualifications specified in § 54.1-1403 of the Code of Virginia for certification.

"Related geological science degree" means a degree that shall include, but not be limited to, a degree in economic geology or petroleum geology.

"Responsible charge" means the direct control and supervision of the practice of geology.

"Supervision" means quality control review of all significant data collection, interpretation and conclusions.

"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the board through certification.

18 VAC 70-20-20. ~~Determining qualifications for applicants. (Repealed.)~~

~~In determining the qualifications of an applicant for certification, a majority vote of members of the board shall be required.~~

18 VAC 70-20-30. Fees.

All fees for application, examination, renewal, and reinstatement shall be established by the board pursuant to § 54.1-201 of the Code of Virginia. All fees are nonrefundable and shall not be prorated.

1. The application fee for certification shall be \$40.
2. The fee for renewal of certification shall be \$80.
3. ~~The fee for taking the examination or reexamination for certification shall be \$100.~~ The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are

competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ ~~44-35~~ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

4. The penalty fee for late renewal shall be \$25 in addition to the renewal fee.

5. The reinstatement fee shall be \$160.

6. The fee for duplicate wall certificates shall be \$25.

7. The fee for paying any of the above fees with a check or other instrument not honored by the bank or other financial institution upon which it is drawn shall be \$25.

18 VAC 70-20-50. Reinstatements.

If the certificate holder fails to renew the certificate within six months following the expiration date, the certificate holder will be required to apply for reinstatement of the certificate. ~~The applicant will be required to present reasons that the certificate was allowed to expire, and the board may grant reinstatement of the certificate, or require requalification or reexamination, or both.~~ The application fee for reinstatement of a certificate shall be an amount equal to twice the renewal fee.

18 VAC 70-20-60. Status of certification during the period prior to reinstatement.

A. Reinstated certifications shall continue to have the same certification number and shall ~~be assigned an expiration date two years from the previous expiration date of the certification~~ *expire on August 31 of the odd-numbered year following the date of reinstatement.*

B. Reinstated certifications shall be regarded as having been continuously licensed without interruption. Therefore, the holder of the reinstated certification shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period.

C. Certifications which are not renewed or reinstated shall be regarded as expired from the date of the expiration forward.

18 VAC 70-20-70. Use of seal.

A certified professional geologist may apply a rubber stamp or preprinted seal to final and complete cover sheets and to each original sheet of plans or drawings prepared or reviewed and approved by the regulant. The seal may be applied to the cover sheet of technical reports and specifications prepared or reviewed and approved by the regulant.

1. All seal imprints on final documents shall be signed.
2. Application of the seal and signature ~~indicates~~ *shall indicate* acceptance of responsibility for work shown thereon.
3. The seal shall conform in detail and size to the design illustrated below:

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* The number referred to is the number, usually three or four digits, as shown on the wall certificate and is the license renewal number issued each biennium as indicated on the licensee's pocket card. The number will not change every two years, but is permanent.

18 VAC 70-20-80. Qualifications for certification.

A. Each applicant for certification as a certified professional geologist in Virginia shall ~~meet the education, experience and examination requirements as specified in § 54.1-1403 of the Code of Virginia.~~ :

1. Make application on forms provided by the board;
2. Be of ethical character;
3. Hold a baccalaureate or higher degree from an accredited college or university with a major in geology, engineering geology, geological engineering or a related geological science. In the absence of one of the aforementioned degrees, each applicant shall provide evidence of the satisfactory completion of 30 semester hours (or the equivalent) of geological science courses including, but not limited to, the following subjects:
 - a. Stratigraphy;
 - b. Structural geology;
 - c. Mineralogy;
 - d. Paleontology;
 - e. Petrology;
 - f. Geomorphology; and
 - g. Field geology.

At least 12 semester hours must have been completed in four of the seven subjects listed in this subsection.

4. Provide the board with written documentation that demonstrates that the courses satisfactorily completed by the applicant are equivalent to those required by this section.

5. Have at least seven years of geological work that shall include either a minimum of three years of geological work under the supervision of a qualified or certified professional

geologist, or a minimum of three years of experience in responsible charge of geological work. The work shall include, but not be limited to, one or more of the following areas:

- a. Mineralogy.
 - (1) Identify and classify major rock types.
 - (2) Identify mineral assemblages.
 - (3) Determine probable genesis and sequence of mineral assemblages.
 - (4) Identify minerals on the basis of chemical composition.
 - (5) Predict subsurface mineral characteristics on the basis of exposures and drillholes.
- b. Petrography/petrology.
 - (1) Identify and classify major rock types.
 - (2) Determine physical properties of rocks.
 - (3) Determine chemical properties of rocks.
 - (4) Determine types or degrees of rock alteration.
 - (5) Determine suites of rock types.
- c. Geochemistry.
 - (1) Establish analytical objectives and approaches.
 - (2) Evaluate geochemical data.
 - (3) Construct models based on results of geochemical analysis.
 - (4) Make recommendations based upon results of geochemical analyses.
- d. Hydrogeology.
 - (1) Design and interpret hydrologic testing programs.
 - (2) Utilize chemical data to evaluate hydrogeologic conditions.
 - (3) Apply geophysical methods to analyze hydrogeologic conditions.
 - (4) Determine physical and chemical properties of aquifers and vadose zones.
 - (5) Determine groundwater flow systems.
 - (6) Evaluate groundwater resources.
 - (7) Evaluate groundwater quality.
 - (8) Design wells and drilling programs.
 - (9) Develop groundwater resource management plans.
 - (10) Plan and evaluate remedial action programs.
- e. Engineering geology.
 - (1) Provide geological information and interpretations for engineering design.

(2) Identify and evaluate potential seismic and other geologic hazards.

(3) Provide geologic consultation during and after construction.

(4) Develop and interpret engineering geology maps and sections.

(5) Evaluate materials resources.

(6) Define and establish site selection and evaluation criteria.

(7) Design and implement field and laboratory programs.

(8) Describe and sample soils for geologic analysis and materials properties testing.

f. Mining geology.

(1) Formulate exploration programs.

(2) Implement field investigations on prospects.

(3) Perform geologic interpretations for mineral reserves.

(4) Perform economic analyses/appraisals.

(5) Provide geologic interpretations for mine development and production activities.

(6) Provide geologic interpretations for mine abandonments, closures, or restorations.

g. Petroleum geology.

(1) Formulate exploration programs.

(2) Implement field investigations on prospects.

(3) Perform geologic interpretations of physical properties and hydrocarbon reserves.

(4) Perform petroleum economic analyses/appraisals.

(5) Provide geologic interpretations for development and production activities.

(6) Provide geologic interpretations for abandonments, closures, or restorations.

B. Each year of full-time undergraduate study in the geological sciences shall count as one-half year of experience up to a maximum of two years, and each year of full-time graduate study shall count as a year of experience up to a maximum of three years. Credit for undergraduate and graduate study shall in no case exceed a total of four years toward meeting the requirements for at least seven years of geological work. The board may consider in lieu of the above-described geological work, the cumulative total of geological work or geological research of persons occupying research or post-graduate positions as well as those teaching geology courses at the college or university level, provided such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the geological work required above.

C. A year of full-time employment is a minimum of 1,760 hours or 220 workdays in a 12-month period. More than 1,760 hours or 220 workdays during a 12-month period shall not be considered as more than one year of full-time experience. Partial credit may be given for actual hours of work or workdays experience if the applicant works as a geologist less than full time.

D. Each applicant shall successfully pass an appropriate examination approved by the board and designed to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of the public practice of geology.

18 VAC 70-20-90. Certification by reciprocity Waiver of examination.

~~Any person certified, registered or licensed in another state, jurisdiction or territory of the United States may be granted a Virginia certificate without written examination, provided that:~~

~~1. The applicant meets all the requirements for certification in Virginia; and~~

~~2. The applicant holds a currently valid license in good standing in another jurisdiction based upon successful completion of a comparable exam.~~

The board may waive the examination requirement for any applicant who makes written application, otherwise meets the requirements of Chapter 14 (§ 54.1-1400 et seq.) of Title 54.1 of the Code of Virginia and also meets one of the following conditions:

1. Provides evidence of at least 12 years of geological work that includes the geological work as specified in 18 VAC 70-20-80; or

2. Provides evidence of an unexpired certificate of registration, certification or license to engage in the practice of geology issued on the basis of comparable requirements by a proper authority of a state, territory or possession of the United States or the District of Columbia.

18 VAC 70-20-105. Change of address or name.

Each certified professional geologist shall notify the board, in writing, of any change of address or name. This notification shall be sent to the board within 30 days after such change of address or name.

18 VAC 70-20-110. Compliance with other laws.

A certified professional geologist:

1. Shall comply with all federal, state, and local building, fire, safety, real estate, or mining codes, as well as any other laws, codes, ordinances, or regulations pertaining to the practice of geology.

2. Shall not violate any state or federal criminal statute involving, including fraud, misrepresentation, embezzlement, bribery, theft, forgery, or breach of fiduciary duty relating to his professional practice.

3. Shall immediately notify the client or employer and the appropriate regulatory agency if his professional judgment is overruled and not adhered to in circumstances of a

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serious threat to the public health, safety, or welfare. If appropriate remedial action is not taken within a reasonable amount of time after making the report, he shall notify the appropriate governmental authority of the specific nature of the public threat.

4. Shall give written notice to the board, and shall cooperate with the board and the department in furnishing any further information or assistance needed, if he knows or believes that another geologist/firm may be violating any of the provisions of Chapter 14 (§ 54.1-1400 et seq.) of Title 54.1 of the Code of Virginia, or this chapter.

18 VAC 70-20-140. Grounds for suspension, revocation, or denial to renew or grant certification.

A. The board may suspend, revoke, or refuse to renew the certification of any geologist who, after a *formal* hearing as provided for in the Administrative Process Act (§ ~~9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia), is found to have committed:

1. Fraud or deceit in obtaining *or renewing* certification (See § ~~54-1.20(5)~~ *subdivision 5 of § 54.1-111* of the Code of Virginia); or

2. Any violation of Part III - Standards of Practice and Conduct, other regulations of the board, or governing statutes of the board; or

3. An act or acts of *gross* negligence, incompetence, or misconduct in the practice of geology as a certified professional geologist; or

4. *Any conviction of a felony that in the opinion of the board would adversely affect the practice of geology.*

~~B. A person shall not be refused a certificate based solely on the prior conviction of a crime unless that conviction directly relates to the geology profession.~~

18 VAC 70-20-150. Reissuance of certificate after revocation.

An individual whose certificate has been revoked in accordance with 18 VAC 70-20-140 ~~above~~ shall file a new application and obtain approval of the board to regain the certificate.

NOTICE: The forms used in administering 18 VAC 70-20, Rules and Regulations of the Virginia Board for Geology, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

~~Application for Certification as a Virginia Certified Professional Geologist Certification Application (rev. 6/00).~~

~~Applicant Check-Off Form.~~

~~Verification of Degree Granted and Course Work Completed.~~

~~Verification of Registration.~~

~~Experience Log (eff. 5/02).~~

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10. Education (list in chronological order) *

Name of Institution	Beginning Month/Year	Ending Month/Year	Major	Graduate Hours Completed	Degree Received

*** A certified/official transcript or other notarized document verifying the completion of the required courses and/or degrees must be submitted to the Board for Geology.**

11. References - One of the three references must be a qualified or licensed/certified/registered geologist.

Name	Address	Telephone Number(s)	Certified?	Certificate Number/ State
1.		() -	Y <input type="checkbox"/> N <input type="checkbox"/>	
2.		() -	Y <input type="checkbox"/> N <input type="checkbox"/>	
3.		() -	Y <input type="checkbox"/> N <input type="checkbox"/>	

12. Have you ever been subject to a disciplinary action imposed by any (including Virginia) local, state or national regulatory body?

No

Yes If yes, list the name of the jurisdiction in which the disciplinary action took place and the license number. Provide an explanation of the events, including a description of the disciplinary proceeding and the type of sanctions that were imposed (i.e., suspension, revocation, voluntary surrender of license, monetary penalty, fine, reprimand, etc.). Attach copies of any correspondence or documentation (including a copy of the final order, decree or case decision) related to this matter. If necessary, you may attach a separate sheet of paper.

13. A. Have you ever been convicted in any jurisdiction of **any felony**? Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.

No Yes If yes, please provide the information requested in #13.C.

B. Have you ever been convicted in any jurisdiction of **any misdemeanor**? Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.

No Yes If yes, please provide the information requested in #13.C.

C. If you answered "yes" to either question #13.A. or #13.B., list the felony and/or misdemeanor conviction(s). Attach a copy of all applicable criminal conviction, state police and court records; information on the current status of incarceration, parole, probation, etc.; and any other information you wish to have considered with this application (i.e., reference letters, documentation of rehabilitation, etc.). If necessary, you may attach a separate sheet of paper.

14. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application. I will notify the Department if I am subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested certificate. I also certify that I understand, and have complied with, all the laws of Virginia related to geology certification under the provisions of Title 54.1, Chapter 14, of the Code of Virginia, and the Virginia Board for Geology Rules and Regulations.

Signature _____

Date _____

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

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BOARDS OF NURSING AND MEDICINE

Title of Regulation: 18 VAC 90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18 VAC 90-30-10, 18 VAC 90-30-60 through 18 VAC 90-30-90; adding 18 VAC 90-30-85).

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Hearing Date: September 21, 2004 - 11 a.m.
Public comments may be submitted until October 8, 2004.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system.

The specific legal mandate to promulgate the regulation for the licensure of nurse practitioners is found in § 54.1-2957 of the Code of Virginia.

Purpose: In recent months, questions have been raised about the qualifications of several applicants for licensure as nurse practitioners. Consequently, the boards identified issues related to licensure and addressed them by proposing several amendments to the regulations. Regulations governing the licensure of nurse practitioners do not clearly state that an applicant for initial licensure in a specialty area of practice must have a graduate degree from an advanced practice educational program and certification by national examination that are both consistent with that area of practice. Regulations specify that a nurse practitioner is only authorized to practice in the specialty of his education and certification, but do not specifically require that the education and certification be congruent. Therefore, a nurse whose specialty education and examination qualified him to practice as an "adult nurse practitioner" should not be licensed as a "family nurse practitioner" because there would be no assurance that he was minimally competent to treat a pediatric population.

Congruency in the degree program and national certification and examination with the licensure and practice of nurse practitioners is intended to protect the health and safety of patients who are in their care. Likewise, minimal competency for initial licensure at the advanced practice level should require a minimum of a master's degree, which is the threshold for accreditation of educational programs. While nurse practitioners practice collaboratively with physicians under a written protocol, they often assume much of the primary responsibility for patients' health care. Therefore, it is essential that their educational preparation and specialty certification ensure their competency to provide care in a particular category of practice.

In order to provide entry into licensure in Virginia for nurse practitioners who have safely practiced in other states but who would not meet the graduate-level educational requirement, new regulations are adopted for licensure by endorsement. Licensure in good standing or eligibility for reinstatement and professional certification in a specialty category consistent with educational preparation should provide adequate evidence of competency to practice in Virginia and should adequately protect the public health and safety.

Substance: At its August 2003 meeting, the committee of the joint boards reiterated that the policy of the board should be to license individuals whose advanced practice educational program and area of certification are congruent. Likewise, the National Council of State Boards of Nursing published a position paper in 2002 recommending regulations to that effect. Currently, 18 VAC 90-30-80 states that the qualifications for initial licensure as a nurse practitioner include evidence of completion of an approved educational program designed to prepare nurse practitioners and submission of evidence of professional certification by an agency accepted by the boards. The regulation has been amended to specify that both the qualifying education program and the professional certification must relate to the category of nurse practitioner licensure and practice, as designated in 18 VAC 90-30-70. Therefore, if a nurse has been educated as a family nurse practitioner, but certified as an adult nurse practitioner, he could not be licensed as a family nurse practitioner because the certifying examination did not test for minimal competency in family practice, including services to children. To protect the health and safety of the public, the boards must ensure that licensees have demonstrated competency through their educational program as well as the certifying examination to treat the population of patients for which they are being licensed.

Additionally, questions have arisen about the degree requirement for an applicant as a nurse practitioner. The definition of an "approved program" specifies that the program must be "offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a master's degree in nursing." Therefore, in the opinion of the boards, a graduate of an approved program should have at least a master's degree, but the regulations stating the qualifications for licensure do not specify that a graduate degree in advanced practice nursing is required. The boards have amended 18 VAC 90-30-80 to clearly state that qualification.

The addition of a requirement for a graduate degree for initial licensure could disqualify a few persons who graduated in previous years from bachelor-level programs and who are seeking licensure from other states. Therefore, regulations for licensure by endorsement specify minimal qualifications, including licensure in good standing and certification by a national certifying body but do not require a graduate degree in advanced practice nursing.

Issues: Advantages or disadvantages to the public: There are no disadvantages to the public. Access to health care provided by nurse practitioners will not be affected, as there should be no additional barriers to licensure. Amendments to regulation will clarify the qualifications necessary to obtain

licensure and facilitate licensure of nurse practitioners moving from other states. Amendments will also offer greater assurance that the nurse practitioner is adequately prepared and competent in the specialty area of his practice.

Advantages or disadvantages to the agency: There are no specific advantages or disadvantages to the agency or the Commonwealth. More specificity in the rules may alleviate questions and misunderstandings from applicants.

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

Summary of the proposed regulation. The Boards of Medicine and Nursing (boards) propose to: 1) update the names of accrediting bodies, 2) clarify that approved programs refer to education programs that offer doctoral degrees as well as those that offer master's degrees, 3) clarify that the boards will grant field licensure only if the applicant's education and certification is consistent with that field, 4) clarify that a graduate degree is required for licensure, 5) eliminate six fields of licensure, and 6) introduce language concerning licensure by endorsement.

Estimated economic impact. One requirement for nurse practitioner licensure is that applicants must have obtained a graduate degree in nursing from a program designed to prepare nurse practitioners that is an "approved program." The current regulations define an "approved program" as a nurse practitioner program that is either accredited by one or more listed associations, "or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a master's degree in nursing and which hold a national accreditation acceptable to the board." The boards propose to amend the definition for "approved program" in the following ways: 1) remove "American Association of Colleges of Nursing" from the list of accrediting associations and replace it with "Commission on Collegiate Nursing Education," 2) amend "National League for Nursing" to become "National League for Nursing Accrediting Commission" in the list of accrediting associations, and 3) in the language describing an "approved program" as one which "is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a master's degree in nursing ...," replace the word "master's" with the word "graduate."

The Commission on Collegiate Nursing Education is the part of the American Association of Colleges of Nursing that accredits educational programs. The proposal to replace the latter with the former is only for clarity and will have no

economic impact beyond saving a potential small amount of time associated with license applicants inquiring about the approval of specific programs. Amending "National League for Nursing" to become "National League for Nursing Accrediting Commission" will have no economic impact.

The current language describing an "approved program" as one that "is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a master's degree in nursing ..." read literally excludes programs which grant a doctorate in nursing, but not a master's degree in nursing. In practice the boards have treated programs that grant a doctorate in nursing, but not a master's degree in nursing, as approved. The proposal to replace the word "master's" with the word "graduate" makes that intent clear.

The boards propose to add language to the regulations clarifying that field licensure will only be granted if the applicant's education and certification is consistent with that field. According to the Department of Health Professions (department), this represents no change in policy or practice. The current language states that an applicant must complete an approved educational program. The boards have received applications from nurse practitioners who have completed nurse practitioner education in a field that is not consistent with the field for which they are applying for licensure. The new clarifying language may potentially save some such applicants the time and fee (\$85) associated with applying for licensure in a field that is not consistent with their education.

The boards propose to eliminate six categories of licensure from the regulations: 1) family planning nurse practitioner, 2) obstetric/gynecological nurse practitioner, 3) emergency nurse practitioner, 4) school nurse practitioner, 5) medical nurse practitioner, and 6) maternal child health nurse practitioner. There is no longer any professional certification, a requirement for licensure, available in any of these six categories.¹ According to the department, licensees who hold a license in a category being eliminated will be able to retain their license or, if qualified by certification, be reissued a license in one of the remaining categories. The department also states that there is no area of practice where a nurse practitioner can currently work that will become unavailable due to the elimination of categories. Thus, the proposal to eliminate six categories of licensure from the regulations will not have a significant impact.

Section 54.1-2957 of the Code of Virginia states that "The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in this Commonwealth." The boards propose to add a section to these regulations that essentially reiterate the meaning of the Code of Virginia. This new language will have no effect.

Businesses and entities affected. The proposed regulations affect the 4,848 individuals licensed as a nurse practitioner,

¹ Source: Department of Health Professions

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individuals interested in nurse practitioner licensure, and physicians and patients who interact with nurse practitioners.

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

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Boards of Nursing and Medicine concur with the analysis of the Department of Planning and Budget for the proposed action on requirements for consistency in educational program and professional certification for regulation, 18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners.

Summary:

The proposed amendments to the nurse practitioner regulations (i) update the names of accrediting bodies; (ii) clarify that approved programs refer to educational programs that offer doctoral degrees as well as those that offer master's degrees; (iii) clarify that the boards will grant field licensure only if the applicant's education and certification are consistent with that field; (iv) clarify that a graduate degree is required for licensure; (v) eliminate six fields of licensure; and (vi) establish qualifications for licensure by endorsement.

18 VAC 90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, ~~American Association of Colleges of Nursing~~ *Commission on Collegiate Nursing Education* or the National League for Nursing *Accrediting Commission* or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a ~~master's~~ *graduate* degree in nursing and which hold a national accreditation acceptable to the ~~board~~ *boards*.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Controlling institution" means the college or university offering a nurse practitioner education program.

"Licensed nurse practitioner" means a registered nurse who has met the requirements for licensure as stated in Part II (18 VAC 90-30-60 et seq.) of this chapter.

"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathy.

"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications which provide for and define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U. S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.

"Protocol" means a written statement, jointly developed by the collaborating physician(s) and the licensed nurse practitioner(s), that directs and describes the procedures to be followed and the delegated medical acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients.

18 VAC 90-30-60. Licensure, general.

A. No person shall perform services as a nurse practitioner in the Commonwealth of Virginia except as prescribed in this chapter and when licensed by the Boards of Nursing and Medicine.

B. The boards shall license applicants who meet the qualifications for licensure as set forth in 18 VAC 90-30-80 or 18 VAC 90-30-85.

18 VAC 90-30-70. Categories of licensed nurse practitioners.

A. The boards shall license nurse practitioners *consistent with their specialty education and certification* in the following categories (a two-digit suffix appears on licenses to designate category):

1. Adult nurse practitioner (01);
2. Family nurse practitioner (02);
3. Pediatric nurse practitioner (03);
4. ~~Family planning nurse practitioner (04);~~
5. ~~Obstetric/gynecologic nurse practitioner (05);~~
6. ~~Emergency nurse practitioner (06);~~
7. 4. Geriatric nurse practitioner (07);

8- 5. Certified registered nurse anesthetist (08);

9- 6. Certified nurse midwife (09);

10- ~~School nurse practitioner (10);~~

11- ~~Medical nurse practitioner (11);~~

12- ~~Maternal child health nurse practitioner (12);~~

13- 7. Neonatal nurse practitioner (13);

14- 8. Women's health nurse practitioner (14);

15- 9. Acute care nurse practitioner (16); and

16- 10. Psychiatric nurse practitioner (17).

B. Other categories of licensed nurse practitioners shall be licensed if the Committee of the Joint Boards of Nursing and Medicine determines that the category meets the requirements of this chapter.

C. Nurse practitioners licensed prior to [the effective date of these regulations] may retain the specialty category in which they were initially licensed, or, if the specialty category has been subsequently deleted and if qualified by certification, be reissued a license in a specialty category consistent with such certification.

18 VAC 90-30-80. Qualifications for initial licensure.

A. An applicant for initial licensure as a nurse practitioner shall:

1. Be currently licensed as a registered nurse in Virginia;
2. Submit evidence of ~~completion~~ of a *graduate degree in nursing* from an educational program designed to prepare nurse practitioners that is an approved program as defined in 18 VAC 90-30-10;
3. Submit evidence of professional certification *that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18 VAC 90-30-90 as an agency accepted by the boards;*
4. File the required application; and
5. Pay the application fee prescribed in 18 VAC 90-30-50.

B. Provisional licensure may be granted to an applicant who satisfies all requirements of this section with the exception of subdivision A 3 of this section only until the release of the results of the first national certifying examination for which he is eligible following his application.

18 VAC 90-30-85. Qualifications for licensure by endorsement.

An applicant for licensure by endorsement as a nurse practitioner shall:

1. Provide verification of licensure as a nurse practitioner or advanced practice nurse in another U.S. jurisdiction with a license in good standing, or, if lapsed, eligible for reinstatement;
2. Submit evidence of professional certification that is consistent with the specialty area of the applicant's

educational preparation issued by an agency accepted by the boards as identified in 18 VAC 90-30-90; and

3. Submit the required application and fee as prescribed in 18 VAC 90-30-50.

18 VAC 90-30-90. Certifying agencies.

A. The boards shall accept the professional certification by examination of the following:

1. American College of Nurse Midwives Certification Council;
2. American Nurses' Credentialing Center;
3. Council on Certification of Nurse Anesthetists;
4. ~~National Certification Board of Pediatric Nurse Practitioners and Nurses~~ *Pediatric Nursing Certification Board;*
5. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties; and
6. American Academy of Nurse Practitioners.

B. The boards may accept professional certification from other certifying agencies on recommendation of the Committee of the Joint Boards of Nursing and Medicine provided the agency meets the definition of a national certifying body set forth in 18 VAC 90-30-10 and that the professional certification is awarded on the basis of:

1. Completion of an approved educational program as defined in 18 VAC 90-30-10; and
2. Achievement of a passing score on an examination.

VA.R. Doc. No. R04-49; Filed July 20, 2004, 9:29 a.m.

BOARD FOR OPTICIANS

Title of Regulation: **18 VAC 100-20. Board for Opticians Regulations (amending 18 VAC 100-20-54 and 18 VAC 100-20-81).**

Statutory Authority: §§ 54.1-201 and 54.1-304 of the Code of Virginia.

Public Hearing Date: September 24, 2004 - 10 a.m.

Public comments may be submitted until October 8, 2004.
(See Calendar of Events section for additional information)

Agency Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, or e-mail opticians@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113. (Callahan Act) Regulatory boards to adjust fees - Following the close of any biennium, when the account

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for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 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..."

Section 54.1-304 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

Section 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

Fee adjustments are mandatory in accordance with these sections. The board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

The Board for Opticians has no other source of revenue from which to fund its operations.

Purpose: The intent of the proposed changes in regulations is to increase fees for applicants and regulants of the Board for Opticians. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department of Professional and Occupational Regulation's (department) operations. By the close of the current biennium, fees will not provide adequate revenue for those costs. The board has no other source of revenue from which to fund its essential functions required for public health, safety and welfare.

The department receives no general fund money, but instead is funded almost entirely from revenue collected for applications, renewals, examination fees, and other 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 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, certificates, or registrations.

Substance: The proposed administrative charge for the spectacle examination is increased from \$10 to \$25. The proposed maximum examination fee for examinations procured in accordance with the Public Procurement Act is increased from \$300 to \$1,000. The proposed application fee for licensure is increased from \$55 to \$100. The proposed application fee for contact lens certification is from increased \$70 to \$100. The proposed renewal fee is from increased \$60 to \$100. The current regulations permit late renewal for up to 12 months after expiration with reinstatement required after 12 months. The proposed regulations permit late renewal for up to 60 days after expiration with reinstatement required after 60 days. The proposal deletes the fee for a duplicate wall certificate because wall certificates are no longer issued.

Issues: The primary issue for the proposed fee increase is the department's statutory requirement to comply with the Callahan Act.

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

Summary of the proposed regulation. The Board of Opticians (board) proposes to raise fees and reduce the timeframe within which a licensee can pay a late renewal fee, versus a reinstatement fee.

Estimated economic impact. Fees. The Department of Professional and Occupational Regulation (DPOR) expects that the board's revenues for the 2002-2004 biennium will finish at 30.7% less than expenses. Additionally, DPOR anticipates that the board's ending cash balance for 2002-2004 will be negative \$4,905.¹ The board attempts to set each fee to approximately match the cost of regulating each respective function.² The board proposes to raise fees by the following amounts:

Spectacle examination administrative charge: increase from \$10 to \$25

¹ The anticipated -\$4,905 cash balance represents -2.6 percent of the expected \$185,399 board expenditures in the 2002-2004 biennium (source: DPOR).

² Source: DPOR

- Total examination fee ceiling: increase from \$300 to \$1,000
- License application: increase from \$55 to \$100
- Contact lens certification application: increase from \$70 to \$100
- License renewal: increase from \$60 to \$100
- Late license renewal: increase from \$25 to \$125
- License reinstatement: increase from \$100 to \$225

The increase in expenses relative to fees collected can be partially attributed to the following: 1) examination costs, which are dependent on both vendor charges and the volume of candidates taking the exam, are estimated to increase by almost \$8,000 from the 2000-02 biennium to the 2002-04 biennium, 2) charges from the Attorney General's Office to the department (for all work across boards) are increasing from \$405,000 for the 2000-02 biennium to \$507,000 for the 2002-04 biennium, and 3) the department is spending \$1.2 million to \$2.0 million on a new computer system for licensing and enforcement.³

The current regulations list a "Duplicate wall certificate fee" of \$25. The board proposes to remove the duplicate wall certificate fee language from the regulations. Since wall certificates are no longer issued, the current language on duplicate wall certificates serves no purpose.

Reinstatement. Under the current regulations, licensees who fail to renew their license within 30 days of its expiration can renew their license by paying a late fee up until 12 months after expiration. If the license has been expired for more than 12 months, the licensee must apply for reinstatement. If the license has been expired for 24 months or less, the licensee only has to pay the reinstatement fee. (If the license has been expired for more than 24 months, other requirements must be met.) The board proposes to permit late renewal only for licenses that are 31 to 60 days late. Thus, the effective change is that licensees whose license has been expired between 61 days and 12 months must now pay the reinstatement fee rather than the late fee. As noted above, under the proposed regulations the reinstatement fee is \$225 and the late renewal fee is \$125. The proposal to shorten the time limit for late license renewal from 12 months to 60 days may encourage some licensees whose license has been expired between 31 and 60 days to renew their license sooner. This does not produce a significant economic impact.

Businesses and entities affected. The proposed amendments will affect the 1,800 opticians in Virginia.

Localities particularly affected. The proposed regulations affect opticians throughout the Commonwealth.

Projected impact on employment. The proposed amendments will not significantly affect employment levels. A small number of mostly inactive opticians may choose not to remain licensed due to the higher fees.

Effects on the use and value of private property. The proposed amendments will decrease the value of opticians'

practices by the amount of the fee increases that apply to them.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board for Opticians concurs with the Department of Planning and Budget's Economic Impact Analysis.

Summary:

The proposed amendments increase fees and reduce the timeframe within which an optician licensee can pay a late renewal fee versus a reinstatement fee.

18 VAC 100-20-54. Fees.

A. The fee for examination or examinations shall consist of the combination of an administrative charge of ~~\$40~~ \$25 (spectacle), \$25 (contact lens), and the appropriate contract charges. Examination service contracts shall be established in compliance with the Virginia Public Procurement Act (~~§ 11-35~~ § 2.2-3700 et seq. of the Code of Virginia). The total examination fee shall not exceed a cost of ~~\$300~~ \$1,000 to the applicant.

B. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date which will be used to determine whether it is on time.

C. Application and examination fees must be submitted with the application for licensure.

The following fees shall apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for licensure by examination or out of state applicants	\$55 \$100	With application
Application for contact lens certification by examination or for out of state applicants	\$70 \$100	With application
Renewal	\$60 \$100	Up to the expiration date on the license with a 30-day grace period
Late renewal (in addition to includes renewal fee)	\$25 \$125	Up to 12 months Between 30 and 60 days after the expiration date on the license
Reinstatement (<i>includes renewal and late renewal fees</i>)	\$100 \$225	After 12 calendar months 60 days following the expiration date on the license
Duplicate wall certificate	\$25	With written request

³ Ibid.

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18 VAC 100-20-81. Reinstatement required.

A. If a licensee fails to renew his license within ~~12 months~~ 60 days after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.

1. Individuals for reinstatement shall continue to meet the standards of entry as set out in subdivisions 1 through 8 of 18 VAC 100-20-10.
2. Individuals for reinstatement shall submit the required fee as set out in 18 VAC 100-20-54.

B. Twenty-four months after expiration of the license, the individual may be reinstated if he can show proof of continuous, active, ethical and legal practice outside of Virginia. If not, the individual must show proof of completion of a board-approved review course which measures current competence. Credit will not be allowed for any review course which has not been approved by the board prior to administration of the course.

C. Sixty months after expiration of the license, the individual, who cannot show proof of continuous, active, ethical and legal practice outside of Virginia, shall be required to apply as a new applicant for licensure. He shall be required to meet all current education requirements and retake the board's written and practical examination.

D. The board, in its discretion and for just cause, may deny reinstatement of a license. Upon such denial, the applicant for reinstatement may request that a proceeding be held in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

E. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the board during the entire period and may be held accountable for his activities during this period. Nothing in these regulations shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure as set out in this provision.

NOTICE: The forms used in administering the Board for Opticians Regulations (18 VAC 100-20) are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230-1066, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

License and Examination Application, 11LIC (rev. ~~11/99~~ 2004).

Contact Lens Endorsement Application, 11CLEND (eff. ~~11/99~~ rev. 2004).

Reciprocity Application, 11REC (eff. 2004).

Reinstatement Application, REINSTATE-APP 11REI (eff. ~~9/99~~ rev. 2004).

VA.R. Doc. No. R03-265; Filed July 21, 2004, 8:59 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Titles of Regulations: 22 VAC 40-120. Standards for Licensed Family Day Systems (REPEAL) (repealing 22 VAC 40-120-10 through 22 VAC 40-120-60).

22 VAC 40-121. Standards for Licensed Family Day Systems (adding 22 VAC 40-121-10 through 22 VAC 40-121-390).

Statutory Authority: §§ 63.2-217, 63.2-1701, and 63.2-1734 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 8, 2004.
(See Calendar of Events section for additional information)

Agency Contact: Doris Sherrod, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 N. Eighth Street, Richmond, VA 23219, telephone (804) 726-7153, FAX (804) 726-7132, or e-mail doris.sherrod@dss.virginia.gov.

Basis: Sections 63.2-217, 63.2-1701 and 63.2-1734 of the Code of Virginia provide the legal authority for the Department of Social Services to promulgate this regulation. The Code of Virginia mandates the licensure of family day systems by the Commissioner of Social Services. The State Board of Social Services is mandated to promulgate regulations for the activities, services, and facilities of family day systems and their member homes to ensure that they are conducive to the welfare of children in care.

Purpose: The regulation is essential to ensure that the activities, services and facilities governed by the regulation are conducive to the health, safety and welfare of children, and that children in these homes that are not licensed by the state receive at least equal protection. The proposed action replaces the current regulation, last revised in 1984, with updated language and additional protections for children in care. The Code of Virginia gives individuals or agencies choosing to operate a family day system authority to approve family day homes for a number of children that, without system approval, would be subject to licensure by the state. The Code of Virginia also grants authority for systems to refer children to their approved family day homes.

Substance: Definitions and names are updated to reflect current statutory language, including family day system, to replace family day-care system, and family day homes, to replace family day care homes.

The following changes in the proposed regulation are mandated by the Code of Virginia:

1. The added requirement that prohibits false or misleading advertising;

2. The added requirement to secure documentation that establishes a child's age and identity, and the last day care or school attended; and

3. The requirement for compliance with the provisions of the law related to background checks and the current regulation for background checks.

The following terms are added and defined: "adult," "assistant," "caregiver," "child day program," "good character and reputation," "parent," "programmatic experience," "regional/area licensing office," "serious injury," and "substitute provider."

Requirements are added in a section titled Reporting Requirements, including, but not limited to, the following:

1. The toll-free number for the Child Abuse and Neglect Hotline;

2. Immediate notification of the department of any danger or hazard that threatens the health and safety of children in a member home;

3. Notification of the department of a serious injury to a child, a lost or missing child, death of a child, or damage to the system's office that affects the operation of the system; and

4. Quarterly submission to the licensing office of a current directory of member homes.

New sections are added regarding public access to records and confidentiality.

The number of homes for which a full-time home visitation staff member is responsible will increase to 40 over a four-year period.

Added to the section on orientation of newly employed system staff is the requirement for training in recognizing and reporting child abuse and neglect.

Ongoing training is newly required for system staff, to be provided by trainers who meet qualifications that are specified in the regulation.

In the section titled Services to Member Homes, qualifications have been added for providers wishing to be approved as members of the system that mirror the requirements for licensed family day home providers, including, but not limited to:

1. Entry-level educational and experience requirements;

2. Attributes, including the ability to speak, read and write in English sufficient to meet the requirements of the standards, the ability to provide daily activities and experiences that reflect the familial, cultural and ethnic diversity of enrolled children, and the ability to understand instructions on prescription and nonprescription medicines;

3. The expectation for compliance with the requirements of the Code of Virginia and the current regulation regarding background checks;

4. Based on guidance from the Virginia Department of Health, use of risk assessment as evidence of absence of symptoms

of active tuberculosis infection or disease, in addition to the Tuberculin Skin Test;

5. Certification in first aid and CPR prior to approval as a member home or employment in a member home;

6. Requirements for child-to-staff ratios, maintenance of the home and yard, care of children, nutrition and food service, emergency preparedness and water safety procedures, and discipline practices and procedures that meet, at minimum, the requirements for Licensed Family Day Homes;

7. Orientation to Standards for Licensed Family Day Homes, system standards, confidentiality requirements, and child abuse and neglect reporting requirements prior to approval as a member home; and

8. A minimum of 12 clock hours of training annually.

Proposed additions to the section titled Services to Children and Families include the following:

1. Information on parents' place of employment;

2. Emergency contact information;

3. Information on the parent's hospitalization or medical assistance plan; and

4. Immunization records on file by the first day of a child's attendance.

Issues: A key advantage to the public is the inclusion of requirements for release of information about system homes to the public. This addition allows consumers to make more informed choices in selecting day care providers, and is consistent with the requirements for release of information in other regulated family day programs. Requirements are also included, however, that assure that certain information is not released, which serves to protect children and families involved in complaint investigations and other investigations where violations of the requirements may be found.

The addition of requirements for immediate notification of the department when hazardous conditions exist in a member home allows the department to take immediate action to oversee and protect children in care, by either assuring immediate abatement of the hazard or removal of children from the situation.

Additional emergency contact information allows providers to take appropriate action and action agreed upon with parents, in the event of an emergency.

For system operators, the increased costs associated with some of the requirements may be viewed as a disadvantage.

This regulatory action poses no disadvantages to the Commonwealth or the public.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity

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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. Due to the extensive nature of changes, the State Board of Social Services (the board) proposes to incorporate and replace Minimum Standards for Licensed Family Day-Care Systems (22 VAC 40-120) with new regulations, Standards for Licensed Family Day Systems (22 VAC 40-121). The main goal of the changes is to improve health and safety of children while under the care of a family day home in a licensed family day-care system.

These regulations have not been updated since 1984. Thus, there are a number of requirements that are enforced in practice due to the changes in the Code of Virginia or changes in other regulations and will be incorporated in these regulations with this action. These changes are not expected to have any economic effect upon promulgation of the regulations as they have been currently enforced. Another group of standards are related to the jointly proposed standards for licensed family day home regulations, 22 VAC 40-111. All of the proposed changes and the economic issues for the changes under this category are the same. The last group of changes is specific to the licensed family day systems and has not been enforced in practice. These changes will have an effect in practice.

Estimated economic impact. Licensed Family Day Systems provide less than 24-hour care to between six and twelve children (exclusive of the children who reside in the home) under 13 years of age through member family day homes. This type of child care offers children a home-like setting. In Virginia, there are two licensed family day systems with approximately 300 member family day homes with a maximum capacity to serve about 3,600 children.

The proposed regulations will update the standards currently being followed in practice and strengthen the current standards through incorporating the proposed changes to 22 VAC 40-111 and through proposed changes specific to the family day systems to improve health and safety of the children in member family day homes. Most of these standards are technically well founded based on the available research.¹ However, the stricter standards will likely introduce non-negligible compliance costs for providers or the system in exchange for improved protective measures. The most likely economic effects of the proposed regulations include an increase in price of family day home care and a decrease in the number of children cared for in these homes.

The likely net effect on the aggregate health and safety risks to children is uncertain. On one hand, available research

supports that health and safety risks to children under the care of licensed providers will likely be reduced. On the other, the same risks to children who will be placed under non-regulated forms of care due to higher prices will likely be increased. There is not sufficient information to make a determination whether one of these opposing effects will be greater than the other.

A detailed explanation of the changes is provided below.

Updating the regulations to reflect current practices: The board proposes to update the regulations to reflect a number of standards already followed in practice following the changes in the Code of Virginia and other regulations. These include prohibiting false or misleading advertising; producing documentation on the child's age, identity, and day care and schools previously attended; addition of the background check requirements found in the Code of Virginia; listing of a toll free number for the Child Abuse and Neglect Hotline; revising the child-to-staff ratio from nine to 12; notification of serious injury to a child, a lost or missing child, death of a child, or damage to the system's office that affects the operations; quarterly submission of the directory of member homes.

All of these requirements are currently being enforced in practice. Thus, no significant economic effect upon promulgation of these changes is expected.

Compliance with Proposed Changes to the Licensed Family Day Home Regulations (22 VAC 40-111): Some of the changes under this category are related to provider qualifications, training, and certification. One of the main changes is requiring new providers to have at least a high school education and three months of programmatic experience. This requirement will not apply to existing providers. Another change is establishing a pre licensure orientation for regulations and licensing procedures, which will be offered by the department. The providers will also be required to have a CPR certification. Moreover, water safety certification must be obtained for activities involving water deeper than two feet. Finally, the number of hours for annual training will be gradually increased from eight hours per year to 12 hours over the next three years. This training covers subjects such as child development, behavioral management, health and safety issues, activities for children, etc.

Available research indicates a positive correlation between caregiver qualifications/training/certification and health/safety of children. The main reasons behind this positive association are: (i) educated caregivers promote mental health, safety, cognitive improvement, intellect, and independence; (ii) caregivers behave more sensitively, less harshly, and in a less authoritarian manner; interact more positively, display more involvement and encouragement, and less punitiveness; (iii) and training reduces disease transmission and accidental injuries, improves staff's ability to facilitate a positive learning and socialization environment, and improves early detection of abuse, neglect, developmental disabilities, and common diseases.

On the other hand, the proposed changes related to provider qualifications/training will likely introduce additional compliance costs. The majority of the costs are in terms of the time required to attend the training/orientation and to

¹ Any reference to national standards or research literature in this analysis is obtained from the literature overview by Dr. Richard Fiene, "13 Indicators of Quality Child Care: Research Update," Submitted to Office of the Assistant Secretary for Planning and Evaluation and Health Resources and Services Administration/Maternal and Child Health Bureau, U.S. Department of Health and Human Resources.

obtain the high school education. For example, assuming \$12 hourly wage rate, the total time (excluding travel time) costs of training requirement for 300 providers can be valued at \$14,400. In addition, there are time costs to obtain CPR and water safety certifications as well as the fees and other educational material costs.² Similarly, the department will likely incur some additional costs in terms of staff time to provide annual training and other costs associated with the trainer, physical location, and materials in addition to increased cost of monitoring and verifying compliance with new standards.

Another set of proposed changes are related to physical plant and safety measures. One of the significant changes is establishing an activity space requirement and gradually increasing the required space from currently acceptable 25 square feet to 35 square feet per child, which is the standard in 42 states. In addition, resilient surfacing under playground equipment, protective barriers around outside play areas, annual inspection of all heating equipment will be required and some equipment height requirements will be established. Risk assessment of all household members for tuberculosis including those who may be currently exempt will be required. Also, the board proposes to require the use of baby monitors during overnight care and proposes to prohibit the use of hot tubs, spas, and whirlpools by all children, the use of wading pools by multiple non-patty trained children, and the use of trampolines.

Most of these safety measures are intended to and are known to reduce risk of injury or illness to children. A significant number of injuries affect head and limbs and they primarily occur due to falls from climbing equipment. Increased activity space could also reduce risk of injury among other potential benefits such as well being, constructive behavior, social integration, reduced stress, and communicable diseases. More comprehensive tuberculosis screening could reduce disease transmission. Moreover, meeting the proposed safety standards could help reduce a family day home's liability if an accident occurs.

These changes are also expected to have significant cost implications for day homes that do not meet the proposed standards. Increasing activity space may reduce the capacity of some family day homes. This will either lead providers to reduce their enrollment, or increase space by new construction or by rent, which means either a reduction in revenues or an increase in compliance costs. In any event, profits will be lower. Additionally, facilities without the proposed safety measures will have to either (i) incur additional material and installation costs, which will vary depending on the equipment or (ii) remove or not use the equipment and offer other activities.³

Similar to the other changes, while further improvements in health and safety of children will likely result, providers that do

not meet the updated standards will incur costs in terms of lower revenues or additional costs to comply with these requirements.

The board proposes numerous other measures including development and distribution of written policies to parents for discipline, termination of care, provision of meals, snacks, medication, and temporary care in the event of an emergency; record keeping for updated emergency contact information, and immunization records; periodically obtaining authorization from parents every three months for administration of over-the-counter drugs; requiring providers to be able to read, write, and speak English, be able to provide daily activities and experiences to children, and the ability to understand instruction on drugs; collecting information on parent's place of employment, emergency contact, and parent's hospitalization or medical assistance plan. A statutory requirement incorporated includes disclosure of information regarding the percentage of time someone other than the provider will be caring for children. Although these changes are not discussed in detail they also have the potential for a marginal improvement in health and safety as well as a non-negligible increase in compliance costs.⁴

As discussed in the analysis prepared for the proposed changes to 22 VAC 40-111, there appears to be room for improvement in three areas. First, the proposed annual training requirement could be redesigned to maintain the level of expected benefits at lower costs. The training needs of the providers do not seem to be uniform. It is logical to assume that the training needs of a veteran provider who has been in this business over ten years is probably much less than the training needs of another provider who is obtaining a license for the first time. This is because the veteran provider has more experience and has already attended many hours of annual training. Also, the expected benefit from an hour of additional training is lower than the one before. For example, a veteran provider may have already taken training in all the subject matter and may be repeating the courses already taken. Thus, about the same level of benefits could be maintained by requiring newly licensed providers to attend 12 hours of training and decreasing the hours of training to a fixed minimum as a provider gains more experience and training in this business. Assuming that one half of the total additional training hours is unproductive, this suggested modification would provide savings in the order of \$8,700 in terms of time and fees.

Second, repeating the authorization every three months for administration of over-the-counter drugs seems to fail the cost-benefit test. This requirement introduces repeated costs involving the reauthorization every three months in order to maintain the same benefit of having the parental consent. Perhaps, requiring the authorization once and allowing the parents to revoke their authorization any time they desire would achieve the same level of benefits without the repetitive reauthorization costs.

Third, the requirement for water safety instructor certification for activities involving water deeper than two feet seems

² The fees for 4 hours of additional training are estimated to be \$10 per provider, or a total of \$3,000 annually for all 300 providers.

The fees for CPR training in addition to first aid training are estimated to be \$10 annually, or \$3,000 for all providers.

The annual inspection of heating equipment is approximately \$55. Thus, the total annual cost to all providers could be about \$16,500.

³ Portable inflatable wading pools are estimated to cost about \$3.95 each and the cost of baby monitors range from \$20 to \$100.

⁴ The estimated cost of distributing written policies to 6 families is \$3 and 12 families is \$6.

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excessive as this certification requires about 30 hours of training. According to the department, there is a lower level of water safety certification called "community water safety" which can be obtained after a four-hour training. It appears that the community water safety certification would still be commensurate with the potential risks while reducing costs significantly.

New changes that will apply to licensed family day-care systems and that are not currently enforced: The proposed changes under this group include increasing staff caseload requirement from 25 to 40 over a four-year period, establishing eight hours of staff training, requiring providers to develop corrective action plans, and requiring systems to disclose compliance history to the parents. System staff provides technical assistance to and investigate complaints in member family day homes. Thus, allowing larger caseloads is expected to reduce the amount of time the staff can devote to each member family to provide assistance and investigate complaints, which could reduce the level of compliance with the proposed regulations. On the other hand, larger caseloads reduce the staff time required and provide some savings to the regulated systems. While this revision significantly increases the caseload per system staff, it is still significantly below the average of 80-100 caseloads per staff employed by the department that performs the same functions for stand-alone licensed family day homes.

The proposed changes also establish an eight-hour training requirement for the staff employed by the systems and development of corrective action plans by the providers. Similar to the provider training, while further improvements in health and safety of children will likely result as a result of increased staff training, this requirement will also introduce additional compliance costs. Probably the majority of the costs are in terms of the time required to attend the training/orientation. Furthermore, the systems will incur some additional costs in terms of staff time to provide annual training and other costs associated with the trainer, physical location, and materials. The change requiring development of corrective action plans could speed up the process in which a provider is brought back into compliance following a violation. Development of the plan, on the other hand, would take some provider time and introduce some additional costs.

Finally, disclosure of compliance history to parents would enable them to make better decisions when hiring a system for the care of their child. The availability of such information would improve the competitiveness of the market and the allocation of limited resources, which is a clear economic gain for society. However, there are likely to be additional costs of data management and dissemination. Additionally, while the systems with noticeably better compliance history would see an increase for the demand for their services, the systems with below average history would see a decrease.

Summary. Based on standard economic theory, the potential effects of proposed standards on the price of care provided and the number of children receiving regulated care are relatively straightforward. While there is no doubt that more stringent standards will raise the cost of care or reduce revenues, the size of the impact will depend on the proximity of the current compliance with respect to the proposed

standards. For example, if compliance with the newly proposed activity space requirements were already high, the additional costs of compliance, or revenue losses would be small. It seems, however, that the increase in compliance costs will likely be significant. If so, higher compliance costs will reduce the number of family day homes offering their services, increase the cost of care for parents, and reduce the number of children cared for by the providers.⁵

The other significant issue of interest is the net effect on the aggregate health and safety risks to children. Available research suggests that the proposed standards will reduce health and safety risks to children under the care of a licensed provider. However, higher day care prices will divert some children toward unregulated forms of care such as the services of a grandmother or services offered under the table. These other alternative forms of care are not subject to licensing requirements or are difficult to bring into compliance, which could reduce the quality of care provided. The determination of the size of these opposing effects and hence the net impact on the aggregate health and safety risks to children is beyond the scope of this analysis and cannot be made at this time.

Nonetheless, it should be pointed out that there are examples in the economic literature where the regulations designed to reduce health and safety risks in fact resulted in an increase in aggregate risks as a result of higher costs. In this case, if the increase in the cost of care is high enough to shift many children from regulated settings to non-regulated settings, the aggregate health and safety risks to children could be actually higher. Similar examples from the economic literature, suggest that aggregate health and safety risks to children cannot be necessarily minimized through excessive and costly regulations.

Businesses and entities affected. The proposed regulations currently apply to two licensed family day systems with the maximum capacity to serve 3,600 children.

Localities particularly affected. The proposed regulations are not expected to affect a given locality more than others.

Projected impact on employment. Expected increase in time and physical plant costs will affect demand for labor in two directions. These will increase demand for labor as family day systems or providers start spending money to purchase construction material and equipment, obtain provider training and certification, staff training, and hiring heating contractors for inspections. These new expenditures or reduced revenues (due to increased activity space, for instance) might make some provider's operations unprofitable and cause them to reduce capacity or completely cease operations and reduce the demand for labor. The increased staff qualification such as the high school education would decrease the applicant pool that is eligible and increased caseloads would reduce

⁵ It is conceivable that the stricter standards somewhat stimulate demand for family day home services. It is not uncommon for some providers who are not otherwise required to have a license to seek licensure from the department voluntarily in order to stimulate the demand for their services. Although an indirect increase in demand is possible, it is expected to be too small to alter the main conclusion drawn on the number of children receiving regulated services.

staffing needs. Thus, the net effect on employment is uncertain.

Effects on the use and value of private property. The proposed changes could also affect the value of family day home provider or system businesses through the effects on future profit streams. Most changes will either increase compliance costs or reduce revenues. Therefore, the value of family day home businesses would decrease on average. On the other hand, increased litigation and costs for liability insurance might be lower if the family day home industry is operating under stronger health and safety standards which could balance out the potential decrease in value to some extent. Furthermore, some physical plant requirements such as fencing or inspection of heating equipment and disclosure of compliance history may affect the value of provider homes and systems in either direction.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget.

Summary:

The proposed joint action repeals the Minimum Standards for Licensed Family Day-Care Systems, 22 VAC 40-120, and replaces it with a new regulation, Standards for Licensed Family Day-Care Systems, 22 VAC 40-121. The new regulation (i) removes procedural language that is now covered in another regulation; (ii) reorganizes and rewords the text for clarity; (iii) incorporates requirements based on changes in the Code of Virginia; and (iv) adds new requirements that increase protection to children.

CHAPTER 121.

STANDARDS FOR LICENSED FAMILY DAY SYSTEMS.

PART I.

INTRODUCTION.

22 VAC 40-121-10. Definitions.

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

"Adult" means any individual 18 years of age or older.

"Assistant" means an individual who is 14 years of age or older and who, under the direct supervision of the provider or substitute provider, provides care, protection, supervision and guidance of children in the member home.

"Caregiver" means the provider, substitute provider or assistant.

"Child" means an individual under 18 years of age.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Commissioner" means the Commissioner of the Virginia Department of Social Services.

"Complaint" means an accusation received either orally or in writing that (i) a licensed family day system is not in compliance with one or more of these standards or one or more statutory requirements; (ii) a family day system home is not in compliance with one or more applicable requirements of these standards or one or more requirements established by the family day system; or (iii) a child in care of a family day home that is a member of a licensed family day system is being abused or neglected as defined by § 63.2-100 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner.

"Director" means the licensee or a person designated by the licensee who oversees the day-to-day operation of the system including compliance with all standards for licensed family day systems.

"Family day system" or "system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who through contractual arrangement may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Family day system home" or "member home" means any family day home that is an approved member of a family day system where care is provided for one to 12 children under the age of 13 exclusive of the provider's own children and any children who reside in the home. Family day homes that are members of a licensed family day system and are approved by that system to care for six to 12 children are, by law, not subject to direct licensure by the department.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness and truthfulness and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage, and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Licensee" means the person or persons to whom the license is issued.

"Licensing office" means the office of the Virginia Department of Social Services from which the family day system's license to operate was issued.

"Parent" means the biological, foster or adoptive parent, legal guardian, or any individual with legal custody of a child enrolled or in the process of being admitted to a family day system home.

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"Person" means any natural person or any association, partnership or corporation.

"Programmatic experience" means time spent working directly with nonrelated children in a group. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period of time. Experience settings may include but not be limited to a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Provider" means an individual 18 years of age or older who is approved by the family day system and who has primary responsibility for providing care, protection, supervision and guidance for children in the family day system home.

"Referral" means any activity by the family day system that provides assistance in locating or arranging day care for children in homes that have been accepted or approved as members of the system, or in locating or arranging for health or social services from other sources based upon identified needs.

"Serious injury" means a wound or other specific damage to the body such as, but not limited to, unconsciousness; broken bones; dislocation; deep cut requiring stitches; concussion; foreign object lodged in eye, nose, ear, or other body orifice.

"Substitute provider" means an individual 18 years of age or older who meets the qualifications for a provider, is designated by the provider and approved by the system, and who is readily available to provide substitute child care in the member home.

PART II. ORGANIZATION AND ADMINISTRATION.

22 VAC 40-121-20. Sponsorship.

Each family day system shall have a clearly identified sponsor.

1. When a system is sponsored by an individual proprietor, the individual is the licensee.
2. When a system is sponsored by a partnership, the partnership shall serve as the licensee and have a written agreement (articles of partnership) that allows operation and maintenance of a family day system.
3. When a system is sponsored by an unincorporated association, the association shall have:
 - a. A governing board that serves as the licensee; and
 - b. A written constitution or written by-laws that allow for the operation and maintenance of a family day system.
4. When a system is sponsored by a corporation, it shall have:
 - a. A governing board that serves as the licensee;
 - b. A charter that specifies that the purpose of the corporation includes the operation and maintenance of a family day system; and

- c. A certificate of corporate status issued by the State Corporation Commission or, for corporations based out-of-state, a certificate of authority to transact business in the Commonwealth of Virginia.

22 VAC 40-121-30. Operational responsibilities.

A. The licensee shall develop a written program description for the system that shall be available to prospective member homes, parents and the general public and that shall include, at minimum, the following elements:

1. The mission of the system;
2. The system's organizational structure;
3. Population to be served;
4. Geographical area to be served;
5. Services to be provided to the homes that are members of the system; and
6. Services to be provided to families and children who use the system.

B. Written policies and procedures shall be developed for the operation of the system that include, but are not limited to:

1. The roles, rights and responsibilities of the system in the supervision and approval of member homes and referral of children to those homes;
2. Criteria for approving, suspending and terminating family day homes as members of the system;
3. The roles, rights and responsibilities of homes that are members of the system;
4. The roles, rights and responsibilities of parents of children who are cared for in homes that are members of the system;
5. Orientation and training of providers;
6. Procedures for technical assistance and consultation to providers, to include alerting them to zoning and other pertinent local ordinances;
7. Procedures for selection, evaluation, inspection, supervision, and monitoring of system homes;
8. Policies and procedures for referral of children to homes that are members of the system;
9. Policies and procedures for referral of children to available health and social services;
10. Procedures for the annual renewal of approval of homes as members of the system;
11. Procedures to be followed to ensure that all areas of noncompliance with approval requirements have been corrected promptly;
12. Procedures for complaint investigations; and
13. Procedures for notifying parents when a member home closes or when a member home's approval has been suspended or terminated.

C. The licensee shall ensure that the system's and member homes' activities, services, and facilities meet and are maintained in compliance with these standards, the terms of the license issued by the department, other relevant federal, state or local laws and regulations, and the system's own policies and procedures.

D. The licensee shall appoint and identify in writing a director to be responsible for the day-to-day operation and management of the system, except when the sponsor is an individual who serves as the director or a partnership in which a partner serves as the director.

E. No family day system shall disseminate or cause directly or indirectly to be disseminated any statements regarding services that are untrue, deceptive or misleading.

22 VAC 40-121-40. Finances.

A. The family day system shall have a plan of financing that ensures sufficient funds to operate in accordance with its stated program description and the services to be provided.

B. An initial application for licensure as a family day system shall include:

1. A plan of financing (working budget) for the first year of operation detailing the expected income and expenses for the year;
2. Documentation of funds or credit available for the first year of operation;
3. A balance sheet showing current assets and liabilities; and
4. A fee and payment schedule as required by 22 VAC 40-121-50.

C. The application for license renewal shall include:

1. A current balance sheet showing current assets and liabilities;
2. A current working budget showing actual income and expenditures; and
3. Current fee and payment schedules as required by 22 VAC 40-121-50.

D. There shall be a system of financial record keeping that is consistent with generally accepted accounting principles and that shows separation of the system's accounts from all other accounts.

E. Those members of the governing entity and staff who have been granted authorized responsibility for funds of the system shall be bonded.

22 VAC 40-121-50. Fee and payment schedules.

A. The family day system shall maintain a current written schedule of fees charged for services provided.

B. The applicable fee schedules shall be made available to families who seek or use the services of the system, to homes that apply for membership in the system and to the department as part of the application for licensure.

C. The family day system shall establish and maintain a current written schedule of payments to be made to homes that are members of the system. This schedule shall specify the amount of payment, conditions of payment and frequency of payment.

D. The schedule of payments to member homes shall be provided to all homes that are members of the system and also to the department as part of the application for licensure. When applicable, this schedule shall also be made available to families who seek or use the services of the system.

22 VAC 40-121-60. Family day system setting.

A. The family day system shall have an office in Virginia that shall serve as the headquarters of the system.

B. The system office shall have:

1. Sufficient space for administration of the system, including all clerical functions;
2. Sufficient space to maintain privacy and confidentiality for conferences with parents who seek or use the services of the system and with family day home providers who are members of the system;
3. At least one working telephone, other than a pay phone, with a listed number that is available for system business;
4. An emergency phone number that shall be provided for the use of the homes in the system during any hours that children are in care if the system's telephone is not manned during those hours.

22 VAC 40-121-70. Determination of number of member homes.

In order to ensure timely and adequate service delivery, the maximum number of homes that may be member homes of the system shall be based on the following factors:

1. The number of system's office staff (NOTE: Persons who are approved as day care providers and their assistants are not considered to be system's office staff);
2. The geographical dispersion of homes with relation to the system office;
3. The financial capabilities of the system; and
4. The types of programs and services offered by the system.

22 VAC 40-121-80. Reporting requirements.

A. The family day system shall submit to the department such reasonable reports and information as it may require.

B. The system's books and records shall be made available for inspection by the department's representative, upon request.

C. The licensee, governing board or its official representative shall notify the department when any major change is anticipated in the program, services provided, or administrative structure. When such a change occurs, which was not anticipated, this notification shall be provided no later than 10 days following the change.

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D. The licensee shall notify the department within five working days of any change in office location or the director of the system, or any change that would affect the terms of the license.

E. The licensee or any system employee shall notify the local department of social services or the toll-free Child Abuse and Neglect Hotline (1-800-552-7096/TDD) as specified in § 63.2-1509 of the Code of Virginia whenever there is reason to suspect that a child has been subjected to abuse or neglect by a provider or any other person.

F. The licensee or any staff member shall notify the department immediately of any imminent danger or hazard that threatens the health and safety of children in a member home.

G. The licensee shall notify the department of any of the following changes or events by the next working day after the system learns of their occurrence:

1. Serious injury to a child while in the care of a provider;
2. Lost or missing child;
3. Death of a child while in the care of a provider;
4. Damage to the system's office that affects the operation of the system;
5. For staff of the system, any pending charge or conviction of a crime specified in § 63.2-1720 of the Code of Virginia, and whether or not the person is the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth;
6. For a provider, substitute provider, assistant or member of a provider's household, any pending charge or conviction of a crime specified in §§ 63.2-1720 and 63.2-1727 of the Code of Virginia, and whether or not the person is the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth;
7. Unanticipated permanent or temporary cessation of the operation of the system; and
8. The provider is exceeding the number of children allowed as a family day home and is required by law to be licensed as a child day center.

H. The program description shall be updated when changes are made in the program and updates provided to the assigned licensing office within 30 days of the change.

I. Within 30 days after the system's initial license to operate is issued and quarterly thereafter, the licensee shall send a current directory of member homes to the assigned licensing office. The directory shall contain the following information:

1. Name of the day care provider;
2. Address of the member home;
3. Telephone number of the member home; and
4. Approved capacity of the member home.

22 VAC 40-121-90. Public access to records.

A. Except as provided in 22 VAC 40-111-100, the family day system shall make the following available for public review:

1. Confirmation that a family day home is a member of the system;
2. Correspondence between the family day system and the provider or other parties in matters pertaining to the family day system's approval or monitoring of the provider;
3. Evaluation and monitoring reports, reflecting the results of the system's evaluation and monitoring of the provider;
4. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the Standards for Licensed Family Day Systems;
5. Enforcement letters or other notification or written notices from the system requiring correction of violations of the Standards for Licensed Family Day Systems; and
6. Correspondence to the system from the department regarding enforcement actions against the member home.

B. Any documents, materials, reports, or correspondence that would normally be included as part of the public record shall remain on file for three years.

C. If a system has a question about whether information may be released to the public, the director shall consult the system's attorney or a representative of the department.

D. Systems may not charge more than provided under the Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, for copies of public information.

22 VAC 40-121-100. Confidentiality.

The licensee shall keep confidential and not part of the public record the following:

1. Records, reports, and correspondence that pertain to child abuse or neglect investigations involving enrolled children;
2. Names of enrolled children and their parents;
3. Confidential information with regard to specific system personnel;
4. Any items that deal with reports of inspection or complaint investigations that are still in progress; and
5. Other material required by state law to be maintained confidential.

PART III.

QUALIFICATIONS AND REQUIREMENTS FOR SYSTEM STAFF.

22 VAC 40-121-110. General staff qualifications.

A. The directors, staff members, volunteers, and any other persons who are alone with, in control of, or supervising one or more children, or involved in the day-to-day operations of the system shall comply with the requirements for background checks in § 63.2-1720 of the Code of Virginia.

B. The director and every staff member or volunteer of a system shall be:

1. 18 years of age or older;
2. Of good character and reputation;
3. Physically and mentally capable of carrying out assigned duties and responsibilities;
4. Emotionally stable with an understanding of problems and needs of children and their families; and
5. Qualified in accordance with the applicable educational training and experience requirements contained in these standards.

22 VAC 40-121-120. Position descriptions.

A. There shall be a written description for each staff position that includes the following:

1. Job title;
2. Functions assigned to the position, including authority and responsibility; and
3. Education or experience, or both, required for the position.

B. A copy of the job description shall be made available to each person assigned to the position at the time of employment and a copy retained in the staff member's record.

22 VAC 40-121-130. Qualifications of the director.

A. Each system shall have one full-time staff member designated as the director.

B. The director shall have:

1. A master's degree in early childhood education, child development, social work, psychology, human services, or a child-related field from an accredited college or university, or the equivalent as determined and approved by the department, plus three years of experience in any one or more of these fields, including two years experience in a supervisory, administrative, or management capacity; or
2. A bachelor's degree in early childhood education, child development, social work, psychology, human services, or a child-related field from an accredited college or university, or the equivalent as determined and approved by the department, plus four years of experience in any of these fields, including two years experience in a supervisory, administrative or management capacity.

22 VAC 40-121-140. Responsibilities of the director.

A. The director shall be responsible for the overall day-to-day management, administration and supervision of systems operations.

B. The director shall ensure assignment of sufficient qualified staff to operate the system.

C. The director shall designate a staff member to serve in the director's absence.

22 VAC 40-121-150. Qualifications of referral, training and home visitation staff.

A. Staff members designated to perform referral, training or home visitation services shall have:

1. A bachelor's degree in early childhood education, child development, social work, psychology, human services, or a child-related field from an accredited college or university or the equivalent as determined and approved by the department; or
2. An associate degree, or equivalent, in a child-related field, human services, community and social services, or educational services from an accredited college or university or the equivalent as determined and approved by the department, and two years supervised experience working in a child day center, children's residential facility, family day home, or similar program providing care to children.

B. The professional qualifications of staff members shall be documented in the staff member's record.

22 VAC 40-121-160. Responsibilities of referral, training and home visitation staff.

A. Responsibilities for referral, training and home visitation services shall be assigned to a permanent staff member or members.

1. Referral services and responsibilities include, but are not limited to, interviewing parents and children and referral of children to family day homes that are members of the system or to available health or social services as needs are identified.
2. Training services and responsibilities include, but are not limited to, developing and providing training, technical assistance and consultation to providers and staff of family day homes that are members of the system.
3. Home visitation services and responsibilities include, but are not limited to, visiting family day homes, for the purpose of inspecting, evaluating, approving, supervising and monitoring member homes in accordance with the requirements of these standards.

B. A full-time home visitation staff member shall be responsible for no more than 30 member homes. Two years after the effective date of the regulation, a full-time staff member shall be responsible for no more than 35 member homes. [Four years after the effective date of the regulation,] one full-time home visitation staff member shall be responsible for no more than 40 member homes.

22 VAC 40-121-170. Clerical/support staff.

A. The system shall employ sufficient clerical/support staff to keep correspondence, required records, accounts and files current and in good order.

B. Clerical/support staff shall be qualified by both education and experience to perform assigned tasks.

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22 VAC 40-121-180. Volunteers.

A. A system that uses volunteers shall have a written plan for their selection, orientation, training, supervision and assignment.

B. At least one staff member shall be assigned the responsibility for selection, orientation, training, scheduling, supervision and evaluation of volunteers.

C. A volunteer who is used to perform any staff function or responsibility shall meet the qualifications of the position and the general staff qualifications as required by 22 VAC 40-121-110.

D. The system shall not be dependent on the use of volunteers to ensure the basic provision of services on a continuous basis.

22 VAC 40-121-190. Staff orientation and training.

A. Prior to assuming their duties, all staff members, including a newly employed director, shall be given orientation in at least the following areas:

1. The system's program description;
2. Services offered by the system;
3. Confidential treatment of personal information;
4. Recognizing and reporting child abuse or neglect;
5. System's policies and procedures; and
6. Standards for Licensed Family Day Systems (22 VAC 40-121).

B. All staff (except custodial staff, if employed) shall obtain a minimum of eight clock hours of training annually, through in-service training programs or institutes, workshops, classes or conferences.

1. The training shall be in areas related to the employee's assigned duties and responsibilities and shall include an update to the topics covered during orientation.
2. Training shall be conducted by trainers who meet the qualifications in 22 VAC 40-121- 280.

C. Documentation of orientation and training, including the date and total hours of training received, the content of the training, and the name of the organization or person who sponsored the training shall be filed in the employee's record.

22 VAC 40-121-200. Records for system staff.

A. The system shall maintain a record on each staff member and volunteer.

B. The record shall contain at minimum the following:

1. Personal and social data.
 - a. Name;
 - b. Birthdate;
 - c. Current address and telephone number;
 - d. Position and date employed;

e. Last previous employment;

f. Copies of at least three references or notations of verbal references reflecting the date of the reference, the source and the content;

g. Background checks, including criminal record checks, child abuse and neglect central registry checks and sworn disclosure statements, as required in § 63.2-1720 of the Code of Virginia;

h. Previous experience and training;

i. Name and telephone number of a person to contact in an emergency; and

j. Date and reason for termination of employment.

2. Documentation of orientation and annual training received following employment as required in 22 VAC 40-121-190.

C. Staff records shall be current, kept in a locked area and retained by the system until two years after employment or volunteer service is terminated.

PART IV. SERVICES TO MEMBER HOMES.

22 VAC 40-121-210. Approval criteria and requirements.

The system shall develop criteria and requirements that family day homes must meet to be approved as members of the system. At minimum, these criteria and requirements in all cases shall match or exceed the requirements for licensed family day homes.

Exceptions:

1. The regulation, General Procedures and Information for Licensure, is not applicable to homes that are members of the licensed system.
2. The family day system shall comply with the recordkeeping requirements in 22 VAC 40-121-370 and 22 VAC 40-121-380.

22 VAC 40-121-220. Approval determination.

A. Prior to approval of any home as a member of the system, the system shall determine that the home complies with the criteria and requirements established by the system in accordance with 22 VAC 40-121-210.

B. The investigation shall include interviews with all adult members of the household and at least two interviews with the day care applicant provider, one of which shall take place in the home where care will be provided to the children.

C. The capacity of the home shall be determined, including evaluation of any unusual conditions.

1. In no case shall the capacity of the member home exceed 12 children, excluding the provider's own children and any children who reside in the home.
2. If the day care provider has other on-going responsibilities within or outside the home that can reasonably be expected to divert time and attention from the operation of the member home, this factor shall be

considered in determining the approved capacity of the member home and the record shall contain documentation of this evaluation.

D. The compliance investigation, including how capacity was determined, shall be documented and a copy of the compliance investigation maintained in the applicant home's record.

22 VAC 40-121-230. Approval notification.

A. Within 30 days following completion of the compliance investigation required in 22 VAC 40-121-220, the system shall provide written notification to the applicant home of the results of the investigation, to include any corrective action required. The corrective action plan will briefly describe any standard, system policy or procedure not met, the action to be taken to meet it, the date by which it will be completed and the signature of the provider.

B. The approval notification shall include the capacity of the home.

C. The approval notification shall be accompanied by an approval certificate that shall be posted in a place that is conspicuous to the public in each approved home.

22 VAC 40-121-240. Annual evaluation.

Each member home shall be approved annually. The same approval process shall be used as described in 22 VAC 40-121-230.

22 VAC 40-121-250. Agreements with member homes.

A. The system shall have a written agreement with each member home that specifies at least the following:

1. The home's agreement with the system's policies and procedures in the areas identified in 22 VAC 40-121-30 B.
2. A Financial agreement between the system and the member home;
3. The system's role in assisting the home in developing a plan to meet the needs of each child accepted for care;
4. The system's role in planning for regular conferences between the home and parents of children in care;
5. The system's responsibility for supervision of children's care and adjustment;
6. The rights and responsibilities of the system to evaluate, approve, monitor, inspect, supervise, suspend or terminate approval, and provide technical assistance and consultation to member homes;
7. The system's responsibility to refer children to available health and social services;
8. The system's right to remove a child from the home and the conditions under which a child may be moved;
9. The member home's agreement not to accept a child from any source other than the system responsible for the home without the prior approval of the system; and
10. The member home's agreement to comply with the reporting requirements in 22 VAC 121-80.

B. This agreement shall be signed prior to referral of children to the member home.

C. The system shall maintain a copy of the agreement in the member home's record and shall provide a copy to the member home.

22 VAC 40-121-260. Orientation of providers.

A. Prior to approval as a member home, the system shall provide training in the following areas for each day care provider:

1. Department-approved orientation program on the applicable sections of the current regulation, Standards for Licensed Family Day Homes;
2. Orientation to the system;
3. Confidential treatment of information about children and their families;
4. Child abuse and neglect reporting requirements.

B. Within the first three months after approval as a member home, the system shall provide training in the following areas for each day care provider;

1. Organizing for family day care;
2. Child growth and development;
3. Nutrition;
4. Developmentally appropriate activities;
5. Community resources;
6. Behavior management and discipline techniques;
7. Parent-provider relationships;
8. Home safety and fire safety;
9. Appropriate toys for mixed age groups of children; and
10. Recognition and prevention of the spread of communicable diseases.

C. The orientation requirement may be waived if the system certifies equivalent competency in these subject areas. System-developed methods of competency certification shall be subject to review and approval by the department prior to its use.

D. The system shall describe and document the content and hours of orientation received by each provider or the equivalent competency or both. The documentation shall be kept on file at the system office as part of the member home's record.

22 VAC 40-121-270. Training of caregivers.

A. The system shall provide a minimum of 12 clock hours of annual in-service training to caregivers.

B. The licensee shall describe and document the content and hours of on-going training received by each provider and shall keep this documentation on file at the system office as part of the member home's record.

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22 VAC 40-121-280. Qualifications of trainers.

A. All trainers used, including those under contract, shall have an A.A., B.A., B.S., or advanced degree in early childhood education (ECE), child development, home economics, psychology, nursing, social work, special education or related field from an accredited college or university (the degree must directly relate to the area of training).

B. Alternatives to the education requirements in subsection A of this section will be considered on an individual basis for specialized subject matter that is relevant for child care providers but that does not require academic preparation in early childhood education. The trainer must provide the following documentation for consideration:

1. Written description of education related to the field of expertise under consideration; and
2. Brief explanation of how the area of expertise relates to early childhood care.

22 VAC 40-121-290. Technical assistance and consultation.

A. The system shall provide technical assistance and consultation to member homes including, but not limited to, the following:

1. Information and guidance on child development, discipline, safety, children with special needs, nutrition, and provider support services;
2. Information on training resources;
3. Information on community resources; and
4. Toys and equipment.

B. Technical assistance and consultation provided to member homes shall be recorded in the member home's record.

22 VAC 40-121-300. Monitoring.

A. The system shall inspect each member home at least quarterly in order to ensure that the home continues to comply with the system's standards.

B. At least two of the monitoring inspections shall be unannounced.

C. The results of the monitoring inspections shall be documented in the member home's record.

D. The department, at any time, may make an announced or unannounced inspection of a member home in order to ensure continued compliance with the applicable provisions of these standards. The results of such inspections shall be provided to the system.

22 VAC 40-121-310. Complaint investigation.

A. The licensee shall investigate any complaints regarding alleged violations of the Standards for Licensed Family Day Systems by any member home. At its discretion the department's representative may also investigate complaints regarding alleged violations of the Standards for Licensed Family Day Systems by member homes or other pertinent requirements.

B. A complete investigation shall be made, by the licensee, of each complaint received. This investigation shall:

1. Be initiated within five working days following the receipt of the complaint;
2. Be completed within 14 days following receipt of the complaint;
3. Include at least one inspection to the member home on which the complaint was received; and
4. Unless clearly justified by the circumstances, be unannounced and without prior notification of the complaint to the provider.

C. A copy of the complaint record shall be placed in the record of the member home against which the complaint was made.

D. A copy of the complaint record shall be provided to the assigned licensing office within 10 days of the date the complaint investigation is completed.

E. When the complaint concerns a specific child, a copy of the completed record shall be placed in the child's record maintained by the system.

22 VAC 40-121-320. Child abuse or neglect complaint.

A. The family day system shall immediately notify the local department of social services child protective services unit or the Child Abuse and Neglect Hotline (1-800-552-7096/TDD) whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person. The system shall also immediately thereafter call the department's representative to report the suspected abuse or neglect complaint.

B. The family day system shall cooperate with the local department of social services in the investigation of the child abuse or neglect complaint.

C. Written notification of the complaint shall be sent within 72 hours to the local department of social services child protective services unit and to the assigned licensing office.

D. Copies of the written notifications to the local department of social services and the assigned licensing office shall be placed in the file of the member home against which the complaint was made.

E. If the complaint suggests that the suspected abuse or neglect occurred while the child was in care or was perpetrated by the home's provider or household members, the system staff shall immediately consult with Child Protective Services or the police, if necessary, to plan the system's investigation of the member home and to determine the safety of other children in care.

22 VAC 40-121-330. Complaint records.

A. Each complaint on a member home that is received by the system shall be recorded on a complaint record that includes, but is not limited to, the following:

1. Name and address of system home;
2. Name, address and telephone number of complainant;

3. Method by which the complaint was made, including the date and time received;

4. Name of person receiving the complaint;

5. Description of the complaint, including dates and times, where applicable;

6. Findings and action taken to include whether the complaint was found to be valid, invalid or its validity was not clearly determined;

7. Name of the person or persons who investigated the complaint and the date the investigation was completed; and

8. Date the complainant was notified of the results of the investigation.

B. Release of information regarding the identity of the complainant shall be governed by the provisions of the Government Data Collection and Dissemination Practices Act, § 2.2-3800 et seq. of the Code of Virginia.

22 VAC 40-121-340. Corrective action plans.

A. If a complaint against a member home is found to be valid or if the system's monitoring visit reveals violations of the Standards for Licensed Family Day Systems or the system policies and procedures, a written corrective action plan shall be developed, even if the system elects to terminate or suspend its approval of the home. This plan shall be signed by the provider and the system representative, and initiated immediately.

B. The corrective action plan shall specify the standard or system's policy or procedure with which the member home does not comply and specify a date by which the violation shall be corrected.

C. The licensee shall ensure that violations are corrected by the date on the corrective action plan.

D. The system shall make a follow-up inspection to the member home to ensure the violations listed on the corrective action plan are corrected.

E. A copy of the corrective action plan shall be maintained in the record of the member home and on file at the member home.

22 VAC 40-121-350. Suspensions and terminations.

A. The system may suspend or terminate approval of a member home for cause, including, but not limited to:

1. Failure to comply with the standards set forth in the Standards for Licensed Family Day Systems or the system's policies and procedures;

2. Use of fraud or misrepresentation in obtaining approval or in the subsequent operation of the member home.

B. When a member home is found to be in violation of any of the provisions of subsection A of this section, the system shall notify the provider of the violation or violations first orally and then in writing, and, as appropriate, shall afford the provider an opportunity to abate the violation or violations within a time

frame agreed upon by the system and the provider in the corrective action plan.

C. The provider shall immediately abate any violation that places children at risk of abuse, neglect or serious harm or injury.

D. The system shall suspend or terminate approval of the member home if the provider fails to abate the violation or violations within the agreed upon time frame or commits a subsequent violation.

E. The system shall give written notice to the provider within five calendar days, specifying the reason for suspension or termination. The notice shall be delivered either by hand or by certified mail with return receipt requested.

F. Copies of the notification of member home suspension or termination required by subsection E of this section shall also be provided by the system to the assigned licensing office.

PART V. SERVICES TO CHILDREN AND FAMILIES.

22 VAC 40-121-360. Referral to member homes.

A. Children shall be referred only to member homes that have completed the approval process.

B. The system shall not knowingly refer a child to a member home that has reached its approved capacity.

C. A representative of the system shall interview the parent or parents and child prior to referral.

D. The parent and child or children shall visit the member home where care will be provided prior to acceptance into care.

22 VAC 40-121-370. Records on children referred for care.

A. The system shall maintain a record on each child accepted by the system and referred to a member home for care. The record shall be kept current and contain the following:

1. Copy of the child care agreement required by 22 VAC 40-121-380;

2. Record of placement that contains the name of each member home in which the child has received care, the date referred for care and the date and reason care was terminated;

3. The child's full name, nickname (if any), address and birthdate;

4. Copy of the following emergency contact information:

a. Name, address and telephone number of each parent;

b. Name, address and telephone number of each parent's place of employment;

c. Name, office address, and telephone number of the child's physician;

d. Name, address and telephone number of two designated persons to contact in case of an emergency if the parent cannot be reached;

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e. Information on allergies and intolerance to food, medication, or any other substances; written instructions signed and dated by a physician on actions to take in an emergency related to the allergy or intolerance;

f. Name of the parent's hospitalization plan and number or medical assistance plan and number, if applicable;

5. Proof of the child's age and identity and the names and addresses of previously attended child day care and schools.

a. Within seven business days of the child's first day of attendance at the family day home, the provider shall obtain from the parent:

- (1) Verification of the identity and age of the child; and
- (2) Name and location (city and state) of day care programs and schools the child has previously attended.

b. Providers shall verify the identity and age of a child by viewing one of the following:

- (1) Original certified birth certificate;
- (2) Original birth registration card;
- (3) Original notification of birth (hospital, physician, or midwife record);
- (4) Original passport;
- (5) Copy of the placement agreement or other proof of the child's identity from a child placing agency;
- (6) Original or carbon copy (not photocopy) of a record or report card from a public school in Virginia; or
- (7) Signed statement on letterhead stationery from a public school principal or other designated official that assures the child is or was enrolled in the school.

c. The provider shall document in the child's record:

- (1) The method of verification of the child's age and identity; and
- (2) The names and locations of the child's previous child care programs and schools.

d. The provider shall notify the local law enforcement agency if the parent does not provide the information required in subsection 5 of this section within seven business days of the child's first day of attendance at the family day home.

6. Immunizations for children.

a. The provider shall obtain by the first day of attendance and shall maintain documentation that each child is up-to-date for all immunizations required by the State Board of Health.

b. Exceptions.

- (1) Documentation of immunizations is not required for any child whose parent submits an affidavit to the family day home on a Department of Health-approved form stating that the administration of immunizing

agents conflicts with the parent's or child's religious tenets or practices;

(2) Documentation of immunizations is not required for any child whose physician or local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health.

(a) The statement shall include an estimated date when immunizations can safely be administered.

(b) The child shall obtain the immunizations no later than 30 days after this date.

7. Physical examination for children.

a. The provider shall obtain documentation of a physical examination by or under the direction of a physician prior to a child's attendance or within 30 days after the first day of attendance. The physical examination prior to attendance shall have been conducted:

- (1) Within 60 days prior to attendance for children six months of age or younger;
- (2) 90 days prior to attendance for children age seven months through 18 months;
- (3) Six months prior to attendance for children age 19 months through 24 months;
- (4) Twelve months prior to attendance for children two years of age through five years of age; and
- (5) 24 months prior to attendance for children six years of age and above.

b. Exception: Physical examinations are not required for any child who shows no visible evidence of sickness and whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that, to the best of the parent's knowledge, the child is in good health and free from communicable or contagious disease.

8. Transfer of immunization or physical examination reports. A new report of physical examination and immunizations is not required for children transferring from a facility licensed or registered by the Virginia Department of Social Services, certified by a local department of social services, or approved by a licensed family day system if the initial report or copy of the initial report of the physical examination and immunizations is available to the admitting family day home.

9. Forms and content of immunization and physical examination reports for children.

a. The current form approved by the Virginia Department of Health, or any form that provides all of the same information, shall be used to record immunizations received and the results of the required physical examination.

b. Each report shall include the date of physical examination and dates immunizations were received and shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

10. Updated information on immunizations received shall be obtained once every six months for children under the age of two years.

11. Updated information on immunizations received shall be obtained once between each child's fourth and sixth birthdays.

12. Record of each referral of the child or the family to health and social services.

13. Copy of each complaint investigation as required by 22 VAC 40-121-310 C.

B. Children's records shall be kept in a locked area, and retained by the system until three years after termination of services.

22 VAC 40-121-380. Written agreements.

A. A written agreement shall be made between the system and the parent when a referral is made to a member home.

B. The written agreement shall contain the following:

1. An authorization for emergency medical care should an emergency occur and the parent cannot be located immediately (Note: If the parent presents a written objection to provision of medical treatment on religious or other grounds, this document shall be provided to emergency medical personnel);

2. Information on any special services to be provided by the family day home;

3. Information on the hours of care per day, week, or month; cost of care per day, week, or month; frequency and amount of payment per day, week or month;

4. Notice of any special problems or needs of a child;

5. Granting or denying permission for field trips;

6. Granting or denying permission for participation in swimming activities;

7. Any other referral information;

8. Agreement regarding the home in which the child will be placed;

9. Name and address of the provider;

10. Information regarding the means by which care will be provided in the event the primary day care provider is ill, on vacation or otherwise unavailable due to an emergency;

11. Statement that system staff members of both the system and member home in which the child receives care will be available for parent conferences; and

12. Information regarding the role of the system in referring children when the approval of a member home is terminated or suspended.

C. A signed copy shall be maintained in the child's record at the system office, a signed copy given to the parent, and a signed copy maintained in the child's record at the member home.

22 VAC 40-121-390. Referral to health and social services.

A. The system shall maintain a current listing of health and social services available in the community and shall refer providers and parents of enrolled children upon request.

B. The system shall record in the child's record all referrals of the child and his family to health and social services agencies.

VA.R. Doc. Nos. R03-187 and R03-188; Filed July 14, 2004, 9:16 a.m.

Title of Regulation: **22 VAC 40-170. Voluntary Registration of Family Day Homes - Requirements for Contracting Organizations (amending 22 VAC 40-170-10 through 22 VAC 40-170-230; and repealing 22 VAC 40-170-20).**

Statutory Authority: §§ 63.2-217, 63.2-1704 and 63.2-1734 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 8, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Doris Sherrod, Program Development Consultant, Virginia Department of Social Services, Division of Licensing Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7153, FAX (804) 726-7132, or e-mail doris.sherrod@dss.virginia.gov.

Basis: Sections 63.2-217, 63.2-1704 and 63.2-1734 of the Code of Virginia provide the legal authority for the State Board of Social Services to adopt regulations and to establish requirements and qualifications for local agencies and community organizations to which a contract may be issued for the certification of family day homes as eligible for registration. Section 63.2-1704 specifically mandates adoption of regulations by the State Board of Social Services to implement this section.

Purpose: Family day homes that care for fewer than six children may voluntarily register with the Department of Social Services. Community organizations contract with the Department of Social Services to certify family day homes as eligible for registration. This regulation establishes qualifications and requirements that agencies contracting with the department must meet and procedures that must be followed. There have been no significant changes to this regulation since it became effective in 1993. This amended regulation incorporates changes determined to be necessary after approximately 10 years of operation of the voluntary registration program. The proposed changes are intended to update the regulation, to eliminate requirements that have been found to be inefficient, unenforceable or burdensome, to clarify certain requirements, and to add basic needed protections that are essential to the health, safety and welfare of children who receive care in homes certified as eligible for voluntary registration by contracting organizations.

Substance: The amended regulation includes the following substantive changes and new provisions:

1. Eliminates the contracting organization's review committee;

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2. Clarifies the contracting organization's responsibility to provide training to registered providers as a requirement rather than an option, in accordance with the statute;
3. Clarifies the contracting organization's responsibility to provide information about, rather than encourage participation in, the United States Department of Agriculture's (USDA's) food program;
4. Eliminates the requirement that contracting organizations report to the division and to the local health department in the provider's municipality the occurrence of a communicable disease by the next working day after the contracting organization learns of the occurrence;
5. Adds the requirement for written follow-up notification within five working days after oral notification of the department of certain events and changes;
6. Establishes a time frame for submission of quarterly reports to the department;
7. Adds to the information to be submitted on quarterly reports the requirement to include the total number of registered providers;
8. Eliminates the requirement to make chronological lists of events about providers on compliance and enforcement matters available for public review;
9. Eliminates the requirement that the executive director or administrator ensure that each provider operates in compliance with all applicable requirements for providers;
10. Separates the qualifications of persons providing evaluation, monitoring, support and technical assistance to providers from the qualifications of persons providing training;
11. Adds first aid and CPR appropriate to the ages of children in care to the list of suggested training topics;
12. Allows contracting organizations to collect a nonrefundable fee not to exceed \$50 when a provider moves to a new address;
13. Increases the fee that contracting organizations may assess for additional home visits to confirm corrective action from a maximum \$10 to a maximum \$20;
14. Clarifies contracting organizations' responsibilities upon receipt of a complaint involving a registered provider;
15. Transfers from the contracting organization to the department the responsibility for assuring that registered providers and parents have access to and review the information to parents statement (22 VAC 40-170-210);
16. Clearly establishes authority for both the contracting organization and the department to visit a registered home during the home's hours of operation;
17. Moves all responsibilities related to adverse actions (denials, revocations, refusals to renew), including issuance of notices and appeal hearings from the contracting organizations to the department.

Issues: Community organizations and agencies compete for the contract to certify family day homes as eligible for

voluntary registration by the Department of Social Services. The proposed amendments, overall, are advantageous to competing organizations in that some requirements are being eliminated, and others have been identified as being more appropriately handled by the department.

The public benefits from the movement of activities related to adverse enforcement actions from the contracting organization to the department. This change eliminates steps and speeds up the process of removing a certificate of registration when necessary by giving voluntarily registered providers the same rather than more opportunities for appeal than licensed providers.

There has been a modest increase in fees charged to providers for processing registration applications and making follow up visits to confirm compliance with the regulation for providers. The fee of up to \$50 assessed when a provider moves to a new location has been implemented in practice, but is now supported by the regulation. The fee for follow up visits has been increased from \$10 to a maximum \$20. Both of these changes are advantageous to contracting organizations.

The primary advantage to the agency of making the requirements less burdensome for contracting organizations is that the department does not have to assume the responsibility for implementing the program. Section 63.2-1704 B of the Code of Virginia states that "if no qualified local agencies or community organizations are available, the Commissioner shall implement the provisions of this section." There are financial incentives for community organizations that are also USDA food program sponsors to implement the program.

There are no disadvantages to the Commonwealth, the agency or the public as a result of this regulatory action.

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

Summary of the proposed regulation. The proposed regulations will (i) allow voluntary family day home contracting organizations to collect up to \$50 fee associated with inspection of a new facility when a provider relocates, (ii) increase the fee for additional home visits to confirm corrective action from \$10 to \$20, (iii) remove the requirements to have a review committee and transfer the responsibilities related to adverse actions from contractors to the Department of Social Services, (iv) transfer the responsibility to the Department of Social Services for

assuring that registered providers and parents have access to information on the parents statement, and (v) clarify numerous other requirements.

Estimated economic impact. The proposed regulations apply to contracting organizations that administer the voluntary registration program for family day homes. Family day homes providing care to fewer than six children may voluntarily register with the Department of Social Services (the department). The voluntary registration program is currently administered by six organizations that operate under contracts with the department in a specific area of the state. Contracting organizations conduct criminal history background checks, child abuse registry checks, process tuberculosis screenings and assess the health and safety of the homes and personal qualifications. Upon recommendation by a contracting organization, the department issues a certificate of registration valid for two years. Currently, about 1,185 providers are issued voluntary registration certificates upon recommendation by the contracting organizations. These regulations establish standards of administration, personnel, and service for these organizations.

One of the proposed changes will allow contracting organizations to collect up to \$50 fee when a voluntarily registered provider moves to a new address. The organizations currently are not authorized to collect any fees when a provider changes its address. However, when a provider relocates, the contracting organization must conduct a new inspection to ensure compliance of the new facility with health and safety standards. This proposed change will allow the contracting organizations to recover some of the costs associated with the inspection from the providers.

The department reports that last year approximately 45 providers relocated, but only 18 chose to maintain their certificates while the remaining ones moved out of state, could not be located, or chose not to continue in the program. Based on 18 relocations per year, the proposed new fee would transfer approximately \$900 from providers to contracting organizations to cover their costs associated with additional inspections of new facilities.

Another proposed change will increase the \$10 maximum fee the organizations may charge for follow up corrective action visits to \$20. Since there is no available data on the number of corrective action visits, the total fiscal impact of this change cannot be accurately estimated, but similar to the previous change, this increased fee will allow contracting organizations to recover a larger share of their costs.

Another proposed change will eliminate the requirement that a contracting organization maintain a review committee including at least three people. Currently, these committees make recommendations to the commissioner to deny, revoke, or refuse to renew a certificate of registration. Also, the current regulations assign to the contracting organizations several responsibilities related to adverse actions such as issuance of notices and appeal hearings. The department already addresses all adverse actions through the Administrative Process Act. The removal of these requirements will eliminate duplicative and unnecessary processes that have been causing some delays. Thus, this change is expected to expedite the decision process

regarding adverse actions. Also, some savings in terms of staff time are expected to accrue to the contracting organizations. However, whether expected savings in staff time will translate into fiscal savings is not known as we do not know whether the review committee members receive any compensation for their work on the committee.

The proposed changes will also shift from contracting organizations to the department the responsibility of supplying the parents statement to home care providers. This statement contains information for parents that the provider has received certificate of registration, that the provider is required to comply with certain requirements, that parents may report alleged violations, and about the scope and limitations of voluntary registration, etc. Currently, the department already supplies that information to the providers. Thus, this change may provide small savings in terms of copying costs to the contracting organizations.

All of the remaining proposed changes are clarifications of the current requirements or enforcement and are not expected to create any significant economic effects.

At the aggregate, the proposed changes will (i) reduce the administrative costs for the contracting organizations by a small amount and (ii) allow contracting organizations to recover a larger proportion of their costs from voluntarily registering providers. Thus, these changes can be expected to strengthen incentives for contracting organizations to continue participation in voluntary registration program. On the other hand, incentives for voluntary providers to obtain a certification and comply with health and safety requirements included in the regulations may be weakened. However, the department believes that even with the proposed fee adjustments, the contracting organizations will likely continue to absorb some of the costs associated with administering this program.

The contracting organizations administer the voluntary registration program for not-for-profit purposes, as there is no direct funding from the department. These organizations are allowed to charge some fees to cover some of their costs. However, it appears that the maximum fees that are allowed under these regulations, even with the proposed new fee for relocations and increased fee for corrective action visits, do not cover the cost of inspections. For example, in its notification letter to end participation in this program, one of the contractors stated that it costs more than the revenues it can collect for each initial registration, maintaining provider records, providing technical assistance, investigating complaints, visits to provider who moved, and additional corrective action visits. Telephone conversations with the contracting organizations revealed that the actual costs per provider per year is in the \$250 to \$300 range.

Theoretically speaking, voluntarily participating providers should be required to cover the costs to the extent they receive private benefits from it. Also, it would be irrational for providers to obtain voluntary certification unless they stand to gain. If substantial costs were required to improve a facility to obtain voluntary certification, we would not expect many providers to proceed, but give up the voluntary certification option. One of the providers indicates that the main reason for most of the providers to voluntarily register is being eligible

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to provide care to children whose costs are paid by the state. Thus, it seems that the primary responsibility to pay for the costs associated with voluntary registration falls on the providers.

One might argue the opposite on the grounds that there are public benefits from voluntary compliance. If that is the case, the economic theory suggests the program costs should be paid from public funds.

These regulations allow contracting organizations to collect fees from the providers and hence can be assumed to support the belief that the providers should pay the costs. However, the fees that can be collected appear to be too low, forcing contracting organizations to absorb some of these costs. Since the providers, or the government, or both should pay for the program costs, economic theory suggests that unintentionally forcing the contracting organizations to continue to pay for these costs may lower economic welfare. Unless the funding of contracting organization costs is raised to the level commensurate with their actual costs, it would be unrealistic to expect their continued participation in this program.

Businesses and entities affected. Currently, there are six contracting organizations administering the voluntary registration program. Approximately 1,185 family day home providers are voluntarily registered.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth.

Projected impact on employment. The proposed changes do not appear to have the potential to affect the business decisions of providers in a significant way, partly because these rules are for voluntary certification. Thus, no significant effect on employment is expected.

Effects on the use and value of private property. Similarly, due to the voluntary nature of this regulation, no significant effect on the use and value of private property is expected.

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

Summary:

The proposed amendments (i) update statutory references throughout the regulation to the new citations in recodified Title 63.2 of the Code of Virginia, along with other revised statutory references since initial adoption; (ii) eliminate requirements that have been found to be inefficient or burdensome, including but not limited to, the establishment and duties of the contracting organization's review committee; (iii) clarify contracting organizations' responsibilities in areas including, but not limited to, training and complaint investigations; (iv) add requirements that establish time frames for submission of reports and for notification of the department of certain events and changes; and (v) transfer responsibility for providing certain information to parents and for processing all aspects of adverse enforcement actions from contracting organizations to the department.

22 VAC 40-170-10. Definitions.

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

"Applicant" means a person 18 years of age or older who has applied for an initial certificate of registration.

*"Certificate of registration" means a document issued by the commissioner to a family day provider, acknowledging that the provider has been certified by the contracting organization or the department and has met the *Voluntary Registration of Family Day Homes - Requirements for Providers* (22 VAC 40-180-10 et seq.) under the Voluntary Registration Program for Family Day Homes.*

"Child" means any individual under 18 years of age.

"Commissioner" means the Commissioner of ~~Social Services~~ the department, his designee or authorized representative.

"Commissioner's designee" means a designated individual or division within the Department of Social Services who is delegated to act on the commissioner's behalf in one or more specific responsibilities.

"Contract" means the document signed by the Department of Social Services and the contracting ~~agency~~ organization.

"Contracting organization" means the agency ~~which has been selected by~~ that has contracted with the Department of Social Services to administer the voluntary registration program for family day homes.

"Cooperative agreement" means an agreement between or among contractors administering the Voluntary Registration Program.

"Denial of certificate of registration" means a refusal by the commissioner to issue a certificate of registration.

"Department" means the ~~Virginia~~ State Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner ~~in carrying out the responsibilities and duties specified in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.~~

"Division" means Division of Licensing Programs.

"Evaluate" or "evaluation" means the review of a family day-care provider by a contracting organization upon receipt of an application for a certificate of registration to verify that the applicant meets the requirements for providers.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the care provider's own children and any children who reside in the home, when at least one child receives care for compensation. ~~From July 1, 1993, until July 1, 1996, family day homes serving nine through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, the family day homes serving six through 12 children, exclusive of the~~

~~provider's own children, shall be licensed. The provider of a licensed or registered home family day home shall disclose to the parents or guardians of the children in care the percentage of time per week that persons other than the provider will care for children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed.~~ However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

~~"Family day provider applicant" or "provider applicant" means a person at least 18 years of age who has applied for a certificate of registration.~~

~~"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual (i) maintains business or , professional, family, and community relationships which that are characterized by honesty, fairness, truthfulness, and dependability, and (ii) has a history or pattern of behavior that demonstrates a concern for the well-being of others to the extent that the individual is considered suitable and able to administer a program for to be entrusted with the care, supervision, and protection of children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, may shall not be considered objective references.~~

~~"Monitor" or "monitoring visit" means to visit a registered family day provider to review the provider's compliance with applicable the Requirements for Providers (22 VAC 40-180) or a visit to the contracting organization to review the organization's compliance with the Requirements for Contracting Organizations (22 VAC 40-170) and any other applicable requirements.~~

~~"Parent" means a biological, foster or adoptive parent, legal guardian, or any person with responsibility for, or custody of, a child enrolled or in the process of being enrolled in a family day home.~~

~~"Provider" or "registered family day provider" means a person who has received an initial or renewed a certificate of registration issued by the commissioner. This provider has primary responsibility in providing care, protection, supervision, and guidance for children in the registered home.~~

~~"Provider assistant" or "assistant" means a person 14 years of age or older who has been designated by the family day provider and approved by the contracting organization to assist the provider or substitute provider in the care, protection, supervision, and guidance of children in the home.~~

~~"Refusal to renew a certificate of registration" means the nonissuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.~~

~~"Registered family day home" means any family day home which that has met the standards for voluntary registration for~~

such homes pursuant to regulations prescribed by the Board of Social Services and ~~which that~~ has obtained a certificate of registration from the Commissioner of Social Services.

"Registration fee" means the payment to a contracting organization by a provider or applicant upon filing an application for a certificate of registration.

"Renewal of a certificate of registration" means the issuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.

~~"Requirements for Contracting Organizations" means the definitions for key terms and the staff and service requirements for contracting organizations.~~

~~"Requirements for Providers" means the procedures and general information set forth for providers operating family day homes who voluntarily register. This includes staffing requirements and a self administered health and safety checklist.~~

"Revocation of a certificate of registration" means the removal of a provider's current certificate of registration *by the commissioner* for failure to comply with the applicable requirements for providers.

"Sponsoring organization" refers to an agency administering the ~~USDA's adult and child food nutrition program~~ *USDA Child and Adult Care Food Program*.

"Staff member" means a person employed by or working for a contracting organization on a regularly scheduled basis. This includes full-time, part-time, and voluntary staff, whether paid or unpaid.

"Substitute provider" means a ~~provider~~ *person at least 18 years of age* who meets the Requirements for Providers, *is approved by the department* and who is readily available to provide substitute child care in a registered provider's home or in the substitute provider's home.

~~"Surrender of a certificate of registration" means voluntary termination of a certificate of registration by a provider prior to expiration.~~

"USDA" means the United States Department of Agriculture.

22 VAC 40-170-20. Legal authority. (Repealed.)

~~The Code of Virginia was amended and § 63.1-196.04 was added in the 1991 General Assembly session to establish provisions for the voluntary registration of family day homes. In 1993, § 63.1-196.04 of the Code of Virginia was amended and reenacted to include a new definition of a family day home.~~

22 VAC 40-170-30. Eligibility and qualifications.

A. Any public or private for-profit or nonprofit organization may apply to become a family day contracting organization, provided the organization meets the eligibility requirements.

B. In order to secure, maintain or renew a contract to provide registration services for family day homes, a contracting organization shall demonstrate its ability to provide for sound facility and finances, permanent records, the collection of fees, the maintenance and provision of reports, officers and agents

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who have good character and reputation, and as set forth below.

1. The contractor shall maintain adequate facilities as verified by an on-site visit prior to approval of the contract and subsequent inspections and monitoring visits.

2. The contractor shall demonstrate its ability to provide for sound financial management through submission of:

a. Financial statements of the organization for which an independent auditor has rendered an opinion for the most recent fiscal year;

b. A report on the internal control structure of the organization prepared by an independent auditor for the most recent fiscal year, which is free of material weaknesses that affect the fiscal management capabilities of the organization; and

c. Any program audit or review performed by state and federal agencies prepared within the last two years which is free of material weaknesses that affect the fiscal management capabilities of the organization.

3. The contractor shall provide for workers' compensation insurance required by Virginia law and a minimum of \$500,000 liability insurance.

4. Contracting requirements.

a. The contracting organization must meet the applicable contracting requirements of the commissioner and the State Board of Social Services and the Requirements for Contracting Organizations.

b. The commissioner may give preference to contracting organizations which serve large geographic areas and may limit the number of contractors based on available resources.

c. The commissioner may modify the territories assigned to contractors to better facilitate the administration of the registration program at any time.

5. Training, technical assistance, and information. The organization shall provide training ~~or~~ and educational information, technical assistance and consultation to providers (See 22 VAC 40-170-150 and 22 VAC 40-170-200).

6. Program requirements. The contracting organization shall:

a. Process applications for voluntary registration;

b. Certify family day homes as eligible for registration (as noted in 22 VAC 40-170-160);

c. Provide educational information to parents;

d. Maintain a list of substitute providers who are voluntary registrants which shall be given to providers upon request; and

e. Provide information as required under the Freedom of Information Act (~~§ 2.1-340 et seq.~~ 2.2-3700 et seq. of the Code of Virginia) and ~~Privacy Protection Act Government~~

~~Data Collection and Dissemination Practices Act (§ 2.1-377 et seq.~~ 2.2-3800 et seq. of the Code of Virginia).

7. Monitoring, complaints and referrals. The contracting organization shall:

a. Monitor family day providers for compliance with ~~health and safety checklist~~ the *Requirements for Providers* (as described in 22 VAC 40-170-190);

b. Respond to routine complaints under the directions of the department (as noted in 22 VAC 40-170-180);

c. Make appropriate referrals to state and local agencies; and

d. ~~Encourage provider participation in~~ *Provide information about* the USDA food program and refer interested persons to sponsoring organizations.

8. The contracting organization shall comply with all performance provisions and level of service provisions as specified in the executed contract.

C. The contracting organization may elect to provide training and may subcontract for the provision of this training to providers. The contracting organization shall ensure that:

1. An agency under subcontract complies with all applicable Requirements for Contracting Organizations in the delivery of training to the providers;

2. Trainers meet the criteria set forth in 22 VAC 40-170-150; and

3. A copy of the subcontract between the contracting organization and the agency subcontracted to perform training shall be maintained on file with the contracting organization.

22 VAC 40-170-40. Administrative responsibility.

A. A privately operated contracting organization shall have a governing board of at least three members that has the authority to:

1. Set overall administrative and operational policies for the contracting organization;

2. Ensure the financial viability of the contracting organization;

3. Ensure policies pertaining to, but not limited to:

a. Program services;

b. Personnel recruitment, selection, training and performance evaluation; and

c. Data collection and reporting;

4. Oversee fiscal operations, including budget and resource development.

B. The governing board shall delegate responsibility for day-to-day operations to an executive director or administrator. The director shall maintain minutes and attendance records of board meetings for review by the division.

C. A publicly operated contracting organization shall have an advisory committee of at least three people that offers advice

and counsel to the contracting organization on the fiscal and administrative operations of the family day registration program. The director shall maintain minutes and attendance records of advisory committee meetings and attendance for review by the division.

~~D. The governing board of a private contracting organization or the director of a public contracting organization shall appoint a review committee of at least three people who shall:~~

- ~~1. Review recommendations to the commissioner to deny, revoke or refuse to renew a certificate of registration if requested by the provider;~~
- ~~2. Exclude from its membership staff members responsible for recommending decisions regarding the denial, revocation or refusal to renew a certificate of registration; and~~
- ~~3. Maintain on file documentation of its findings.~~

~~E. D.~~ The contracting organization shall make family day registration services available to those who request it.

22 VAC 40-170-50. Inspection and monitoring of contractors.

A. The department will conduct a comprehensive programmatic inspection of the contracting organization to determine compliance at least once during the contract period.

B. Each contract period shall be two years or as established by the department.

C. An authorized representative of the department may make an announced or unannounced visit at any time during the contracting organization's normal operating hours to monitor the contracting organization and review files, reports or records to determine its compliance with the requirements and to investigate a complaint.

D. The department shall notify the contracting organization in writing whenever the department determines that the contracting organization is operating in violation of any of the Requirements for Contracting Organizations. Notifications will specify the plan of corrective action, including completion date, that must be taken by the contracting organization in order to abate the violation or violations.

E. If the contracting organization fails to abate the violation or violations or commits subsequent violations, the contract may be revoked or refused renewal. A contract may also be revoked or refused renewal for:

1. Any activity, policy or conduct that presents a serious or imminent hazard to the health, safety and well-being of a child;
2. Demonstrating ~~of~~ *an* ~~inability~~ *inability* to operate or to administer the voluntary family day registration program in accordance with the contract *or this regulation*;
3. Using fraud in obtaining or maintaining a contract;
4. Any fiscal policies, procedures, or conduct ~~which that~~ *that* demonstrate inadequate fiscal management of program funds; or

5. Failing to comply with the cooperative agreement among contractors.

F. If a contracting organization's approval is revoked or refused renewal or if the contract is terminated for any reason, all records related to voluntary registration shall be brought up to date, put in good order, and given to the department within five working days.

22 VAC 40-170-60. Reporting requirements.

A. The contracting organizations or any staff member shall notify the local department of social services or the state department's Child Protective Services office as specified in Chapter 12 15 (§ ~~63.1-248.3 et seq.~~ *63.2-1509 et seq.*) of Title ~~63.1~~ *63.2* of the Code of Virginia, whenever there is a reason to suspect that a child has been subjected to abuse or neglect by a provider or any other person.

B. The contracting organization or any staff member shall notify the department immediately of any imminent danger or dangers or hazard or hazards that threaten the health and safety of children in the provider's home.

~~C. The contracting organization shall notify the division and the local health department in the provider's municipality of the occurrence of a communicable disease. Such notification shall be made by the next working day after the contracting organization learns of the occurrence.~~

~~D. C.~~ The contracting organization shall notify the ~~central~~ *central* office of the division, orally, of any of the following changes or events by the next working day after the contracting organization learns of their occurrence *and in writing within five work days*:

1. Injury that results in ~~the~~ *an* ~~emergency medical treatment or~~ *emergency medical treatment or* the admission of a child to a hospital while in the care of a provider;
2. Lost or missing child when it was necessary to seek assistance of local emergency or police personnel;
3. The death of a child while in the care of a provider;
4. Damage to the contracting organization's offices that affects the operation of family day registration;
5. Any criminal charge or charges and their disposition or dispositions, as specified in § ~~63.1-198.1~~ *63.2-1719* of the Code of Virginia, of the staff of the contracting organization or of a provider, substitute provider, provider assistant, or member of a provider's household;
6. Cancellation of the contracting organization's general or comprehensive liability insurance coverage;
7. Unanticipated permanent or temporary closing of the contracting organization or the registration program; and
8. The provider is exceeding the number of children allowed under registration and is required by law to be licensed.

~~E. D.~~ The contracting organization shall notify the division orally within three working days, of any change in office location or the director of the contracting organization or the registration program *and in writing within five work days*.

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~~F- E.~~ The contracting organization shall report statistical data as noted in 22 VAC 40-170-70 and specified by the contract.

22 VAC 40-170-70. Contracting organization records.

A. The contracting organization shall maintain the following records:

1. Administrative records.

~~a. The Requirements for Voluntary Registration of Family Day Homes;~~

~~b. The document providing information to parents as specified in 22 VAC 40-170-210;~~

~~e. a.~~ Staff records, as specified in 22 VAC 40-170-100;

~~d. b.~~ A copy of the contracting organization's insurance policies as specified ~~here and~~ by the contract *and in 22 VAC 40-170-30 B 3*;

~~e. c.~~ Documentation of all funds collected and expended related to the administration of the program, including registration fees;

~~f. d.~~ A copy of the contracting organization's financial records and audits;

~~g. e.~~ Documentation of training sessions conducted by the contracting organization or subcontractors and the qualifications of trainers;

~~h. f.~~ Files documenting recommended denials, *surrenders, revocations* and nonrenewals of certificates of registration ~~and appeals~~ as specified in 22 VAC 40-170-230;

~~i. g.~~ A copy of corrective action plans to abate violations of the Requirements for Contracting Organizations;

~~j. h.~~ A copy of the inspection and monitoring visit reports completed by the department; and

~~k. i.~~ A copy of the cooperative agreements with other contractors.

2. A copy of contracts between the contracting organization and any subcontracted agency to perform training related to family day registration.

3. Records on providers as specified in Part IV (22 VAC 40-170-140 et seq.) and all documents related to the registration application. Records shall also be kept on providers who have discontinued family day services, and additional information as may be received regarding the provider's compliance with the Requirements for Providers.

B. The contracting organization shall, *within 30 days after the end of each quarter*, submit ~~quarterly~~ narrative and statistical reports including, but not limited to:

1. *The total number of registered providers*;

~~2.~~ 2. The number of applications pending and withdrawn;

~~3.~~ 3. The training information listed in 22 VAC 40-170-150 G;

~~4.~~ 4. Program income and expenditures as noted in 22 VAC 40-170-170;

~~4.~~ 5. Number of monitoring visits, the areas of noncompliance and the results of any complaint investigations; and

~~5.~~ 6. Narrative reports on progress or impediments related to the attainment of goals and objectives set forth in the contract.

C. The administrative records specified in this section shall be maintained by the contracting organization for three calendar years.

22 VAC 40-170-80. Complaints against a contracting organization.

A. Complaints against a contracting organization ~~shall will~~ be investigated by the department. An investigation ~~shall will~~ be conducted to determine compliance with the contract and the Requirements for Contracting Organizations. The contracting organization ~~shall will~~ be notified of the findings by the department.

B. If the contracting organization wishes to appeal an administrative decision that does not result in revocation of the contract by the department, the contractor ~~may shall~~ follow an informal appeal process as outlined in the Department of Social Services, Division of Licensing Programs *current regulation*, General Procedures and Information for Licensure (22 VAC 40-80-10 et seq.).

C. The contracting organization may appeal a decision by the department resulting in a revocation decision in accordance with the Administrative Process Act (§ ~~9-6.14:1 et seq.~~ 2.2-4000 et seq. of the Code of Virginia).

22 VAC 40-170-90. Public access to records.

A. The contracting organization shall make the following files available for public review:

1. Active applications for a certificate of registration and related materials or documentation;

2. List of registered providers updated quarterly;

3. Correspondence between the contracting organization and the provider or other parties in matters pertaining to the contracting organization's monitoring or registration of the provider;

4. Evaluation and monitoring reports, where applicable, reflecting the results of the contracting organization's evaluation and monitoring of the provider;

5. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the Requirements for Providers;

6. Enforcement letters from the contracting organization requiring abatement of violations of the Requirements for Providers;

7. Correspondence to the contracting organization from the department regarding enforcement actions against the provider;

~~8. Chronological lists of events about the provider on compliance and enforcement matters;~~

~~9.~~ 8. Completed complaint investigations reports, except child abuse or neglect investigations or other information restricted by the requirements of Chapter 42 15 (§ ~~63.1-248.1 et seq.~~ 63.2-1500 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia or other state law; and

~~10.~~ 9. Any other documents, materials, reports, or correspondence that would normally be included as part of the public record shall remain on file for three years.

B. The contracting organization shall keep confidential and not part of the public record the following:

1. Records, reports or correspondence that pertain to child abuse or neglect investigations involving enrolled children and any other information pertaining to children, parents or providers that are restricted from public access under Chapter 42 15 (§ ~~63.1-248.1~~ 63.2-1500 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia or other state law;

2. Records, reports, correspondence or forms containing names of enrolled children and their parents;

3. Confidential information with regard to specific contracting organization personnel;

4. Any items that deal with reports of inspection or complaint investigations that are still in progress; and

5. Other material required by state law to be maintained as confidential.

C. If a contracting organization has a question about whether information may be released to the public, the executive director should consult the organization's attorney and a representative of the department.

D. Contractors may not charge more than provided under the Freedom of Information Act (§ ~~2.1-340 et seq.~~ 2.2-3700 et seq. of the Code of Virginia) for copies of public information.

~~E. The contracting organization shall maintain on file for the executive director or administrator and for each staff member the information described in Part III (22 VAC 40-170-100 et seq.).~~

22 VAC 40-170-100. General staff requirements.

A. The executive director or administrator, board members, corporate officers, or partners and every staff member of a contracting organization shall be of good character and reputation. Staff shall possess ability to provide services to parents and providers, as specified in these requirements. The director, board members, and corporate officers shall possess ability to direct the organization.

B. Prior to the employment or utilization of the executive director or administrator or a staff member directly involved with administering the registration program, the contracting organization shall require the applicant for executive director or administrator and each staff applicant to complete and sign an application for employment, indicating the applicant's:

1. Name, address and telephone number;
2. Education and work experience; and

~~3. Criminal records check and Child Protective Services Central Registry clearance Background checks in accordance with § 63.2-1721 B of the Code of Virginia and the current regulation regarding background checks.~~

C. Prior to the executive director's or administrator's or any staff member's employment, the contracting organization shall obtain two references, either in writing or orally, from former employers or other persons who have knowledge of the applicant's work experience, education and character. If the reference is given orally, documentation shall be on file with comments. If staff is already employed, references shall be provided within 20 days of signing the contract with the department.

D. The executive director or administrator and every staff member shall notify the contracting organization by the end of the contracting organization's next working day of any criminal convictions or charges filed during their employment or utilization by the contracting organization.

E. Evidence of conviction for crimes of violence, child abuse or neglect or other crimes which may relate adversely to the operation of the contracting organization shall be among those actions that are considered in determining an individual's fitness and suitability to serve as executive director or administrator or as a staff member.

F. Except for crimes specified in § ~~63.1-498.4~~ 63.2-1719 of the Code of Virginia, evidence of conviction of a crime by an individual serving as executive director or administrator, corporate officer, or partner or as a staff member shall not automatically result in the cancellation of the contract. Such determination shall be made on a case-by-case basis by the commissioner or the commissioner's designee.

22 VAC 40-170-110. Types and responsibilities of staff.

A. Each contracting organization shall have an executive director or administrator who is responsible for the overall management and administration of the contracting organization's family day registration program.

B. The contracting organization shall have sufficient staff to carry out the family day registration program.

C. The executive director may also serve as a staff member if the administrator has no role in approving providers for the USDA food program. Likewise, staff involved in approving homes for USDA shall not approve homes for registration unless an alternative arrangement is approved by the division.

D. The executive director or administrator shall ensure:

1. That the contracting organization operates in compliance with all applicable Requirements for Contracting Organizations;

~~2. That each provider operates in compliance with all applicable Requirements for Providers;~~

~~3.~~ 2. The supervision of all staff members assigned to the contracting organization's family day registration program;

4. 3. The development and implementation of policies and procedures for the day-to-day operation of the contracting organization's family day registration program;

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~~5.~~ 4. The orientation of staff members to the policies and procedures of the contracting organizations;

~~6.~~ 5. The development and maintenance of administrative, fiscal and program records; and

~~7.~~ 6. The development and implementation of a program of outreach, public relations, and technical assistance as directed by the division.

22 VAC 40-170-120. Staff qualifications.

A. The executive director or administrator shall possess a bachelor's degree and a minimum of two years of managerial or supervisory experience. The degree and experience shall be in the field of human services, child care services, child development, education, psychology, nursing, social work, or business.

B. Staff members responsible for provider evaluation, monitoring, support, *and* technical assistance ~~and training~~ shall possess the following:

1. An associate's degree in human services, child care services, child development, education, nursing or social work and one year professional experience working with children; or

2. A high school diploma or General Education Development (GED) diploma and three years of experience in the field of human services, child care services, child development, education, nursing, psychology, or social work and at least one year of which must be professional experience working directly with children.

22 VAC 40-170-130. Staff training.

The executive director or administrator shall:

1. Provide staff members with access to a copy of the Requirements for Contracting Organizations and the Requirements for Providers.

2. Ensure that staff, as appropriate, are trained in:

- a. Recognizing and reporting child abuse or neglect;
- b. Evaluating provider applicants as specified in 22 VAC 40-170-140;
- c. Conducting or securing training sessions for providers when requested;
- d. Monitoring providers as specified in 22 VAC 40-170-190;
- e. Providing technical assistance to providers as specified in 22 VAC 40-170-200;
- f. Procedures for identification and referral of special needs children; and
- g. Recruiting providers for registration and promoting the program through public relations as directed or approved by the ~~division~~ department.

3. Ensure staff designated to conduct training meet the qualifications set forth for trainers in 22 VAC 40-170-150.

22 VAC 40-170-140. Evaluation of family day provider applicants.

A. The contracting organization shall provide to each applicant for a certificate of registration the following information:

1. A voluntary registration provider application, including the health and safety checklist;
2. A request form for a criminal records check and a Child Protective Services (CPS) Central Registry clearance;
3. A sworn disclosure statement;
4. A copy of the Requirements for Providers;
5. A list of sponsoring organizations for the USDA food program;
6. A list of all contracting organizations; and
7. Other forms and information as required by the division.

B. The contracting organization's evaluation of each applicant shall include a review of the information required on the application for registration and other program requirements.

C. The contracting organization shall evaluate each provider prior to recommending certification, denial or refusal to renew the provider's certificate of registration.

D. The contracting organization shall visit each applicant's home as described in 22 VAC 40-170-190 prior to recommending the issuance of the certificate of registration and at renewal to evaluate the applicant's compliance with the Requirements for Providers.

E. A renewal application packet ~~will~~ *shall* be sent to the provider no later than 90 days prior to the expiration of the current certificate of registration.

F. If needed, the provider and contracting organization shall complete a corrective action plan during the initial home visit. This will briefly describe any standard not met, the action to be taken to meet it, the date by which it will be completed, and the signature of the provider.

22 VAC 40-170-150. Training of family day providers.

A. The contracting organization shall supply to each provider:

1. Prior to recommending the issuance of a certificate of registration, a copy of appropriate informational materials supplied by the department; and
2. From time to time, any other available materials that may assist the provider in operating a family day home.

B. The contracting organization shall ensure training or educational materials are available and easily accessible to providers prior to recommending the issuance of a certificate of registration and after being awarded the certificate by the commissioner.

C. Training or educational materials shall include information regarding, but not limited to, the following subjects:

1. Child development;
2. Discipline;

3. Safety, ~~first aid~~ and emergency evacuation procedures;
4. Health and sanitation;
5. Nutrition;
6. Program activities;
7. Child abuse detection and prevention;
8. Parent-provider communication;
9. Injury prevention; ~~and~~
10. ~~Special needs training.~~ *Serving children with disabilities; and*
11. *First aid and CPR, as appropriate to the ages of children in care.*

D. Where training is provided, sessions for provider applicants shall include group or individual instruction by persons with expertise in the areas of instruction. All trainers used, including those under subcontract, shall have the following education and experience:

1. A.A., B.A., B.S., or advanced degree in early childhood education (ECE), child development, home economics, psychology, nursing, social work, special education or related field from an accredited college or university (the degree must directly relate to the area of training); or
2. A valid professional credential (or certification) from an early childhood education or child development related organization (such as Child Development Associate Credential or National Association for Family Day Care Accreditation); or
3. Have at least four years of substantial compliance with applicable regulations, in a child care setting working directly with children as a caregiver, teacher, child life worker, social worker, or in a similar role in a program serving children of the age represented in the course, seminar or workshop; and
4. At least 12 college level credits in courses directly related to child growth and development and three professional references. A professional reference may not be from a relative, and must directly relate to the training topics for which the applicant is applying.

E. Alternatives to the education or experience requirements in 22 VAC 40-170-150 D will be considered on an individual basis for specialized subject matter that is relevant for child care providers but which does not require academic preparation in early childhood education. The applicant must provide the following documentation for consideration:

1. A written description of education or experience related to the field of expertise under consideration; and
2. A brief explanation of how the area of expertise relates to early childhood care.

F. Training may be supplemented by:

1. Printed materials;
2. Television broadcasts; or

3. Audio-visual materials.

G. The contracting organization shall maintain on file documentation of training it provides, including for each training session the names of the participants, the goals, a description of the information presented, the date the training occurred and an evaluation.

22 VAC 40-170-160. Issuance of the certificate of registration.

A. If the contracting organization determines that the provider applicant is in compliance with all applicable requirements for providers, the contracting organization shall certify the home as eligible for registration and submit a recommendation on forms prescribed by the commissioner. Upon receipt, the commissioner shall evaluate the recommendation for certification and may register the family day home.

B. The certificate of registration shall be issued by the commissioner to a specific provider at a specific location and shall not be transferable.

C. A provider who has been denied a certificate of registration or has had a certificate revoked or refused renewal by the commissioner shall not be eligible for issuance of a certificate of registration until six months after the date of such action unless the waiting period is waived by the commissioner as noted in Chapter 40 17 (§ ~~63.1-195 et seq.~~ 63.2-1700 et seq.) of Title ~~63.1~~ 63.2 of the Code of Virginia.

22 VAC 40-170-170. Collection of registration fees.

A. The contracting organization shall process all applications for a certificate of registration without regard to the applicant's race, national origin, religion, sex, or age (provider must be at least 18 years of age to register).

B. The contracting organization may collect a nonrefundable biennial registration fee which shall not exceed \$50 from the provider applicant and with each application for renewal of the certificate of registration. The fee shall be paid in the form of check or money order made payable to the contracting organization. This does not include the fee for the criminal records check, CPS Central Registry clearance, or the tuberculosis test.

C. *The contracting organization may collect a nonrefundable fee not to exceed \$50 when a registered provider moves to a new address.*

~~C.~~ D. The contracting organization may assess a fee not to exceed ~~\$40~~ \$20 for an additional home visit if corrective action is needed after the initial home visit and as specified in the Requirements for Providers.

~~D.~~ E. An additional fee shall not be required if a minor change in the information collected occurs before the expiration date of the current certificate of registration or if the provider requires a duplicate copy of the certificate of registration due to loss or destruction of the original.

~~E.~~ F. The contracting organization shall retain the funds generated by registration fees and shall maintain a record of the registration fees collected from the providers, in accordance with *the* department's contract requirements.

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F. G. The contracting organization shall ensure and document that the registration fees collected are directed to the maintenance or improvement of the contracting organization's voluntary registration program.

22 VAC 40-170-180. Complaints and violations.

~~A. Complaints against a provider and alleged violations by a provider which are directed to the contracting organization shall be referred to the appropriate agency within a timeframe specified by the division. This may include referrals to Child Protective Services, health and safety officials, the appropriate sponsoring organization or USDA office, or the department's regional licensing office if the complaint alleges that the home is subject to licensure. When the contracting organization receives a complaint of alleged violations of the Requirements for Providers, the contracting organization shall investigate the complaint and shall require the provider to correct any violations found.~~

1. Complaints of abuse or neglect of children in care shall be referred immediately to Child Protective Services and, where possible, shall be investigated jointly with the local department of social services protective services staff.

2. Issues not included in the Requirements for Providers, including but not limited to sanitation, fire safety and food service issues, shall immediately be referred to the appropriate agency, including health and safety officials or USDA.

~~B. Complaints shall also be received by or referred to the contracting organization with procedures developed under the direction of the department.~~

~~C. B.~~ If, during the course of investigating a complaint, the commissioner determines that it is necessary to revoke a certificate of registration, the contracting organization and the commissioner shall take action in accordance with 22 VAC 40-170-230.

22 VAC 40-170-190. Monitoring of family day providers.

A. The contracting organization shall monitor, unannounced, at least 10% of the providers registered who are not participating in the food program every two years to evaluate compliance with the Requirements for Providers. ~~The USDA requires that providers participating in the food program be monitored three times a year and recommends one of these visits be unannounced.~~

B. The contractor shall visit the home during the hours in which care is being provided to children by the provider.

C. The contracting organization shall maintain on file a written report of each monitoring visit to the provider's home.

22 VAC 40-170-200. Technical assistance.

A. The contracting organization shall provide technical assistance to registered providers and parents of enrolled children upon request. This assistance shall include responding to providers' and parents' questions and concerns regarding family day-care and referrals to appropriate agencies.

B. The contracting organization shall maintain a listing of support services available in the community and shall refer providers and parents of enrolled children upon request.

C. The contracting organization shall make the following information available to providers:

1. A list of reportable communicable diseases;
2. A list of physical symptoms or conditions that indicate a child may have a communicable disease;
3. Guidelines for administration of medication;
4. Guidelines for the care of sick children;
5. Guidelines for positive discipline;
6. A list of services to which a provider is entitled, including:
 - a. Participating in training sessions offered by or through the contracting organization *or the department*; and
 - b. Receiving technical assistance from the contracting organization;
7. Resources for children with a potential or actual handicapping condition. This may include a toll free number for early intervention (1-800-234-1448) or:
 - a. Informing the parent of the child's rights to a special education program and related services;
 - b. Referring the parent to the Virginia Department of Education for a possible comprehensive evaluation and individual service plan development for the child; and
 - c. Referring the parent to the health clinic in the local health department for a possible comprehensive medical evaluation for the child;
8. Information on how to identify children who are victims of abuse and neglect and who to contact if it is suspected; *and*
9. *A copy of the Recommended Childhood and Adolescent Immunization Schedule - United States, 2003.*

22 VAC 40-170-210. Information to parents.

~~A. The contracting organization~~ *department shall will* supply to providers sufficient copies of a written information to parents statement *that shall be posted in a conspicuous location in the registered home for the parents of all enrolled children*, which indicates:

1. The provider has received a certificate of registration;
2. The provider is required to comply with the Requirements for Providers;
3. The scope and limitations of voluntary registration;
4. The name, address and phone number of the contractor so that parents may receive a copy of the Requirements for Providers by contacting the contracting organizations;
5. Parents may report alleged violations of the Requirements for Providers to the local contracting organizations and complaints about the contractor to the division;

6. Any person providing full-time or part-time child care for pay on a regular basis who has reason to suspect that a child is an abused or neglected child is required by state law to report the matter immediately to the local social services department (except as prescribed in § ~~63.1-248.3~~ 63.2-1509 of the Code of Virginia) or to call the statewide toll free hotline (1-800-552-7096/TDD). Further, any person may report suspected abuse and neglect as set forth in § ~~63.1-248.4~~ 63.2-1510 of the Code of Virginia;

7. Parents of enrolled children shall be permitted to visit the family day home at any time their child or children are present without having to secure the prior approval of the provider. Parents may be restricted to visit only those areas of the home designated for family day-care;

8. The operation of the family day home is subject to unannounced monitoring visits by the contracting organization and monitoring of a sample of registered family day homes by the department;

9. Parents may request that the contracting organization provide technical assistance to the parent or the provider, and referrals to appropriate community resources; ~~and~~

10. Parents are advised to ask their provider whether they carry liability insurance; ~~and~~

11. *Providers must inform parents of the percentage of time someone other than the provider will be caring for children.*

22 VAC 40-170-230. Denials, revocations, refusals to renew, provider appeals procedures.

A. The contracting organization may recommend to the commissioner that a provider's certificate of registration be denied, revoked, or refused renewal for cause, including, but not limited to:

1. Failure to comply with adult-child ratios, staffing requirements, or other standards set forth in the Requirements for Providers;

2. Use of fraud or misrepresentation in obtaining a certificate of registration or in the subsequent operation of the family day home;

3. Any conduct or activity which adversely affects or presents a serious hazard to the health, safety, and general well-being of an enrolled child, or which otherwise demonstrates unfitness by a provider to operate a family day home;

4. Refusal to furnish the contracting organization or the department with records;

5. Refusal to permit immediate admission to the family day home to the parent of an enrolled child who is present in the home or to an authorized representative of the contracting organization or department ~~when any enrolled child is present during the home's hours of operation;~~ or

6. Documentation maintained by a contracting organization or the department that a provider's certificate of registration has been denied, revoked, or refused renewal by the commissioner during the six months prior to the date the application is resubmitted for a certificate of registration.

B. When a provider is found to be in violation of any of the provisions of subsection A of this section, the contracting organization shall notify the provider of the violation or violations first orally and then in writing, and, as appropriate, shall afford the provider an opportunity to abate the violation or violations within a time frame agreed upon by the contracting organization and the provider. The provider shall immediately abate the violation situations where children are at risk of abuse, neglect or serious harm or injury.

C. The contracting organization may recommend to the commissioner that the certificate of registration be denied, revoked, or refused renewal if the provider fails to abate the violation or violations within the agreed upon time frame or commits a subsequent violation. A statement referencing the standard violated shall be included with the recommendation.

~~D. Upon notification of the contracting organization's intent to recommend to the commissioner that a certificate of registration be denied, revoked or refused renewal, the contracting organization shall give written notice to the provider within five calendar days, specifying the reason for such action, either by hand delivery or by certified mail with return receipt requested. The notice shall afford the provider an opportunity to request, in writing, a review within 15 calendar days after receipt of notification before the contracting organization's review committee.~~

~~E. If the provider requests a review, the contracting organization's review committee shall consider each recommendation to deny, revoke, or refuse renewal within 15 calendar days of receiving the provider's request and shall afford the provider an opportunity to be heard. The review committee shall issue a written report of its findings to the provider and the commissioner's designee within five working days after completing its review.~~

~~F. D.~~ The contracting organization shall submit its recommendation to the commissioner's designee who shall make a decision to accept or refuse the recommendation.

~~G. E.~~ If the commissioner's designee upholds the recommendation to deny, revoke, or refuse renewal, the commissioner's designee ~~shall~~ *will* inform the provider that the decision may be appealed in accordance with the Administrative Process Act (§ ~~9-6.14:1 et seq.~~ 2.2-4000 *et seq.* of the Code of Virginia) and a hearing may be requested in writing within 15 calendar days after receipt of the notification of the decision.

~~H. F.~~ After a hearing, the commissioner shall issue the final order and shall notify the provider that this order may be appealed in accordance with the Administrative Process Act (§ ~~9-6.14:1 et seq.~~ 2.2-4000 *et seq.* of the Code of Virginia).

~~I. If the provider's certificate of registration is revoked or refused renewal by the commissioner or the commissioner's designee, the contracting organization shall request that the provider notify the parent of each child enrolled in the family day home within 10 calendar days of such action.~~

FORMS

~~Voluntary Registration Contracting Organization's Recommendation to Deny, Revoke, Refuse to Renew, or Close Certificate of Registration, 032-05-209/1 (rev. 10/00).~~

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DOCUMENT INCORPORATED BY REFERENCE

Recommended Childhood and Adolescent Immunization Schedule-United States, 2003.

VA.R. Doc. No. R04-11; Filed July 14, 2004, 9:17 a.m.

Titles of Regulations: **22 VAC 40-660. Child Day Care Services Policy (REPEAL) (repealing 22 VAC 40-660-10 through 22 VAC 40-660-100).**

22 VAC 40-661. Child Care Program (adding 22 VAC 40-661-10 through 22 VAC 40-661-90).

Statutory Authority: § 63.2-217 of the Code of Virginia and 45 CFR 98.11.

Public Hearing Date: N/A -- Public comments may be submitted until October 8, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Mary Ward, Program Consultant, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7638, FAX (804) 726-7655, or e-mail mary.ward@dss.virginia.gov.

Basis: The statutory authority for the Child Care and Development Fund is the Child Care and Development Block Grant of 1990 as amended by the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104-193) and the Balanced Budget Act of 1997 (Public Law 105-33), as implemented in regulation at 45 CFR Parts 98 and 99. Also, authority comes from the Food Stamp Act of 1977, as amended. State authority comes from §§ 63.2-217, 63.2-319, 63.2-510, 63.2-611, and 63.2-616 of the Code of Virginia. The State Board of Social Services has the authority to promulgate this regulation. Many of the provisions are federally mandated.

Purpose: The new regulation brings the regulation into compliance with state and federal changes. The regulation is updated to support current child care policy and practice, much of which is mandated by the federal government.

The child care program helps protect the safety of vulnerable low-income children while parents work, are in approved education or training, or are receiving protective services by enabling parents to purchase appropriate and safe child care services.

The goal of this regulation is to ensure that the Child Care and Development Fund is administered statewide in a consistent manner that complies with laws and best practices. The Child Care and Development Fund (i) promotes parental choice to enable working parents to make their own decision on the child care that best suits their family's needs, (ii) provides consumer education information to help parents make informed child care decisions, (iii) provides child care to parents trying to achieve independence from public assistance, (iv) assists in implementing health and safety standards related to child care services, and (v) increases the availability, affordability, and quality of child care services for all citizens.

Substance: The new regulation eliminates obsolete terminology and policy and replaces them with current information. The new regulation adds a requirement that all recipients of child care subsidy be referred to the Division of Child Support Enforcement, unless there is a good reason why this should not be done. Current policy encourages this, but does not mandate it. The new regulation adds a basis for better handling of suspected child care fraud. This new basis is needed due to the growth of the program, the large amount of funding associated with the program, and the need to better manage fraud when it has been identified. The new regulation defines what is meant by background checks and specifies for how long the background checks will remain valid. The regulation specifies that children of owners or operators of family day homes are not eligible to receive a subsidy if they are cared for in the home of the owner or operator. The regulation also specifies training requirements for providers who participate in the child care subsidy program.

Issues: Citizens in Virginia will benefit from having a child care regulation that reflects current practice mandated by federal and state law. They will benefit from the new requirement for all families to register with the Division of Child Support Enforcement, helping families become more self-sufficient through collection of support due. Many families are now on waiting lists for the child care subsidy program due to limitations on funding.

Families will benefit by better handling of suspected fraud, thereby protecting limited funding for eligible families that are abiding by program rules and policies. The regulation assures families that the child care program will be administered with clear and consistent case management policies, including customer legal due process notification.

Providers of child care services will be better served by having the regulation current. It clearly states that all families have full parental choice of all legally operating child care. It assures that providers will be paid based on rates established through a statewide survey. Children will benefit from providers meeting health and safety requirements.

The proposed regulation poses no disadvantages to the public or the Commonwealth.

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

Summary of the proposed regulation. § 63.2-217 of the Code of Virginia allows the State Board of Social Services to adopt

regulations necessary or desirable to carry out the purpose of Title 63.2 (Welfare: Social Services) of the Code of Virginia.

The proposed regulation (i) requires all child care providers participating in the subsidy program to meet training requirements set forth by the Department of Social Services (DSS), (ii) requires that all recipients of childcare subsidy be referred to the Division of Child Support Enforcement before the local social services department approve the subsidy payments, (iii) eliminates the option in the existing regulation for parents to pay for childcare and then be reimbursed by the state for the cost of those services, (iv) increases the flexibility that local departments have to conduct reassessments, and (v) includes a new section on fraud that provides a basis for fraud identification and the handling of suspected child care fraud cases.

The proposed changes are also intended to bring the regulation into compliance with state and federal law. For example, income eligibility criteria are changed from being based on the state median income to being based on the federal poverty level, reflecting changes in state and federal law. The regulation is also updated to reflect current childcare policy and practice. In an effort to make the regulation consistent with current policy, references to market rates when determining payment amounts are replaced with references to maximum reimbursement rates and co-payment requirements for families receiving childcare subsidies are specified. The regulation also adds language to clarify the intent of the regulation. For example, the proposed regulation includes additional language regarding background checks for childcare providers participating in the subsidy program and their employees. Background checks are to remain valid for three years as long as the provider offers services continuously under the childcare subsidy program and individual employees maintain continuous employment, residence, or volunteer status with the provider. The three-year requirement is consistent with the background check requirements for regulated childcare providers. The regulation also removes obsolete language and adds clarifying language and definitions intended to improve the implementation and enforcement of the regulation.

Estimated economic impact. (1) The proposed regulation requires all childcare providers participating in the subsidy program to meet training requirements set forth by DSS. Under the existing regulation, providers must meet certain health and safety requirements prior to DSS paying them for their services. The proposed regulation requires that all providers meet training requirements that include four hours of skills training per year in addition to training in first-aid training and cardiopulmonary resuscitation (CPR). Childcare centers are currently required to have at least one person on the premises with CPR and first-aid certification. The provider will be required to bear the cost of any additional training, although local social services departments can choose to subsidize some or all of the cost. While training topics for the skills training are not mandated in the regulation, DSS intends to track training requirements and training sessions attended by childcare providers through Pathlore, the agency's automated system that keeps track of such information.

Training for childcare providers offered through DSS usually cost between \$10 and \$20. According to DSS, the agency offered 243 training sessions in various topics during FY 2004. The combined CPR and first-aid class through the Red Cross lasts about six hours. A first-aid certification (valid for three years) and a CPR certification (valid for one year) through the Red Cross together cost \$60.

Thus, the proposed change is likely to impose additional costs on childcare providers participating in the subsidy program. Providers will be required to spend between \$10 and \$20 per year in getting the required training. They will also incur additional costs in getting their CPR certification each year and their first-aid certification every three years. In addition to the cost of the training course itself, the proposed change is also likely to impose some additional economic costs. The time taken to meet the training requirement must be valued as time that would have otherwise been used for regular childcare-related activities. Thus, the proposed change will result in lost income for the provider during the time they are in training. The proposed change is also likely to impose some travel-related costs, including costs related to traveling to and from the training center. DSS believes these costs to be small as training sessions are usually scheduled for Saturdays and can be taken in one of many locations across the state or using the agency's video training series.

The proposed change is also likely to produce some economic benefits. By requiring all providers to have up-to-date training in childcare, first-aid, and CPR, the proposed change is likely to reduce the risk of harm to children at these facilities. According to DSS, the proposed change is aimed primarily at unregulated childcare providers, whose numbers have been on the rise. DSS believes that the training requirements are the minimum required in order that childcare providers keep abreast of the latest developments in the field and operate in a safe manner. While DSS does not have data on the number of instances when children have been harmed at these facilities due to the provider's lack of adequate training, available research points to a positive correlation between caregiver qualifications, training, and certification and the health and safety of children¹. The main reasons given for the positive association are: (i) caregivers who receive specialized training are better able to facilitate a positive learning and socialization environment, and tend to have children who are more compliant, more cooperative, less aggressive, and who exhibit fewer negative behaviors, (ii) staff training programs reduce the number of accidental injuries in childcare centers, and (iii) staff training in procedures meant to reduce the transmission of infectious diseases reduces the number of pathogens present in childcare centers. Training is also shown to improve early detection of abuse, neglect, developmental disabilities, and common diseases.

The net economic impact of the proposed change will depend on whether the additional costs imposed by the requirement are greater than or less than the benefits accruing from it. It is not possible at this time to make a precise estimate of the net

¹ Fiene, R., 2002. *13 Indicators of Quality Child Care: Research Update*. Presented to the Office of the Assistant Secretary for Planning and Evaluation and the Health Resources and Services Administration/Maternal and Child Health Bureau, U.S. Department of Health and Human Resources.

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economic impact of the proposed change. Payments to providers is made at the local level and DSS does not have a statewide automated system that would allow us to obtain data on the number of regulated and unregulated providers currently taking part in the subsidy program. Moreover, DSS does not have data on the number of instances when children have been harmed at these facilities due to the provider's lack of adequate training.

(2) The proposed regulation requires that all recipients of childcare subsidy be referred to the Division of Child Support Enforcement (DCSE) before local social services department approve the subsidy payments. According to DSS, food stamp, TANF (temporary assistance for needy families), and post-TANF recipients are already required to report to DCSE. Many of the other childcare subsidy recipients also voluntarily report to DCSE. Thus, the proposed change is likely to affect only those recipients not currently reporting to DCSE. DSS expects DCSE caseload to increase by approximately 3-4% as a result of the change. According to DSS, despite the increase in caseload, the budget office does not anticipate any increase in resources to DCSE.

The proposed change is likely to impose some additional costs. DCSE will now be required to handle a larger number of cases, potentially increasing operating costs for the division and eventually for the taxpayers. All childcare subsidy recipients will now be required to go through an extra layer of processing before receiving the subsidy. However, the proposed change is also likely to produce economic benefits. It is likely to reduce the number of fraud cases and provide for better enforcement of the regulation. The net economic impact of the proposed change will depend on whether any additional costs to DCSE and to childcare subsidy recipients are outweighed by the benefits of reducing the number of fraud cases. There are no studies or data available at this time that would allow us to make precise estimates of the economic impact of the proposed change.

(3) The proposed regulation eliminates the option in the existing regulation for parents to pay for childcare and then be reimbursed by the state for the cost of services eligible for the subsidy. Under the existing regulation, a parent could choose whether DSS payment for childcare services are made by means of a direct payment to the provider or by means of a reimbursement to the parent. The proposed regulation removes the option available to parents to pay for childcare services themselves and then seek reimbursement from DSS.

The proposed change is not likely to have a significant economic impact. According to DSS, it is extremely rare for the department to reimburse parents. Most parents eligible for subsidy payments under this regulation do not have the resources to pay for childcare services upfront. Moreover, the proposed change will not prevent those parents who currently take advantage of the reimbursement clause from receiving the childcare services they have always received. Instead of reimbursing these parents, DSS will now directly pay the provider for any childcare services.

(4) The proposed regulation increases the flexibility that local departments have to conduct reassessments. Currently, local departments are required to conduct reassessments at least once every quarter in order to determine whether the

authorized services are meeting the needs of the child and the parent. The proposed regulation removes the quarterly reassessment requirement and only requires that the local department make regular contact with a member of the case household.

The proposed regulation is not likely to have significant economic impact. According to DSS, the proposed change was made keeping in mind federal regulations on childcare services. Amendments to the federal regulations are being considered that would require local departments to conduct reassessments a minimum of once a year. Thus, the requirement in the proposed regulation was left flexible in order to accommodate changes to the federal regulations. Local social services departments will continue to have the discretion to conduct assessments at more frequent intervals.

(5) The proposed regulation includes a new section on fraud that provides a basis for fraud identification and the handling of suspected childcare fraud cases. The proposed change is intended to clarify existing policy regarding cases of fraud. Existing regulations allow DSS to conduct criminal prosecutions and recoup costs in cases of fraud.

Thus, the proposed change is not likely to have a significant economic impact. To the extent that it clarifies existing policy and improves understanding of the regulation, it is likely to have some small economic benefit.

The remaining changes being proposed, such as changes that make the regulation consistent with federal and state law and with current practice, the deletion of redundant language, and the addition of clarifying language are not likely to have a significant economic impact. To the extent that these changes improve the understanding and implementation of the regulation, they are likely to produce some economic benefits.

Businesses and entities affected. The proposed regulation is likely to affect recipients and providers of childcare services eligible for the subsidy program. Recipients will be required to report to DCSE before receiving the subsidy and will no longer be able to receive DSS reimbursement for eligible childcare services paid for by them. Providers will now be required to meet additional training requirements.

According to DSS, 55,497 children or 31,190 families were served with subsidy dollars in FY 2003. There is no data currently available on the number of providers of childcare services currently operating in Virginia.

Localities particularly affected. The proposed regulation affects all localities in the Commonwealth. Local social services departments will now have more flexibility with regard to conducting reassessments of whether authorized childcare services are meeting the requirements of the child and the parent.

Projected impact on employment. The new training requirement being proposed in the regulation could have a negative impact on employment. As providers will have to bear the cost of the required training, this could reduce the number of individuals working in the childcare services industry.

Effects on the use and value of private property. The proposed regulation could have a negative impact on

providers of childcare services. The cost of meeting the additional training requirements is likely to raise the cost of operating these facilities and thus lower their asset value. However, some of the increase in operating costs could be mitigated by a decrease in the cost of insurance from having better-trained staff. It is not possible at this time to determine the net impact of the proposed change on the use and value of private property.

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

Summary:

The proposed joint action repeals 22 VAC 40-660 and replaces it with new regulation 22 VAC 40-661. The new regulation (i) eliminates obsolete language, replacing it with current terms and practices; (ii) makes substantive changes, including a new requirement for families to be referred to the Division of Child Support Enforcement unless there is good cause why this should not be done; (iii) clarifies the receipt of child care subsidies for children of family day home owners or operators; (iv) clarifies the length of time background checks will be valid; and (v) specifies a requirement for child care provider training and new policies on how to handle suspected fraud.

CHAPTER 661.
CHILD CARE PROGRAM.

22 VAC 40-661-10. Definitions.

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

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Background checks" means a sworn statement or affirmation as may be required by the Code of Virginia, the Criminal History Record Check, the Sex Offender and Crimes Against Minors Registry Check and the Central Registry Child Protective Services check.

"Child care services" means those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also means activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents, establish paternity, and establish, modify, enforce, or collect child support, or child and spousal support.

"Children with special needs" means children with documented developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Copayment" means a specific fee that is a portion of a household's income that is contributed toward the cost of child care.

"Department" means the State Department of Social Services.

"Federal poverty level" means the income levels by family size, determined by the federal Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include, but is not limited to, copayments, charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

"Fraud" means the knowing employment of deception or suppression of truth in order to receive services one is not entitled to receive.

"FSET" means Virginia's Food Stamp Employment and Training Program, a multi-component employment and training program that provides Job Search, Job Search Training, Education, Training, and Work Experience to certain Food Stamp recipients.

"Good cause" means a valid reason why a parent in a two-parent household, or any other person under Virginia law responsible for the support of the children, cannot provide the needed child care, or a valid reason why a parent will not be required to register with the Division of Child Support Enforcement.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five, pregnant women, and their families (as established by the Head Start Act (42 USC § 9840)).

"Income eligible" means that eligibility for subsidy is based on income and family size.

"In-home" means child care provided in the home of the child and parent when all the children in care reside in the home and the provider does not live in the home.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the state Child Care and Development Fund plan filed with the United States Department of Health and Human Services.

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"Nonfraud overpayment" means an overpayment that was caused by the local department, or by an inadvertent household or provider error.

"Parent" means the primary adult caretaker or guardian of a child.

"Resource and referral" means services that provide information to parents to assist them in choosing child care, and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

"Subsidy programs" means the department programs that assist low income eligible families with the cost of child care, including the TANF child care program and the income eligible child care programs.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy to eligible former TANF recipients after the TANF case closes.

22 VAC 40-661-20. Families and children served.

Child care services are provided to children in eligible families that meet the following criteria:

1. Need for child care.
 - a. Families served must have an established need for child care subsidy. In two-parent households there must be good cause why either parent cannot provide the needed child care.
 - b. Child care can be provided to support:
 - (1) Employment,
 - (2) Approved education or training, or
 - (3) Child protective services.
2. Financial eligibility. Families served must be financially eligible to receive child care subsidy.
3. Residence. Children served must be legal residents of the United States and must reside in the locality where application is made.
4. Age of children. Children served must be under age 13, or under the age of 18 if they are physically or mentally

incapable of caring for themselves or subject to court supervision. Child care must not be purchased for children who are eligible to attend public kindergarten or for older children during that portion of a day when appropriate public education is available, unless there are valid and documented reasons the children must be out of school.

5. Child support. Where there is an absent person who has responsibility for support of the children, families must be referred to the Division of Child Support Enforcement (DCSE) for child support services, as appropriate. The service worker is responsible for determining good cause why any applicant or recipient parent should not be referred to DCSE. Once referred, it is the parent's responsibility to cooperate with DCSE in order for the local department to approve child care subsidy payments. Noncooperation is grounds for case closure.

6. Children of owners or operators of family day homes. A child of an owner or operator of a family day home shall not be eligible to receive a child care subsidy if that child will be cared for in the home of the owner or operator.

22 VAC 40-661-30. Child care programs.

Child care subsidy, to the extent of available funding, is provided through the following programs:

1. TANF Child Care Program. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed care for the TANF capped child. These services are also provided to:
 - a. A child who receives Supplemental Security Income (SSI), if the parent is on the TANF grant and if the child would have been in the TANF assistance unit were it not for the receipt of SSI, or
 - b. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.
2. Income eligible child care programs.
 - a. Transitional child care. Child care subsidy and services are made available to eligible children of former TANF recipients to support parental employment if the TANF case is closed, and they are found income eligible.
 - b. Head Start child care. Head Start child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start core hours.
 - c. Fee child care. Fee child care subsidy and services are made available to children in eligible low income families to the extent of available funding.
3. Food Stamp child care. Child care subsidy and services are made available to children of parents in Virginia's FSET program to allow participation in an approved activity.

22 VAC 40-661-40. State income eligible scale and copayments.

A. State income eligible scale. The department establishes the scale for determining financial eligibility for the income

eligible child care programs. Income eligibility is determined by measuring the family's income and size against the percentage of the federal poverty level for their locality. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except: Supplemental Security Income; TANF benefits; general relief; food stamp benefits; child support paid to another household; earnings of a child under the age of 18 years; garnished wages; earned income tax credit; lump sum child support payments; and scholarships, loans, or grants for education except any portion specified for child care.

Unless a local alternate scale is approved, the income eligibility scale established by the department must be used for the transitional, Head Start and fee programs. Proposed alternate sliding scales must be approved by the department prior to submission to the local board of social services.

B. Copayments. Copayments are established by the department. All families receiving child care subsidy have a copayment responsibility of 10% of their gross monthly income or the copayment established by an approved local alternate scale except that families whose gross monthly income is at or below the federal poverty level who are recipients of TANF, participants in the FSET program, or families in the Head Start program will have no copayment.

C. Five-year limit. Localities may limit receipt of fee child care program subsidies to a maximum of 60 months (five years). Receipt of transitional child care does not count toward the five years.

D. Waiting list. Local departments must have a waiting list policy for the fee child care program. Prior receipt of TANF must not be a reason for preferential placement on a waiting list. Proposed policy for a waiting list must be approved by the department prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly.

22 VAC 40-661-50. Parental choice and providers used.

Families who receive subsidy have full parental choice of all legally operating child care. Agencies must not establish policies that limit parental choice of providers. Providers used must afford parents unlimited access to their children when they are in care. Providers must afford state and local department staff unlimited access to children in care when one or more children in care receive a child care subsidy. Providers who participate in the subsidy program must be at least 18 years of age, obtain background checks as required by the regulations for their type of child care, and participate in annual training. Background checks for regulated child care providers and local department approved child care providers remain valid according to the provisions of the regulations for their type of child care. Background checks for employees of certified preschools or nursery schools and unregulated family day home providers that participate in the child care subsidy program will remain valid for three years as long as the provider provides continuous services under the child care subsidy program. For any other individual who is required to have background checks according to § 63.2-1725 of the Code of Virginia, the background checks will remain valid for three years as long as the individual maintains continuous

employment, residence or volunteer status with that provider. Training requirements will consist of current certification in first aid and cardiopulmonary resuscitation (CPR) as appropriate for the age for the children in care, the cost of which will be borne by the provider. Four hours of skills training will also be required annually. Skills training is available through the department at a cost of less than \$20 per participant.

22 VAC 40-661-60. Determining payment amount.

A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care.

2. For children with special needs, payment over the maximum reimbursable rate is allowed when this is appropriate as determined by the local department.

3. Providers will be paid up to the maximum reimbursable rate of the jurisdiction in which the provider is located. Local departments must pay the rates and fees providers charge the general public, up to the maximum reimbursable rate, or a negotiated rate that is lower.

4. For out-of-state providers, the local department maximum reimbursable rate is used.

5. Parents who choose to place a child in a facility with a rate above the maximum reimbursable rate are responsible for payment of any additional amount, unless the local department elects to pay the additional amount out of local funds.

B. In-home care. For in-home child care, payment must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. Registration fee. A single annual registration fee, if charged, will be paid. Transportation fees are paid only when the transportation services are provided by the provider. The total cost of care, excluding the single annual registration fee, but including special programs, other fees and transportation, must not exceed the maximum reimbursable rate and must be identified as one child care cost.

22 VAC 40-661-70. Case management.

A. Application and assessment. Parents who request child care services are required to sign an application and cooperate with an assessment by the local department. Consumer education, including the selection and monitoring of child care, must be provided to parents to assist them in gaining needed information about child care services and availability of providers.

B. Service planning. Child care workers must complete a written service plan for each child care case. The service plan outlines the mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

C. Due process. Applicants and recipients will be afforded due process through timely written notices of action at the time of case approval, for all significant changes, and at the time of case termination.

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D. Reassessment. Local departments will make regular contacts with a member of the case household or the provider. The purpose of these contacts is to evaluate whether the child care services authorized are meeting the needs of the child and the parent.

E. Beginning date of service payment.

1. The beginning date of service payment is the date the signed application is received in the local department if the family is determined eligible within 45 days.

2. If the determination is made more than 45 days after the signed application is received, services may begin only on the date eligibility is actually determined, except in the case of administrative delay.

3. Administrative delay is when either the parent or provider does not provide needed information for eligibility purposes to the local department within the 45 days due to circumstances beyond their control.

4. Payment cannot be made to licensed providers prior to the effective dates of their initial licenses.

F. Parental responsibilities.

1. Parents must be informed of their responsibility to report changes that could affect their eligibility. These changes must be reported to the local department within 10 calendar days. Parents must be informed that failure to report required changes may result in case closure, repayment of child care costs, or prosecution for fraud.

2. Parents must be informed of their responsibility to pay all fees owed. Parental failure to pay fees may result in case closure.

G. Termination. Local department termination of child care services must be planned jointly with the parent and provider. Adequate documentation supporting the reasons for termination must be filed in the case record.

22 VAC 40-661-80. Fraud.

A. Fraud. When it is suspected that there has been a deliberate misrepresentation of facts in order to receive services, the local department must determine whether or not fraud was committed. There must be clear and convincing evidence that demonstrates that the household or provider committed or intended to commit fraud.

B. Repayment. In addition to any criminal punishment, anyone who causes the local department to make an improper vendor payment by withholding required information or by providing false information will be required to repay the amount of the improper payment.

C. Nonfraud overpayment. In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program.

22 VAC 40-661-90. Complaints in the child care setting.

All complaints regarding possible child abuse or neglect occurring in a child care setting must be referred to the child protective services unit at the local department serving the area where the child care service is located. Information

regarding the complaint must be shared with the worker responsible for licensure or approval. All other complaints are referred to the approval authority.

VA.R. Doc. Nos. R03-291 and R03-292; Filed July 14, 2004, 9:18 a.m.

Titles of Regulations: **22 VAC 40-770. Standards and Regulations for Agency Approved Providers (REPEAL) (repealing 22 VAC 40-770-10 through 22 VAC 40-770-160)**

22 VAC 40-771. Local Department Approved Provider Standards (adding 22 VAC 40-771-10 through 22 VAC 40-771-510).

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

Public Hearing Date: N/A -- Public comments may be submitted until October 8, 2004.

(See Calendar of Events section for additional information)

Agency Contact: Sue Murdock, Family Specialist, Department of Social Services, Division of Family Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7616, FAX (804) 726-7895, or e-mail susan.murdock@dss.virginia.gov.

Basis: Pursuant to § 63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of public assistance and social services programs. The regulation does not exceed the scope of the mandate.

Purpose: The regulation is necessary to protect the health, safety, and welfare of citizens by setting a base of quality in purchasing care and making placements for vulnerable children and adults. Because of these standards, assurances can be made that the care purchased or arranged meets health and safety standards and supports care that is conducive to the health, safety and well-being of individuals, children and families. The goal of the new regulation is to maintain these assurances, while also ensuring conformity with all current federal and state laws and regulations.

Substance: The new regulation greatly differs from the current relative to format and lay-out. The current regulation was written in generic format, sectioned according to topics such as age, criminal records, home safety, etc. Users must read the entire regulation to determine if and how a particular standard applies to the program in which they work. The proposed regulation is reformatted, with a separate section for each provider type. Each section addresses all applicable standards for that provider type.

Substantive changes include:

1. Adding of barrier crimes standards for adult providers.
2. Adding requirements regarding the handling of medications for adult foster care and adult day care.
3. Adding a new section on rights and responsibilities of adults in care.
4. Modifying provision for tuberculosis screening requirements to conform to Department of Health policies.

5. Clarifying that allowable variances to permanency provider standards are not allowed if the provider is convicted of a crime pursuant to § 63.2-1719 of the Code of Virginia.

6. Addressing when a criminal background and child protective services check must be repeated.

Issues: The public benefits by being assured that service providers approved through local departments of social services meet standards and are qualified to care for children and adults. The Department of Social Services and the Commonwealth benefit by having clear procedures aligned with current applicable federal and state laws and regulations. There are no disadvantages to the public or Commonwealth.

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

Summary of the proposed regulation. The proposed regulations will modify the format of the regulations for clarity, incorporate recent statutory changes, and add new language to clarify the current policy followed in practice on a number of issues. The two main changes are establishing a background check requirement for adult service providers, even though not required by the Code of Virginia, and establishing health and safety orientation and training requirements for child care providers.

Estimated economic impact. These regulations contain standards by which local departments of social services approve adult care, child care, foster care, and adoptive home providers. These providers are relatively small compared to similar providers approved by the division of licensing programs of the Department of Social Services (DSS). There are approximately 63 adult foster care providers, 2,231 home based adult care providers, 600 children's family day homes, and 5,000 foster homes approved by the local departments of social services.

The majority of the proposed changes are not expected to create any significant economic effect. Many of the changes are related to reformatting of the regulation into three sections: one for adult services, one for child care, and one for adoptive and foster providers. According to DSS, generic provisions in the current regulation that apply to all providers are no longer easily understood because of the uniqueness of each type of provider. DSS proposes to create three sections, each of which is applicable to a specific provider type.

In addition, a number of other proposed changes will incorporate the statutory requirements that have been in effect

since these regulations were last revised. The most substantive of these are requiring background checks and child protective central registry checks for child care and adoptive and foster providers, and expanding the list of barrier crimes to conform to the changes in the Code of Virginia.¹

The remaining changes are clarifications of the current requirements or the policy followed in practice. For example, the language is proposed to (i) clarify that admission of adults requiring skilled nursing facility level of care into adult foster care is prohibited, (ii) explain the rights of recipients in adult care, (iii) clarify that child care providers must provide access to local department of social services staff and parents when requested, and (iv) clarify that a risk assessment for tuberculosis is sufficient instead of actual tests, etc.

Since the changes discussed above are either clarifications of the requirements that have been already enforced in practice, or clarifications of regulatory language applicable to each provider type, no significant economic effect is expected upon promulgation.

One of the important proposed changes appears to be establishing a background check requirement for adult service providers, assistants, spouses, and other household members who come in contact with adults in care even though the statute does not require it. This requirement will apply to 63 adult foster care homes and 2,231 home based providers. The local departments will collect the fees from the provider and conduct the background checks through the State Police at an estimated cost of \$20 per case. No repeat background check will be performed as long as the individual remains in continuous service with the same provider.

The main purpose of the background check requirement for these providers is to reduce potential risk of harm to adults. The rationale is that persons with certain criminal convictions are more likely to harm or exploit adult residents than other persons without such backgrounds, and background checks would probably increase protection of these adults. Although the objective of background checks is clear, there is no available study assessing potential risks. Thus, the significance and types of risks that may be present, as well as the success of background checks in reducing potential risks, are not well known.

It is estimated that the criminal background check requirement may affect about 2,300 adult care providers. Since background check costs \$20, compliance costs for providers are likely to increase. The approvals of an unknown number of providers may be terminated and consequently they may incur significant economic losses if they are found to have a disqualifying record. Finally, there will probably be additional administrative costs to local departments for conducting these checks.

Another significant change is establishing minimum 12 hours of health/safety orientation and training requirements in addition to first aid and CPR certification for approximately 600 child care providers. According to DSS, a first aid certification (valid for three years) and a CPR certification

¹ Relevant sections of the Code of Virginia are: §§ 63.2-1725, 63.2-1724, 63.2-901.1, and 63.2-1719.

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(valid for one year) together can be obtained at \$60. Also, DSS charges \$20 for a six-hour training. While the proposed training will most likely increase providers' compliance costs, a reduction in health and safety risks to children is expected.

Similar to the suggestion made for the proposed changes to 22 VAC 40-111, the proposed 12-hour annual training requirement for adult day care providers could be redesigned to maintain the level of expected benefits at lower costs. The training needs of the providers do not seem to be uniform. It is logical to assume that the training needs of a veteran provider who has been in this business over 10 years is probably much less than the training needs of another provider who is obtaining a license for the first time. This is because the veteran provider has more experience and has already attended many hours of annual training. Also, the expected benefit from an hour of additional training is lower than the one before. For example, a veteran provider may have already taken training in all the subject matter and may be repeating the courses already taken. Thus, about the same level of benefits could be maintained by requiring newly licensed providers to attend 12 hours of training and decreasing the hours of training to a fixed minimum as a provider gains more experience and training in this business.

Businesses and entities affected. The proposed regulations apply to approximately 63 adult foster care providers, 2,231 home based adult care providers, 600 children's family day homes, and 5,000 foster homes approved by the local departments of social services.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth.

Projected impact on employment. Unless the proposed background requirements result in termination of the approvals of a significant number of providers, no significant effect on employment is expected.

Effects on the use and value of private property. Similarly, the value of a provider's business may significantly decrease if the provider's approval is terminated because of a disqualifying criminal record. Otherwise, the proposed changes are not expected to have significant effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the Economic Impact Analysis prepared by the Department of Planning and Budget.

Summary:

The regulation addresses standards for local departments of social services to approve and regulate service providers including adult service providers, child care providers, and adoptive and foster providers. The purpose of the proposed action is to repeal the existing regulation, 22 VAC 40-770, and replace it with a new regulation. The current regulation includes generic provisions that apply to all providers. Because of the uniqueness of each type of provider, such a format is no longer effective. The new regulation is divided into appropriate sections for adult services, child care, adoptive and foster providers, and is updated to comply with changes to federal and state laws and regulations.

Substantive changes include the addition of barrier crimes standards for adult providers and rights and responsibilities of adults in care. In addition, timeframes for repeat background checks and prohibition of allowable variances for certain crimes are addressed.

CHAPTER 771. LOCAL DEPARTMENT APPROVED PROVIDER STANDARDS.

PART I. DEFINITIONS AND APPLICABILITY.

22 VAC 40-771-10. Definitions.

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

"Adoptive parent or parents" means a provider who gives parental care and establishes permanent family relationships for children in the provider's home for purposes of adoption.

"Adult" means any individual 18 years of age or over.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care provider" means a provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical and emotional well-being through companionship, self-education, and satisfying leisure activities. Day care for more than three adults requires licensure by the state Department of Social Services.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult foster care provider" means a provider who gives room and board, supervision and special services in his own home for up to three adults who are unable to remain in their own home because of a physical or mental condition or an emotional or behavioral problem. Care provided for more than three adults requires licensure by the Virginia Department of Social Services.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical or mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. Neglect includes self-neglect as well as neglect by others.

"Adult services" means services that are provided to adults 60 years of age and older and to adults 18 years of age and older who have a disability. Adult services include home-based services (companion, chore, and homemaker services), adult foster care, and adult day care.

"Assistant" means any individual who is responsible to assist a provider in caring for clients.

"Central registry" means a subset of the child abuse and neglect information system and is the name index with identifying information on individuals named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Child or children" means any natural person under 18 years of age.

"Chore provider" means a provider who performs nonroutine, heavy home maintenance tasks for clients unable to perform such tasks for themselves.

"Client" means any adult or child who needs supervision and services and seeks assistance in meeting those needs from a local department of social services.

"Companion provider" means a provider who assists clients unable to care for themselves without assistance in activities such as light housekeeping, companionship, shopping, meal preparation, and activities of daily living.

"Corporal punishment" means any type of physical punishment inflicted in any manner upon the body of a child, including but not limited to hand spanking, shaking a child, forcing a child to assume an uncomfortable position, or binding a child.

"Department" means the state Department of Social Services.

"Family day home" means, pursuant to § 63.2-100 of the Code of Virginia, a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.

"Foster parent" means a provider who gives 24-hour substitute family care, room and board, and services for up to eight children committed or entrusted to local boards of social services or placed by agreement between a local board or public agency pursuant to Chapter 9 (§ 63.2-900 et seq.) of Title 63.2 of the Code of Virginia.

"Home-based services" means companion, chore, and homemaker services that allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency.

"Homemaker" means a provider with homemaking skills acquired through training and experience who gives instruction in or, where appropriate, performs activities such as personal care, home management, household maintenance, child rearing and nutrition, consumer or hygiene education.

"Infant" means any child from birth up to two years of age.

"In-home child care provider" means a provider who is responsible for the supervision and care of children in the child's own home and all the children in care reside in the home. The provider cannot own the home or have his name on the lease or rental agreement.

"In-home provider" means an individual who provides care in the home of the client needing supervision and services. In-home providers include companion, chore, homemaker, and in-home child care providers.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local department approved provider" means a provider that is not subject to licensure and is approved by a local department of social services to provide services to Department of Social Services' clients.

"Out-of-home provider" means an individual who provides care in the individual's own home to clients who enter the home for purposes of receiving needed supervision and services. Out-of-home providers include adoptive parents before the final order of adoption is entered, adult day care providers, adult foster care providers, family day home providers, and foster parents.

"Parent or guardian for children" means the biological or adoptive parent or the legal guardian or guardians of a child.

"Permanency provider" means adoptive parent(s) (until the final order of adoption is issued) and/or foster parent(s) that provide a home that improves the safety, permanency and well-being of the child in care.

"Responsible person" means the parent or guardian of a child or an individual designated by or for an adult client.

22 VAC 40-771-20. Local department approved providers.

A. This regulation applies to providers approved by a local department and does not apply to providers licensed by the department.

B. This regulation is applicable to the following providers:

1. Out-of-home providers:

- a. Adoptive parents (this regulation does not apply to adoptive parents after the final order of adoption is entered);
- b. Adult day care providers;
- c. Adult foster care providers;
- d. Family day home providers; and
- e. Foster parents.

2. In-home providers:

- a. Chore providers;
- b. Companion providers;
- c. In-home child care providers; and

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d. Homemaker providers.

C. These standards and regulations are not applicable to individual providers who are either licensed by the department or approved through an organization licensed by the department. Examples of such providers include, but are not limited to, licensed and voluntarily registered family day homes, family day homes, licensed independent foster homes and foster and adoptive homes approved by child-placing agencies.

**PART II.
ADULT SERVICES.**

22 VAC 40-771-30. Standards for providers and other persons.

A. Age.

1. All local department approved adult services homemaker services providers shall be at least 18 years of age.

2. All local department approved adult services chore and companion providers shall be at least 16 years of age. If the local department chooses to hire a chore or companion provider who is at least 16 years of age but less than 18 years of age, the local department must determine that the provider is competent and able to provide the service.

3. Any assistant to a local department approved provider for adult services shall be at least 16 years of age.

B. Criminal record background checks and additional requirements.

1. The provider and any assistant, the spouse of the provider, or other adult household members who come in contact with adults in care shall identify any criminal convictions and consent to a criminal record search in a form similar to the sworn statement or affirmation in accordance with § 63.2-1720 of the Code of Virginia. A criminal record report remains valid as long as the individual remains in continuous service with the same provider. When an individual terminates service with one provider and begins work for another provider, the criminal record report secured for the prior provider shall not be valid for the new provider. A new criminal record background check shall be required.

2. For adult services, convictions of crimes listed in § 63.2-1719 of the Code of Virginia shall prohibit a provider or, for adult foster care and adult day care, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care to receive approval as a provider. In addition, if the provider or, for adult foster care and adult day care, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care have been convicted of any other felony or misdemeanor that, in the judgment of the local department jeopardizes the safety or proper care of adults, the provider shall be prohibited from being approved as a provider of services to adults.

3. Exception. The provider and any assistant, spouse of the provider, or other adult household members who come in contact with adults in care and who have been convicted of

a crime listed in § 63.2-1719 of the Code of Virginia may receive an allowable variance on this standard if it does not jeopardize the safety or proper care of the adult and the local department approves the exception.

4. Fee. The local department shall receive from the provider a fee in the amount of the cost of the criminal record check plus a nominal processing fee for the criminal record background check(s).

C. Interview, references, and employment history.

1. The provider shall participate in interviews with the local department.

2. The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider.

3. The provider shall provide information on the provider's employment history.

4. The local department will use the interviews, references, and employment history to assess that the provider is:

a. Knowledgeable of and physically and mentally capable of providing the necessary care for adults;

b. Able to sustain positive and constructive relationships with adults in care, and to relate to adults with respect, courtesy, and understanding;

c. Capable of handling emergencies with dependability and good judgment; and

d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for adults.

5. For adult foster care and adult day care, at least one interview must occur in the home where the care is to be provided. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be provided.

6. For homemaker providers, the local department will further use the interview, references, and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:

a. Home management and household maintenance;

b. Personal care of the elderly or adults with a disability;

c. Nutrition education and meal planning and preparation, including special diets; and

d. Personal hygiene and consumer education.

7. For adult foster care providers, the local department will further use the interview, references, and employment history to assess that the provider has sufficient financial income or resources to meet the basic needs of his own family and has the knowledge, skills, and abilities to care for adults, including, but not limited to:

a. Provision of a furnished room in the home that meets applicable zoning, building, and fire safety codes.

b. Housekeeping services based on the needs of the adult in care.

c. Nutritionally balanced meals and snacks, including extra portions and special diets as necessary.

d. Provision of clean bed linens and towels at least once a week and as needed by the adult.

e. Assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.

f. Provision of generic personal toiletries including soap and toilet paper.

g. Assistance with the following: care of personal possessions; care of personal funds if requested by the adult and adult foster care home's policy permits it; use of telephone; arranging transportation; obtaining necessary personal items and clothing; making and keeping appointments; and correspondence.

h. Securing health care and transportation when needed for medical treatment.

i. Providing social and recreational activities as required by licensing regulations.

j. General supervision for safety.

D. Training.

1. The local department shall provide some basic orientation to any approved provider.

2. The provider shall attend any orientation and training required by the local department. Training requirements will not exceed 12 hours per year. The provider will bear the cost of any required training unless the local department subsidizes the cost for all local department approved providers.

E. Medical requirements.

1. The provider and, for out-of-home care, the assistant, the provider's spouse, and all other adult household members who come in contact with adults in care shall submit a statement from the local health department or licensed physician that he is believed to be free of tuberculosis in a communicable form.

2. The provider and assistant shall submit the results of a physical and mental health examination when requested by the local department.

F. Updated information. All local department approved providers must keep the local department informed of changes in the household that may affect approval of the provider.

G. The provider must have the capability to perform fully the requirements of the position, have the moral and business integrity and reliability to ensure good faith performance and

who is determined by the local department to meet the requirements of the position.

H. Any provider who causes the local department to make an improper payment by withholding information or providing false information may be required to pay the amount of the improper payment

22 VAC 40-771-40. Standards for care for adult services providers.

A. Nondiscrimination. The provider shall provide care that does not discriminate on the basis of race, ethnicity, sex, national origin, age, religion, or handicap.

B. Supervision.

1. The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency.

2. A responsible adult shall always be available to substitute in case of an emergency.

3. If extended absence of the provider is required, the local department must approve any substitute arrangements the provider wishes to make. An extended absence shall be defined as greater than one day.

4. The provider shall ensure that adequate care and supervision is provided to adults in care and that the adult's health, safety, and well-being are protected.

C. Food. The following standards apply to adult day care and adult foster care providers:

1. Adults in care shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day and the daily nutritional needs of each adult.

2. Adults in care shall receive special diets if prescribed by a licensed physician or in accordance with religious or ethnic requirements, the adult's preferences, or other special needs.

3. Adequate drinking water shall be available at all times.

D. Transportation of adults.

1. If the provider transports adults in care, the provider shall have a valid driver's license and automobile liability insurance.

2. The vehicle used to transport adults shall have a valid license and inspection sticker.

3. Providers who transport adults must ensure that all passengers are using safety belts in accordance with requirements of Virginia law.

E. Medical care.

1. The provider shall have the name, address, and telephone number of each adult's physician and responsible person easily accessible.

2. The provider must be able to meet the identified needs of the adult before accepting the adult for care and in order to continue to provide services to the adult.

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3. *The adult foster care and adult day care provider shall:*

- a. *Ensure that the adult receives prescription drugs only in accordance with an order signed by a licensed physician or authentic prescription label and, with the responsible person's written consent, as appropriate;*
- b. *Document all medications taken by adults in care, including over-the-counter medications;*
- c. *Ensure that the adult in care receives nonprescription drugs only with the adult's or responsible person's written consent, as required;*
- d. *Keep medications separate from food except those items that must be refrigerated;*
- e. *Report all major injuries and accidents to the adult's responsible person immediately;*
- f. *Have authorization for emergency medical care for each adult in care; and*
- g. *Have first aid supplies easily accessible in case of accidents.*

4. *Admission or retention of adults in an adult foster care home is prohibited when the adult has any of the following conditions or care needs:*

- a. *Ventilator dependency;*
- b. *Dermal ulcers stage III and IV except those stage III ulcers that are determined by an independent physician to be healing and care is provided by a licensed health care professional under a physician's treatment plan.*
- c. *Intravenous therapy or injection directly into the vein except for intermittent intravenous therapy managed by a licensed health care professional.*
- d. *Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;*
- e. *Psychotropic medications without appropriate diagnosis and treatment plans;*
- f. *Nasogastric tubes;*
- g. *Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube;*
- h. *Individuals presenting an imminent physical threat or danger to self or others.*
- i. *Individuals requiring continuous licensed nursing care (seven days a week, 24 hours a day);*
- j. *Individuals whose physician certifies that placement is no longer appropriate;*
- k. *Individuals who require maximum physical assistance as documented by the Virginia Uniform Assessment Instrument and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance; or*

l. Individuals whose health care needs cannot be met in the specific adult foster care home as determined by the home.

F. Activities. The adult day care and adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults in care.

G. Abuse, neglect, or exploitation reporting responsibilities of providers. All providers of adult services shall immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department or to the 24-hour toll-free hotline (hotline number: 888-83-ADULT). Providers covered by this regulation are mandatory reporters in accordance with § 63.2-1606 of the Code of Virginia. Failure to report could result in civil and/or criminal liability.

H. Clothing requirements. The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and that all clothing is properly laundered or cleaned and altered or repaired as necessary.

22 VAC 40-771-50. Standards for the home of the adult foster care or adult day care provider.

A. Physical accommodations.

1. The home shall have appropriate space and furnishings for each adult receiving care in the home to include:

- a. *Space to keep clothing and other personal belongings;*
- b. *Accessible and adequate basin and toilet facilities;*
- c. *Comfortable sleeping or napping furnishings;*
- d. *For adults unable to use stairs unassisted, sleeping space on the first floor of the home;*
- e. *Adequate space for recreational activities; and*
- f. *Sufficient space and equipment for food preparation, service, and proper storage.*

2. All rooms used by adults shall be heated in winter, dry, and well ventilated.

3. All doors and windows used for ventilation shall be appropriately screened.

4. Rooms used by adults in care shall have adequate lighting for activities and the comfort of adults.

5. The provider and any adult in care shall have access to a working telephone in the home.

6. The home shall be in compliance with all local ordinances.

7. Additional standards for adult foster care:

- a. *No more than two adults shall share a sleeping room unless they request and consent to sharing such a sleeping arrangement.*
- b. *There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and talk privately.*

B. Home safety.

1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the adults receiving care.

2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the local department requests it.

3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new adult placed in the home.

4. Attics or basements used by adults in care shall have two emergency exits. One of the emergency exits shall lead directly outside and may be a door or an escapable window.

5. Possession of any weapons, including firearms, in the home must be in compliance with federal, state, and local laws and ordinances. The provider shall store all weapons, firearms, and ammunition in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatterproof.

6. The provider shall protect adults from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances. Documentation of inoculations shall be made available upon local department request.

7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults in care who are mentally incapacitated.

8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

C. Sanitation.

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.

2. The home and grounds shall be free of garbage, debris, insects, and rodents that would present a hazard to the health of the adult in care.

D. Capacity.

1. The provider shall not exceed the maximum allowable capacity for the type of care provided and approved by the local department.

2. The adult day care provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day care must be licensed by the department.

3. The adult foster care provider shall not accept more than three adults for the purpose of receiving room, board, supervision, or special services, regardless of relationship

of any adult to the provider. A provider that accepts more than three adults for these purposes must be licensed as an assisted living facility provider by the department.

22 VAC 40-771-60. Record requirements for adult foster care and adult day care providers.

A. The provider shall maintain written legible information on each adult in care.

B. Information on the adult in care shall include:

1. Identifying information on the adult in care;

2. Name, address, and home and work telephone numbers of responsible persons;

3. Name and telephone number of person to be called in an emergency when the responsible person cannot be reached;

4. Name, address, and home and work telephone numbers of persons authorized to pick up the adult in care;

5. Name of persons not authorized to call or visit the adult in care;

6. Date of admission and discharge of the adult in care;

7. Daily attendance record, where applicable. Daily attendance records are required for adult day care;

8. Medical information pertinent to the health care of the adult in care;

9. Correspondence related to the adult in care as well as other written adult information provided by the local department; and

10. Placement agreement between the provider and the adult and his responsible person, where applicable.

C. Adult records are confidential and shall not be shared without the approval of the adult in care or responsible person.

D. The local department and its representatives shall have access to all records.

22 VAC 40-771-70. Approval period.

The approval period for a provider is 24 months when the provider meets the standards. In the case of adult day care and adult foster care, the home shall also meet the standards.

22 VAC 40-771-80. Allowable variance.

The provider may receive an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the adult or violate federal, state, or local law and the local department approves the request.

22 VAC 40-771-90. Emergency approval.

A. Emergency approval of a provider may be granted under the following conditions:

1. The court orders emergency placement; or

2. The adult or his responsible person requests placement or service in an emergency.

B. Emergency approval shall not exceed 30 days.

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22 VAC 40-771-100. Provider monitoring.

A. For adult day care or adult foster care providers, the local department representative shall visit the home of the provider as often as necessary, but at least semi-annually to monitor the performance of the provider.

B. For home-based care providers, the local department representative will interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider.

C. Provider monitoring shall include interviews with adults receiving care from the provider.

D. The adult in care shall have access to all provider monitoring reports completed by the local department upon request.

22 VAC 40-771-110. Renewal process.

The local department will reapprove the provider prior to the end of the approval period if the provider continues to meet the standards. In the case of adult day care or adult foster care provider, the home shall also continue to meet the standards.

22 VAC 40-771-120. Inability to meet standards.

A. If the provider cannot meet the standards described in this section, the local department shall grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of noncompliance.

B. The local department may grant provisional approval if noncompliance does not jeopardize the safety or proper care of the adults in care. Provisional approval shall not exceed three months.

C. The local department may suspend approval in noncompliance may jeopardize the safety and proper care of the adults in care. Suspension shall not exceed three months. During the suspension, the provider can give no care to adults referred by the local department.

D. If the provider is found to be out of compliance with the standards set forth herein and cannot meet standards within three months and a variance is not granted, the approval shall be revoked.

22 VAC 40-771-130. Relocation of out-of-home provider.

If the out-of-home provider moves, the local department will determine continued compliance with standards related to the home as soon as possible, but no later than 30 days after relocation to avoid disruption of services to the adult in care.

22 VAC 40-771-140. Right to appeal.

The provider shall have the right to appeal the actions of the local department.

22 VAC 40-771-150. Rights of adults in care.

A. Adults in the care of local department approved providers shall have the rights and responsibilities specified in this section. The provisions of this section shall not be construed to restrict or abridge any right that any adult has under the

law. The provider shall establish policies and procedures to ensure that adults in care are aware of the following rights:

1. To be fully informed, prior to the beginning of the provision of services, of his rights and of all rules and expectations governing his conduct and responsibilities; the adult and, if appropriate, his responsible persons shall acknowledge, in writing, receipt of this information, which shall be filed in his record;

2. To be fully informed, prior to the beginning of the provision of services, of services available and of any related charges, if any; this shall be reflected by the adult's written acknowledgment of having been so informed, which shall be filed in his record;

3. Unless a conservator of such person has been appointed, to be free to manage his personal finances and funds; to be entitled access to personal account statements reflecting financial transactions made; and, when receiving adult foster care, to be given at least a quarterly accounting of financial transactions made on his behalf;

4. To be afforded confidential treatment of his personal affairs and records and to approve or refuse their release to any individual outside the home except as otherwise provided in law and except in case of his transfer to another setting;

5. When receiving adult foster care or adult day care, to be transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and to be given advance notice of at least 30 days; upon notice of discharge or upon giving reasonable advance notice of his desire to move, the adult shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is under the care of the provider, to be afforded the opportunity to participate in the planning of his program or care and medical treatment and the right to refuse treatment;

7. When receiving care from an adult foster care or adult day care provider, to not be required to perform services for the home except as voluntarily contracted pursuant to an agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;

8. To be free to select health care services from reasonably available resources;

9. To be free from mental, emotional, physical, sexual, and financial abuse or exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and, when receiving care from an adult foster care or adult day care provider, to not have his known needs neglected or ignored by the provider;

10. To be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

11. To be free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats, or reprisal;

12. When receiving care from an out-of-home local department approved provider, to be permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other adults;

13. To be encouraged to function at his highest mental, emotional, physical, and social potential;

14. To receive and send uncensored, unopened mail;

15. To refuse medication unless there has been a court finding of incompetence;

16. To choose which services are included in the service agreement and to receive all physician-prescribed treatments. Adults also have the right to refuse services, if doing so does not endanger the health or safety of other adults; and

17. To be free of physical, mechanical or chemical restraint except in the following situations and with appropriate safeguards, including training for the provider on the use of restraints:

a. As necessary to respond to unmanageable behavior in an emergency situation that threatens the immediate safety of the adult or others; and

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened adult;

18. To be free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

19. To be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health-related consultations that the adult may have at the home;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. When receiving care from an out-of-home provider, in the adult's room or portion thereof; adults shall be permitted to have guests or other adults in their rooms unless to do so would infringe upon the rights of other adults; staff may not enter an adult's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the State Board of Social Services; and

f. When receiving care from an out-of-home provider, in visits with his spouse; if both are adults of the home they are permitted, but not required, to share a room unless otherwise provided in the adult's agreements; and

20. Is permitted to meet with and participate in activities of social, faith-based, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the adult is unable to fully understand and exercise the rights and responsibilities contained in this section, the local department shall require that a responsible person, of the adult's choice when possible, designated in writing in the adult's record, be made aware of each item in this section and the decisions that affect the adult or relate to specific items in this section; an adult shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the adult's record.

C. The out-of-home provider shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Adult Protective Services Hotline of the Department of Social Services as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any substate ombudsman program serving the area.

D. The out-of-home provider shall make its policies and procedures for implementing this section available and accessible to adults, relatives, agencies, and the general public.

E. Each out-of-home provider shall provide appropriate staff training to implement each adult's rights included in this section.

F. Adults in care have the right to be fully informed in advance about recommended care and treatment and of any recommended changes in that care or treatment.

G. Adults in care have the right to freedom from searches of personal belongings without the adult or responsible person's permission, unless the care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the out-of-home provider setting and the adult is present during the search.

H. When receiving care from an out-of-home provider, adults have the right to be notified before the adult's room or roommate is changed.

I. When receiving care from an out-of-home provider, adults have the right to communicate privately and without restriction with any other adult who does not object to the communications.

J. Adults have the right to file an appeal if it is believed that an adult right has been violated, and adults have the right to advocacy assistance throughout the appeal process.

22 VAC 40-771-160. Responsibilities of adults in adult foster care or adult day care.

A. The adult in care must follow the house rules of the provider unless these rules are in violation of adults' rights.

B. Adults in care must give a two-week written notice of intent to leave the placement.

Proposed Regulations

C. Adults in care must notify providers if there are changes in the adult's health status.

PART III.
CHILD CARE.

22 VAC 40-771-170. Standards for providers and other persons.

A. Age.

1. All local department approved providers shall be at least 18 years of age.
2. Any assistant to a local department approved provider shall be at least 16 years of age.

B. Criminal record background checks and additional requirements.

1. The provider and, for out-of-home care, any employee; prospective employee; volunteers; agents involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or more children; any other adult living in a home where local department approved provider services are rendered; and the assistant, spouse of the provider, and adult household members who come in contact with children shall identify any criminal convictions and be willing to consent to and receive background checks pursuant to §§ 63.2-1719-1720 of the Code of Virginia. A criminal record report remains valid for three years as long as the provider maintains continuous approval by the local department. For any other individual who is required to have a background check, a criminal record report remains valid for three years as long as the individual maintains continuous employment, residence or volunteer status with that provider.

2. The provider and, for out-of-home care, any employee; prospective employee; volunteers; agents involved in the day-to-day operation of an out-of-home service; all agents who are alone with, in control of, or supervising one or more children, any other adult living in a home where local department approved provider services are rendered; and the assistant, spouse of the provider, and adult household members who come in contact with children shall not have an offense pursuant to § 63.2-1719 of the Code of Virginia.

3. Additional requirements.

a. The family day home shall not be permitted to enter into a contract with a local department for child care services when an applicant; any employee; a prospective employee; a volunteer; an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home has any offense as defined in § 63.2-1719 of the Code of Virginia.

b. It shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in the home, has been convicted of a felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth pursuant to § 63.2-1727 of the Code of Virginia.

c. Family day home providers shall meet health and safety standards, as required by policy developed by the department's Child Care and Development Division.

C. Child abuse or neglect record.

1. The provider and, for out-of-home care, assistant, spouse of the provider and adult household members who come in contact with children; any employee; prospective employee; volunteers; agents involved in the day-to-day operation of an out-of-home service; all agents who are alone with, in control of, or supervising one or more child and any other adult living in the home shall consent to a search of the Child Protective Service Central Registry if care is provided for the children. A Child Protective Services Central Registry search remains valid for three years as long as the provider maintains continuous approval by the local department. For any other individual who is required to have a Child Protective Services Central Registry, the search remains valid for three years as long as the individual maintains continuous employment, residence or volunteer status with that provider.

2. The provider, assistant, spouse of the provider, or adult household members who come in contact with children; any employee; prospective employee; volunteers; agents involved in the day-to-day operation of an out-of-home service; all agents who are alone with, in control of, or supervising one or more children; and any other adult living in a home shall not have a founded child abuse or neglect record in the Child Protective Service Central Registry if care is provided for children.

D. Interview, references, and employment history.

1. The provider shall participate in interviews with the local department.

2. The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider. The local department may request more than two references.

3. The provider shall provide information on the provider's employment history.

4. The local department will use the interviews, references, and employment history to assess that the provider is:

a. Knowledgeable in and physically and mentally capable of providing the necessary care for children;

b. Able to sustain positive and constructive relationships with children in care, and to relate to children with respect, courtesy and understanding;

c. Capable of handling emergencies with dependability and good judgment; and

d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for children.

5. For out-of-home care, at least one interview must occur in the home where the care is to be given. All adult household members shall be interviewed to ensure that

they understand the demands and expectations of the care to be given.

E. Training (all providers). The provider shall attend any orientation and training required by the Child Care and Development Division. Training requirements will not exceed 12 hours per year in addition to any requirements for first aid and cardiopulmonary resuscitation (CPR). The provider will bear the cost of any required training unless the local department subsidizes the cost for all local department approved providers in the locality.

F. Medical requirements (all providers).

1. Tuberculosis screenings. The provider and, for out-of-home care, the assistant, and all other adult household members who come in contact with children shall submit a statement from the local health department or licensed physician that he is believed to be free of tuberculosis in a communicable form.

2. Other medical examinations. The provider and assistant shall submit the results of a physical and mental health examination when requested by the local department.

3. The local department shall obtain medical statements from a licensed physician or local health department for children placed with providers through the local department.

G. Updated information. All local department approved providers must keep the local department informed of changes in the household that may affect approval of the provider.

22 VAC 40-771-180. Standards for care.

A. Nondiscrimination. The provider shall provide care that does not discriminate on the basis of race, color, sex, national origin, age, religion, or handicap.

B. Supervision.

1. The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency.

2. A responsible adult shall always be available to substitute in case of an emergency.

3. If extended absence of the provider is required, the local department must approve any substitute arrangements the provider wishes to make. An extended absence shall be defined as greater than one day.

4. Children shall be supervised by an adult at all times. An assistant under age 18 cannot be left in charge.

5. The provider shall ensure that adequate care and supervision is provided to children and the child's health, safety, and well-being is protected.

C. Food.

1. Children shall receive meals and snacks appropriate to the number of hours in care and the daily nutritional needs of each child.

2. Children shall receive special diets if prescribed by a licensed physician or in accordance with religious or ethnic requirements or other special needs.

3. Adequate drinking water shall be available at all times.

4. Children shall receive nutritionally balanced meals appropriate for the length of time in care each day.

D. Transportation of children.

1. If the provider transports children, the provider shall have a valid driver's license and automobile liability insurance.

2. The vehicle used to transport children shall have a valid license and inspection sticker.

3. Providers who transport children must use child restraint devices in accordance with requirements of Virginia law.

4. Providers who transport children must ensure that all passengers are using safety belts in accordance with requirements of Virginia law.

E. Medical care.

1. The provider shall have the name, address, and telephone number of each child's physician and contact person designated by the parent or guardian easily accessible.

2. The provider shall have first aid supplies easily accessible in case of accidents.

3. The out-of-home provider shall keep medicines and drugs separate from food except those items that must be refrigerated.

4. The family and in-home day care provider shall:

a. Give prescription drugs only in accordance with an order signed by a licensed physician or authentic prescription label and with a parent or guardian's written consent, as appropriate;

b. Document all medications administered to children, including over-the-counter medications;

c. Give nonprescription drugs, including but not limited to vitamins and aspirin, only with the parent's or guardian's written consent;

d. Report all major injuries and accidents and all head injuries to the child's parent or guardian; and

e. Have authorization for emergency medical care for each child.

5. The family day home provider:

a. May refuse to accept a sick child into the home;

b. Shall isolate a child who becomes ill during the day and notify the parent or guardian immediately in order that the child may be removed;

c. Shall identify or label all prescription and nonprescription drugs with each child's name and return all drugs to the parent or guardian when no longer needed; and

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d. Shall keep all prescription and nonprescription drugs out of the reach of children.

F. Discipline of children.

- 1. The provider shall establish rules that encourage desired behavior and discourage undesired behavior in cooperation with the parent or guardian of children in care.*
- 2. The provider shall not use corporal punishment.*
- 3. The provider shall not humiliate or frighten the child in disciplining the child.*
- 4. The provider shall not withhold food, force naps, or punish toileting accidents in disciplining the child.*

G. Activities. The provider shall:

- 1. Provide adequate space and structured activities appropriate to the children's ages, interests and abilities, as well as unstructured experiences in family living;*
- 2. Provide opportunities for vigorous outdoor play daily, depending on the weather and the age of the child, as well as for participation in quiet activities; and*
- 3. Limit the types of television, video games, music and computer programs and sites viewed and listened to by children and not use television, video games or computers as a substitute for planned activities.*

H. Abuse, neglect, or exploitation reporting responsibilities of providers. The provider shall immediately report any suspected abuse, neglect, or exploitation of any child in care to the local department or to the 24-hour toll-free hotline (hotline number: 800-552-7096). Most providers covered by this regulation are mandatory reporters in accordance with § 63.2-1509 of the Code of Virginia.

22 VAC 40-771-190. Standards for the home of the out-of-home provider.

A. Physical accommodations.

- 1. The home shall have sufficient appropriate space and furnishings for each child receiving care in the home to include:*
 - a. Space to keep clothing and other personal belongings;*
 - b. Accessible basin and toilet facilities;*
 - c. Comfortable sleeping or napping furnishings;*
 - d. Space for recreational activities; and*
 - e. Sufficient space and equipment for food preparation, service, and proper storage.*
- 2. All rooms used by children shall be heated in winter, dry, and well-ventilated.*
- 3. All doors and windows used for ventilation shall be appropriately screened.*
- 4. Rooms used by children shall have adequate lighting for activities and the comfort of children.*
- 5. The provider and any assistant shall have access to a working telephone in the home.*

6. The home shall be in compliance with all local ordinances.

B. Home safety.

- 1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the children receiving care.*
- 2. The home and grounds shall be free of safety hazards. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the local department requests it.*
- 3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new child, other than an infant, placed in the home.*
- 4. Attics or basements used by children shall have two emergency exits. One of the emergency exits shall lead directly outside, and may be a door or an escapable window.*
- 5. Possession of any weapons, including firearms, in the home must be in compliance with federal and state laws and local ordinances. The provider shall store any firearms and ammunition and other weapons in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall be maintained out of the reach of the children in care. The cabinet shall not be accessible to the child in care. Any glass cabinets used to store any weapons, including firearms, shall be shatter-proof.*
- 6. The provider shall protect children from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances and documentation of inoculations made available if the local department requests.*
- 7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of children.*
- 8. The out-of-home provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector as a minimum in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.*

C. Sanitation.

- 1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.*
- 2. The home and grounds shall be free of garbage, insects, and rodents that would present a hazard to the health of the children.*

D. Capacity.

- 1. The provider shall not exceed the maximum allowable capacity for the type of care given and as approved by the local department.*

2. The maximum number of children at any one time shall not exceed five as long as there are no more than four children under the age of two in care, including the provider's own children and any children who reside in the home pursuant to § 63.2-100 of the Code of Virginia.

3. Any child with a handicap who requires extra attention of the provider counts as two children.

4. More than five children may be enrolled part time as long as no more than five children are present at any given time and there are no more than four children under the age of two in care, including the provider's own children and any children who reside in the home.

5. The ratio of children to adults shall not be exceeded and shall be based on the following:

- a. There shall be one adult to four infants.
- b. There shall be one adult to five children two years old and older.

22 VAC 40-771-200. Children's record requirements.

A. The provider shall maintain written legible information on each child in care.

B. Children's information shall include:

- 1. Identifying information on the child;
- 2. Name, address, and home and work telephone numbers of responsible persons;
- 3. Name and telephone number of person to be called in an emergency when the responsible person cannot be reached;
- 4. Name, address, and home and work telephone numbers of persons authorized to pick up the child in care;
- 5. Name of persons not authorized to call or visit the child;
- 6. Date of admission and withdrawal of the child;
- 7. Daily attendance record, where applicable;
- 8. Medical information pertinent to the health care of the child;
- 9. Correspondence related to the child as well as other written child information provided by the local department;
- 10. Placement agreement between the provider and parent or guardian where applicable; and
- 11. For family day homes, information shall also include authorization for each child to participate in specific classes, clubs, or other activities. The provider shall obtain individual authorization for each child for every field trip or out-of-town trip.

C. Children's records are confidential and cannot be shared without the approval of the parent or guardian. The local department and its representatives shall have access to all records.

22 VAC 40-771-210. Approval period.

The approval period for a provider is 24 months when the provider and, for out-of-home care, the home meet the standards.

22 VAC 40-771-220. Allowable variance.

The provider may receive an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the children or violate federal, state, or local law.

22 VAC 40-771-230. Provider monitoring.

A. For out-of-home providers who are used by the local department, the local department representative will visit the home of the provider as often as necessary but at least semi-annually to monitor the performance of the provider.

B. The representative of the Department of Social Services shall have access to the home and the children in care at any time there are children in care.

C. Parents or guardians shall have access to the home and their children at any time their children are in care.

22 VAC 40-771-240. Renewal process.

The local department will reapprove the provider prior to the end of the approval period if the provider continues to meet the standards. In the case of an out-of-home provider, the home shall also continue to meet the standards.

22 VAC 40-771-250. Inability to meet standards.

If the provider cannot meet the standards described in this part, the local department will grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of noncompliance.

22 VAC 40-771-260. Relocation of out-of-home provider.

If the out-of-home provider moves, the local department will determine continued compliance with standards related to the home.

22 VAC 40-771-270. Right to grieve.

In accordance with procedures established by the department, the provider shall have the right to grieve the actions of the local department to the director of the local department.

PART IV.
PERMANENCY PROVIDERS.

Article 1.
Adoption.

22 VAC 40-771-280. Applicability.

The standards included in this regulation apply to adoptive parents until the final order of adoption is issued.

22 VAC 40-771-290. Standards for providers and other persons.

- A. Age. All adoptive parents shall be at least 18 years of age.
- B. Criminal record background checks and additional requirements.

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1. *Adoptive parent applicants and any other adult household members shall complete a criminal background check pursuant to § 63.2-1721 et seq. of the Code of Virginia.*

2. *Convictions of crimes listed in § 63.2-1719 of the Code of Virginia will preclude approval of applications to become adoptive parent(s).*

C. Child abuse or neglect record. Adoptive parent applicants, including any other adult household members, shall consent to a search of the Child Protective Service Central Registry. The adoptive provider and all adult household members who come in contact with children shall not have a founded child abuse or neglect record in the Child Protective Service Central Registry.

D. Interview, references, and employment history.

1. *The provider shall participate in interviews with the local department.*

2. *The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider. The local department may request more than two references.*

3. *The provider shall provide information on the provider's employment history.*

4. *The local department will use the interviews, references, and employment history to assess that the:*

a. Provider is knowledgeable in and physically and mentally capable of providing the necessary care for children;

b. Provider is able to sustain positive and constructive relationships with children in care, and to relate to children with respect, courtesy and understanding;

c. Provider is capable of handling emergencies with dependability and good judgment; and

d. Provider is able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for children;

e. Provider demonstrates a capacity to love and nurture a child born to someone else;

f. Provider can accept the child for his own sake without expecting him to resolve family problems or fulfill family ambitions; and

g. Married adoptive parents show marital stability and mutual satisfaction with each other.

5. *The local department shall conduct a home study in a format prescribed by the department.*

6. *Providers shall disclose the following financial information:*

a. Income from all sources;

b. Savings and investments;

c. Property; and

d. Debts.

7. *At least one interview must occur in the home where the care is to be given. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be given.*

E. Training. The local department shall provide a minimum of 27 hours of basic orientation and training, based on a curriculum developed by the state, to each provider prior to placement of a child in the home. Local departments will provide a minimum of 12 hours annual in-service training to each provider as long as the provider remains approved for the placement of children. The in-service training is based on the curriculum developed by the state. The provider shall attend all orientation and training sessions required by the local department at no cost to the provider.

F. Medical requirements.

1. *Tuberculosis screenings. The provider and all other adult household members who come in contact with children shall submit a statement from the local health department or licensed physician that he is believed to be free of tuberculosis in a communicable form.*

2. *Other medical examinations. The provider shall submit the results of a physical and mental health examination when requested by the local department. For adoptive parents, the local department will require submission of the results of a physical examination performed by a licensed physician within the past 12 months.*

3. *The local department shall obtain medical statements from a licensed physician or local health department for children placed with providers through the local department.*

G. Updated information. All local department approved providers must keep the local department informed of changes in the household that may affect approval of the provider.

22 VAC 40-771-300. Standards for care.

A. Nondiscrimination. The provider shall provide care that does not discriminate on the basis of race, color, sex, national origin, age, religion, or handicap.

B. Supervision.

1. *The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency.*

2. *A responsible adult shall always be available to substitute in case of an emergency.*

3. *If absence of the provider is required, the local department must approve any substitute arrangements the provider wishes to make.*

4. *The provider shall ensure that adequate care and supervision is provided to children and the children's health, safety, and well-being is protected.*

C. Food.

1. Children shall receive meals and snacks appropriate to the nutritional needs of each child.
2. Children shall receive special diets if prescribed by a licensed physician or in accordance with religious or ethnic requirements or other special needs.
3. Adequate drinking water shall be available at all times.
4. Children shall receive nutritionally balanced meals.

D. Transportation of children.

1. If the provider or any other adult transports children, the provider and any other adult shall have a valid driver's license and automobile liability insurance.
2. The vehicle used to transport children shall have a valid license and inspection sticker.
3. Providers and any other adults who transport children must use child restraint devices in accordance with requirements of Virginia law.

E. Medical care.

1. The provider shall have the name, address, and telephone number of each child's physician easily accessible.
2. The provider shall have first aid supplies easily accessible in case of accidents.
3. The provider shall keep medicines and drugs separate from food except those items that must be refrigerated.

F. Discipline of children.

1. The provider shall establish rules that encourage desired behavior and discourage undesired behavior.
2. The provider shall not use corporal punishment.
3. The provider shall not humiliate or frighten the child in disciplining the child.
4. The provider shall not withhold food, force naps, or punish toileting accidents in disciplining the child.

G. Abuse, neglect, or exploitation reporting responsibilities of providers. The provider shall immediately report any suspected abuse, neglect, or exploitation of the child in care to the local department or to the 24-hour toll-free hotline (hotline number: 800-552-7096).

22 VAC 40-771-310. Standards for the providers.

A. Physical accommodations.

1. The home shall have sufficient appropriate space and furnishings for each child receiving care in the home including:
 - a. Space to keep clothing and other personal belongings;
 - b. Accessible basin and toilet facilities;
 - c. Comfortable sleeping or napping furnishings;
 - d. For children unable to use stairs unassisted, other than a child who can easily be carried, sleeping space on the first floor of the home;

- e. Space for recreational activities; and
- f. Sufficient space and equipment for food preparation, service, and proper storage.

2. All rooms used by children shall be heated in winter, dry, and well-ventilated.
3. All doors and windows used for ventilation shall be appropriately screened.
4. Rooms used by children shall have adequate lighting for activities and the comfort of children.
5. The provider shall have access to a working telephone in the home.
6. The home shall be in compliance with all local ordinances.

B. Home safety.

1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the children receiving care.
2. The home and grounds shall be free of safety hazards. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the local department requests it.
3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new child, other than an infant, placed in the home.
4. Attics or basements used by children shall have two emergency exits. One of the emergency exits shall lead directly outside, and may be a door or an escapable window.
5. Possession of any weapons, including firearms, in the home must be in compliance with federal and state laws and local ordinances. The provider shall store any firearms and ammunition and other weapons in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall be maintained out of the reach of all children in the home. The cabinet shall not be accessible to the children in care. Any glass cabinets used to store any weapons, including firearms, shall be shatter-proof.
6. The provider shall protect children from household pets that may be a health or safety hazard.
7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of children.
8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector as a minimum in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

C. Sanitation.

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1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.

2. The home and grounds shall be free of garbage, insects, and rodents that would present a hazard to the health of the child.

22 VAC 40-771-320. Child record requirements for the provider.

A. The provider shall maintain written legible information on each child in care.

B. Child information shall include:

1. Identifying information on the child;
2. Name of persons not authorized to call or visit the child;
3. Medical information pertinent to the health care of the child;
4. Correspondence related to the child as well as other written child information provided by the local department; and
5. Placement agreement between the provider and the local department.

C. Child records are confidential. The local department and its representatives shall have access to all records.

22 VAC 40-771-330. Approval period.

The approval period is 24 months when the provider and the home meet the standards.

22 VAC 40-771-340. Allowable variance.

Pursuant to the department's policy, the provider may receive an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the child or violate federal, state, or local law, except that a variance shall not be granted if the provider has been convicted of a crime listed in § 63.2-1719 of the Code of Virginia.

22 VAC 40-771-350. Renewal process.

The local department will reapprove the adoptive provider prior to the end of the approval period if the provider and the home continue to meet the standards. Criminal record background checks and child abuse and neglect central registry checks must be completed at each renewal on the adoptive parent(s) provider and other adult household members in order for the family to continue to meet standards.

22 VAC 40-771-360. Inability to meet standards.

If the provider cannot meet the standards described in this article, the local department will grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of noncompliance.

22 VAC 40-771-370. Relocation of provider.

If the provider moves, the local department will determine continued compliance with standards related to the home.

22 VAC 40-771-380. Right to grieve and appeal.

The provider and applicant to become a provider shall have the right to grieve the actions of the local department to the local board on issues related to the application of state policy. If the provider or applicant is not satisfied with the grievance review, the provider or applicant may appeal to the commissioner or his designee. Decisions on the placement of a specific child with a provider is not subject to appeal to the commissioner or his designee. A provider may grieve these decisions to the local board. The local board shall have the final authority to determine appropriate placement for children pursuant to § 16.1-278.2 of the Code of Virginia. However, decisions regarding final adoptive placements are made by the circuit court pursuant to Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2 of the Code of Virginia.

Article 2. Foster Care.

22 VAC 40-771-390. Standards for providers and other persons.

A. Age.

1. All local department approved foster care providers shall be at least 18 years of age.
2. Any assistant to a local department approved provider shall be at least 16 years of age.

B. Criminal record background checks and additional requirements.

1. Foster parent applicants and any other adult household members shall complete a criminal background check pursuant to § 63.2-1721 et seq. of the Code of Virginia.
2. Convictions of crimes listed in § 63.2-1719 of the Code of Virginia will preclude approval of applications to become foster parent(s).

C. Child abuse or neglect record. Foster parent applicants, including any other adult household members, shall consent to a search of the Child Protective Service Central Registry. The foster care provider and all adult household members who come in contact with children shall not have a founded child abuse or neglect record in the Child Protective Service Central Registry.

D. Interview, references, and employment history.

1. The provider shall participate in interviews with the local department.
2. The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider. The local department may request more than two references.
3. The provider shall provide information on the provider's employment history.
4. The local department will use the interviews, references, and employment history to assess that the:

a. Provider is knowledgeable in and physically and mentally capable of providing the necessary care for children;

b. Provider is able to sustain positive and constructive relationships with children in care, and to relate to children with respect, courtesy and understanding;

c. Provider is capable of handling emergencies with dependability and good judgment; and

d. Provider is able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for children;

5. The local department shall conduct a home study in a format prescribed by the department.

6. At least one interview must occur in the home where the care is to be given. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be given.

7. The local department will further use the interview, references, and employment history to assess that the foster care provider has sufficient financial income or resources to meet the basic needs of the provider's own family.

E. Training. The local department shall provide a minimum of 27 hours of basic orientation and training, based on a curriculum developed by the state, to each provider prior to placement of a child in the home. Local departments will provide a minimum of 12 hours annual in-service training to each provider as long as the provider remains approved for the placement of children. The in-service training is based on the curriculum developed by the state. The provider shall attend all orientation and training sessions required by the local department at no cost to the provider.

F. Medical requirements.

1. Tuberculosis screenings. The foster care provider and all other adult household members who come in contact with children shall submit a statement from the local health department or licensed physician that he is believed to be free of tuberculosis in a communicable form.

2. Other medical examinations. The provider shall submit the results of a physical and mental health examination when requested by the local department.

3. The local department shall obtain medical statements from a licensed physician or local health department for children placed with providers through the local department.

G. Updated information. All local department approved providers must keep the local department informed of changes in the household that may affect approval of the provider.

22 VAC 40-771-400. Standards for care.

A. Nondiscrimination. The provider shall provide care that does not discriminate on the basis of race, color, sex, national origin, age, religion, or handicap.

B. Supervision.

1. The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency.

2. A responsible adult shall always be available to substitute in case of an emergency.

3. If absence of the provider is required, the local department must approve any substitute arrangements the provider wishes to make.

4. The provider shall ensure that adequate care and supervision are provided to children and the children's health, safety, and well-being is protected.

C. Food.

1. Children shall receive meals and snacks appropriate to the daily nutritional needs of each child.

2. Children shall receive special diets if prescribed by a licensed physician or in accordance with religious or ethnic requirements or other special needs.

3. Adequate drinking water shall be available at all times.

4. Children shall receive nutritionally balanced meals.

D. Transportation of children.

1. If the provider or any other adult transports children, the provider and any other adult shall have a valid driver's license and automobile liability insurance.

2. The vehicle used to transport children shall have a valid license and inspection sticker.

3. Providers and any other adults who transport children must use child restraint devices in accordance with requirements of Virginia law.

E. Medical care.

1. The provider shall have the name, address, and telephone number of each child's physician easily accessible.

2. The provider shall have first aid supplies easily accessible in case of accidents.

3. The provider shall keep medicines and drugs separate from food except those items that must be refrigerated.

F. Discipline of children.

1. The provider shall establish rules that encourage desired behavior and discourage undesired behavior in cooperation with the local department.

2. The provider shall not use corporal punishment.

3. The provider shall not humiliate or frighten the child in disciplining the child.

4. The provider shall not withhold food, force naps, or punish toileting accidents in disciplining the child.

G. Abuse, neglect, or exploitation reporting responsibilities of providers. The provider shall immediately report any suspected abuse, neglect, or exploitation of any child in care

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to the local department or to the 24-hour toll-free hotline (hotline number: 800-552-7096).

H. Clothing requirements.

1. Foster parents shall provide adequate and seasonal clothing appropriate for the age and size of each child.
2. The foster parent provider shall ensure that children have adequate and seasonal clothing and that all clothing is properly laundered or dry cleaned, and altered or repaired as needed.

22 VAC 40-771-410. Standards for the home of the provider.

A. Physical accommodations.

1. The home shall have sufficient appropriate space and furnishings for each child receiving care in the home including:
 - a. Space to keep clothing and other personal belongings;
 - b. Accessible basin and toilet facilities;
 - c. Comfortable sleeping or napping furnishings;
 - d. For children unable to use stairs unassisted, other than a child who can easily be carried, sleeping space on the first floor of the home;
 - e. Space for recreational activities; and
 - f. Sufficient space and equipment for food preparation, service, and proper storage.
2. All rooms used by children shall be heated in winter, dry, and well ventilated.
3. All doors and windows used for ventilation shall be appropriately screened.
4. Rooms used by children shall have adequate lighting for activities and the comfort of children.
5. The provider shall have access to a working telephone in the home.
6. The home shall be in compliance with all local ordinances.
7. No more than four children shall occupy one bedroom.
8. There shall be at least 70 square feet of space in a room occupied by one child and at least 50 square feet of space for each child in a room shared by two or more.
9. Children of the opposite sex shall not share a bed or a bedroom.
10. Children over the age of five shall not share a bedroom with an adult.

B. Home safety.

1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the children receiving care.
2. The home and grounds shall be free of safety hazards. The provider shall permit a fire inspection of the home by

appropriate authorities if conditions indicate a need for approval and the local department requests it.

3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new child, other than an infant, placed in the home.

4. Attics or basements used by children shall have two emergency exits. One of the emergency exits shall lead directly outside, and may be an escapable door or an escapable window.

5. Possession of any weapons, including firearms, in the home must be in compliance with federal and state laws and local ordinances. The provider shall store any firearms and ammunition and other weapons in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall be maintained out of the reach of all children in the home. The cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatter-proof.

6. The provider shall protect children from household pets that may be a health or safety hazard.

7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of children.

8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector as a minimum in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

C. Sanitation.

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.

2. The home and grounds shall be free of garbage, insects, and rodents that would present a hazard to the health of the child.

D. Capacity.

1. The provider shall not exceed the maximum allowable capacity for the type of care given and as approved by the local department.

a. The maximum number of children in a home with two foster parents is eight.

b. The maximum number of children in a home with one foster parent is four.

c. The foster parents' own children under age 14 count in determining the maximum number of children.

d. An infant counts as two children.

e. Any child with a handicap who requires extra attention of the provider counts as two children.

f. The local department may grant an exception to the foster home's maximum capacity to avoid separating a sibling group.

2. The actual capacity of a particular home may be less than the above capacities if:

a. The physical accommodations of the home are not adequate for the maximum number of children;

b. The capabilities and skills of the provider are not sufficient to manage the maximum number of children; or

c. Other individuals in the home require special attention or services of the provider.

22 VAC 40-771-420. Child record requirements for the provider.

A. The provider shall maintain written legible information on each child in care.

B. Child information shall include:

1. Identifying information on the child;

2. Name, address, and home and work telephone numbers of responsible persons;

3. Name and telephone number of person to be called in an emergency when the responsible person cannot be reached;

4. Name, address, and home and work telephone numbers of persons authorized to pick up the child in care;

5. Name of persons not authorized to call or visit the child;

6. Date of admission and discharge of the child;

7. Medical information pertinent to the health care of the child;

8. Correspondence related to the child as well as other written child information provided by the local department;

9. Placement agreement between the provider and the local department.

C. Child records are confidential and cannot be shared without the approval of the child and/or parent. The local department and its representatives shall have access to all records.

22 VAC 40-771-430. Approval period.

The approval period for a provider is 24 months when the provider and the home meet the standards.

22 VAC 40-771-440. Allowable variance.

The provider may receive an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the child or violate federal, state, or local law, except that a variance shall not be granted if the provider has been convicted of a crime listed in § 63.2-1719 of the Code of Virginia.

22 VAC 40-771-450. Emergency approval.

A. Emergency approval of a provider may be granted under the following conditions when the placement is in the home of the child's relative or friend:

1. The court orders emergency placement;

2. The child is placed under the 72-hour emergency removal authority; or

3. The parent requests placement or service in an emergency.

B. Prior to placement of a child with an unapproved provider, a criminal background check and child abuse and neglect central registry search must be conducted on all adults in the home of where the child is to be placed pursuant to § 63.2-901.1 of the Code of Virginia. Crimes listed in § 63.2-1719 of the Code of Virginia will preclude placement of the child.

22 VAC 40-771-460. Provider monitoring.

The local department representative will visit the home of the provider as often as necessary but at least semi-annually to monitor the performance of the provider.

22 VAC 40-771-470. Renewal process.

The local department will reapprove the foster care provider prior to the end of the approval period if the provider and the home continue to meet the standards. Criminal record background checks and child abuse and neglect central registry checks must be completed at each renewal on the foster parent(s) provider and other adult household members in order for the family to continue to meet standards.

22 VAC 40-771-480. Inability to meet standards.

If the provider cannot meet the standards described in this article, the local department will grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of noncompliance.

22 VAC 40-771-490. Relocation of the provider.

If the provider moves, the local department will determine continued compliance with standards related to the home.

22 VAC 40-771-500. Right to grieve and appeal.

The provider and applicant to become a provider shall have the right to grieve the actions of the local department to the local board on issues related to the application of state policy. If the provider or applicant is not satisfied with the grievance review, the provider or applicant may appeal to the commissioner or his designee. Decisions on the placement of a specific child with a provider is not subject to appeal to the commissioner or his designee. A provider may grieve these decisions to the local board. The local board shall have the final authority to determine appropriate placement for children pursuant to § 16.1-278.2 of the Code of Virginia.

22 VAC 40-771-510. Applicability.

These standards continue to apply for foster care providers who care for youth between the ages of 18 and 21.

VA.R. Doc. No. R03-66; Filed July 14, 2004, 9:14 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Title of Regulation: 8 VAC 20-670. **Regulations Governing the Operation of Private Day Schools for Students with Disabilities (adding 8 VAC 20-620-10 through 8 VAC 20-670-440).**

Statutory Authority: §§ 22.1-16 and 22.1-321 of the Code of Virginia.

Effective Date: September 10, 2004.

Agency Contact: Carolyn Hodgins, Specialist, Private Day Schools, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-4551, FAX (804) 225-2524.

Summary:

Existing Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits, 8 VAC 20-13, provide the basis upon which private trade, technical, business, and correspondence schools, and private day schools for children with disabilities can be established and operated within the Commonwealth. The proposed new Regulations Governing the Operation of Private Day Schools for Students with Disabilities provide in a separate regulation the requirements for private day schools for students with disabilities that are licensed and operated in accordance with §§ 22.1-16 and 22.1-321 of the Code of Virginia. In addition, the proposed new regulations differ from 8 VAC 20-13 by (i) exempting schools that collect no advance tuition other than equal monthly installments from maintaining a guarantee instrument, (ii) allowing schools to obligate privately placed students for more than quarterly increments of their annual tuition if the school makes tuition insurance available, (iii) providing that scheduled on-site inspections will occur every three years and unannounced visits may occur anytime, and (iv) requiring criminal background checks including fingerprinting for school employees. Fees are not included in conformance with action of the General Assembly to eliminate collection of fees from private day schools for students with disabilities.

Changes from the proposed regulation include (i) editorial changes for consistency and clarity; (ii) the elimination of the requirement of maintaining the results of a "current" x-ray or tuberculin test in personnel files; (iii) the addition of a section regarding the exemption of private schools whose primary purpose is to provide educational services to students without disabilities (although students with disabilities may be enrolled).

Summary of Public Comment's 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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:6 VA.R. 539-551 December 1, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

8 VAC 20-670-10. Definitions.

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

"Behavior management [program]" means those principles and methods employed by a school to help an individual student achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized education program or individualized instructional plan and written policies and procedures governing service expectation, educational and treatment goals, and safety and security.

"Board" means the Virginia Board of Education.

"Branch campus" means any multi-site location in the same town, city, or county where the school is offered on a regular continuing basis.

"Consent" means the voluntary and revocable agreement of the parent or parents or eligible student who has been fully informed of all information relevant to the activity including which records, if any, will be released for which consent is sought in the parent's, parents' or eligible student's native language, or other mode of communication, and who understands and agrees, in writing, to the carrying out of the activity for which consent is sought.

"Department" means the Virginia Department of Education.

"Disability category" means a listing of special education eligibility classifications for students served.

"Extension classroom" means a location away from but in close proximity to the main campus where only classes are offered.

"Guaranty instrument" means a surety bond, irrevocable letter of credit or certificate of deposit.

"License to operate" means the legal document issued by the Board of Education that provides institutional and programmatic authority to operate a school as further defined in these regulations.

"Paraprofessional" means an appropriately trained employee who assists and is supervised by qualified professional staff.

"Physical restraint" (also referred to as "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent a student from moving his body to engage in behavior that places himself or others at risk of physical harm. Physical restraint does not include the use of "hands on" approaches that occur for extremely brief periods of time and never exceeds more than a few seconds duration and is used for the following purposes:

1. To intervene in or redirect a potentially dangerous encounter in which the student may voluntarily move away from the situation or hands-on approach; or
2. To quickly deescalate a dangerous situation that could cause harm to the individual or others.

"Regulations" means this document in its entirety.

"Rules of conduct" means a listing of rules that is maintained to inform students and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"School for students with disabilities" means a privately owned or operated preschool, school or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have autism, deaf-blindness, a developmental delay, a hearing impairment, including deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness.

"Time out" means removing the individual from his immediate environment to a different, open location until the student is calm or the problem behavior has subsided.

[8 VAC 20-670-15. Exemption.

Any privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even through the school may serve children with disabilities in a regular academic setting, is exempt from this chapter.]

8 VAC 20-670-20. [No change from proposed.]

8 VAC 20-670-30. Initial application.

A. The application forms and information regarding the application process shall be available from the department.

B. Complete applications and other required documentation shall be [~~submitted to~~ received by] the department at least 60 [~~administrative~~ business] days in advance of the school's planned opening date.

8 VAC 20-670-40. Assessment of application.

A. The department shall evaluate each completed application within 60 [~~administrative~~ business] days of its receipt for licensure and advise the school in writing of its approval or any deficiencies.

B. All deficiencies shall be corrected within 100 calendar days from receipt of the department's written evaluation of the application. Any school not meeting this deadline shall submit to the department a written request for continued consideration.

8 VAC 20-670-50. [No change from proposed.]

8 VAC 20-670-60. [No change from proposed.]

8 VAC 20-670-70. Penalty for noncompliance.

A. Any person who opens, operates, or conducts a school without first obtaining a license to operate may be found guilty of a Class 2 misdemeanor [(§ 22.1-331 of the Code of Virginia)].

B. Each day the school remains open without a license to operate, the owner or board of directors shall incur a separate offense.

C. The department shall refer to the Office of the Attorney General any alleged or known violation of these provisions. The Office of the Attorney General shall refer the matter to the Commonwealth Attorney of proper jurisdiction.

8 VAC 20-670-80. Application requirements for schools seeking a license to operate.

The following information shall be submitted as part of the application:

1. Title or name of the school that is permanent and distinct and shall not be changed without first securing approval from the department.
2. Names and addresses of owners, controlling officials, and managing employees.
3. Evidence of compliance with applicable State Corporation Commission regulations when the school is owned by a partnership or corporation.
4. Curriculum information in the department's required format.
5. A scale drawing or copy of the floor plan including room use and dimensions.
6. A certificate of occupancy or other report from the appropriate government agency or agencies indicating that the location or locations meet applicable fire safety, building code, and sanitation requirements.
7. A copy of the deed, lease, or other legal instruments authorizing the school to occupy such locations.
8. A listing of the equipment, training aids, and textbooks used for instruction.
9. The maximum anticipated enrollment to be accommodated with the equipment available and the ratio of students to teachers and instructional aides.
10. A listing of the qualifications of the staff in the school.
11. A proposed budget, a three-year financial plan, and documentation of sufficient operating capital to carry the school through its first year including proof of a guaranty instrument described in subdivision 13 of this section.

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12. A copy of the student enrollment agreement, a current schedule of tuition and other fees, copies of all other forms used to keep student records, and the procedure for collecting and refunding tuition.

13. A surety bond, irrevocable letter of credit or certificate of deposit as required by 8 VAC 20-670-320.

14. Copies of all proposed advertising.

[15. A handbook describing the school's programs and policies.]

[~~15.~~ 16.] Any additional information as the board or department may deem necessary to carry out the provisions of the Code of Virginia.

8 VAC 20-670-90. [No change from proposed.]

8 VAC 20-670-100. [No change from proposed.]

8 VAC 20-670-110. Instructional program.

A. The instructional program of each school shall reflect the written philosophy of the school by implementing the stated objectives through methods, procedures, and practices that reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the students served. Instructional programs for students with disabilities shall be conducted in accordance with appropriate regulations governing the education of children with disabilities approved and issued by the board [(8 VAC 20-80)].

B. Each school shall provide a program of instruction that promotes the individual student's developmental growth or academic achievement at successive grade levels. Instruction shall be designed to accommodate each student and meet the abilities, interest, educational and transitional needs of the students.

C. Programs for students with disabilities shall also comply with the following requirements:

1. Each student identified by a local education agency (LEA) as eligible for special education and related services and placed by a local school division or for noneducational reasons by a comprehensive services team shall have an individualized education program on file with the school in accordance with regulations of the board governing the education of children with disabilities. Students not identified as such and those placed by parents shall have an individualized instruction program.

2. Individualized education programs shall address participation in the general curriculum and acquisition of the knowledge and skills contained in the Virginia Standards of Learning for English, mathematics, science, and history/social science [(8 VAC 20-80-62 F)].

3. Confidentiality of information including access rights; record of access; record on more than one child; list of types and location of information; fees; amendment of records at parent's request; consent; collection, storage, disclosure and destruction safeguards; and destruction of information shall be kept in accordance with regulations of the board [(8 VAC 20-150)].

4. The school shall use testing and evaluation materials that are not racially or culturally discriminatory and do take into consideration the student's disabling condition or conditions, or racial and cultural background.

5. The Virginia State Assessment Program shall be addressed in the student's individualized education program [(8 VAC 20-80-62 F 5)].

6. Schools shall follow the Standards for Accrediting Public Schools in Virginia (8 VAC 20-131) or standards approved by the Virginia Council of Private Education for conferring credit and diplomas [(8 VAC 20-131-110)].

7. Records of current initial eligibility determinations or reevaluations of eligible students with disabilities, conducted in accordance with board regulations, shall be on file [(8 VAC 20-80-56)].

8. A planned program for personnel development shall be provided.

9. A plan for and documentation of contact with parents, guardians, and local school division personnel shall be available.

10. All procedural safeguards required by regulations governing the education of students with disabilities shall apply for eligible students [(8 VAC 20-80-70)].

11. Instructional/training schedules shall be conducted in accordance with board regulations [(8 VAC 20-131-150)].

12. The school shall maintain pupil-teacher ratios in accordance with department regulations [(8 VAC 20-80-45)].

D. A written agreement between the school and any third party organization shall be entered into for programs requiring an enrolled student internship or externship. A copy of the agreement shall be available for review by the board or department.

8 VAC 20-670-120. [No change from proposed.]

8 VAC 20-670-130. Behavior management programs.

A. If a school has a program for behavior management or modification, the school shall develop, implement, and have on file written policies and procedures that describe the use of behavior management techniques approved by the governing body of the school. Positive approaches to behavior management shall be emphasized. The behavior management techniques used by the school shall be listed in order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used by trained school personnel. The policies must protect the safety and well-being of the student at all times, including during fire and other emergencies. Policies must specify the mechanism for monitoring and methods of documenting the use of behavior management techniques.

B. All interested parties, including students, their parents, guardians and local education agencies when the student is publicly placed, shall be informed of the policies and rules of conduct through written information contained in the school's handbooks, brochure, enrollment contract, or other

publications. Informed consent shall be obtained before implementation of any behavior management program.

C. Schools may allow students to voluntarily take time outside the classroom or in a designated area of the classroom to regroup. If the student requires assistance to remove himself from the immediate environment, it must be done in accordance with the school's policies and procedures for the use of time out that comply with sound therapeutic practice. Staff must be available to students during this time in regaining emotional control.

D. A school that uses physical restraints shall have and implement written policies and procedures governing their use. The procedures shall include methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the student's behavior. Use of physical restraints shall be limited to that which is minimally necessary to protect the student or others and may only be used by trained staff and only after less intrusive interventions have failed and when failure to restrain would result in harm to the student or others.

E. The behavior management program shall be developed, implemented, and monitored by staff trained in behavior management programming. Staff shall review the training in physical restraints and less intrusive interventions at least annually.

F. Application of a formal behavior management [~~technique~~ program] designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time-specific plan that is consistent with sound therapeutic practice. Consent of the individual, parent or guardian, and the placing school division is required.

G. Individual applications of formal behavior management techniques including use of physical restraints shall be reported to the parents and documented in the student's record and, at a minimum, include date and time, staff involved, circumstances and reasons for use, including other behavior management techniques attempted, duration, type of technique used, and outcomes.

H. Injuries resulting from or occurring during the implementation of behavior management techniques shall be documented and appropriate health care shall be administered. The student's parents or legal guardian shall be notified.

I. Students shall not discipline, restrain or implement behavior management plans of other students.

J. The following actions are prohibited:

1. Any action that is humiliating, degrading, or abusive;
2. Deprivation of drinking water or food necessary to meet a student's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the student's file;
3. Denial of use of toilet facilities or toileting assistance;

4. Use of restraint as punishment, reprisal, or for the convenience of staff;

5. Corporal punishment;

6. Deprivation of health care including counseling; and

7. Use of mechanical and chemical restraints.

8 VAC 20-670-140. [No change from proposed.]

8 VAC 20-670-150. Provisions for health.

A. A report of [a comprehensive] physical examination [~~not more than three years old~~] by a qualified healthcare provider and an up-to-date immunization record shall be on file for each student.

B. A student suffering with a contagious or infectious condition or disease shall be excluded from school while in that condition unless attendance is approved by a qualified healthcare provider.

C. An adequate first aid kit shall be provided for use in the case of accidents, minor injuries, and medical emergencies.

D. All medications shall be accepted only in current original labeled prescription containers with parental permission to administer.

E. Transportation of medication shall be expressly covered in the school's policy manual. All interested parties shall be informed of the policy through written information.

F. Training shall be provided to all staff in medication procedures and effects and in infection control measures including the use of universal precautions. All staff administering medication shall receive approved training for medication management. At least one person [~~trained~~ certified] in first aid and CPR shall be available at all times to the students at the school [~~and on field trips~~].

G. In schools where meals are served on a daily basis, the school shall have the services of either a full-time or part-time dietitian or nutritionist, or consultative assistance to ensure that a well-balanced nutritious daily menu is provided. Records of menus for all meals served shall be kept on file for six months.

H. Any case of suspected child abuse or neglect shall be reported immediately to the local child protective services unit as required by [§ 63.2-1509 of] the Code of Virginia. Any case of suspected child abuse or neglect that is related to the facility shall be reported immediately to the department and placing agency, and to either the parent or legal guardian. When a case of suspected child abuse or neglect is reported to child protective services, the student's records shall include the date and time the suspected abuse or neglect occurred, a description of the incident, the action taken as a result of the incident, and the name of the person to whom the report was made at the local child protective services unit.

8 VAC 20-670-160. Transportation.

A. All drivers of vehicles transporting students shall comply with the requirements of the applicable laws of Virginia [(§ 22.1-180)]. Appropriate safety measures that take into consideration the age range and disabling conditions of

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students served at the school shall be taken by staff members or other adults who may transport students to and from school [or on school-sponsored activities].

B. Evidence of vehicle liability insurance to protect those students transported to and from the school shall be submitted.

C. All schools shall have on file evidence that school-owned vehicles used for the purpose of transporting students to and from school and school-related activities meet federal and state standards and are maintained in accordance with applicable state and federal laws [(49 CFR Part 571)].

D. All vehicles used to transport students on school activities shall be equipped with first aid kits, a fire extinguisher, and two-way communication devices.

E. Individual student emergency information including currently prescribed and over-the-counter medications, significant medical problems, and any allergies shall accompany students when they are being transported.

8 VAC 20-670-170. [No change from proposed.]

8 VAC 20-670-180. [No change from proposed.]

8 VAC 20-670-190. Administrative personnel.

A. Each school shall designate a person to be responsible for the administration of the school. This person shall be a graduate of an accredited college or university and shall have sufficient time, training, and ability to carry out effectively the duties involved.

B. The individual responsible for the day-to-day operation of the educational program, no matter how titled, shall hold and maintain a valid five-year renewable postgraduate professional license issued by the board. This individual shall hold an endorsement in at least one appropriate area of disability served by the school [(8 VAC 20-21)]. The individual serving in this capacity could be the same person functioning as the administrator identified in subsection A of this section provided licensure requirements are met.

C. The department may make exception to the above requirements for good cause upon application by the school.

8 VAC 20-670-200. Teachers.

A. Teachers of academic courses in elementary and nondepartmentalized middle and high school programs shall hold a current Virginia teaching license issued by the board with endorsement in at least one of the specific areas of disability served by the school, or otherwise comply with [board regulations. "~~Otherwise comply~~" means that a teacher without endorsement in a specific area of disability must secure a Special Education Conditional License from the board and agree in writing to earn credit at the rate of six semester hours per year toward full endorsement beginning in the next semester. Requirements for a teaching license and the procedure for securing a license are outlined in] the Licensure Regulations for School Personnel (8 VAC 20-21).

B. Teachers in middle and high schools that are departmentalized must hold a current Virginia teachers license with endorsement in the academic area they are instructing

[(8 VAC 20-21)]. A sufficient number of appropriately endorsed special education teachers must be available to case manage individualized education programs (IEPs) and to provide disability specific technical assistance and instruction. Ongoing staff development must include disability specific training.

C. Teachers of specialized subjects such as music, art, physical education, health and vocational education must hold a valid teaching license with an endorsement in the teaching area of responsibility and agree to complete course work or inservice training in working with the types of students served by the school.

D. The board may make exception to the above requirements for good cause.

8 VAC 20-670-210. [No change from proposed.]

8 VAC 20-670-220. Personnel files.

Personnel files for staff shall be maintained and shall include the following documentation:

1. Academic preparation and past experience;
2. Attendance records;
3. Copies of contracts indicating dates and terms of employment;
4. Results of a [~~current~~] x-ray or tuberculin test and other health records required by § 22.1-300 of the Code of Virginia and applicable regulations of the Virginia Department of Health;
5. Evidence of child protective service and criminal records checks including fingerprinting. Additionally for all staff who may transport students, evidence of Department of Motor Vehicles checks and a current copy of the driver's license; and
6. Documentation of staff development.

8 VAC 20-670-230 through 8 VAC 20-670-270. [No change from proposed.]

8 VAC 20-670-280. Advertising and publications.

A. Each school shall use its complete name as listed on its license to operate for all publicity, publications, promotions or marketing purposes.

B. With respect to its status with the board, the school may advertise only that it has a "License to Operate from the Virginia Board of Education." No other wording is acceptable to the board.

A school holding a license to operate issued by the board shall not expressly or by implication indicate by any means that the license to operate represents an endorsement offered by the school.

C. [~~Each school shall develop and publish a handbook describing the school's programs and policies that shall be submitted to the department for review and approval prior to final printing.~~]—All printed materials shall be accurate concerning the school's requirements for admission, curricula,

programs and services, graduation requirements, tuition and other fees or charges, and terms for payment of tuition and other fees. Copies shall be filed with the board or department.

D. A school or its representatives shall not make any fraudulent or misleading statement about any phase of its operation in published or distributed materials.

E. Printed or electronic representations shall not be used by a school in such a manner as to convey a false impression about the size, importance, or location of the school's facilities or its equipment.

F. Schools shall not use endorsements, commendations, or recommendations by students, individuals, manufacturers, business establishments or organizations except with their written consent and without any offer of financial compensation. Written evidence of compliance shall be maintained and available to the board or department.

G. The accrediting agency must be named if accreditation is used as part of a school's promotional materials.

H. No school may use the seal of the Commonwealth in any advertisement, publication or document.

8 VAC 20-670-290. [No change from proposed.]

8 VAC 20-670-300. A license to operate is not transferable.

A. A change of ownership occurs when control of a school changes from one owner to another. New owners of a school shall make an application for an original license to operate.

B. If there is a change in ownership of a school, the current owner shall notify the department at least 30 days prior to the proposed date of sale and provide a copy of the agreement of sale. An application for an original license to operate [~~or certificate of program compliance~~], including all attachments listed in 8 VAC 20-670-30, shall be submitted to the department by the new owner within 30 days following the effective date of the change. The school may be operated on a temporary basis under the new ownership until an original license to operate has been issued by the board.

8 VAC 20-670-310 through 8 VAC 20-670-330. [No change from proposed.]

PART XIV.

DENIAL, REVOCATION, SUSPENSION OR REFUSAL TO RENEW [~~A CERTIFICATE~~], GROUNDS.

8 VAC 20-670-340. [No change from proposed.]

8 VAC 20-670-350. Refusal, denial, revocation, or suspension.

The board may refuse to renew or may deny, revoke or suspend the license to operate [~~of~~] a school for any one or combination of the following causes:

1. Violation of any provision of the Code of Virginia or any board regulations;
2. Furnishing false, misleading, or incomplete information or failure to furnish information requested by the board or department;

3. Violation of any commitment made in an application for a license to operate [~~or certificate of program compliance~~];

4. Failure to provide or maintain the premises or equipment in a safe and sanitary condition as required by law, by state regulations or local ordinances;

5. Failure to maintain adequate financial resources to conduct the programs offered or to retain an adequate, qualified instructional staff;

6. Failure to safeguard the interests of the public; and

7. Failure within a reasonable time to provide information requested by the board or department as a result of a formal or informal complaint or as supplement to an application.

8 VAC 20-670-360. Board investigation.

The department may, upon its own motion, investigate the actions of any applicant or any persons holding or claiming to hold a license to operate. The department shall make such an investigation upon the written complaint of any individual setting forth facts which, if proved, would constitute grounds for denial, refusal, suspension, or revocation of a [~~certificate or~~] license.

8 VAC 20-670-370. Department investigation procedures.

Authority is granted to the department staff to investigate complaints from individuals and other sources concerning alleged violations of the Code of Virginia or regulations by a school. Where the findings of the department are in favor of the complainant, the school shall abide by any recommendations made or corrective action deemed necessary by the department. If the school disagrees with the recommendations or corrective actions, the department shall hold an informal hearing to determine whether further action (i.e., revocation, suspension or refusal to renew a [~~certificate license~~]) is warranted. The Superintendent of Public Instruction or his designee shall chair the hearing.

8 VAC 20-670-380 through 8 VAC 20-670-420. [No change from proposed.]

8 VAC 20-670-430. Transmitting documents and other materials.

A. The mailing of applications, forms, letters, or other papers shall not constitute receipt of the same by the department unless sent by registered mail, certified mail, express mail, or courier with return receipt requested.

B. All materials sent should be addressed to the Private Day Schools for Students with Disabilities, Department of Education, Box 2120, Richmond, VA 23218-2120, or [~~Office of~~] Private Day Schools for Students with Disabilities, James Monroe Building, 24th Floor, 101 North 14th Street, Richmond, VA 23219.

C. Materials submitted by electronic means (e.g., facsimile machine, computer, etc.) will be accepted contingent upon receipt of original documents sent in accordance with subsection A of this section.

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8 VAC 20-670-440. Complaints.

Schools are required to establish and provide to parents, students, and placing agencies an internal complaints resolution process. In the event that the complainant is not satisfied with the internal resolution or prefers, he may file a complaint with the Office [for of] Private [Special Education] Day Schools [for Students with Disabilities], Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120.

VA.R. Doc. No. R02-252; Filed July 15, 2004, 12:10 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

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

Title of Regulation: 9 VAC 5-30. Ambient Air Quality Standards (Rev. A04) (amending 9 VAC 5-30-10, and 9 VAC 5-30-30 through 9 VAC 5-30-80; adding 9 VAC 5-30-55 and 9 VAC 5-30-65).

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

Effective Date: September 8, 2004.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.virginia.gov.

Summary:

On July 18, 1997, EPA issued a regulation replacing the 1-hour 0.12 parts per million (ppm) ozone national ambient air quality standard (NAAQS) with an 8-hour standard at a level of 0.08 ppm. At the same time, EPA issued a regulation revising the particulate matter standard by adding a new standard for fine particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM_{2.5}), set at 15 micrograms per cubic meter (µg/m³). These primary standards became effective on September 16, 1997, and are located in 40 CFR Part 50. On April 30, 2004, EPA promulgated a final rule to implement Phase I of the 8-hour ozone standard, including the transition from the 1-hour to the 8-hour standard. 40 CFR 50.9 has been revised to indicate that the 1-hour standard is no longer effective one year after the effective date of the rule, which means that the 8-hour standard replaces the 1-hour standard on June 15, 2005.

Chapter 30 of the Regulations for the Control and Abatement of Air Pollution contains the specific criteria pollutant standards set out in 40 CFR Part 50. Incorporation of the NAAQS into the state regulations is necessary to provide a legally enforceable means by which the state prepares attainment and maintenance plans, and determines whether a new source will affect the NAAQS.

9 VAC 5-30-10. General.

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. Ambient air quality standards are required to assure that ambient concentrations of air pollutants are consistent with established criteria and shall serve as the basis for effective and reasonable management of the air resources of the Commonwealth of Virginia.

C. Primary ambient air quality standards define levels of air quality which, allowing an adequate margin of safety, are necessary to protect the public health. Secondary ambient air quality standards define more stringent levels of air quality which are necessary to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. At such time as additional pertinent information becomes available with respect to applicable air quality criteria, such information will be considered and the ambient air quality standards will be revised accordingly.

D. The absence of a specific ambient air quality standard shall not preclude action by the board to control pollutants to assure protection, safety, welfare and comfort of the people of the Commonwealth of Virginia.

E. Where applicable, all measurements of air quality shall be corrected to a reference temperature of 77°F *degrees Fahrenheit* and to a reference pressure of 14.7 pounds per square inch absolute.

9 VAC 5-30-30. Sulfur oxides (sulfur dioxide).

A. The primary ambient air quality standards are as follows:

1. 80 micrograms per cubic meter (~~0.03~~ 0.030 parts per million) - annual arithmetic mean *not to be exceeded in a calendar year. The annual arithmetic mean shall be rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm shall be rounded up).*

2. 365 micrograms per cubic meter (0.14 parts per million) - maximum 24-hour concentration not to be exceeded more than once per calendar year. *The 24-hour averages shall be determined from successive nonoverlapping 24-hour blocks starting at midnight each calendar day and shall be rounded to two decimal places (fractional parts equal to or greater than 0.005 ppm shall be rounded up).*

B. The secondary ambient air quality standard is 1,300 micrograms per cubic meter (0.50 parts per million) - maximum three-hour concentration not to be exceeded more than once per calendar year. *The 3-hour averages shall be determined from successive nonoverlapping 3-hour blocks starting at midnight each calendar day and shall be rounded to*

one decimal place (fractional parts equal to or greater than 0.05 ppm shall be rounded up).

C. Sulfur dioxide shall be measured by the reference method described in Appendix A of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

D. To demonstrate attainment of the primary standard, the annual arithmetic mean and the second-highest 24-hour averages must be based upon hourly data that are at least 75% complete in each calendar quarter. A 24-hour block average shall be considered valid if at least 75% of the hourly averages for the 24-hour period are available. In the event that only 18, 19, 20, 21, 22, or 23 hourly averages are available, the 24-hour block average shall be computed as the sum of the available hourly averages using 18, 19, and so on as the divisor. If fewer than 18 hourly averages are available, but the 24-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of subdivision A 2 of this section, then this shall be considered a valid 24-hour average. In this case, the 24-hour block average shall be computed as the sum of the available hourly averages divided by 24.

E. To demonstrate attainment of the secondary standard, the second-highest 3-hour average must be based upon hourly data that are at least 75% complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of subsection B of this section, then this shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by three.

9 VAC 5-30-40. Carbon monoxide.

A. The primary and secondary ambient air quality standards are as follows:

1. Nine parts per million (10 milligrams per cubic meter) - average eight-hour concentration not to be exceeded more than once per year.
2. 35 parts per million (40 milligrams per cubic meter) - average one-hour concentration not to be exceeded more than once per year.

B. Carbon monoxide shall be measured by the reference method described in Appendix C of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. An 8-hour average shall be considered valid if at least 75% of the hourly averages for the 8-hour period are available. In the event that only six (or seven) hourly averages are available, the 8-hour average shall be computed on the basis of the hours available using six (or seven) as the divisor.

D. When summarizing data for comparison with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

9 VAC 5-30-50. Ozone (1-hour).

A. The primary and secondary ambient air quality standard is 0.12 parts per million (235 micrograms per cubic meter).

B. Ozone shall be measured by the reference method described in Appendix D of 40 CFR Part 50, other method designated as such, or by an equivalent method.

C. The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 micrograms per cubic meter) is equal to or less than one, as determined by Appendix H of 40 CFR Part 50.

D. The 1-hour ozone ambient air quality standard set forth in subsection A of this section shall no longer apply to an area after June 15, 2005.

9 VAC 5-30-55. Ozone (8-hour).

A. The primary and secondary ambient air quality standard is 0.08 parts per million, daily maximum 8-hour average.

B. Ozone shall be measured by the reference method described in Appendix D of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. The 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with Appendix I of 40 CFR Part 50.

9 VAC 5-30-60. Particulate matter (PM₁₀).

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

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

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

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

C. For the purpose of determining attainment of the primary and secondary standards, particulate matter shall be measured in the ambient air as PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by the reference method described in Appendix J of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

9 VAC 5-30-65. Particulate matter.

A. The primary and secondary ambient air quality standards for particulate matter (PM_{2.5}) are:

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

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

B. Particulate matter shall be measured in the ambient air as $PM_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by the reference method described in Appendix L of 40 CFR Part 50, or other method designated as such, or by equivalent method.

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

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

E. The primary and secondary ambient air quality standards for particulate matter (PM_{10}) are:

1. 50 micrograms per cubic meter -- annual arithmetic mean concentration

2. 150 micrograms per cubic meter -- 24-hour average concentration.

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

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

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

9 VAC 5-30-70. Nitrogen dioxide.

A. The primary and secondary ambient air quality standard is 0.053 parts per million (100 micrograms per cubic meter) - annual arithmetic mean concentration.

B. Nitrogen dioxide shall be measured by the reference method described in Appendix F of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. The standards are attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75% complete or upon data derived from manual methods that are at least 75% complete for the scheduled sampling days in each calendar quarter.

9 VAC 5-30-80. Lead.

A. The primary and secondary ambient air quality standard is 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter.

B. Lead and its compounds shall be measured as elemental lead by the reference method based on Appendix G of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

VA.R. Doc. No. R04-212; Filed July 1, 2004, 8:09 a.m.

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Title of Regulation: 9 VAC 5-60. Hazardous Air Pollutant Sources (Rev. H04) (adding 9 VAC 5-60-91).

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 112 of the Clean Air Act; and 40 CFR Parts 61 and 63.

Effective Date: September 8, 2004.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510 or e-mail kgsabastea@deq.virginia.gov.

Summary:

The amendment updates state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on April 22, 2004. A new section, 9 VAC 5-60-91 (National Performance Track Program), is added that incorporates EPA's National Performance Track Program as promulgated in 40 CFR 63.2, 63.10, and 63.16. The specific version of the provisions adopted by reference is that promulgated on April 22, 2004 (69 FR 21737).

9 VAC 5-60-91. National Performance Track Program.

The Environmental Protection Agency (EPA) National Performance Track Program as promulgated in 40 CFR 63.2, 63.10, and 63.16 is, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9 VAC 5-60-110. The specific version of the provisions adopted by reference shall be that promulgated on April 22, 2004 (69 FR 21737).

VA.R. Doc. No. R04-213; Filed July 1, 2004, 8:08 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

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 Virginia Waste Management Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 20-60. Virginia Hazardous Waste Management Regulations (amending 9 VAC 20-60-18).

Statutory Authority: § 10.1-1402 and Article 4 (10.1-1426 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia; 42 USC § 6921 et seq., and 40 CFR Parts 260-272.

Effective Date: September 8, 2004.

Agency Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, or e-mail rgwickline@deq.virginia.gov.

Summary:

Virginia Hazardous Waste Management Regulations, 9 VAC 20-60, include requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations. The federal regulatory text as it existed July 1, 2003, was specified as that incorporated. Immediate Final Rule 2004 addresses only 9 VAC 20-60-18, the section making the specification of the date of incorporated text. This section is altered by striking the previous prescribed date and adopting the new date of July 1, 2004, thus making it the new date of reference of all incorporated federal regulatory text. The effective date of the incorporated text will be the effective date as published in the Federal Register notice or the effective date of this amendment, whichever is later.

9 VAC 20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, 2003 2004, with the effective date as published in the Federal Register notice or November 5, 2003 September 8, 2004, whichever is later.

VA.R. Doc. No. R04-215; Filed July 1, 2004, 8:11 a.m.

Title of Regulation: 9 VAC 20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9 VAC 20-110-90 and 9 VAC 20-110-110).

Statutory Authority: §§ 10.1-1450 and 44-146.30 of the Code of Virginia; 49 USC §§ 1809-1810 and 49 CFR Parts 107, 170-180, 383 and 390-397.

Effective Date: September 8, 2004.

Agency Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, or e-mail rgwickline@deq.virginia.gov.

Summary:

The regulations include requirements in the form of incorporated federal regulatory text at Title 49 of the Code of Federal Regulations. The federal regulatory text as it existed October 1, 2002, was specified as that incorporated. Immediate Final Rule 2003 addresses only 9 VAC 20-110-110, the section making the specification of the date of incorporated text. This section is altered by striking the

previous prescribed date and adopting the new date of October 1, 2003, thus making it the new date of reference of all incorporated federal regulatory text. The language is also clarified to the effect that the effective date of the incorporated text will be the effective date as published in the Federal Register notice or the effective date specified in this amendment, whichever is later.

9 VAC 20-110-90. Enforcement.

A. The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, and any rule or regulation promulgated herein. Those law-enforcement officers certified to enforce the provisions of this article, and any regulations promulgated under such article, shall annually receive in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials.

B. Judicial enforcement of these regulations shall be governed by § 10.1-1455 of the Code of Virginia. (Note: The federal regulations at 40 CFR Part 171 and elsewhere set maximum civil penalties. Section 10.1-1455 of the Code of Virginia limits the maximum civil penalty for the acts occurring on any single day to \$25,000 per violation. Therefore, this is the maximum penalty available under these regulations in courts of the Commonwealth. Maximum penalties for acts occurring over more than one day are \$25,000 per violation for each day, each day of violation constituting a separate offense.)

9 VAC 20-110-110. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated and in effect as of October 1, 2002 (except as otherwise specified below) 2003, or as specified in the federal rule, whichever is later, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. 49 CFR Part 107, Subpart B.
2. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.
3. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.
4. Specifications for Packagings in 49 CFR Part 178.
5. Specifications for Tank Cars in 49 CFR Part 179.
6. Continuing Qualifications and Maintenance of Packagings in 49 CFR Part 180.

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7. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

VA.R. Doc. No. R04-218; Filed July 1, 2004, 8:10 a.m.

STATE WATER CONTROL BOARD

<p>REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
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Title of Regulation: **9 VAC 25-720. Water Quality Management Planning Regulation (amending 9 VAC 25-720-50, 9 VAC 25-720-60, 9 VAC 25-720-90 and 9 VAC 25-720-130).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia and federal Clean Water Act (33 USC § 1313e).

Effective Date: September 8, 2004.

Agency Contact: Charles Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4462, FAX (804) 698-4136 or e-mail chmartin@deq.virginia.gov.

Summary:

This amendment consists of the inclusion of 28 Total Maximum Daily Load (TMDL) waste load allocations contained in 11 TMDL reports. The TMDLs were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process and the waste load allocations are adopted as part of 9 VAC 25-720 in accordance with Virginia's Public Participation Procedures for Water Quality Management Planning.

9 VAC 25-720-50. Potomac-Shenandoah River Basin.

A. Total maximum daily load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Muddy Creek	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R	Nitrate	49,389.00	LB/YR
2.	Blacks Run	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	32,844.00	LB/YR
3.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	69,301.00	LB/YR
4.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Phosphorus	0.00	LB/YR
5.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Sediment	286,939.00	LB/YR
6.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Phosphorus	38.00	LB/YR
7.	Holmans Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham/ Shenandoah	B45R	Sediment	78,141.00	LB/YR
8.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Sediment	276.00	LB/YR
9.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	138.00	LB/YR
10.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Sediment	0.00	LB/YR
11.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Phosphorus	0.00	LB/YR
12.	Linville Creek	Total Maximum Load Development for Linville Creek: Bacteria and Benthic Impairments	Rockingham	B46R	Sediment	5.50	TONS/YR
13.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Ammonia	7,185.00	KG/YR
14.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Chlorine	27.63	KG/YR
15.	Shenandoah River	Development of Shenandoah River PCB TMDL (South Fork and Main Stem)	Warren & Clarke	B41R, B55R, B57R, B58R	PCBs	179.38	G/YR

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16.	Shenandoah River	Development of Shenandoah River PCB TMDL (North Fork)	Warren & Clarke	B51R	PCBs	0.00	G/YR
17.	Shenandoah River	Development of Shenandoah River PCB TMDL (Main Stem)	Warren & Clarke	WV	PCBs	179.38	G/YR
18.	Cockran Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	B10R	Organic Solids	1,556.00	LB/YR
19.	Lacey Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Rockingham	B47R	Organic Solids	680.00	LB/YR
20.	Orndorff Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Shenandoah	B52R	Organic Solids	103.00	LB/YR

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 - POTOMAC RIVER SUB-BASIN RECOMMENDED SEGMENT CLASSIFICATIONS

SEGMENT NUMBER	DESCRIPTION OF SEGMENT	MILE TO MILE	CLASSIFICATION
1-23	Potomac River tributaries from the Virginia-West Virginia state line downstream to the boundary of the Dulles Area Watershed Policy	176.2 – 149.0	WQ
1-24	Potomac River tributaries located within the boundaries of the Dulles Area Watershed Policy	149.0 – 118.4	WQ
1-25	Potomac River tributaries from the downstream limit of the Dulles Area Watershed Policy to Jones Point	118.4 – 107.6	WQ
1-26	Potomac River tributaries from Jones Point downstream to Route 301 bridge	107.6 – 50.2	WQ
1-27	All Streams included in the Occoquan Watershed Policy	_____	WQ
1-28	Potomac tributaries from Route 301 bridge downstream to the mouth of the Potomac River	50.2-0.0	EL

TABLE B2 – POTOMAC RIVER SUB-BASIN - RECOMMENDED PLAN FOR WASTEWATER FACILITIES

Facility Number	Name	Receiving Stream	Recommended Action	SIZE	Treatment level (4)	BOD ₅	OD	TKN	P	Institutional Arrangement
1	Hillsboro	North Fork Catoctin Creek WQ (1 –23)	Construct new facility	.043 ⁽²⁾	AWT	7 ⁽⁷⁾	-	-	-	Loudoun County Sanitation Authority (LCSA)
2	Middleburg	Wancopin Creek WQ (1-23)	Construct new facility; abandon old facility	.135	AST	14 ⁽⁵⁾	-	-	-	LCSA
3	Middleburg East and West	Unnamed tributary to Goose Creek WQ (1 –23)	Abandon- pump to new facility							
4	Round Hill	North Fork Goose Creek	No further action recommended	.2	AWT	10 ⁽⁵⁾	-	-	-	Town of Round Hill

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5	St. Louis	Beaver Dam Creek WQ (1-23)	Construct new facility	.086	AST	20 ⁽⁵⁾	-	-	-	LSCA
6	Waterford	South Fork Catoclin Creek WQ (1-23)	No further action recommended	.058	AST	24 ⁽⁵⁾	-	-	-	LSCA
7	Hamilton	Unnamed tributary to South Fork of Catoclin Creek WQ (1-23)	Upgrade and or expand	.605 ⁽²⁾	AWT	7 ⁽⁷⁾	-	-	-	Town of Hamilton
8	Leesburg	Tuscarora Creek (1-24)	Upgrade and or expand	2.5	AWT	1 ⁽⁹⁾	-	1	0.1	Town of Leesburg
9	Lovettesville	Dutchman Creek WQ (1-23)	Upgrade and or expand	.269 ⁽²⁾	AWT	7 ⁽⁷⁾	-	-	-	Town of Lovettesville
10	Purcellville	Unnamed tributary to North Fork Goose Creek WQ (1-23)	No further action recommended	.5	AST	15 ⁽⁵⁾	-	-	-	Town of Purcellville
11	Paeonian Springs	Unnamed tributary to South Fork of Catoclin Creek WQ (1-23)	Construct new facility	.264 ⁽²⁾	AWT	7 ⁽⁷⁾	-	-	-	LCSA
12	Cedar Run Regional	Walnut Branch or Kettle Run WQ (1-27)	Construct new facility	1.16 ⁽²⁾	AWT	1 ⁽⁶⁾	-	1	0.1	Fauquier County Sanitation Authority
13	Vint Hill Farms	South Run (1-27)	Upgrade and/or expand	.246	AST	14 ⁽⁵⁾	-	-	2.5	U.S. Army
14	Arlington	Four Mile Run WQ (1-25)	Upgrade and/or expand	30 ⁽³⁾	AWT	3 ⁽⁸⁾	-	1	0.2	Arlington County
15	Alexandria	Hunting Creek WQ (1-26)	Upgrade and/or expand	54	AWT	3 ⁽⁸⁾	-	1	.02	Alexandria Sanitation Authority
16	Westgate	Potomac River WQ (1-26)	Abandon- pump to Alexandria							
17	Lower Potomac	Pohick Creek WQ (1-26)	Upgrade and/or expand	36 ⁽³⁾	AWT	3/8	-	1	0.2	Fairfax County
18	Little Hunting Creek	Little Hunting Creek WQ (1-26)	Abandon- pump to Lower Potomac							
19	Doque Creek	Doque Creek WQ (1-26)	Abandon- pump to Lower Potomac							
20	Fort Belvoir 1 and 2	Doque Creek WQ (1-26)	Abandon- pump to Lower Potomac							
21	Lorton	Mills Branch WQ (1-26)	Upgrade and/or expand	1.0	AWT	3 ⁽¹¹⁾	-	1	0.1	District of Columbia
22	UOSA	Tributary to Bull Run WQ (1-27)	Expanded capacity by 5 mgd increments	10.9 ⁽³⁾	AWT	1 ⁽⁶⁾	-	1	0.1	USOA
23	Gainesville Haymarket	Tributary Rock Branch WQ (1-27)	Abandon Pump to UOSA							
24	Potomac (Mooney)	Neabsco Creek WQ (1-26)	Construct new facility	12 ⁽³⁾	AWT	3 ⁽⁸⁾	-	1	0.2	Occoquan-Woodbridge Dumfries-Triangle Sanitary District

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25	Belmont	Marumsc Creek WQ (1-26)	Abandon- pump to Potomac							
26	Featherstone	Farm Creek WQ (1-26)	Abandon- pump to Potomac							
27	Neabsco	Neabsco Creek WQ (1-26)	Abandon- pump to Potomac							
28	Dumfries	Quantico Creek WQ (1-26)	Abandon- pump to Potomac							
29	Dale City #1	Neabsco Creek WQ (1-26)	Upgrade and /or expand	4.0	AWT	3 ⁽⁶⁾	-	1	0.2	Dale Service Corporation (DSC)
30	Dale City #8	Neabsco Creek WQ (1-26)	Upgrade and /or expand	2.0	AWT	3 ⁽⁶⁾	1	1	0.2	DSC
31	Quantico Mainside	Potomac River WQ (1-26)	Upgrade and /or expand	2.0	AWT	3 ⁽⁶⁾	-	1	0.2	U.S. Marine Corps
32	Aquia Creek	Austin Run WQ (1-26)	Construct new facility	3.0	AWT	3 ⁽⁶⁾	-	1	0.2	Aquia Sanitary District
33	Aquia	Aquia Creek WQ (1-26)	Abandon- pump to new facility							
34	Fairview Beach	Potomac River (estuary)	Construct new facility	.05	Secondary	Secondary	-	-	-	Fairview Beach Sanitary District
35	Dahlgren	Upper Machodoc Creek WQ (1-28)	Upgrade and /or and expand	.2	Secondary	Secondary	-	-	-	Dahlgren Sanitary District
36	Colonial Beach	Monroe Creek EL (1-28)	No further action recommended	.85	Secondary	28 ^{(5) (13)}				Town of Colonial Beach
37	Machodoc Kinsale		Construct new facility	.89	Secondary & Spray Irrigation	48 ^{(10) (13)}	-	-	-	Machodoc Kinsale Sanitary District
38	Callao		Construct new facility	.25	Secondary & Spray Irrigation	48 ^{(10) (13)}	-	-	-	Callao Sanitary District
39	Heathsville		Construct new facility	.10	Secondary & Spray Irrigation	48 ^{(10) (13)}	-	-	-	Heathsville Sanitary District
40	King George Courthouse	Pine Creek	Construct new facility	.039	Secondary	30 ⁽¹³⁾	-	-	-	King George County

TABLE B2 - NOTES: POTOMAC RIVER SUB-BASIN - RECOMMENDED PLAN FOR WASTEWATER TREATMENT FACILITIES

(1) Year 2000 design flow 201 Facility Plan, P.L. 92-500, unless otherwise noted.

(2) Year 2000 average flow from Potomac/Shenandoah 303(e) Plans, Vol V-A Appendix, 1975 pp. B-33-B-44.

(3) Future expansion at unspecified date.

(4) Secondary treatment: 24-30 mg/l BOD₅, advanced secondary treatment (AST): 11-23 mg/l, advanced wastewater treatment (AWT): <10mg/l BOD₅. A range is given to recognize that various waste treatment processes have different treatment efficiencies.

(5) Effluent limits calculated using mathematical modeling.

(6) Effluent limits based on Occoquan Watershed Policy, presented under reevaluation.

(7) Effluent limits based on treatment levels established by the Potomac/Shenandoah 303(e) Plan, Vol. V-A 1975, p. 237, to protect low flow streams and downstream water supply.

(8) Effluent limits based on Potomac River Embayment Standards, presently under reevaluation. Nitrogen removal limits deferred until reevaluation is complete.

⁽⁹⁾ Effluent limits based on Dulles Watershed Policy, recommended for reevaluation. Interim effluent limits of 12 mg/l BOD₅ and 20 mg/l Suspended Solids will be met until the Dulles Area Watershed Standards are reevaluated.

⁽¹⁰⁾ Effluent limits based on Virginia Sewerage Regulation, Section 33.02.01.

⁽¹¹⁾ Interim effluent limits of 30 mg/l BOD₅, 30mg/l Suspended Solids, and 4 mg/l Phosphorus, will be effective until average daily flows exceeds 0.75 MGD. At greater flows than 0.75 MGD, the effluent limitations will be defined by the Potomac Embayment Standards.

⁽¹²⁾ Secondary treatment is permitted for this facility due to the the extended outfall into the main stem of the Potomac River.

⁽¹³⁾ This facility was also included in the Rappahannock Area Development Commission (RADCO) 208 Areawide Waste Treatment Management Plan and Potomac-Shenandoah River Basin 303 (e) Water Quality Management Plan.

TABLE B3 - SHENANDOAH RIVER SUB-BASIN RECOMMENDED SEGMENT CLASSIFICATIONS

SEGMENT NUMBER	DESCRIPTION OF SEGMENT	MILE TO MILE	CLASSIFICATION
1-1	North River-main stream and tributaries excluding segments 1-1a, 1-1b	56.4-0.0	EL
1-1a	Muddy Creek-main stream and War Branch, RM 0.1-0.0	3.7 - 1.7	WQ
1-1b	North River-main stream	16.1 - 4.6	WQ
1-2	Middle River-main stream and tributaries excluding segments 1-2a, 1-2b	69.9 - 0.0	EL
1-2a	Middle River-main stream	29.5 - 17.9	WQ
1-2b	Lewis Creek-main stream	9.6 - 0.0	WQ
1-3	South River-main stream and tributaries excluding segment 1-3a	52.2 - 0.0	EL
1-4	South Fork Shenandoah-main stream and tributaries excluding segments 1-4a, 1-4b, 1-4c	102.9 - 0.0	EL
1-4a	South Fork Shenandoah-main stream	88.1 - 78.2	WQ
1-4b	Hawksbill Creek-main stream	6.20 - 0.0	WQ
1-4c	Quail Run-main stream	5.2 - 3.2	WQ
1-5	North Fork Shenandoah- main stream and tributaries excluding segment 1-5a, 1-5h	108.9 – 0.0	EL
1-5a	Stony Creek-main stream	19.9 - 14.9	WQ
1-5b	North Fork Shenandoah-main stream	89.0 - 81.4	WQ
1-6	Shenandoah River-main stream and tributaries excluding segments 1-6a, 1-6b	57.4 - 19.8	EL
1- 6a	Stephens Run-main stream	8.3 - 0.0	WQ
1-6b	Dog Run-main stream	5.2 - 0.0	WQ
1-7	Opequon Creek-main stream and tributaries excluding segments 1-7a, 1-7b	54.9 - 23.6	EL
1-7a	Opequon Creek-main stream	32.3 - 23.6	WQ
1-7b	Abrams Creek-main stream	8.7 - 0.0	WQ
1-8	All Virginia streams upstream of Opequon-Potomac confluence that have headwaters in Frederick County	--	EL
1-9	All Virginia streams upstream of Opequon-Potomac confluence that have headwaters in Highland County	--	EL

* R.M. = River Mile, measured from the river mouth

TABLE B4 - SHENANDOAH RIVER SUB-BASIN - RECOMMENDED PLAN FOR SELECTED INDUSTRIAL WASTEWATER TREATMENT FACILITIES

FACILITY NUMBER	NAME ⁽¹⁾	INDUSTRIAL CATEGORY	RECEIVING STREAM CLASSIFICATION	RECOMMENDED WASTELOAD ALLOCATION ⁽²⁾			COMPLIANCE SCHEDULE
				BOD ₅	TKN	NH ₃ -N	

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1	Wampler	Food Processing	War Branch WQ (1-1a)	84 ⁽³⁾	-	-	None
6	Wayn-Tex	Plastic and Synthetic Materials Mfg.*	South River WQ (1-3a)	44 ⁽⁵⁾	-	-	None
7	DuPont	Plastic and Synthetic Materials Mfg.*	South River WQ (1-3a)	600	-	50	None
8	Crompton-Shenandoah	Textile Mills*	South River WQ (1-3a)	60	173 ⁽⁴⁾	88	None
10	General Electric	Electroplating*	South River WQ (1-3a)	BPT Effluent Limits			None
12	Merck	Miscellaneous Chemicals (Pharmaceutical)*	S. F. Shenandoah River WQ (1-4a)	3454	2846	1423	Consent Order
17	VOTAN	Leather, Tanning and Finishing*	Hawksbill Creek WQ (1-4b)	240	75	-	None
21	National Fruit	Food Processing	N. F. Shenandoah River WQ (1-5b)	(6)	(6)	(6)	None
22	Rockingham Poultry	Food Processing	N. F. Shenandoah River WQ (1-5b)	(6)	(6)	(6)	None
23	Shen-Valley Meat Packers	Food Processing	N. F. Shenandoah River WQ (1-5b)	(6)	(6)	(6)	None
35	O'Sullivan	Rubber Processing* Machinery and Mechanical Products Manufacturing	Abrams Creek WQ (1-7b)	BPT Effluent Limits			None

TABLE B4 - NOTES: SHENANDOAH RIVER SUB-BASIN - RECOMMENDED PLAN SELECTED INDUSTRIAL WASTEWATER TREATMENT FACILITIES

(1) An * identifies those industrial categories that are included in EPA's primary industry classification for which potential priority toxic pollutants have been identified.

(2) Allocation (lb/d) based upon 7Q10 stream flow. Tiered permits may allow greater wasteloads during times of higher flow. BPT = Best Practicable Technology.

(3) A summer 1979 stream survey has demonstrated instream D.O. violations. Therefore, the identified wasteload allocation is to be considered as interim and shall be subject to further analysis.

(4) The NPDES permit does not specify TKN but does specify organic-N of 85 lb/d. TKN is the sum of NH -N and organic -N.

(5) This allocation is based upon a flow of 0.847 MGD.

(6) The total assimilative capacity for segment WQ (1-5b) will be developed from an intensive stream survey program and development of an appropriate calibrated and verified model. Wasteload allocations for National Fruit, Rockingham Poultry and Shen-Valley will be determined after the development of the calibrated and verified model and the determination of the segment's assimilative capacity.

TABLE B5 - SHENANDOAH RIVER SUB-BASIN - RECOMMENDED PLAN FOR SELECTED MUNICIPAL WASTEWATER TREATMENT FACILITIES

FACILITY NUMBER	NAME	RECOMMENDED RECEIVING STREAM	FACILITY			WASTELOAD ALLOCATION ⁽³⁾ lb/d BOD ₅	INSTITUTIONAL ARRANGEMENT	COMPLIANCE ⁽⁴⁾ SCHEDULE
			RECOMMENDED ACTION	SIZE ⁽¹⁾	TREATMENT ⁽²⁾ LEVEL			
2	Harrisonburg Rockingham Reg. Sewer Auth.	North River WQ (1-1)	Correct I/I	12.0 ⁽⁵⁾	AST	2,000 ⁽⁶⁾	Harrisonburg-Rockingham Regional Sewer Authority	None
3	Verona	Middle River WQ (1-2a)	Construct new facility, abandon old plant, correct I/I	0.8	Secondary	Secondary Limits	Augusta County Service Authority	July 1, 1983

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4	Staunton	Middle River WQ (1-2a)	Upgrade, provide outfall to Middle River, correct I/I	4.5	Secondary	Secondary Limits	City of Staunton	July 1, 1983
5	Fishersville	Christians Creek EL (1-2)	No further action recommended	2.0	Secondary	Secondary Limits	Augusta County Service Authority	None
9	Waynesboro	South River WQ (1-3a)	Upgrade, correct I/I	4.0	AWT with nitrification	250 ⁽⁵⁾	City of Waynesboro	July 1, 1983
11	Grottoes	South River EL (1-3)	Construct new facility	0.225	Secondary	Secondary Limits	Town of Grottoes	No existing facility
13	Elkton	S.F. Shenandoah River WQ (1-4a)	Construct new facility, abandon old plant	0.4	Secondary	Secondary Limits	Town of Elkton	July 1, 1983
14	Massanutten Public Service Corporation	Quail Run WQ (1-4c)	No further action recommended	1.0	AWT	84.0 ⁽⁶⁾	Private	None
15	Shenandoah	S.F. Shenandoah River EL (1-4)	Upgrade, expand, correct I/I	0.35	Secondary	Secondary limits	Town of Shenandoah	No existing facility
16	Stanley	S.F. Shenandoah River EL (1-4)	Construct new facility	0.3	Secondary	Secondary limits	Town of Stanley	No existing facility
18	Luray	Hawksbill Creek WQ (1-4b)	Construct new facility, abandon old plant, correct I/I	0.8	Secondary	Secondary Limits	Town of Luray	July 1, 1983
19	Front Royal	Shenandoah River EL (1-6)	Construct new facility, abandon old plant, correct I/I	2.0	Secondary	Secondary Limits	Town of Front Royal	July 1, 1983
20	Broadway	N.F. Shenandoah River WQ (1-5b)	Upgrade, expand, investigate I/I	⁽⁶⁾	⁽⁶⁾	⁽⁶⁾	Town of Broadway	July 1, 1983
24	Timberville	N.F. Shenandoah River WQ (1-5b)	Upgrade, expand, investigate I/I	⁽⁶⁾	⁽⁶⁾	⁽⁶⁾	Town of Timberville	July 1, 1983
25	New Market	N.F. Shenandoah River EL (1-5)	Upgrade, investigate I/I	0.2	Secondary	Secondary Limits	Town of New Market	July 1, 1983
26	Mount Jackson	N.F. Shenandoah River EL (1-5)	Upgrade, expand, correct I/I	.0.2	Secondary	Secondary Limits	Town of Mount Jackson	July 1, 1983
27	Edinburg	N.F. Shenandoah River EL (1-5)	Upgrade, expand, investigate I/I	0.15	Secondary AST	Secondary Limits 65	Town of Edinburg Public	July 1, 1983 None
28	Stony Creek Sanitary District	River EL (1-5) Stony Creek WQ (1-5a)	No further action required	0.6	AST	65	Public	
29	Woodstock	N.F. Shenandoah River EL (1-5)		0.5	Secondary	Secondary Limits	Town of Woodstock	July 1, 1983
30	Toms Brook-Mauertown	Toms Brook EL (1-5)	Construct new facility	0.189	Secondary	Secondary Limits	Toms Brook	No existing facility
31	Strasburg	N.F. Shenandoah River EL (1-5)	Upgrade, expand, correct I/I	0.8	Secondary	Secondary Limits	Town of Strasburg	July 1, 1983
32	Middletown	Meadow Brook EL (1-5)	Upgrade, expand	0.2	Secondary	Secondary	Town of Middletown	July 1, 1983
33	Stephens City Stephens Run	Stephens Run EL (1-6a)	Upgrade, expand	0.54	AST	72	Frederick-Winchester Service Authority	July 1, 1983
34	Berryville	Shenandoah River EL (1-6)	Upgrade, provide outfall to Shenandoah River, investigate I/I	0.41	Secondary	Secondary Limits	Town of Berryville	July 1, 1983

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36	Frederick-Winchester Regional	Opequon Creek WQ (1-7a)	Construct new facility, abandon county and city plans, correct I/I	6.0	AWT with nitrification	456 ⁽⁷⁾	Frederick-Winchester Service Authority	July 1, 1983
37	Monterey	West Strait Creek EL (1-9)	Upgrade, correct I/I	0.075	Secondary	Secondary Limits	Town of Monterey	July 1, 1983

TABLE B5 - NOTES: SHENANDOAH RIVER SUB-BASIN - RECOMMENDED PLAN FOR SELECTED MUNICIPAL WASTEWATER TREATMENT FACILITIES

(1) Year 2000 design flow (MGD) unless otherwise noted.

(2) Secondary treatment: 24-30 mg/l BOD₅, advanced secondary treatment (AST): 11-23 mg/l BOD₅, advanced wastewater treatment (AWT): <10 mg/l BOD₅. A range is given to recognize that various waste treatment processes have different treatment efficiencies.

(3) Recommended wasteload allocation calculated using mathematical modeling based upon 7Q10 stream flows. Tiered permits may allow greater wasteloads during periods of higher stream flows. Allocations other than BOD₅ are noted by footnote.

(4) The July 1, 1983, data is a statutory deadline required by P.L. 92-500, as amended by P.L. 92-217. The timing of construction grant funding may result in some localities to miss this deadline.

(5) Year 2008 design.

(6) This BOD loading is based on a 7Q10 flow rate of 26.8 cfs at the HRRSA discharge.

(7) NH₃-N = 50 lb/d.

(8) This allocation is based on a TKN loading no greater than 84 lb/day.

9 VAC 25-720-60. James River Basin.

A. Total maximum daily load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Pheasanty Run	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Bath	I14R	Organic Solids	1,231.00	LB/YR
2.	Wallace Mill Stream	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	I32R	Organic Solids	2,814.00	LB/YR
3.	Montebello Sp. Branch	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Nelson	H09R	Organic Solids	37.00	LB/YR

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 - UPPER JAMES RIVER BASIN RECOMMENDED SEGMENT CLASSIFICATION

Stream Name	Segment No.	Mile to Mile	Classification	Comments
Maury River	2-4	80.3-0.0	E.L.	Main & tributaries
James River	2-5	271.5-266.0	W.Q.	Main only
James River	2-6	266.0-115.0	E.L.	Main & tributaries except Tye & Rivanna River
Tye River	2-7	41.7-0.0	E.L.	Main & tributaries except Rutledge Creek
Rutledge Creek	2-8	3.0-0.0	W.Q.	Main only
Piney River	2-9	20.6-0.0	E.L.	Main & tributaries
Rivanna River	2-10	20.0-0.0	E.L.	Main & tributaries

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Rivanna River	2-11	38.1-20.0	W.Q.	Main only
Rivanna River	2-12	76.7-38.1	E.L.	Main & tributaries
S.F. Rivanna River	2-13	12.2-0.0	E.L.	Main & tributaries
Mechum River	2-14	23.1-0.0	E.L.	Main & tributaries
N.F. Rivanna River	2-15	17.0-0.0	E.L.	Main & tributaries except Standardsville Run
Standardsville Run	2-16	1.2-0.0	W.Q.	Main only
Appomattox River	2-17	156.2-27.7	E.L.	Main & tributaries except Buffalo Creek, Courthouse Branch, and Deep Creek
Buffalo Creek	2-18	20.9-0.0	E.L.	Main & tributaries except Unnamed Tributary @ R.M. 9.3
Unnamed Tributary of Buffalo Creek @ R.M. 9.3	2-19	1.3-0.0	W.Q.	Main only
Courthouse Branch	2-20	0.6-0.0	W.Q.	Main only
Deep Creek	2-21	29.5-0.0	E.L.	Main & tributaries except Unnamed Tributary @ R.M. 25.0
Unnamed Tributary of Deep Creek @ R.M. 25.0	2-22	2.2-0.0	W.Q.	Main only

TABLE B2 - UPPER JAMES RIVER BASIN LOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT⁷

Stream Name	Segment Number	Classification	Mile to Mile	Significant Discharges	Total Assimilative Capacity of Stream BOD ₅ lbs/day	Wasteload Allocation BOD ₅ lbs/day ²	Reserve BOD ₅ lbs/day ⁵
Cedar Creek	2-3	E.L.	1.9-0.0	Natural Bridge, Inc. STP	35.0	28.0	7.0 (20%)
Elk Creek	2-3	E.L.	2.8-0.0	Natural Bridge Camp for Boys STP	7.0	3.3	3.7 (53%)
Little Calfpasture River	2-4	E.L.	10.9-4.0	Craigsville	12.0	9.6	2.4 (20%)
Cabin River	2-4	E.L.	1.7-0.0	Millboro	Self -sustaining	None	None
Maury River	2-4	E.L.	19.6-12.2	Lexington STP	380.0	380.0	None
Maury River	2-4	E.L.	12.2-1.2	Georgia Bonded Fibers	760.0	102.0 ³	238.0 (31%)
				Buena Vista STP		420.0	
Maury River	2-4	E.L.	1.2-0.0	Lees Carpets	790.0	425.0 ³	290.0 (37%)
				Glasgow STP		75.0	
James River	2-5	W.Q.	271.5-266.0	Owens-Illinois	4,640.0	4,640.0 ³	None
James River	2-6	E.L.	257.5-231.0	Lynchburg STP	10,100.0	8,000.0	2,060.0 (20%)
				Babcock & Wilcox- NNFD		40.0 ³	
James River	2-6	E.L.	231.0-202.0	Virginia Fibre	3,500.0	3,500.0	None
Rutledge Creek	2-8	W.Q.	3.0-0.0	Amherst STP	46.0	37.0	9.0 (20%)
Town Creek	2-7	E.L.	2.1-0.0	Lovingston STP	26.0	21.0	5.0 (20%)
Ivy Creek	2-6	E.L.	0.1-0.0	Schuyler	13.8	11.0	2.8 (20%)
James River	2-6	E.L.	186.0-179.0	Uniroyal, Inc.	1,400.0	19.3 ⁶	1,336.0 (95%)
				Scottsville STP		45.0	
North Creek	2-6	E.L.	3.1-0.0	Fork Union STP	31.0	25.0	6.0 (20%)
Howells Branch and Licking Hole Creek	2-14	E.L.	0.7-0.0	Morton Frozen Foods	20.0	20.0 ³	None

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Standardsville Run	2-16	W.Q.	1.2-0.0	Standardsville STP	17.9	14.3	3.6 (20%)
Rivanna River	2-11	W.Q.	23.5-20.0	Lake Monticello STP	480.0	380.0	100.0 (20%)
Rivanna River	2-10	E.L.	15.0-0.0	Palmyra	250.0	4.0	158.0 (63%)
				Schwarzenbach Huber		88.0 ³	
Unnamed Tributary of Whispering Creek	2-6	E.L.	1.2-0.0	Dillwyn STP	38.0	30.0	8.0 (21%)
South Fork Appomattox River	2-17	E.L.	5.5-0.0	Appomattox Lagoon	18.8	15.0	3.8 (20%)
Unnamed Tributary of Buffalo Creek	2-19	W.Q.	1.3-0.0	Hampden-Sydney Coll. STP	10.0	8.0	2.0 (20%)
Appomattox River	2-17	E.L.	106.1-88.0	Farmville STP	280.0	220.0	60.0 (21%)
Unnamed Tributary of Little Guinea Creek	2-17	E.L.	2.5-1.3	Cumberland H.S. Lagoon	0.6	0.5	0.1 (20%)
Unnamed Tributary of Tear Wallet Creek	2-17	E.L.	0.68-0.0	Cumberland Courthouse	8.8	7.0	1.8 (20%)
Courthouse Branch	2-22	W.Q.	2.2-0.0	Amelia STP	21.0	17.0	4.0 (20%)
Unnamed Tributary of Deep Creek	2-22	W.Q.	2.2-0.0	Crewe STP	50.3 ^{11,12}	50.1 ^{11, 12}	0.2 (0.4%) ^{11,12,13}

¹ Recommended classification.

² Based on 2020 loads or stream assimilative capacity less 20%.

³ Load allocation based on published NPDES permits.

⁴ This assimilative capacity is based upon an ammonia loading no greater than 125.1 lbs/day.

⁵ Percentages refer to reserve as percent of total assimilative capacity. Minimum reserve for future growth and modeling accuracy is 20% unless otherwise noted.

⁶ No NPDES Permits published (BPT not established) allocation base on maximum value monitored.

⁷ This table is for the existing discharge point. The recommended plan may involve relocation or elimination of stream discharge.

⁸ Assimilative capacity will be determined upon completion of the ongoing study by Hydrosience, Inc.

⁹ Discharges into Karnes Creek, a tributary to the Jackson River.

¹⁰ Discharges into Wilson Creek, near its confluence with Jackson River.

¹¹ Five-day Carbonaceous Biological Oxygen Demand (cBOD₅).

¹² Revision supersedes all subsequent Crewe STP stream capacity, allocation, and reserve references.

¹³ 0.4 percent reserve: determined by SWCB Piedmont Regional Office.

Source: Wiley & Wilson, Inc.

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TABLE B3 - UPPER JAMES RIVER BASIN ADDITIONAL LOAD ALLOCATIONS BASED ON RECOMMENDED DISCHARGE POINT

Stream Name	Segment Number	Classification ¹		Significant Discharges	Total Assimilative Capacity of Stream BOD ₅ lbs/day	Wasteload ² Allocation BOD ₅ lbs/day	Reserve ⁴ BOD ₅ lbs/day ⁵
Mill Creek	2-4	E.L.	5.5-0.0	Millboro	30.0	7.3	22.7 (76%)
Calfpasture River	2-4	E.L.	4.9-0.0	Goshen	65.0	12.0	53.0 (82%)
Maury River	2-4	E.L.	1.2-0.0	Lees Carpet	790.0	425.0 ³	235.0 (30%)
				Glasgow Regional S.T.P.		130.0	
Buffalo River	2-7	E.L.	9.6-0.0	Amherst S.T.P.	150.0	120.0	30.0 (20%)
Rockfish River	2-6	E.L.	9.5-0.0	Schuyler S.T.P.	110.0	25.0	85.0 (77%)
Standardsville Run		E.L.		Standardsville	Land Application Recommended		
South Fork Appomattox River		E.L.		Appomattox Lagoon	Connect to Recommended Facility in Roanoke River Basin		
Buffalo Creek	2-17	E.L.	9.3-7.7	Hampden-Sydney College	46.0	23.0	23.0 (50%)
Unnamed trib. of Tear Wallet Creek		E.L.		Cumberland Courthouse	Land Application Recommended		
Courthouse Branch		E.L.		Amelia	Land Application Recommended		
Deep Creek	2-17	E.L.	25.0-12.8	Crewe S.T.P.	69.0	55.0	14.0 (20%)

¹Recommended classification.

²Based on 2020 loads or stream assimilative capacity less 20%.

³Load allocation based on published NPDES permit.

⁴Percentages refer to reserve as percent of total assimilative capacity. Minimum reserve for future growth and modeling accuracy is 20% unless otherwise noted.

⁵Assimilative capacity will be determined upon completion of the ongoing study by Hydrosience, Inc.

Source: Wiley & Wilson, Inc.

TABLE B4 - SEGMENT CLASSIFICATION UPPER JAMES-JACKSON RIVER SUBAREA

Stream Name	Segment Number	Mile to Mile	Stream Classification	Comments
Back Creek	2-1	16.06-8.46	W.Q.	Main Only
Jackson River	2-1	95.70-24.90	E.L.	Main and Tributaries
Jackson River	2-2	24.90-0.00	W.Q.	Main Only
Jackson River	2-2	24.90-0.00	E.L.	Tributaries Only
James River	2-3	349.50-308.50	E.L.	Main and Tributaries
James River	2-3	308.50-279.41	E.L.	Main and Tributaries

TABLE B5 - UPPER JAMES-JACKSON RIVER SUBAREA WASTELOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT¹

MAP LOCATION	STREAM NAME	SEGMENT NUMBER	SEGMENT CLASSIFICATION STANDARDS	MILE to ² MILE	DISCHARGER	VPDES PERMIT NUMBER	VPDES PERMIT LIMITS BOD ₅ kg/day	303(e) ³ WASTELOAD ALLOCATION BOD ₅ kg/day
1	Jackson River	2-1	E.L.	93.05-	Virginia Trout	VA0071722	N/A	Secondary

Final Regulations

B	Warm Springs Run	2-1	E.L.	3.62-0.00	Warm Springs STP	VA0028233	9.10	Secondary
3	Back Creek	2-1	W.Q.	16.06-8.46	VEPCO	VA0053317	11.50	11.50
C	X-trib to Jackson River	2-1	E.L.	0.40-0.0	Bacova	VA0024091	9.10	Secondary
D	Hot Springs Run	2-1	E.L.	5.30-0.00	Hot Springs Reg. STP	VA0066303	51.10	Secondary
E	X-trib to Cascades Creek	2-1	E.L.	3.00-0.00	Ashwood-Healing Springs STP	VA0023726	11.30	Secondary
F	Jackson River	2-1	E.L.	50.36-	U.S. Forest Service Bolar Mountain	VA0032123	1.98	Secondary
G	Jackson River	2-1	E.L.	43.55	U.S. Army COE Morris Hill Complex	VA0032115	1.70	Secondary
H	Jackson River	2-1	E.L.	29.84-	Alleghany County Clearwater Park	VA0027955	5.70	Secondary
4	Jackson River	2-1	E.L.	25.99	Covington City Water Treatment Plant	VA0058491	N/A	Secondary
5	Jackson River	2-2	W.Q.	24.64-19.03	Westvaco	VA0003646	4,195.00	4,195.00 ⁴
6					Covington City ⁵ Asphalt Plant	VA0054411	N/A	N/A
7					Hercules, Inc ⁶	VA0003450	94.00	94.00
J	Jackson River	2-2	W.Q.	19.03-10.5	Covington STP	VA0025542	341.00	341.00
K	Jackson River			10.5-0.0	Low Moor STP ⁷	VA0027979	22.70	22.70
M					D.S. Lancaster CC ⁸	VA0028509	3.60	3.60
L					Selma STP ⁹	VA0028002	59.00	59.00
10					The Chessie System ¹⁰	VA0003344	N/A	N/A
N					Clifton Forge STP ¹¹	VA0002984	227.00	227.00
11					Lydall ¹²	VA0002984	6.00	6.00
P					Iron Gate STP ¹³	VA0020541	60.00	60.00
8	Paint Bank Branch	2-2	E.L.	1.52	VDGIF Paint Bank Hatchery	VA0098432	N/A	Secondary
I	Jerrys Run	2-2	E.L.	6.72-	VDOT 1-64 Rest Area	VA0023159	0.54	Secondary
AA	East Branch (Sulfer Spring)	2-2	E.L.	2.16	Norman F. Nicholas	VA0078403	0.05	Secondary

Final Regulations

BB	East Branch (Sulfer Spring)	2-2	E.L.	1.91-	Daryl C. Clark	VA0067890	0.068	Secondary
9	Smith Creek	2-2	E.L.	3.44-	Clifton Forge Water Treatment Plant	VA0006076	N/A	Secondary
O	Wilson Creek	2-2	E.L.	0.20-0.0	Cliffondale ¹⁴ Park STP	VA0027987	24.00	Secondary
2	Pheasanty Run	2-3	E.L.	0.01-	Coursey Springs	VA0006491	434.90	Secondary
Q	Grannys Creek	2-3	E.L.	1.20-	Craig Spring Conference Grounds	VA0027952	3.40	Secondary
CC	X-trib to Big Creek	2-3	E.L.	1.10-	Homer Kelly Residence	VA0074926	0.05	Secondary
12	Mill Creek	2-3	E.L.	0.16-	Columbia Gas Transmission Corp.	VA0004839	N/A	Secondary
R	John Creek	2-3	E.L.	0.20-	New Castle STP(old)	VA0024139	21.00	Secondary
S	Craig Creek	2-3	E.L.	48.45-36.0	New Castle STP (new)	VA0064599	19.90	Secondary
T	Craig Creek	2-3	E.L.	46.98-	Craig County Schools McCleary E.S.	VA0027758	0.57	Secondary
DD	Eagle Rock Creek	2-3	E.L.	0.08-	Eagle Rock STP ¹⁵ (Proposed)	VA0076350	2.30	Secondary
U	X-trib to Catawba Creek	2-3	E.L.	0.16	VDMH & R Catawba Hospital	VA0029475	13.60	Secondary
14	Catawba Creek	2-3	E.L.	23.84	Tarmac-Lonestar	VA0078393	0.80	Secondary
FF	Borden Creek	2-3	E.L.	2.00-	Shenandoah Baptist Church Camp	VA0075451	0.88	Secondary
EE	X-trib to Borden Creek	2-3	E.L.	0.36	David B. Pope	VA0076031	0.07	Secondary
V	X-trib to Catawba Creek	2-3	E.L.	3.21-	U.S. FHA Flatwood Acres	VA0068233	0.03	Secondary
W	Catawba Creek	2-3	E.L.	11.54-	Fincastle STP	VA0068233	8.50	Secondary
X	Looney Mill Creek	2-3	E.L.	1.83-	VDOT I-81 Rest Area	VA0023141	0.91	Secondary
Y	X-trib to Stoney	2-3	E.L.	0.57	VDOC Field Unit No. 25 Battle Creek	VA0023523	1.10	Secondary
Z	James River	2-3	E.L.	308.5-286.0	Buchanan STP	VA0022225	27.00	Secondary

TABLE B5 - NOTES:

Final Regulations

N/A Currently No BOD₅ limits or wasteload have been imposed by the VPDES permit. Should BOD₅ limits (wasteload) be imposed a WQMP amendment would be required for water quality limited segments only.

¹ Secondary treatment levels are required in effluent limiting (E.L.) segments. In water quality limiting (W.Q.) segments quantities listed represent wasteload allocations.

² Ending river miles have not been determined for some Effluent Limited segments.

³ These allocations represent current and original (1977 WQMP) modeling. Future revisions may be necessary based on Virginia State Water Control Board modeling.

⁴ The total assimilative capacity at critical stream flow for this portion of Segment 2-2 has been modeled and verified by Hydrosience, Inc. (March 1977) to be 4,914 kg/day BOD₅.

⁵ The discharge is to an unnamed tributary to the Jackson River at Jackson River mile 22.93.

⁶ The discharge is at Jackson River mile 19.22.

⁷ The discharge is to the mouth of Karnes Creek, a tributary to the Jackson River at Jackson River mile 5.44.

⁸ The discharge is at Jackson River mile 6.67.

⁹ The discharge is at Jackson River mile 5.14.

¹⁰ The discharge is at Jackson River mile 4.72.

¹¹ The discharge is at Jackson River mile 3.46.

¹² The discharge is at Jackson River mile 1.17

¹³ The discharge is at Jackson River mile 0.76

¹⁴ The discharge is to the mouth of Wilson Creek, a tributary to the Jackson River at Jackson River mile 2.44.

¹⁵ The discharge is to the mouth of Eagle Rock Creek, a tributary to the Jackson River at Jackson River mile 330.35.

TABLE B6 - RICHMOND CRATER INTERIM WATER QUALITY MANAGEMENT PLAN STREAM CLASSIFICATIONS - JAMES RIVER BASIN

SEGMENT	SEGMENT NUMBER	MILE TO MILE	CLASSIFICATION
USGS HUC02080206 James River	2-19	115.0-60.5	W.Q.
USGS HUC02080207 Appomattox	2-23	30.1-0.0	W.Q.

TABLE B6- * Note: A new stream segment classification for the Upper James Basin was adopted in 1981. The SWCB will renumber or realign these segments in the future to reflect these changes. This Plan covers only a portion of these segments.

TABLE B7 - RICHMOND CRATER INTERIM WATER QUALITY MANAGEMENT PLAN- CURRENT PERMITTED WASTE LOADS (March 1988)

	SUMMER (June-October)						WINTER (November-May)					
	FLOW (mgd)	BOD ₅		NH ₃ -N ¹		DO ² (mg/l)	FLOW (mgd)	BOD ₅		NH ₃ -N ¹		DO ² (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)			(lbs/d)	(mg/l)			
City of Richmond STP ³	45.00	3002	8.0	-	-	-	45.00	5367	14.3	-	-	-
E.I. DuPont-Spruance	8.68	936	-	-	-	-	8.68	936	-	-	-	-
Falling Creek STP	9.00	1202	16.0	-	-	5.9	9.00	2253	30.0	-	-	5.9
Proctor's Creek STP	6.40	1601	30.0	-	-	5.9	11.80	2952	30.0	-	-	5.9
Reynolds Metals Company	0.39	138	-	7	-	-	0.39	138	-	7	-	-
Henrico STP	30.00	3005	12.0	-	-	5.9	30.00	7260	29.0	-	-	5.9
American Tobacco Company	1.94	715	-	-	-	-	1.94	716	-	-	-	-

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ICI Americas, Inc.	0.20	152	-	-	-	-	0.20	152	-	-	-	-
Phillip Morris- Park 500	1.50	559	-	-	-	-	1.50	557	-	-	-	-
Allied (Chesterfield)	51.00	1207	-	-	-	-	51.00	1207	-	-	-	-
Allied (Hopewell)	150.00	2500	-	-	-	-	150.00	2500	-	-	-	-
Hopewell Regional WTF	34.08	12507	44.0	-	-	4.8	34.08	12507	44.0	-	-	4.8
Petersburg STP	15.00	2804	22.4	-	-	5.0	15.00	2804	22.4	-	-	5.0
TOTAL	353.19	30328					358.59	39349				

¹ NH₃-N values represent ammonia as nitrogen.

² Dissolved oxygen limits represent average minimum allowable levels.

³ Richmond STP's BOD₅ is permitted as CBOD₅

TABLE B7 - WASTE LOAD ALLOCATIONS FOR THE YEAR 1990

	SUMMER (June-October)					WINTER (November-May)					
	FLOW (mgd)	CBOD ₅		NH ₃ -N ^{1,3}		DO ² (mg/l)	CBOD ₅		NH ₃ -N ¹		DO ² (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.00	3002	8.0	2403	6.4	5.6	5367	14.3	5707	15.2	5.6
E.I. DuPont-Spruance	11.05	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	12.00	1602	16.0	961	9.6	5.9	2403	24.0	1402	14.0	5.9
Reynolds Metals Co.	0.49	172		8		6.5	172		8		6.5
Henrico STP	30.00	3002	12.0	2403	9.6	5.6	4756	19.0	3504	44.0	5.6
American Tobacco Co.	2.70	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris- Park 500	2.20	819		92		4.6	819		92		4.6
Allied (Chesterfield)	53.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	165.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	34.07	12502	44.0	12091	36.2	4.8	12502	44.0	10291	36.2	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	380.81	31084		28978			36679	35958			

¹ NH₃-N values represent ammonia as nitrogen.

² Dissolved oxygen limits represent average minimum allowable levels.

³ Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

TABLE B7- WASTE LOAD ALLOCATION FOR THE YEAR 2000

	SUMMER (June-October)					WINTER (November-May)					
	FLOW (mgd)	CBOD ₅		NH ₃ -N ^{1,3}		DO ² (mg/l)	CBOD ₅		NH ₃ -N ¹		DO ² (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.08	3002	8.0	2403	6.4	5.6	5367	14.3	5707	15.2	5.6
E.I. DuPont-Spruance	196.99	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	16.80	1602	11.4	961	6.9	5.9	2403	17.1	1402	10.0	5.9
Reynolds Metals Co.	0.78	172		13		6.5	172		13		6.5

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Henrico STP	32.80	3002	11.0	2403	8.8	5.6	4756	17.4	3504	12.8	5.6
American Tobacco Co.	3.00	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris- Park 500	2.90	819		92		4.6	819		92		4.6
Allied (Chesterfield)	56.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	170.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	36.78	12502	40.7	12091	33.5	4.8	12502	40.7	10291	33.5	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	406.43	31084		28982			36679		35963		

¹ NH₃-N values represent ammonia as nitrogen.

² Dissolved oxygen limits represent average minimum allowable levels.

³ Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

TABLE B7- WASTE LOAD ALLOCATIONS FOR THE YEAR 2010

	SUMMER (June-October)					WINTER (November-May)					
	FLOW (mgd)	CBOD ₅		NH ₃ -N ^{1,3}		DO ² (mg/l)	CBOD ₅		NH ₃ -N ¹		DO ² (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.86	3002	7.8	2403	6.3	5.6	5367	14.0	5707	14.9	5.6
E.I. DuPont-Spruance	16.99	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	24.00	1602	8.0	961	4.8	5.9	2403	12.0	1402	7.0	5.9
Reynolds Metals Co.	0.78	172		13		6.5	172		13		6.5
Henrico STP	38.07	3002	9.5	2403	7.6	5.6	4756	15.0	3504	11.0	5.6
American Tobacco Co.	3.00	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris- Park 500	2.90	819		92		4.6	819		92		4.6
Allied (Chesterfield)	56.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	180.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	39.61	12502	37.8	10291	31.1	4.8	12502	37.8	10291	31.1	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	432.1	31084		28982			36679		35963		

¹ NH₃-N values represent ammonia as nitrogen.

² Dissolved oxygen limits represent average minimum allowable levels.

³ Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

9 VAC 25-720-90. Tennessee-Big Sandy River Basin.

A. Total maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Guest River	Guest River Total Maximum Load Report	Wise	P11R	Sediment	317.52	LB/YR
2.	Cedar Creek	Total Maximum Daily Load (TMDL)	Washington	O05R	Sediment	1,789.93	LB/YR

		<i>Development for Cedar Creek, Hall/Byers Creek and Hutton Creek</i>					
3.	Hall/Byers Creek	Total Maximum Daily Load (TMDL) <i>Development for Cedar Creek, Hall/Byers Creek and Hutton Creek</i>	Washington	O05R	Sediment	57,533.49	LB/YR
4.	Hutton Creek	Total Maximum Daily Load (TMDL) <i>Development for Cedar Creek, Hall/Byers Creek and Hutton Creek</i>	Washington	O05R	Sediment	91.32	LB/YR

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 - SEWERAGE SERVICE AREAS

Map No.	Locality	Receiving Stream Classification ²	NPDES LIMITS ³			Status of Applicable ⁴ Section 201 Programs (March 1977)
			FLOW (mgd)	BOD ₅ (lbs/day)	SS (lbs/day)	
14T	Abingdon	EL	0.6	840	840	Step III at EPA for award.
14B	Amonate	EL	Permit to be issued in future			Not on priority list.
4T	Appalachia	EL	0.3	75	75	To be studied with Big Stone Gap
5T	Big Stone Gap	EL	0.8	240	240	Recommended for FY 77 Step 1.
13B	Bishop	EL	Permit to be issued in future			Not on priority list.
	Bristol	EL	Served by plant in Tennessee			Health hazard area to be served by collection system funded in FY 76. Extension of existing interceptor into Bearer Creek & Sinking Creek area to be funded by Region IV EPA and Tennessee. Also infiltration/inflow study to be funded in FY 77.
23T	Chilhowie	EL	0.265	68.5	79.6	Proposed Step I study with Marion.
	Cleveland	WQ	0.05	12.5	12.5	Step III grant awarded by EPA.
	Clinchport	WQ	Not to exceed present discharge			Town and Country Authority has not yet applied for Step I from FY 76 funds.
2B	Clintwood	WQ	0.235	*70.5/117.5	*70.5/117.5	On FY 77 list for Step I.
11T	Coeburn	WQ	0.4	160	160	On FY 77 list for Step I.
18T	Damascus	EL	0.25	62.5	62.5	Final audit and inspection of facility completed.
6T	Duffield	EL	0.075	30	30	Not on priority list.
	Dungannon-Fort Blackmore	WQ	Permit to be issued in future			Not on priority list.
10T	Gate City-Weber City	EL	0.504	*151/252	*151/252	Step I in progress.
3B, 5B	Harmon-Big Rock		1.25	156	312	System is approved by state and submitted to EPA.
6B, 7B	Grundy-Vansant	WQ	Permit to be issued in future			System is approved and submitted to EPA.
9B	Haysi	WQ	Permit to be issued in future			Step I plan is complete. Town disapproved plan. SWCB evaluating alternatives.
8B T	Hurley	WQ	Permit to be issued in future			Step I plan complete and under review by state.
1T	Jonesville	EL	0.15	38	38	Not on priority list.

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13T	Lebanon	WQ	0.2	60	60	Step III application at EPA.
25T	Marion	EL	1.7	510	510	Step I recommended for FY 77. Marion is proceeding on infiltration/inflow study under prior approval from EPA.
	Nickelsville	WQ	Permit to be issued in future			Not on priority list.
7T, 8T	Norton	WQ	0.77, 0.22	832,371	640,0184	Step I in process (with Wise).
2T	Pennington Gap	EL	0.315	410	315	Step I recommended for FY 76. Community has not yet completed Step I application.
1 B	Pound	WQ	0.175	44	44	Step III funded by EPA. Facility nearly completed.
19T	Raven-Doran	WQ	0.26	67.2	78	System to remain unchanged.
20T	Richlands	WQ	0.8	845	650	Step I in process. Step II recommended in FY 77.
	Rosedale	WQ	Permit to be issued in future			Not on priority list.
	Rose Hill-Ewing	EL	Permit to be issued in future			Not on priority list.
3T	St. Charles	EL	0.125	25	25	Abandonment proposed. Then to be served by Pennington Gap, subject to recommendations of Facility Plan.
12T	St. Paul	WQ	0.4	100	100	Complete and audited by EPA.
22T	Saltville	EL	0.5	125	125	Complete and audited by EPA.
	Sugar Grove-Teas	EL	Permit to be issued in future			Not on priority list.
15T	Swords Creek-Honaker	EL	0.144	187	144	Step I in FY 76. Step II recommended in FY 77.
24T	Tazewell, Town of	EL	0.70	*210/350	*210/350	Step I recommended in FY 77.
10B, 11B, 12B	Trammel-McClure	WQ	Permit to be issued in future			Not on priority list.
9T	Wise	WQ	0.28	112	112	Step I in progress (with Norton).

¹ Dischargers are shown on Plate 3-B (Map No. with "B" designates Big Sandy) and 3-T (Map No. with "T" designates Tennessee).

² Effluent Limiting (EL) or Water Quality (WQ).

³ For existing sewage treatment facility.

⁴ For new sewage treatment facility.

*Seasonal NPDES allowable loading: April to September/October to March.

Source: Thompson & Litton and State Water Control Board.

~~B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.~~

9 VAC 25-720-130. New River.

A. Total maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Stroubles Creek	Benthic TMDL for Stroubles Creek in Montgomery County, Virginia	Montgomery	N22R	Sediment	233.15	T/YR

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1- SEWERAGE SERVICE AREAS

Map ¹ No.	Locality	Receiving ² Stream Classification	NPDES Limits ³ Flow BOD ₅ SS (mgd) (kg/day) (kg/day)			Status of Applicable ⁴ Section 201 Programs (January 1980)
	Abbs Valley	WQ	Permit not needed at present			Not on priority list
	Austinville	EL	Permit not needed at present			Not on priority list
	Bastian	EL	Permit not needed at present			Continue to use septic tanks for present
1	Blacksburg	EL	6.0	544.8	544.8	Completed
	Bland	EL	Permit to be issued in future			Not on priority list
29	Bluefield	WQ	3.5	106	106	Near Completion
	Boissevain	WQ	Effluent treated at Pocahontas			Redesign to treat at Pocahontas underway
2	Christiansburg	WQ	2.0	113.5	113.5	Completed
3	Dublin	EL	.22	29.9/49.9	29.9/49.9	To be connected to Pepper's Ferry STP (Radford Cluster) in FY-80
	Elk Creek	EL	Permit not needed at present			Continue to use septic tanks
4	Fairlawn	EL	.26	47	47	To be connected to Pepper's Ferry STP (Radford Cluster)
	Falls Mills	WQ	.144	5.5	5.5	Step I approved; limits for new plant
	Flat Ridge	EL	Permit not needed at present			Not on priority list
*5	Floyd	EL	.1	59.0	45.4	Small community; Step IV
13	Fries	EL	.02	11.8	9.1	Step I approved
14			.16	94.5	72.7	
17	Galax	EL	1.5	170	170	Not on priority list
	Glen Lyn	EL	Permit not needed at present			Not on priority list
15	Hillsville	EL	.2	23	23	Step I to be approved soon
16			.15	17	17	
*18	Independence	EL	.2	22.7	22.7	Step I approved; selected alternative was for one plant
19			.1	11.4	11.4	
	Ivanhoe	EL	Permit not needed at present			Continue to use septic tanks
	Max Meadows	EL	Permit to be issued in future			Not on priority list
	Mechanicsburg	EL	Permit not needed at present			Not on priority list
6	Narrows	EL	0.60	354.0	272.0	Step I at EPA; Step II - FY-80
	Newport	EL	Permit not needed at present			Not on priority list
7	Pearisburg	EL	0.30	177.0	136.0	Step I at EPA; Step II - FY-80; Step III - FY-84
	Pembroke	EL	Permit not needed at present			Not on priority list
*30	Pocahontas	WQ	.15	17	17	Step I grant approved to correct I/I problems
8	Pulaski	EL	2.0	234/303	234	To be connected to Pepper's Ferry STP (Radford Cluster) in FY-80 (Step II)
9	Radford STP	EL	2.5	1475	925	Step II - FY-80
*10	Rich Creek	EL	.12	71	54	Step I at EPA, Step IV - FY-83
31	Riner	EL	.035	4.0	4.0	Completed

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	Rocky Gap	EL	Permit not needed at present			Continue to use septic tanks for present
12	Rural Retreat	EL	0.15	37.5	37.5	Step I to be completed in FY-80
	Speedwell	EL	Permit not needed at present			Continue to use individual septic tanks for present
	Troutdale	EL	Permit not needed at present			Continue to use individual septic tanks for present
	Woodlawn	EL	Permit to be issued in future			Not on priority list
11	Wytheville	EL	20	400	200	Sewage treatment plant completed

¹Discharges are shown on Plate 3.

²Effluent Limiting (E.L.) or Water Quality Limiting (WQ).

³For existing sewage treatment facility.

⁴For new sewage treatment facility.

*Small communities with combined Step II and III Grants.

TABLE B2- EFFLUENT LIMITS^{(1) (4)} NEW RIVER BASIN

Discharge	Receiving Stream	Maximum BOD ₅ Loading Limits (kg/day)
Troutdale	Fox Creek	6.1
Independence	Peachbottom Creek	13.5
Fries	New River	50.5
Galax	Chestnut Creek	240.3
Hillsville	Little Reed Island Creek	99.6
Woodlawn	Crooked Creek	69.5
Speedwell	Cripple Creek	17.4
Austinville	New River	19.5
Rural Retreat	South Fork	50.5
Wytheville	Reed Creek	298.3
Max Meadows	Reed Creek	82.4
⁽³⁾ Pulaski	Peak Creek	316.8
Floyd	Dodd Creek	24.1
Riner	Mill Creek	9.8
Blacksburg	New River	583.4
Christiansburg	Crab Creek	359.4
⁽³⁾ Dublin-New River-Fairlawn-Radford-Plum Creek	New River	772.7
Newport	Sinking Creek	2.9
Pembroke	New River	28.4
Bland	Walker Creek	10.3
Mechanicsburg	Walker Creek	3.1
Narrows-Pearisburg	New River	110.8
Bastian	Wolf Creek	10.4
Rocky Gap	Wolf Creek	9.0
Rich Creek	Rich Creek	19.9
Glen Lyn	New River	5.7
Bluefield	Bluestone River	136.4

(2) Abbs Valley	Laurel Fork	11.4
(2) Pocahontas	Laurel Fork	5.5
(2) Boissevain	Laurel Fork	5.9

(1) Other effluent limitations will be determined by Water Quality Standards and/or Best Available Technology requirements.

(2) Secondary treatment will be required until a further verification of the model is made to document the need for treatment beyond secondary.

(3) To join Radford Cluster.

(4) This table supersedes Table 152, page 199, Thompson & Litton, Inc., New River Basin Comprehensive Water Resources Plan, Volume V-A.

TABLE B3- NEW RIVER BASIN INDUSTRIAL EFFLUENT LIMITATIONS*

Parameters in Average kg/day or (Concentration) as mg/l

FACILITY NUMBER

MAP NUMBER 20 APCO 004 401 501 006	BOD ₅ 1.14	SS 382 1.14 318	OIL & GREASE 192 159	IRON (1.0) MAX	COPPER (1.0) MAX	
21 Burlington Industries 001	BOD ₅ 346	SS 354	PHENOLS 1.7	SULFIDE 0.9	ALUMINUM 1.0	
22 Celanese Fibers Co. 002 003	FLOW (MGD) 2.8 3.5	BOD ₅ (30) 2,999	SS 2,023	COD 27,694		
23 Hercules, Inc. 001	SS 34					
24 Lynchburg Foundry 001	SS 143	OIL & GREASE 53.1	PHENOLS 1.04			
25 RAAP Combined Ind. 026	FLOW (MGD) 1.0	BOD ₅ 114	SS 6,714 114	COD 237	OXIDIZED NITROGEN 18,697	SULFATE 565 67
26 New Jersey Zinc 001 002 003 004 005 006	BOD ₅ 2.3	SS (38) (.30) (20) (30) (30) 2.3	TOTAL CYANIDE (0.02) (0.02) (0.25)	DISSOLVED LEAD (0.25) (0.25) (0.35) (1.0) (0.25) -----	DISSOLVED ZINC (1.0) (1.0) (1.0) (0.25) (1.0) -----	DISSOLVED IRON (0.3) (0.25) (0.25) (0.25) -----
27 Elk Creek Raycarl Products	SS (5)	OIL & GREASE (10)	IRON (1)	PHOSPHATE (2)	ZINC (0.5)	
28 Fields Mfg	BOD ₅ 3.6	SS 4.1	OIL & GREASE 0.8	TEMP. 75°F		

VA.R. Doc. No. R04-256; Filed July 13, 2004, 9:12 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

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 Virginia Board for Asbestos, Lead, and Home Inspectors will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18 VAC 15-30. Virginia Lead-Based Paint Activities Regulations (amending 18 VAC 15-30-420 and 18 VAC 15-30-820).

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

Effective Date: September 8, 2004.

Agency Contact: Thomas K. Perry, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

Summary:

Amendments specify that notifications must be submitted by the training manager. The notification submission period has been expanded from 48 hours to seven business days prior to the training course. Specific timeframes have been established for any change in start date, training location, or cancellation of the training program. The amendments list specific information that each notification must include.

The amendments specify that participant lists must also be submitted by the training manager. The participant list submission period has been expanded from 24 hours to 10 business days following the training program completion. The amendments list specific information that each participant list must include.

Also, the method of submitting notifications and participant lists, currently used as department procedure, is established in the regulation.

Language has been modified in 18 VAC 15-30 to indicate that failure to submit notifications and participant lists as required and in the manner described in 18 VAC 15-30-420 is a violation of the board's regulations.

18 VAC 15-30-420. Recordkeeping and provision of records to the board.

A. Each accredited lead training program shall maintain and make available upon request from the board the following records:

1. All documents specified in 18 VAC 15-30-360 that demonstrate the qualifications listed in 18 VAC 15-30-340 of the training manager and principal instructors.
2. Current curriculum/course materials and documents reflecting any changes made to these materials.
3. Course examination.
4. Information on how the hands-on assessment is conducted including, but not limited to, who conducts the assessment, how the skills are graded, what facilities are used, and the pass/fail rate.
5. The quality control plan described in 18 VAC 15-30-410.
6. Results of the student's hands-on skills assessments and course examination and a copy of each student's course completion certificate.
7. Any other material not listed in this chapter that was submitted to the board as part of the application for accreditation.

The accredited lead training provider shall retain these records at the location specified on the training program application for a minimum of three years and six months.

B. The training manager shall notify the board at least seven business days prior to the start date of any accredited lead training program. For the purposes of this section, a business day shall mean Monday through Friday with the exception of federal holidays.

C. The training manager shall provide an updated notification when an accredited lead training program will begin on a date other than the start date specified in the original notification as follows:

1. For accredited lead training programs beginning prior to the start date provided to the board, an updated notification must be received by the board at least seven business days before the new start date.
2. For accredited lead training programs beginning after the start date provided to the board, an updated notification must be received by the board at least two business days before the start date provided to the board.

D. The training manager shall update the board of any change in location of an accredited lead training program at least seven business days prior to the start date provided to the board.

E. The training manager shall update the board regarding any accredited lead training program cancellations or any other change to the original notification at least two business days prior to the start date provided to the board. This requirement shall not apply to situations or circumstances beyond the control of the training provider.

F. Each notification, including updates, shall include the following:

1. Notification type (original, update, cancellation).

2. *Training program name, Virginia accreditation number, address, and telephone number.*

3. *Course discipline, type (initial/refresher), and the language in which the instruction will be given.*

4. *Dates and times of training.*

5. *Training locations, telephone number, and address.*

6. *Principal instructor's name.*

7. *Training manager's name and signature.*

~~B.~~ G. The training program participant list shall be completed by the training provider and training program participants daily.

~~C.~~ H. The training program participant list shall be retained by the training provider for three years following the date of completion of the training program.

~~D.~~ I. The training ~~provider~~ *manager* shall provide to the board the *accredited lead* training program participant list ~~within 24 hours of~~ *no later than 10 business days following* the training program completion. *For the purposes of this section, a business day shall mean Monday through Friday with the exception of federal holidays.*

J. *The training program participant list shall include the following:*

1. *Training program name, Virginia accreditation number, address, and telephone number.*

2. *Course discipline and type (initial/refresher).*

3. *Dates of training.*

4. *Each participant's name, address, date of birth, course completion certificate number, and course test score.*

5. *Training manager's name and signature.*

K. *Written notifications and training program participant lists must be submitted using the U.S. Postal Service, by fax, by commercial delivery service, or hand delivered using a sample form available from the board or a similar form that contains the information required by this section. Notifications and training program participant lists may also be submitted electronically via an e-mail address established by the board specifically to receive this documentation.*

~~E.~~ L. The training provider shall retain all examinations completed by training program participants for a period of three years.

~~F.~~ ~~Training providers shall notify the department no less than 48 hours prior to conducting an accredited lead training program.~~

~~G.~~ M. The department will not recognize training certificates from approved training providers that fail to notify or fail to provide a training program participant list.

18 VAC 15-30-820. Suspension or revocation of approval of an accredited lead training provider.

A. The board may suspend, revoke, or modify an accredited lead training program's approval if an accredited lead training provider, training manager, or other person with supervisory authority over the training program has:

1. Misrepresented the contents of a training course to the board or the student population.

2. Failed to submit required information or notification in a timely manner.

3. ~~Failed to submit training program notifications as required and in the manner described in 18 VAC 15-30-420.~~

4. ~~Failed to submit training program participant lists as required and in the manner described in 18 VAC 15-30-420.~~

~~5.~~ 5. Failed to maintain required records.

4. 6. Falsified accreditation records, qualifications of the training manager and principal instructors, or other accreditation information.

~~5.~~ 7. Failed to comply with the federal, state, or local lead-based paint statutes or regulations.

B. The board shall conduct disciplinary procedures in accordance with §§ 2.2-4019 and 2.2-4021 of the Administrative Process Act.

NOTICE: The forms used in administering 18 VAC 15-30, Virginia Lead-Based Paint Activities Regulations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Lead Contractor License Application, 33LCON (rev. 5/03).

Lead License Application Requirements, 33LINS (rev. 5/03).

Lead License Application, 33LLIC (rev. 5/03).

Experience Verification Form, 33LEXP (rev. 5/03).

Education Verification Form, 33LED (rev. 5/03).

Lead Training Course Application Requirements, 33LCRSRQ (rev. 5/03).

Lead Training Course Application, 33LCRS (rev. 7/03).

Training Notification, 33LTN (eff. 7/04).

Training Program Participant List, 33LPL (eff. 7/04).

Final Regulations

Commonwealth of Virginia
 Department of Professional and Occupational Regulation
 3600 West Broad Street
 Richmond, Virginia 23230-4917
 (804) 367-8595
 Web Site: www.dpor.virginia.gov
 E-mail Address: trainingcompliance@dpor.virginia.gov



Board for Asbestos, Lead, and Home Inspectors TRAINING NOTIFICATION

The Training Manager may complete this form or a similar form when notifying the Department.
 Refer to the *Virginia Lead-Based Paint Activities Regulations* when preparing training notification forms.

1. Type of Notification
 Original
 Updated
 Cancellation

2. Course Description (choose one in each column)

<u>Course Discipline</u>	<u>Course Type</u>	<u>Language Presented</u>
<input type="checkbox"/> Worker	<input type="checkbox"/> Initial	<input type="checkbox"/> English
<input type="checkbox"/> Supervisor	<input type="checkbox"/> Refresher	<input type="checkbox"/> Spanish
<input type="checkbox"/> Inspector		<input type="checkbox"/> Other _____
<input type="checkbox"/> Risk Assessor		
<input type="checkbox"/> Project Designer		

3. Dates/Times of Courses

Month/Day/Year	Start Time	End Time
	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm

4. Principal Instructor _____
5. Training Location Name (if applicable) _____
6. Location of Training Location _____
7. Telephone & Facsimile Numbers
 () - _____ () - _____
Telephone Facsimile
8. Name of Training Program _____
9. Virginia Accreditation Number _____
10. Street Address of Training Program _____
 City, State, Zip of Training Program _____
11. Telephone & Facsimile Numbers
 () - _____ () - _____
Telephone Facsimile
12. I hereby attest and affirm that the information included on this notification form is true and accurate to the best of my belief and knowledge. I acknowledge that any approval authorized pursuant to this notification will be subject to revocation if issuance was based on incorrect or inadequate information that materially affected the decision to issue the approval.
- Name of Training Manager _____
 Signature of Training Manager _____ Date _____

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BOARD OF MEDICINE

Title of Regulation: **18 VAC 85-120. Regulations Governing the Certification of Athletic Trainers (adding 18 VAC 85-120-75).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Effective Date: September 8, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Summary:

The amendment allows the board to authorize an applicant for certification as an athletic trainer to practice for no more than 60 days pending completion of the application package and submission of all documentation. Before receiving provisional certification to practice, an applicant and his employer must request the authorization for good cause, provide documentation of current certification from the National Athletic Trainers Association Board of Certification (NATABOC) and, if licensed or certified in another state, documentation that the license or certificate is current and unrestricted.

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

18 VAC 85-120-75. Provisional authorization.

Upon written request from an applicant and his employer and for good cause shown, an applicant who provides documentation of current NATABOC certification and, if licensed or certified by another jurisdiction in the United States, documentation that his license or certificate is current and unrestricted may be granted authorization to practice as an athletic trainer for 45 days pending submission of all other required documentation and issuance of a [~~certificate~~ license]. At the discretion of the board, additional time, not to exceed 15 days, may be allowed to complete the application process.

NOTICE: The forms used in administering the 18 VAC 85-120, Regulations Governing the Certification of Athletic Trainers, 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, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

[FORMS

Instructions for Completing an Athletic Trainer *Licensure* Application (rev. ~~3/03~~ 5/04).

Application for a ~~Certificate~~ License to Practice as an Athletic ~~Training~~ Trainer (rev. ~~3/03~~ 5/04).

Form A, Claims History Sheet (rev. ~~3/03~~ 5/04).

Form B, Activity Questionnaire (rev. ~~3/03~~ 5/04).

Form C, Clearance from Other State Boards (rev. ~~3/03~~ 5/04).

Form L, Certificate of Professional Education (rev. ~~3/03~~ 5/04).

Provisional ~~Certificate~~ License to Practice as an Athletic Trainer Pursuant to 18 VAC 85-120-80 (rev. ~~3/03~~ 5/04).

Renewal Notice (eff. 5/04).

License Renewal Notice and Application (rev. ~~11/02~~ 5/04).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).]

VA.R. Doc. No. R03-259; Filed July 20, 2004, 9:31 a.m.

BOARD OF NURSING

Title of Regulation: **18 VAC 90-20. Regulations Governing the Practice of Nursing (amending 18 VAC 90-20-10, 18 VAC 90-20-35, 18 VAC 90-20-40, 18 VAC 90-20-50, 18 VAC 90-20-60, [~~18 VAC 90-20-90,~~] 18 VAC 90-20-95, 18 VAC 90-20-120, 18 VAC 90-20-140, 18 VAC 90-20-160, 18 VAC 90-20-170, 18 VAC 90-20-190, 18 VAC 90-20-200, 18 VAC 90-20-220, 18 VAC 90-20-230, 18 VAC 90-20-270, 18 VAC 90-20-280, 18 VAC 90-20-300, 18 VAC 90-20-390, 18 VAC 90-20-410, 18 VAC 90-20-460; adding 18 VAC 90-20-65; repealing 18 VAC 90-20-310 through 18 VAC 90-20-360).**

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

Effective Date: September 8, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Summary:

The amendments to existing regulations are recommendations from a periodic review to clarify and update certain provisions affecting the nursing education program, the practice of nursing, and medication administration programs. Current regulations for nurse aides and nurse aide education programs found within 18 VAC 90-20 are being repealed and repromulgated in a new set of regulations, 18 VAC 90-25, Regulations Governing Certified Nurse Aides. Through its regulatory review, the board determined that a separate set of regulations for nurse aides would be clearer and less cumbersome, especially for nurse aide education programs that have specific criteria for establishing and maintaining an approved program.

Amendments to the nursing and nurse aide education program address concerns about the quality of instruction, the reporting of changes in the program, and other issues related to meeting the educational needs of students. To ease the burden of nursing education programs that undergo extensive review for accreditation by a national nursing credentialing body, the amendments allow acceptance of that accreditation for the purpose of continued approval by the board.

Additional requirements provide specificity about evidence of continued competency necessary for reinstatement of a license, to provide certain grounds for disciplinary action for the protection of patients or clients, to specify the number of hours of training necessary in a medication administration training program, to update the protocol for adult immunizations, and to state in regulation a policy of the board on the delegation of tasks in an operating room.

Changes since the proposed remove 18 VAC 90-20-90, Faculty, from this action pending further consideration by the board; amend 18 VAC 90-20-300 to clarify references to "client" and "patient"; and remove violating federal laws on the privacy of patient information as a criteria for a finding of unprofessional conduct.

Summary of Public Comment's 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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:8 VA.R. 735-753 December 29, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

18 VAC 90-20-10 through 18 VAC 90-20-65. [No change from proposed.]

18 VAC 90-20-95 through 18 VAC 90-20-280. [No change from proposed.]

18 VAC 90-20-300. Disciplinary provisions.

A. The board has the authority to deny, revoke or suspend a license issued, or to otherwise discipline a licensee, upon proof that the licensee has violated any of the provisions of § 4.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit *in procuring or maintaining a license* means, but shall not be limited to:

- a. Filing false credentials;
- b. Falsely representing facts on an application for initial license, reinstatement or renewal of a license; or
- c. Giving or receiving assistance in the taking of the licensing examination.

2. Unprofessional conduct means, but shall not be limited to:

- a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;
- b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;
- c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
- d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;
- e. Falsifying or otherwise altering patient ~~or~~, employer, student, or educational program records, including falsely representing facts on a job application or other employment-related documents;
- f. Abusing, neglecting or abandoning patients or clients;
- g. Practice of a clinical nurse specialist beyond that defined in 18 VAC 90-20-290;
- h. Representing oneself as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the board; ~~or~~
- i. Delegating nursing tasks to an unlicensed person in violation of the provisions of Part ~~X~~ VIII (18 VAC 90-20-420 et seq.) of this chapter; ;
- j. *Giving to or accepting from a patient or client property or money for any reason other than fee for service or a nominal token of appreciation;*
- k. *Obtaining money or property of a patient or client by fraud, misrepresentation or duress;*
- l. *Entering into a relationship with a patient or client that constitutes a professional boundary violation in which the nurse uses his professional position to take advantage of a [patient or] client's vulnerability, to include but not limited to actions that result in personal gain at the expense of the patient [or client], a nontherapeutic personal involvement or sexual conduct with a patient [or client]; or*
- m. *Violating state [~~or federal~~] laws relating to the privacy of patient information, including but not limited to § 32.1-127.1:03 of the Code of Virginia.*

B. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.

18 VAC 90-20-310 through 18 VAC 90-20-460. [No change from proposed.]

Final Regulations

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, Board of Nursing, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Licensure by Endorsement - Registered Nurse (rev. [~~40/02~~ 11/03]).

Instructions for Licensure by Endorsement - Registered Nurse (rev. 10/02).

Instructions for Licensure by Endorsement - Licensed Practical Nurse (rev. [~~40/02~~ 11/03]).

Application for Licensure by Endorsement - Licensed Practical Nurse (rev. 10/02).

Instructions for Filing Application for Licensure by Examination for Registered Nurses [~~, RN1-INS~~] (rev. [~~40/02~~ 6/04]).

Application for Licensure by Examination - Registered Nurse (rev. [~~40/02~~ 11/03]).

Instructions for Filing Application for Licensure by Examination for Practical Nurses [~~, PN1-INS~~] (rev. [~~40/02~~ 6/04]).

Application for Licensure by Examination - Licensed Practical [~~Nurses-Nurse~~] (rev. [~~40/02~~ 11/03]).

Instructions for Filing Application for Licensure by Repeat Examination for Registered Nurses [~~, RN2-INS~~] (rev. [~~40/02~~ 6/04]).

Application for Licensure by Repeat Examination for Registered Nurse (rev. 10/02).

Instructions for Filing Application for Licensure by Repeat Examination for Practical Nurses [~~, PN2-INS~~] (rev. [~~40/02~~ 2/03]).

Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev. 10/02).

Instructions for Filing Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries [~~, PNE-INS~~] (rev. [~~40/02~~ 6/04]).

Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. [~~40/02~~ 11/03]).

[*Instructions for Filing Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. 11/03).*]

Temporary Exemption To Licensure (eff. 10/02).

Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. [~~40/02~~ 11/03]).

Application for Reinstatement of License as a Registered Nurse (rev. [~~40/02~~ 11/03]).

Application for Reinstatement of License as a Licensed Practical Nurse (rev. [~~40/02~~ 11/03]).

[*Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation (rev. 11/03).*]

Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation (rev. 11/03).]

License Verification Form (rev. 10/02).

Renewal Notice and Application, 0001, RN (rev. [~~42/02~~ 11/03]).

Renewal Notice and Application, 0002, LPN (rev. [~~42/02~~ 11/03]).

Renewal Notice and Application, 0015, Clinical Nurse Specialist (rev. 12/02).

Application for Registration as a Clinical Nurse Specialist (rev. 10/02).

Survey Visit Report (rev. 12/02).

Annual Report for Registered Nursing Programs (rev. 12/02).

Annual Report for Practical Nursing Programs (rev. 12/02).

~~Renewal Notice and Application 1401, Certified Nurse Aide (rev. 12/02).~~

~~Renewal Notice and Application, Advanced Certified Nurse Aide (eff. 12/02).~~

~~Instructions for Application for Certification as Advanced Certified Nurse Aide (eff. 2/03).~~

~~Application for Certification as Advanced Certified Nurse Aide (eff. 2/03).~~

~~Application for Reinstatement of Nurse Aide Certification (rev. 12/02).~~

~~Instructions for Application for Reinstatement of Nurse Aide Certification (rev. 12/02).~~

~~Instructions for Application for Reinstatement of Advanced Nurse Aide Certification (eff. 2/03).~~

~~Application for Reinstatement of Advanced Nurse Aide Certification (eff. 2/03).~~

~~Application for Nurse Aide Certification by Endorsement (rev. 12/02).~~

~~Instructions for Application for Nurse Aide Certification by Endorsement (rev. 12/02).~~

~~Nurse Aide Certification Verification Form (rev. 12/02).~~

~~Application to Establish a Nurse Aide Education Program (rev. 12/02).~~

~~Application to Establish an Advanced Certification Nurse Aide Education Program (eff. 12/02).~~

~~Nurse Aide Education Program – Program Evaluation Report (rev. 11/02).~~

~~Nurse Aide Education Program On-Site Review Report (rev. 12/02).~~

~~Advanced Certification Nurse Aide Education Program – On-site Review Report (eff. 12/02).~~

~~Evaluation of On-Site Visitor (eff. 12/02).~~

~~Request for Statistical Information (eff. 12/02).~~

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

VA.R. Doc. No. R02-143A; Filed July 15, 2004, 12:37 p.m.

Title of Regulation: **18 VAC 90-25. Regulations Governing Certified Nurse Aides (adding 18 VAC 90-25-10 through 18 VAC 90-25-100).**

Statutory Authority: § 54.1-2400 and Article 4 (§ 54.1-3022 et seq.) of Chapter 30 of Title 54.1 of the Code of Virginia.

Effective Date: September 8, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9943, or e-mail elaine.yeatts@dhp.virginia.gov.

Summary:

18 VAC 90-25, Regulations Governing Certified Nurse Aides replaces existing regulations for nurse aides and nurse aide education programs found within 18 VAC 90-20, Regulations Governing the Practice of Nursing. Through its regulatory review, the board determined that a separate set of regulations for nurse aides would be clearer and less cumbersome, especially for nurse aide education programs that have specific criteria for establishing and maintaining an approved program. The regulations are identical to current requirements for nurse aide certification and educational program approval with the exception of certain rules identified during regulatory review.

Amendments to the program requirements clarify instructional expectations of the board for maintaining approval to provide nurse aide education, including an increase in the core curriculum from 16 to 24 hours and inclusion of instruction in fall prevention and care of sensory-impaired clients. The process for reporting to the board and for an interruption in the program is also clarified. Regulations for reinstatement of nurse aide certification have been amended to include a prohibition against reinstatement following a finding of abuse, neglect or misappropriation of property and a board guidance document that provides for the possibility of reinstatement if the finding of neglect was based on a single occurrence. As with the nursing regulations, there

are additional grounds added to the disciplinary provisions that address situations encountered in disciplinary cases before the board.

Changes to the proposed regulation (i) replace the terms "patient" and "resident" with the newly defined term "client"; (ii) amend language regarding licensure renewal by nurse aides; and (iii) eliminate language stating that violation of federal laws by a nurse aide relating to the privacy of client information would constitute unprofessional conduct.

Summary of Public Comment's 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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:8 VA.R. 753-762 December 29, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changes since publication of the proposed are set out.

18 VAC 90-25-10. Definitions.

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

"Board" means the Virginia Board of Nursing.

["Client" means a person receiving the services of a certified nurse aide, to include a patient in a health care facility or at home or a resident of a long-term care facility.]

"Committee" means the Education Special Conference Committee, comprised of not less than two members of the board in accordance with § 2.2-4019 of the Code of Virginia.

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means a licensed nursing home or an entity that is certified for Medicare or Medicaid long-term care reimbursement and licensed or certified by the Virginia Department of Health.

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity that conducts a nurse aide education program.

18 VAC 90-25-20. [No change from proposed.]

18 VAC 90-25-30. [No change from proposed.]

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18 VAC 90-25-40. Requirements for the curriculum.

A. Curriculum content. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

1. Initial core curriculum. Prior to the direct contact of a student with a nursing facility client, a total of at least 24 hours of instruction in the following areas must be presented:

- a. Communication and interpersonal skills.
- b. Infection control.
- c. Safety and emergency procedures, including dealing with obstructed airways and fall prevention.
- d. Promoting client independence.
- e. Respecting clients' rights.

2. Basic skills.

- a. Recognizing changes in body functioning and the importance of reporting such changes to a supervisor.
- b. Measuring and recording routine vital signs.
- c. Measuring and recording height and weight.
- d. Caring for the clients' environment.
- e. Measuring and recording fluid and food intake and output.
- f. Performing basic emergency measures.
- g. Caring for a client when death is imminent.

3. Personal care skills.

- a. Bathing and oral hygiene.
- b. Grooming.
- c. Dressing.
- d. Toileting.
- e. Assisting with eating and hydration, including proper feeding techniques.
- f. Caring for skin, to include prevention of pressure ulcers.
- g. Transfer, positioning and turning.

4. Individual client's needs, including mental health and social service needs.

- a. Modifying the aide's behavior in response to the behavior of clients.
- b. Identifying developmental tasks associated with the aging process.
- c. Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.
- d. Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal

choices, and by providing and reinforcing other behavior consistent with the client's dignity.

e. Utilizing the client's family or concerned others as a source of emotional support.

f. Responding appropriately to the client's behavior; including, but not limited to, aggressive behavior and language.

g. Providing appropriate clinical care to the aged and disabled.

h. Providing culturally sensitive care.

5. Care of the cognitively or sensory (visual and auditory) impaired client.

a. Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

b. Communicating with cognitively or sensory impaired [~~residents~~ clients].

c. Demonstrating an understanding of and responding appropriately to the behavior of cognitively or sensory impaired [~~residents~~ clients].

d. Using methods to reduce the effects of cognitive impairment.

6. Skills for basic restorative services.

a. Using assistive devices in transferring, ambulation, eating and dressing.

b. Maintaining range of motion.

c. Turning and positioning, both in bed and chair.

d. Bowel and bladder training.

e. Caring for and using prosthetic and orthotic devices.

f. Teaching the client in self-care according to the client's abilities as directed by a supervisor.

7. Clients' rights.

a. Providing privacy and maintaining confidentiality.

b. Promoting the client's right to make personal choices to accommodate individual needs.

c. Giving assistance in resolving grievances and disputes.

d. Providing assistance necessary to participate in client and family groups and other activities.

e. Maintaining care and security of the client's personal possessions.

f. Promoting the [~~resident's~~ client's] rights to be free from abuse, mistreatment and neglect and the need to report any instances of such treatment to appropriate staff.

g. Avoiding the need for restraints in accordance with current professional standards.

8. Legal and regulatory aspects of practice as a certified nurse aide, including, but not limited to, consequences of abuse, neglect, misappropriation of [patient client] property and unprofessional conduct.

9. Occupational health and safety measures.

10. Appropriate management of conflict.

B. Unit objectives.

1. Objectives for each unit of instruction shall be stated in behavioral terms that are measurable.

2. Objectives shall be reviewed with the students at the beginning of each unit.

C. Curriculum changes. Changes in curriculum shall be approved by the board prior to implementation and shall be submitted at the time of the on-site visit or with the report submitted by the program coordinator in the intervening year.

18 VAC 90-25-50. Other program requirements.

A. Records.

1. Each nurse aide education program shall develop and maintain an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the nurse aide must receive a copy of this record and a certificate of completion from the program.

2. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

B. Student identification. The nurse aide students shall wear identification that clearly distinguishes them as a "nurse aide student."

C. Length of program.

1. The program shall be at least 120 clock hours in length.

2. The program shall provide for at least 24 hours of instruction prior to direct contact of a student with a nursing facility client.

3. Skills training in clinical settings shall be at least 40 hours of providing direct client care. Five of the clinical hours may be in a setting other than a nursing home. Hours of observation shall not be included in the required 40 hours of skills training.

4. Employment orientation to facilities used in the education program must not be included in the 120 hours allotted for the program.

D. Classroom facilities. The nurse aide education program shall provide facilities that meet federal and state requirements including:

1. Comfortable temperatures.

2. Clean and safe conditions.

3. Adequate lighting.

4. Adequate space to accommodate all students.

5. Instructional technology and equipment needed for simulating [resident client] care.

18 VAC 90-25-60. [No change from proposed.]

18 VAC 90-25-70. [No change from proposed.]

18 VAC 90-25-80. Renewal or reinstatement of certification.

A. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, [an application a notice] for renewal shall be mailed by the board to the last known address of each currently registered certified nurse aide.

2. The certified nurse aide shall [return the submit a] completed application with the required fee of \$45 and verification of performance of nursing-related activities for compensation within the two years immediately preceding the expiration date.

3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.

4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat and pass the nurse aide competency evaluation prior to applying for recertification.

5. The board shall also charge a fee of \$25 for a returned check.

B. Reinstatement of certification.

1. An individual whose certification has lapsed for more than 90 days shall file the required application and renewal fee and provide:

a. Verification of performance of nursing-related activities for compensation in the two years prior to the expiration date of the certificate and within the preceding two years; or

b. When nursing activities have not been performed during the preceding two years, evidence of having repeated and passed the nurse aide competency evaluation.

2. An individual who has previously had a finding of abuse, neglect or misappropriation of property is not eligible for reinstatement of his certification, except as provided in subsection C of this section.

C. If a finding of neglect was made against a certificate holder based on a single occurrence, an individual may petition for removal of the finding of neglect provided:

1. A period of at least one year has passed since the finding was made; and

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2. The individual seeking reinstatement demonstrates sufficient evidence that employment and personal history do not reflect a pattern of abusive behavior or neglect.

18 VAC 90-25-90. [No change from proposed.]

18 VAC 90-25-100. Disciplinary provisions for nurse aides.

The board has the authority to deny, revoke or suspend a certificate issued, or to otherwise discipline a certificate holder upon proof that he has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit in order to procure or maintain a certificate shall mean, but shall not be limited to:

- a. Filing false credentials;
- b. Falsely representing facts on an application for initial certification, reinstatement or renewal of a certificate; or
- c. Giving or receiving assistance in taking the competency evaluation.

2. Unprofessional conduct shall mean, but shall not be limited to:

- a. Performing acts beyond those authorized for practice as a nurse aide as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, and beyond those authorized by the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) or by provisions for delegation of nursing tasks in Part X (18 VAC 90-20-420 et seq.) of 18 VAC 90-20.
- b. Assuming duties and responsibilities within the practice of a nurse aide without adequate training or when competency has not been maintained;
- c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
- d. Falsifying or otherwise altering client or employer records, including falsely representing facts on a job application or other employment-related documents;
- e. Abusing, neglecting or abandoning clients;
- f. Having been denied a license or certificate or having had a license or certificate issued by the board revoked or suspended;
- g. Giving to or accepting from a [~~patient~~ or] client property or money for any reason other than fee for service or a nominal token of appreciation;
- h. Obtaining money or property of a [~~patient~~ or] client by fraud, misrepresentation or duress;
- i. Entering into a relationship with a [~~patient~~ or] client that constitutes a professional boundary violation in which the nurse aide uses his professional position to take advantage of a client's vulnerability, to include but

not limited to actions that result in personal gain at the expense of the [~~patient~~ client], an inappropriate personal involvement or sexual conduct with a [~~patient~~ client]; or

j. Violating state [~~or federal~~] laws relating to the privacy of [~~patient~~ client] information, including but not limited to § 32.1-127.1:03 of the Code of Virginia.

3. For the purposes of interpreting provisions of § 54.1-3007 (7) of the Code of Virginia, a restriction on nurse aide certification shall be interpreted as having a finding of abuse, neglect or misappropriation of patient property made in another state or being placed on the abuse registry in another state.

FORMS [No change from proposed.]

VA.R. Doc. No. R02-143B; Filed July 15, 2004, 12:34 p.m.

BOARD OF PHYSICAL THERAPY

Title of Regulation: 18 VAC 112-20. Regulations Governing the Practice of Physical Therapy (amending 18 VAC 112-20-10, 18 VAC 112-20-40, 18 VAC 112-20-50, 18 VAC 112-20-60, 18 VAC 112-20-65, 18 VAC 112-20-70, 18 VAC 112-20-90, 18 VAC 112-20-100, 18 VAC 112-20-120 and 18 VAC 112-20-130; repealing 18 VAC 112-20-20, 18 VAC 112-20-80 and 18 VAC 112-20-110).

Statutory Authority: § 54.1-2400 and Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: September 8, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Summary:

The amendments are intended to clarify and update educational, examination and practice requirements. Substantive changes include the elimination of the prohibition on licensure after six failed attempts to pass the national examination; inclusion of a requirement for additional clinical training or course work to sit for the examination after three failures; and acceptance of documentation of active practice for seven years with an unrestricted license if the examination taken for initial licensure is not identical to the examination required in Virginia.

Changes to the proposed regulation (i) remove proposed language setting the scale score of the standard for passage of the national examination and return existing text allowing the board to retain the flexibility to adjust the score prescribed; (ii) change the requirements for licensure by endorsement to 160 hours within the past two years for consistency with the hours required for renewal of an active license in Virginia; (iii) allow the physical therapist to communicate with a patient's legally authorized representative; (iv) allow consultation visits to be under general supervision rather than require visits

under general supervision; and (v) change the requirement for an evaluation by the physical therapist at the time of discharge to instead require periodic evaluations prior to discharge.

Summary of Public Comment's 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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published 20:11 VA.R. 1164-1173 February 9, 2004, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however the sections that have changed since publication of the proposed are set out.

18 VAC 112-20-10 through 18 VAC 112-20-50. [No change from proposed.]

18 VAC 112-20-60. ~~Application~~ Requirements for licensure by examination.

A. Every applicant for initial ~~board~~ licensure by examination shall submit:

1. Documentation of having met the educational requirements specified in 18 VAC 112-20-40 or 18 VAC 112-20-50;
2. The required application, fees and credentials to the board; and
3. Documentation of passage of the national examination [as prescribed by the board ~~by a minimum scale score of 600 or as established by the board~~].

B. If an applicant fails the national examination three times, he shall apply for approval to sit for any subsequent examination by submission of evidence satisfactory to the board of having successfully completed additional clinical training or course work in the deficiency areas of the examination.

18 VAC 112-20-65. Requirements for the ~~examination~~ licensure by endorsement.

~~A. The minimum passing score shall be a scale score of 600 or as established by the board.~~

~~B. An applicant who fails the examination after six attempts shall be denied licensure.~~

~~C. A person not taking the licensure examination within four years after graduation shall successfully complete a full-time 480-hour traineeship.~~

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18 VAC 112-20-40 or 18 VAC 112-20-50;

2. The required application, fees, and credentials to the board; and

3. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state and active practice with a current, unrestricted license for at least seven years prior to applying for licensure in Virginia.

C. A physical therapist or physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least [~~320~~ 160] hours within the [~~four~~ two] years immediately preceding his application for licensure shall first successfully complete a 480-hour traineeship as specified by subsection B of 18 VAC 112-20-140.

18 VAC 112-20-70. [No change from proposed.]

18 VAC 112-20-80. [No change from proposed.]

18 VAC 112-20-90. ~~Individual~~ General responsibilities to patients.

~~A. The physical therapist's responsibilities are to evaluate a patient, plan the treatment program, administer and document treatment within the limit of his professional knowledge, judgment and skills and communicate with the referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery to the extent required by § 54.1-3482 of the Code of Virginia therapist shall be responsible for managing all aspects of the physical therapy care of each patient and shall provide:~~

1. The initial evaluation [~~and any periodic reevaluation~~] for each patient and its documentation in the patient record; and
2. [~~An evaluation prior to discharge of the~~ Periodic evaluations prior to] patient [~~discharge~~], including documentation of the patient's response to therapeutic intervention [~~at the time of discharge~~].

B. The physical therapist shall communicate the overall plan of care to the patient [or his legally authorized representative] and shall also communicate with a referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, nurse practitioner or physician assistant to the extent required by § 54.1-3482 of the Code of Virginia.

C. A physical therapist assistant may assist the physical therapist in performing selected components of physical therapy intervention to include treatment, measurement and data collection, but not to include the performance of an evaluation as defined in 18 VAC 112-20-10.

D. A physical therapist assistant's visits to a patient [~~shall~~ may] be made under general supervision.

18 VAC 112-20-100 through 18 VAC 112-20-130. [No change from proposed.]

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NOTICE: The forms used in administering the 18 VAC 112-20, Regulations Governing the Practice of Physical Therapy, 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, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

[FORMS

Application for a ~~License~~ *Licensure by Examination* to Practice Physical Therapy (~~Examination~~) (rev. 8/00 7/04).

Application for a ~~License~~ *Licensure by Endorsement* to Practice Physical Therapy (~~Endorsement~~) (rev. 8/00 7/04).

Application for Reinstatement of Licensure to Practice Physical Therapy (rev. 8/00 7/04).

Instructions for Licensure by Endorsement to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of an Approved Program) (rev. 12/04 7/04).

Instructions for Licensure by Endorsement to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of a Nonapproved Program) (rev. 12/04 7/04).

Instructions for Licensure by Examination to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of an Approved Program) (rev. 12/04 7/04).

Instructions for Licensure by Examination to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of a Nonapproved Program) (rev. 12/04 7/04).

Instructions for Completing Reinstatement of Licensure Application for Physical Therapist/Physical Therapist Assistant (rev. 12/04 7/04).

~~The FSBPT Score Transfer Service, National Physical Therapy Examination (PT/PTA), Score Transfer Request Application~~ (rev. 7/00 5/03).

Traineeship Application, Statement of Authorization (rev. 8/00 7/04).

Traineeship Application, Statement of Authorization (1,000-hour traineeship) (rev. 8/00 7/04).

Traineeship Application, Statement of Authorization, Relicensure (480-hour traineeship) (rev. 8/00 7/04).

~~Relicensure Traineeship Certification~~ (rev. 8/00).

Form #A, Claims History Sheet (rev. 7/00 7/04).

Form #B, Employment/Practice Verification of Physical Therapy (rev. 8/00 7/04).

Form #C, Verification of State Licensure (rev. 8/00 7/04).

Form #L, Certificate of Physical Therapy Education (rev. 7/00 7/04).

Renewal Notice and Application (rev. 12/04 7/04).

Continued Competency and Assessment Form (rev. 9/04 7/04).]

VA.R. Doc. No. R03-191; Filed July 21, 2004, 11:58 a.m.

BOARD OF COUNSELING

Titles of Regulations: 18 VAC 115-20. Regulations Governing the Practice of Professional Counseling (amending 18 VAC 115-20-20, 18 VAC 115-20-100, 18 VAC 115-20-110, and 18 VAC 115-20-140; adding 18 VAC 115-20-105, 18 VAC 115-20-106, and 18 VAC 115-20-107).

18 VAC 115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18 VAC 115-50-20, 18 VAC 115-50-90, 18 VAC 115-50-100, and 18 VAC 115-50-120; adding 18 VAC 115-50-95, 18 VAC 115-50-96, and 18 VAC 115-50-97).

18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18 VAC 115-60-20, 18 VAC 115-60-110, 18 VAC 115-60-120, and 18 VAC 115-60-140; adding 18 VAC 115-60-115, 18 VAC 115-60-116, and 18 VAC 115-60-117).

Statutory Authority: § 54.1-103, 54.1-2400, and 54.1-3505.1 of the Code of Virginia.

Effective Date: September 8, 2004.

Agency Contact: Ben Foster, Deputy Executive Director, Board of Counseling, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-7250, or e-mail ben.foster@dhp.virginia.gov.

Summary:

The amendments (i) require that licensed professional counselors, marriage and family therapists, and substance abuse treatment practitioners complete a minimum of 20 hours of continuing competency activities each year in order to qualify for licensure renewal; (ii) provide for an inactive licensure status for individuals who are not actively practicing and may be unable to meet the continuing competency requirements; and (iii) require that a counselor, therapist, or practitioner whose license has lapsed complete continuing competency hours prior to reinstatement of his license.

Summary of Public Comment's 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.

REGISTRAR'S NOTICE: The proposed regulations were adopted as published in 20:8 VA.R. 796-807 December 29, 2003, with the changes to the forms identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulations are not published at length; however, the sections that have changed since publication of the proposed are set out.

NOTICE: The forms used in administering 18 VAC 115-20, Regulations Governing the Practice of Professional Counseling, 18 VAC 115-50, Regulations Governing the

Practice of Marriage and Family Therapy, and 18 VAC 115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Professionals 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, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

(18 VAC 115-20)

License Renewal Notice and Application (rev. 2/00 [~~11/03~~ 7/04]).

~~Quarterly Evaluation Form (eff. 2/00).~~

~~Verification of Supervision Form (eff. 2/00).~~

~~Registration of Supervision; Post-Graduate Degree Supervised Experience (eff. 2/00).~~

Application for Reinstatement of a Lapsed License (eff. 11/03).

FORMS

(18 VAC 115-50)

Marriage and Family Therapist Licensure Application, MFTAPP4 Form 1 (rev. 2/00 11/03).

Licensure Verification of Applicant, MFTAPP2 Form 2 (rev. 7/99 11/03).

Verification of Supervision for Marriage and Family Therapist Licensure, MFTAPP3 Form 3 (rev. 7/99 11/03).

~~Quarterly Evaluation Form, MFTAPP 3B (eff. 8/99).~~

Licensure Verification of Out-of-State Supervisor, MFTAPP4 Form 4 (rev. 7/99 11/03).

Courses Outline Form for Marriage and Family Therapist Licensure, MFTAPP5 Form 5 (eff. 7/97 rev. 11/03).

Verification of Internship, MFTAPP6 Form 6 (eff. 8/99 rev. 11/03).

Verification of Internship Hours Toward the Residency, MFTAPP7 Form 7 (eff. 8/99 rev. 11/03).

Supervision Outline Form for Marriage and Family Endorsement Applicants, Form 8 (rev. 11/03).

Registration of Supervision for Marriage and Family Therapist Licensure, MFTREG4 Form A (rev. 2/00 11/03).

Application for Reinstatement of a Lapsed License (eff. 11/03).

General Information for Licensure as a Marriage and Family Therapist (eff. 11/03).

Application Instructions - Licensure by Examination (eff. 11/03).

Application Instructions - Licensure by Endorsement (eff. 11/03).

License Renewal Notice and Application (rev. 2/00 [~~11/03~~ 7/04]).

~~Supervision Outline Form for Marriage and Family Therapist Endorsement Applicants, MFTAPP8 (eff. 12/99).~~

[FORMS

(18 VAC 115-60)

Substance Abuse Treatment Practitioner Licensure Application, Form 1 (rev. 4/03 11/03).

General Information for Licensure as a Substance Abuse Treatment Practitioner (eff. 4/03 rev. 11/03).

Verification of Competency for Independent Practice of Substance Abuse Treatment (TLW) (eff. 4/03 rev. 11/03).

Licensure/Certification Verification of Applicant, Form 2 (rev. 4/03 11/03).

Verification of Supervision for Substance Abuse Treatment Practitioner Licensure, Form 3 (rev. 4/03 11/03).

Supervisor's Experience and Education, Form 3A (rev. 4/03 11/03).

Licensure Verification of Out-of-State Supervisor, Form 4 (rev. 4/03 11/03).

Courses Outline Form for Substance Abuse Treatment Practitioner Licensure, Form 5 (rev. 4/03 11/03).

Graduate Course/Hour Outline Form for Substance Abuse Treatment Practitioner Licensure (TLW) (rev. 11/03).

Verification of Internship, Form 6 (rev. 4/03 11/03).

Verification of Internship Hours Toward the Residency, Form 7 (rev. 4/03 11/03).

Registration of Supervision for Substance Abuse Treatment Practitioner Licensure, Form A (rev. 4/03 11/03).

Quarterly Evaluation Form, Form C (rev. 4/03 11/03).

Supervision Outline Form for Substance Abuse Treatment Practitioner Endorsement Applicants, Form 8 (rev. 4/03 11/03).

License Renewal Notice and Application (rev. 4/03 7/04).

Substance Abuse Treatment Practitioner Application for Reinstatement of a Lapsed License, SATPREIN (rev. 4/03 11/03).

Substance Abuse Treatment Practitioner Application for Reinstatement Following Disciplinary Action, SATPREDISC (rev. 1/03).]

VA.R. Doc. Nos. R02-258, R02-259, R02-260; Filed July 21, 2004, 11:59 a.m.



Final Regulations

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

FINAL ORDER

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.

Attachment B, referenced in the following order, is not being published; however, it is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1300 East Main Street, 1st Floor, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday.

Title of Regulation: 20 VAC 5-419. Procedural Rules for Implementing §§ 251 and 252 of the Telecommunications Act of 1996, 47 USC §§ 251 and 252 (amending 20 VAC 5-419-10 through 20 VAC 5-419-40).

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

Effective Date: July 21, 2004.

Agency Contact: John K. Shumate, Jr., Attorney, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, toll free (800) 552-7945, or e-mail jshumate@scc.state.va.us.

Summary:

The rules, in part, address the procedure for filing negotiated agreements with the commission, the availability of negotiated agreements for public inspection, and the procedure for compulsory arbitration. The rules also reduce the number of copies that parties to a negotiated agreement must supply, eliminate the notification requirement, and provide for the automatic approval by the commission of negotiated agreements.

Changes made to the proposed regulation require an arbitration request to include a separate list of those issues resolved by the parties and those issues not resolved by the parties through negotiation. Also, the requirement for parties to a negotiated agreement to jointly file a negotiated agreement is removed.

AT RICHMOND, JULY 15, 2004

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC-2003-00171

Ex Parte: In the matter of revising the rules governing the filing of interconnection agreements

On November 20, 2003, the State Corporation Commission ("Commission") issued an Order for Notice and Comment or Requests for Hearing regarding the Staff's proposed revisions to 20 VAC 5-419-10 et seq., Procedural Rules for Implementing §§ 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252 ("Proposed Rules"). Interested parties were given an opportunity to comment or request a hearing on the Proposed Rules no later than January 5, 2004.

Comments were received from the following five interested parties: Allegiance Telecom of Virginia, Inc. ("Allegiance"); Cox Virginia Telecom, Inc. ("Cox"); WorldCom, Inc. ("MCI"); Central Telephone Company and United Telephone-Southeast, Inc. (collectively, "Sprint"); and Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon"). No one requested a hearing on the Proposed Rules.

In its comments, Allegiance suggests that agreements "adopted" pursuant to 47 U.S.C. § 252(i) be reviewed by the Commission and approved on an expedited basis if no person filed any comment or request for hearing regarding such "opt-in" agreements.

Cox recommends that: (1) language be added to proposed 20 VAC 5-419-10 requiring that any request for arbitration separate the issues into two categories, i.e., those issues that have been resolved through negotiation and those issues that have not been resolved; (2) the Commission act to approve negotiated agreements within 60 days of the filing of the agreement if asked to do so by a party to the agreement; (3) language be added reflecting a state commission's duty to conclude arbitrations within nine months of the request for interconnection, pursuant to 47 U.S.C. § 252(b)(4)(C); and (4) language be added creating a procedure for the adoption of previously approved negotiated agreements pursuant to 47 U.S.C. § 252(i).

MCI states that it agrees, for the most part, with the Proposed Rules; however, it expresses concern that the wording of proposed 20 VAC 5-419-20 appears to deal not only with negotiated agreements but might be read to include the adoption of previously approved interconnection agreements. MCI requests that the Commission clarify that previously approved interconnection agreements are not included within the ambit of the Proposed Rules.

Sprint, in its comments, supports the Staff's Proposed Rules.

Verizon suggests three changes to the Proposed Rules: (1) remove the requirement that negotiated agreements be jointly filed because it would be burdensome to require joint filings; (2) delete the word "adoption" from proposed 20 VAC 5-419-20 1 because the word creates confusion by being capable of being read to include opt-in agreements made pursuant to 47 U.S.C. § 252(i); and (3) permit notification of the termination of an interconnection agreement to be submitted to the Staff of the Commission instead of being filed through the Office of the Clerk of the Commission.

NOW UPON CONSIDERATION of the comments filed herein, we find that we should adopt the amended rules appended to this Order as Attachment A effective upon filing with the Virginia Registrar of Regulations. We briefly summarize changes made to the Proposed Rules below.

We reject Allegiance's suggestions that the Commission approve opt-in agreements made pursuant to 47 U.S.C. § 252(i) and that the Commission approve these opt-in agreements on an expedited basis in some cases. Furthermore, we reject Cox's proposed language that would create a process for handling opt-in agreements by this Commission. We also reject Verizon's suggestion that "adoption" be struck from proposed 20 VAC 5-419-20 1.¹

We agree with Cox's suggestion that requests for arbitration separately list those issues resolved and not resolved through negotiation and amend proposed 20 VAC 5-419-10 B to reflect that change. We find that such a requirement promotes efficiency.

We reject Cox's suggestion that the Commission act to approve negotiated agreements on an expedited basis if requested to do so by a party. Pursuant to 20 VAC 5-419-20 4, except when otherwise acted upon by the Commission, negotiated agreements shall be deemed approved pursuant to 47 U.S.C. § 252(e)(4) 90 days after the agreement is filed with the Commission. We find that allowing negotiated agreements not otherwise acted upon by the Commission to be approved pursuant to federal law promotes efficiency.

We reject Cox's suggestion that language be added reflecting a state commission's obligation to conclude its arbitration within nine months of the date the request for interconnection has been received by a local exchange carrier ("LEC"). We find that inclusion of such language is redundant of the requirement found at 47 U.S.C. § 252(b)(4)(c).

We accept Verizon's suggestion that parties to a negotiated agreement not be required to file jointly the agreement with the Commission. We find that such a requirement would be inefficient because of the delay it introduces to the process. We note, however, that we do not expect the filing of an agreement to be unilateral.

We reject Verizon's suggestion that notice of the termination of a negotiated agreement be filed with the Staff and not with the Clerk of the Commission. We find that such a provision is inconsistent with the administration of the Rules because it would create inconsistent filing

¹ Both Verizon and MCI admit to some confusion regarding inclusion of the word "adoption" in proposed 20 VAC 5-419-20 1, suggesting that the word might be read to include agreements opted into pursuant to 47 U.S.C. § 252(i). We note that proposed 20 VAC 5-419-20 explicitly mentions only agreements made pursuant to 47 U.S.C. § 252(a)(1). Furthermore, the word "adopt" and its brethren appear nowhere in 47 U.S.C. § 252(i), but the word "adoption" does appear in 47 U.S.C. § 252(e)(1) to describe agreements entered into through negotiation or arbitration that may be submitted to a state commission. We are, therefore, of the opinion that Congress contemplated that state commissions would only accept agreements entered into through negotiation or arbitration under 47 U.S.C. § 252(a) or § 252(b). We take this opportunity to clarify that proposed 20 VAC 5-419-20 does not encompass opt-in agreements made pursuant to 47 U.S.C. § 252(i).

requirements, requiring the Division of Communications to update the Clerk's files.

Additionally, we amend proposed 20 VAC 5-419-20 6 to reflect that an amendment, replacement, or notice of termination of an interconnection agreement shall be timely filed.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt the revised Procedural Rules for Implementing §§ 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252, appended hereto as Attachment A.

(2) A copy of this Order and the rules adopted herein shall be forwarded forthwith for publication in the Virginia Register of Regulations.

(3) This case is dismissed, and the papers herein shall be placed in the 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 attached hereto as Attachment B. 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 5-419-10. General procedure.

~~A. Any reference in this chapter to "interested parties" shall initially refer to the service list attached to the Order Prescribing Notice and Inviting Comments entered in Case No. PUC960059. Any other person who wishes to be included on this service list as an "interested party" under this chapter may file such a request with the Clerk of the State Corporation Commission. A master list shall be kept by the clerk and shall be updated as necessary. A reference in this chapter to service upon interested parties shall mean service on all parties included on this master service list as updated by the clerk's office, unless this service list has been modified in accordance with this chapter. Any reference in this chapter to a person shall include a person or an entity.~~

~~B. A. An arbitration request which has issues resolved through negotiations, but not filed as a separate agreement, will be considered as one proceeding through the arbitration procedure set out in 20 VAC 5-419-30. The resolved portions of the agreement shall be reviewed under 47 USC § 252(e)(2)(A), and arbitrated portions of the agreement shall be reviewed under 47 USC § 252(e)(2)(B). An arbitration request having issues resolved through negotiations and filed as a separate agreement will be considered as two proceedings. The separate negotiated agreement shall be considered under 20 VAC 5-419-20 and any unresolved issues will be considered under 20 VAC 5-419-30 shall include [separate lists of those] issues [that the parties have not] resolved [by the parties and those issues not resolved by the parties] through negotiation. The resolved portions of an agreement shall be reviewed under 47 USC § 252(e)(2)(A), and arbitrated~~

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~~portions of an agreement shall be reviewed under 47 USC § 252(e)(2)(B).~~

~~G. The commission may deviate from the provisions of this chapter as it deems necessary to fulfill its obligations under 47 USC §§ 251 and 252.~~

~~D. B. The filing of an arbitration request shall not preclude the parties from continuing negotiations on unresolved issues. Those issues that are resolved after an arbitration request has been filed with the commission shall be considered negotiated provisions, subject to appropriate notice requirements under the proposed arbitration procedures.~~

~~E. C. To the extent there is conflict between this chapter and the State Corporation Commission's Rules of Practice and Procedure (5 VAC 5-20-40 et seq.), this chapter shall control.~~

~~F. D. No provision of this chapter shall interfere with the commission's power to direct a hearing examiner to consider any issue or issues which that arise during these proceedings a proceeding under this chapter.~~

~~G. E. The provisions of this chapter that require the filing of supporting documentation or evidence shall require strict compliance. Failure to file supporting documentation or evidence as when required by this chapter may result in denial dismissal of the relief sought by the party failing to comply or in a decision adverse to that party's position on the merits.~~

~~F. The commission may decline to act in matters governed by this chapter arising under 47 USC §§ 251 and 252, or may exercise its authority pursuant to § 56-265.4:4 B 4 of the Code of Virginia.~~

~~H. G. The commission may, in its discretion, order an evidentiary hearing to address issues that arise in these proceedings a proceeding under this chapter or may deny a hearing request when a hearing is not necessary to resolve the issues at hand. The commission may also consolidate proceedings or common issues from two or more proceedings.~~

~~H. All filings made pursuant to this chapter shall be with the clerk of the commission. Additional copies of any filing made pursuant to this chapter shall be provided to the clerk of the commission upon request of the clerk.~~

~~I. The commission may deviate from the provisions of this chapter as it deems necessary to fulfill its obligations under the Code of Virginia or 47 USC §§ 251 and 252.~~

20 VAC 5-419-20. Agreements arrived at through negotiation.

The following procedure shall be observed when parties ~~who~~ have negotiated and entered into a binding agreement for interconnection, services, or network elements ("interconnection agreement") under 47 USC § 252(a)(1) ~~submit their voluntarily negotiated agreement for review by the commission under 47 USC § 252(e).~~

1. The parties shall, *within 28 days of the execution or adoption of the negotiated agreement*, [*jointly*] file *three printed copies of the negotiated agreement* [*with the*] ~~commission and on or before that same day shall serve a notice of filing, which describes the terms and conditions of the agreement or a copy of the negotiated agreement itself, on all interested parties and the commission staff, in accordance with 5 VAC 5-20-140 [clerk of the commission]~~. If a person specifically requests a copy of the negotiated agreement, The parties shall promptly serve a copy of the agreement on ~~the~~ any person making the request *for same. The filed agreement shall be accompanied by a cover letter setting forth the names and mailing address of the regulatory contact for each party to the negotiated agreement and shall clearly and conspicuously identify the filing as an interconnection agreement.*

2. Within 21 days of the filing of the negotiated agreement, any person may ~~submit~~ *file an original and two copies of comments or requests for hearing* regarding the negotiated agreement. ~~These~~ *Comments or requests for hearing shall refer to the case number, include all supporting documentation. The comments , and shall be limited to the criteria for review under 47 USC § 252(e)(2)(A). A request for hearing must be filed with the comments. Absent a showing of good cause for a hearing, the commission may review the negotiated agreement without a hearing. Any person filing comments or a request for hearing, or both, shall, on or before the date of filing of such comments or request, serve a copy on the parties to the negotiation and the commission staff in accordance with 5 VAC 5-20-140. Upon the request of another person, a person shall promptly serve a negotiated agreement. A copy of the comments or request for hearing, or both, shall be served promptly on the persons making the request for same.*

~~3. After the deadline for comments or requests for hearing, the service list for the case shall be limited to the parties to the negotiations, the commission staff and any persons filing comments or requests for hearing, or both ("modified service list").~~

~~4. 3. Within 35 15 days of the filing of the negotiated agreement any comment or request for hearing, the parties to the negotiated agreement may jointly file a an original and two copies of a response to any comments filed thereto and shall serve a copy on the person who filed comments or request for hearing. This response shall refer to the case number and include all supporting documentation, and shall be served on the modified service list and the commission staff on or before the filing date in accordance with 5 VAC 5-20-140.~~

~~4. Unless otherwise acted upon by the commission, negotiated agreements shall be deemed approved, pursuant to 47 USC § 252 (e)(4), 90 days after the negotiated agreement is filed with the commission.~~

~~5. Notification of modifications or amendments to any agreement [made pursuant to this section] shall be filed and subject to comment or request for hearing in the~~

same manner governing agreements as set forth above. Notifications of modifications or amendments shall refer to the case number assigned in the original case [, and shall be accompanied by a cover letter that identifies the filing as a "notification of Modification of Interconnection Agreement" or "Amendment of Interconnection Agreement"]. ["]

6. The parties to any [~~negotiated~~] agreement subject to this section shall file an original and two copies of [~~notification of its termination~~ (i) any amendment or revision to the agreement, (ii) any superseding replacement agreement, or (iii) notification of termination of the agreement] within 28 days after the [effective] date of [such amendment, replacement, or] termination of [~~the an~~] agreement.

20 VAC 5-419-30. Agreements arrived at through compulsory arbitration.

The following procedure shall be followed when a party to a negotiation petitions the commission to arbitrate unresolved issues under 47 USC § 252(b):

1. Any party to a negotiation may petition ("petitioning party") the commission to arbitrate any unresolved issue in accordance with the deadlines set out in 47 USC § 252(b)(1). ~~The An original and five copies of an arbitration request shall be filed as a petition, including all supporting documentation, and must conform with 47 USC § 252(b)(2). The petition shall be accompanied by a cover letter clearly and conspicuously identifying the filing as a petition for compulsory arbitration under 47 USC § 252(b).~~ Along with its petition, the petitioning party shall file any request for hearing along with any prefiled direct testimony and all materials it will rely on to support its case at the hearing, including all evidence it intends to present. ~~In its petition, the petitioning party shall certify its compliance with the duty to negotiate in good faith provision of 47 USC § 251(c)(1). In addition to its obligation to serve a copy of the petition on the other party or parties to the negotiation, The petitioning party shall serve, on or before the date of filing, a notice of filing which describes the contents of the arbitration petition or a copy of the petition itself on all interested parties and the commission staff, on or before the same day it is filed with the commission, in accordance with 5 VAC 5-20-140 on all other parties to the negotiation. If a any person specifically requests a copy of the petition, the petitioning party shall promptly serve a copy of the petition on the person making the request for same.~~

2. Within 25 days after the petition ~~requesting arbitration~~ is filed ~~with the commission~~, the nonpetitioning party ~~or parties~~ to the negotiation ("responding party") may file ~~an original and five copies of any response and any additional information as provided under 47 USC § 252(b)(3). In addition, with its response, if a request for hearing was filed by the petitioning party, the responding party shall file an original and five copies of any prefiled direct responsive testimony, if necessary, and all materials it will rely on to support its case at the hearing, including all evidence it intends to present. If no request~~

~~for hearing was filed by the petitioning party, The responding party may file, with its response, a request for a hearing along with any prefiled and shall file an original and five copies of its direct testimony and all materials it will rely on to support its case at the hearing, including all evidence it intends to present. The Any response shall include any all supporting documentation and shall be served on the petitioning party and commission staff, and a notice of filing which describes the contents of the response or a copy of the response itself shall be served on all interested parties, on or before the date the response is filed with the commission, in accordance with 5 VAC 5-20-140. If a person specifically requests a copy of the response, the responding party shall promptly serve a copy of the response on the person making the request for same. If no timely request for hearing is received, the commission may arbitrate the unresolved issues and review the resolved issues without a hearing.~~

~~3. Comments on the petition and response may be filed no more than 45 days after the petition is filed with the commission. Comments relating to unresolved issues in the petition shall be limited to the standards for reviewing arbitrated agreements under 47 USC § 252(c) and 47 USC § 252(e)(2)(B). Comments relating to the issues resolved in the negotiation which is the subject of the arbitration petition shall be limited to the standards for reviewing negotiated agreements under 47 USC § 252(e)(2)(A). Comments shall include all supporting documentation.~~

~~4. If a hearing request has been filed by either the petitioning or the responding party, a person wishing to participate in the hearing shall file, by the deadline for filing comments, a notice of participation which shall contain (i) a precise statement of the party's interest in the proceeding; (ii) a full and clear statement of the facts which the interested party is prepared to prove by competent evidence, the proof of which will warrant the relief sought; and (iii) a statement of the specific relief sought and legal basis therefor. Along with the notice of participation, the person wishing to participate in the hearing shall also file all supporting documentation, including testimony and evidence it will rely on to support its position at the hearing. A person filing comments or a notice of participation, or both, shall, on or before the day of the filing, serve a copy on the petitioning and responding parties and the commission staff in accordance with 5 VAC 5-20-140. Upon the request of another person, a person filing comments or a notice of participation, or both, shall promptly serve a copy of the comments or notice on the person making the request. In addition, if the responding party filed a hearing request, the petitioning party's prefiled direct testimony, if any, and all materials it will rely on to support its case at the hearing, including all evidence it intends to present shall be filed and served on the responding party and the commission staff by the deadline for filing comments by persons.~~

~~5. After the deadline for comments or notices of participation, the service list for the case shall be the modified service list, limited to the parties to the~~

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~~arbitration petition, the commission staff, and any persons filing comments or notices of participation, or both.~~

~~6. Nine months or sooner after the request for interconnection, services, or network elements was received by the incumbent local exchange carrier, the commission shall issue its decision resolving the unresolved issues. In its order, the commission shall provide a deadline for the parties to the negotiation to provide the commission with a formalized agreement.~~

~~3. Participation by individuals and entities other than the negotiating parties shall be by leave of the commission.~~

~~7. The 4. If the commission accepts arbitration of the dispute, the parties shall submit the formalized agreement as an agreement adopted by arbitration for commission review under 47 USC § 252(e), in compliance with the deadlines set by the commission. On or before submission of the formalized agreement, the parties will serve a copy of the agreement on the parties on the modified service list, and the commission staff in accordance with 5 VAC 5-20-140 file six copies of an agreement adopting the results of such arbitration within 28 days of the conclusion of the arbitration. The deadline for filing such agreement may be extended by order of the commission for good cause shown.~~

~~8. 5. Within 10 days after the formalized agreement is filed [with the commission], any person may file an original and five copies of comments or request for hearing on the agreement. Such comments shall be limited to the grounds for rejection as listed in 47 USC § 252(e)(2) and shall include all supporting documentation. Simultaneously with their filing On or before the date of filing, comments or requests for hearing shall be served on the parties to the agreement and the commission staff by next day delivery and to the parties on the modified service list in accordance with 5 VAC 5-20-140.~~

~~9. 6. Within 15 days after the formalized agreement is filed [with the commission], any party to the agreement may file an original and five copies of any reply comments in direct response to comments filed under subdivision 7 5 of this section. Such reply shall include all supporting documentation, and shall be served on the modified service list and the commission staff on or before the filing date in accordance with 5 VAC 5-20-140.~~

~~[7. Notification of modifications or amendments to any agreement made pursuant to this section shall be filed and subject to comment or request for hearing in the same manner governing agreements as set forth above. Notifications or modifications or amendments shall refer to the case number assigned in the original case and shall be accompanied by a cover letter that identifies the filing as a "notification of Modification of Interconnection Agreement" or "Amendment of Interconnection Agreement."~~

~~8. The parties to any agreement subject to this section shall file an original and two copies of (i) any amendment or revision to the agreement, (ii) any superseding~~

~~replacement agreement, or (iii) notification of termination of the agreement within 28 days after the effective date of such amendment, replacement, or termination of an agreement.]~~

20 VAC 5-419-40. Statement of generally available terms.

The following procedure shall be followed when a Bell Operating Company ("BOC") files a statement of generally available terms and conditions:

1. The BOC shall, on or before the day the statement of *generally available terms and conditions* is filed [~~with the clerk of the commission~~], serve a notice of filing which generally describes the terms and conditions of the statement or a copy of the statement itself on all interested parties in accordance with 5 VAC 5-20-140. If a person specifically requests a copy of the statement, the BOC shall promptly serve a copy of the statement on the person making the request. The BOC shall, on or before the date of filing, serve a copy of the statement on the commission staff in accordance with 5 VAC 5-20-140. The filing shall include a detailed explanation of how the statement complies with 47 USC § 252(d) and 47 USC § 251 and the regulations thereunder and shall include all supporting documentation.

2. *Comments or requests for hearing* may be filed within 21 days of the filing of the statement. Comments shall be limited to whether the statement complies with 47 USC § 252(d) and 47 USC § 251 and the regulations thereunder and shall include all supporting documentation. ~~Any request for hearing shall be filed with the comments.~~ The commission will grant a hearing request only if good cause is shown. Comments or requests for hearing, or both, shall, on or before the date of filing, be served upon the BOC and the commission staff in accordance with 5 VAC 5-20-140. Upon [~~the~~] request [~~of another person~~], a person shall promptly serve a copy of the comments or request for hearing, or both, on the person making the request *for same*.

3. After the deadline for *the filing of* comments or requests for hearing has passed, the service list for the case shall be ~~the modified service list~~, limited to the BOC, the commission staff, and any persons *filing who timely filed* comments or requests for hearing, or both.

VA.R. Doc. No. R04-51; Filed July 21, 2004, 10:07 a.m.

TITLE 22. SOCIAL SERVICES

CHILD DAY-CARE COUNCIL

Title of Regulation: **22 VAC 15-20. General Procedures and Information for Licensure (repealing 22 VAC 15-20-10 through 22 VAC 15-20-380).**

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Effective Date: November 1, 2004.

Agency Contact: Kathryn Thomas, Program Development Consultant, Department of Social Services, 7 North Eighth St., Richmond, VA 23219, telephone (804) 726-7158, FAX (804) 726-7132, or e-mail kathryn.thomas@dss.virginia.gov.

Summary:

The Code of Virginia mandates the licensure of child day centers and the programmatic standards for centers are promulgated by the Child Day-Care Council. The general procedures regulation contains general licensing requirements for all programs licensed by the Department of Social Services, including child day centers, and has been jointly promulgated by the Child Day-Care Council and the State Board of Social Services. A memorandum from the Office of the Attorney General, dated November 22, 2002, stated that the council could, but was not required to, promulgate a separate general procedures regulation. Council voted on June 12, 2003, not to promulgate a separate regulation. Therefore, 22 VAC 15-20 is being repealed. The general procedures regulation adopted by the State Board of Social Services, 22 VAC 40-80, General Procedures and Information for Licensure, will apply to all licensed programs.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

VA.R. Doc. No. R03-75; Filed July 15, 2004, 2:46 p.m.

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Titles of Regulations: **22 VAC 15-50. Regulation for Criminal Record Checks for Child Welfare Agencies (repealing 22 VAC 15-50-10 through 22 VAC 15-50-70).**

22 VAC 15-51. Minimum Standards for Background Checks for Licensed Child Day Centers (adding 22 VAC 15-51-10 through 22 VAC 15-51-80).

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Effective Date: October 1, 2004.

Agency Contact: Wenda Singer, Program Consultant, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-2201, FAX (804) 692-2370, or e-mail wenda.singer@dss.virginia.gov.

Summary:

Pursuant to changes in the Code of Virginia, the regulations (i) expand the list of crimes that are barriers to operating, working or volunteering at licensed child day centers, (ii) mandate a search of the child abuse central registry, (iii) change the timeframe to receive background checks from 21 days to 30 days, and (iv) clarify persons who must undergo background checks.

Other changes include (i) requiring repeat background checks every three years, (ii) allowing licensed child day

centers to accept background checks dated less than six months from when contract employees begin providing services at facilities, and (iii) allowing persons to take background check findings with them and use them for another application within 90 days.

Changes to the proposed regulation include:

- 1. Replacing a reference to "child welfare agency" with "licensed child day center" in the definition for "agent";*
- 2. Adding to the definition of "Involved in the day-to-day operations" having access to child and family records unless the person is operating under the authority of a court order;*
- 3. Making technical corrections regarding citations and to reflect language in the Code of Virginia;*
- 4. Making editorial changes regarding subdivisions, reformatting of tables, grammar and spelling;*
- 5. Changing the terms "staff volunteer" to "volunteer" and "parent-staff volunteer" to "parent volunteer" throughout the regulation;*
- 6. Clarifying terms and requirements by adding language;*
- 7. Changing from one year to two the time span that centers must keep all background information; and*
- 8. Making a correction stating that if a center receives notification that a person has been denied licensure because of background checks information, the center must provide a copy of the notification document to the person.*

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

CHAPTER 51.
BACKGROUND CHECKS FOR LICENSED CHILD DAY CENTERS.

22 VAC 15-51-10. Defining words and phrases.

The following words and terms have these meanings when used in reference to this regulation:

"Agent" means a person who acts on behalf of, or is an employee or [staff] volunteer with, a [~~child welfare agency~~ licensed child day center].

"Applicant" means the person or persons applying for licensure as a child day center. In the case of a sole proprietorship, the applicant is the individual owner. In the case of partnership, corporation, limited liability company, public agency or similar entity, the applicant must designate at least one individual who must comply with the applicant's obligation on its behalf and must include all individuals who will be on site exercising direction over the operation.

"Background checks" means a sworn statement or affirmation, a criminal history record report, and a child protective services central registry check.

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"Barrier crime" means a conviction identified at § 63.2-1719 of the Code of Virginia. The convictions, and Code of Virginia references, are murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.), malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, [~~assaults~~ assault] and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.), robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive by shooting as set out in § 18.2-286.1, or an equivalent offense in another state.

"Center" means licensed child day center.

"Central Criminal Records Exchange" means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Department of State Police.

"Central registry" means the record of founded complaints of child abuse and neglect maintained by the Department of Social Services.

"Central registry finding" means the record of founded complaints of child abuse and neglect for an individual.

"Commissioner" means the Commissioner of the Virginia Department of Social Services or his designee.

"Contract agency" means an entity with which the center or a parent has an agreement to provide services to a child or children while attending the center.

"Contract employee" means a person with whom the center or a parent has an agreement to provide services to a child or children while attending the center.

"Criminal history record check" means the process the Department of State Police uses to generate a criminal record report on a person.

"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The report identifies convictions within the Commonwealth.

"Department" means the Department of Social Services.

"Department representative" means an employee of the department who carries out regulatory duties.

"Disqualifying background" means (i) having been the subject of a founded complaint of child abuse or neglect even if his record has been purged from the Child Abuse and Neglect Central Registry system, (ii) a barrier crime conviction, or (iii) any other felony not included in the definition of "barrier crime," unless five years have elapsed since the conviction. For the purpose of this regulation, no person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.

"Employee" means a person hired by a center or with whom the center has an employment agreement.

"Involved in the day-to-day operations" means (i) in a supervisory or management position, making daily decisions regarding the operation of the center [~~or~~ ,] (ii) counted by the center for purposes of staff-to-children ratios [, or (iii) has or will have access to child and family records except those individuals who are operating under authority of a court order].

"Licensed" means having met the requirements of and obtained licensure through the Department of Social Services as required in General Procedures and Information for Licensure ([~~22 VAC 15-89~~ 22 VAC 40-80]).

"Licensee" means any individual, partnership, association, public agency, or corporation to whom the license is issued.

"Local agency" means local department of social services.

"May" means has permission.

"Must" means the action is a requirement.

"Must not" means the action is prohibited.

"Other felony" means conviction for any felony in the last five years that is not a barrier crime felony.

"Parent [~~staff~~] volunteer" means someone supervising, without pay, a group of children that includes the parent [~~staff~~] volunteer's own child in a program that operates no more than four hours per day, provided that the parent [~~staff~~] volunteer works under the direct supervision of a

person who has received a clearance pursuant to § 63.2-1720 or § 63.2-1724 of the Code of Virginia.

"Search of central registry" means the process the Virginia Department of Social Services' Child Protective Services Unit uses to generate a central registry report on a person.

~~["Staff volunteer" means a person who provides services without pay and who is alone with a child or children in performance of his duties.]~~

"Sworn statement or affirmation" means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or equivalent offense outside the Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

~~["Volunteer" means a person who provides services without pay and who is alone with a child or children in performance of his duties.]~~

22 VAC 15-51-20. Describing background checks.

The background checks covered by this regulation are:

1. Sworn [~~statements~~ statement] or [~~affirmations~~ affirmation];
2. Criminal history record [~~checks~~ check]; and
3. Central registry [~~searches~~ search].

22 VAC 15-51-30. Identifying who is not covered by this regulation.

All child welfare agencies that are not [licensed child day] centers are not covered by this regulation. Requirements for these facilities are at 22 VAC 40-191.

22 VAC 15-51-40. Identifying who is covered by this regulation.

A. This regulation applies to centers.

B. Background checks are required at the time of initial application. [4-] These background checks are required at the time of application for licensure:

Who	What	When
[a. 1.] Any [÷] applicant; and any agent at the time of application who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children	Sworn statement or affirmation, search of central registry, and criminal history record check	Upon application for licensure as a center

[~~b.~~ 2.] Exception: Persons who have had background checks by the center are not required to obtain new checks when the initial application is due to:

[1-(a)] A change in site location; or

[2-(b)] The entity opening a new site location.

C. Background checks are required after the initial licensure.

Who	What	When
[1.] New person [without current background checks] designated as applicant, licensee, or agent who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children	Sworn statement or affirmation Search of central registry and criminal history record check	Whenever an applicant, licensee, or agent changes Before the end of 30 days after the change
[2.] Any employee of a center who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children	Sworn statement or affirmation Search of central registry and criminal history record check	Prior to first day of employment at the center Before 30 days of employment [in this capacity] at the center ends
[3. Staff] Volunteer at a center who [is or] will be alone with any child in the performance of duties, excluding a parent- volunteer for children attending a center	Sworn statement or affirmation Search of central registry and criminal history record check	Prior to first day of service at the center [in this capacity] Before 30 days of service at the center elapses
[4.] Any applicant, licensee, agent, employee, and [staff] volunteer who is required to have background checks	Sworn statement or affirmation, search of central registry and criminal history record check	Before three years since the date of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report
[5.] Any individual who [has or] will have access to child and family records except those individuals operating under authority of a court order	Sworn statement or affirmation, search of central registry and criminal history record check	Prior to having access to child and family records and before three years since the date of the last sworn

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		statement or affirmation, most recent central registry finding, and most recent criminal history record check report
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6. Persons with most recent checks before 1990 must have repeat checks by the end of December of the year in which the regulation becomes effective. It is the end of December of the following year for those with most recent checks from 1991 through 1995. It is at the end of December of the third year for those with most recent checks from 1996 through 2002.]

D. Background checks are required for independent contract employees and employees hired by a contract agency. If a center uses independent contract employees or contract employees hired by a contract agency who will be involved in the day-to-day operations of the center or who will be alone with, in control of, or supervising one or more children, the center must:

1. Obtain background checks according to the above requirements for employees or view the original required background checks maintained by the contract employee or contract agency;

2. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at the center; and

3. Make copies, and keep them at the center. Staff must write on the copies of the criminal record reports that they are photocopies of originals that center staff verified.

[4. Provide a sworn statement or affirmation, central registry finding and criminal history record check report before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.]

E. A center must not accept a required criminal history record report or a central registry finding from an applicant, licensee, or other person required to obtain background checks that is dated more than 90 days prior to the date of application, employment, or [~~staff~~] volunteering.

[1. A center must not accept a copy of sworn statement or affirmation.

2.] Exception: See provisions for contracting agencies at 22 VAC 15-51-40 D 3.

F. The department must not accept a required criminal history record report or a central registry finding from an applicant or licensee that is dated more than 90 days prior to the date of licensure, or from the date when the person who is designated as the applicant or licensee changes.

22 VAC 15-51-50. Explaining requirements for satisfactory background checks.

A. The department must require documentation of satisfactory background checks for applicants, agents, employees, and [~~staff~~] volunteers. Background checks information must be made available to department representatives upon request. A satisfactory sworn statement or affirmation is a fully completed original that states that:

1. The person does not have a criminal conviction that is a barrier crime or is any felony conviction within the last five years;

2. The person is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and

3. There is no other knowledge that the individual has an unsatisfactory background.

Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also include convictions in other states that are equivalent to the barrier crimes set out in this regulation.

A satisfactory central registry finding is one in which:

1. A copy of the department's child protective services check form is returned to the center indicating that, as of the date on the reply, the individual whose name was searched is not identified in the Central Registry of Founded Child Abuse/Neglect Investigations as an involved caregiver with a founded disposition of child abuse/neglect, and

2. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.

A satisfactory criminal history record check report is one in which:

1. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the center with [~~either~~] no convictions indicated or convictions indicated, but no barrier crimes or other felony convictions in the last five years; and

2. There is no other knowledge that the individual has a barrier crime, or other felony conviction in the past five years, in Virginia or elsewhere.

B. Background checks results are not open-ended.

1. If a person leaves a center and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him.

[2.] The center must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.

[~~2~~-3. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period,] a background check remains valid at a center if no more than 12 consecutive months have passed from when a person:

- a. Began a leave of absence from that center;
- b. Was terminated from employment at that center; or
- c. Was transferred to a center owned and operated by the same employer or entity.

[~~3~~-4.] If there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has a disqualifying background, the center or the department may require new background checks relevant to this suspicion.

[~~4~~-5.] When the center or the department chooses to require a new background check, the center or the department:

- a. May allow the person to continue the same relationship with the center until the center or the department receives the new Virginia background check information or equivalent documentation from another state, or
- b. Must require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.

C. Waivers of some criminal convictions are possible. Refer to 22 VAC 40-191-90 through 22 VAC 40-191-130 of Background Checks for Child Welfare Agencies for an explanation of the waiver.

22 VAC 15-51-60. Explaining consequences of unsatisfactory background checks results.

A. Applicants are denied licensure when there are unsatisfactory background checks results for:

1. Applicants as a center; or
2. Agents at the time of application who are or will be involved in the day-to-day operations of the center or who are or will be alone with, in control of, or supervising one or more of the children.

B. An employee or [~~staff~~] volunteer of a center must not be employed or provide staff volunteer service until the center has the person's completed sworn statement or affirmation. Any person making a materially false statement regarding any offense shall be guilty of a Class 1 misdemeanor pursuant to §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

C. An employee or [~~staff~~] volunteer of a center must be denied continued employment or staff volunteer service if:

1. The center does not have an original criminal history record report within 30 days of employment or [~~staff~~] volunteer service; or

2. The center does not have a central registry finding within 30 days of employment or [~~staff~~] volunteer service.

D. No violation shall occur and an employee may continue to work or provide [~~staff~~] volunteer service in a center if the center has documentation that the criminal history record request, or the request for search of the central registry was submitted within seven calendar days of the person being employed or being a [~~staff~~] volunteer, but the report is not returned within 30 calendar days.

[1.] If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requestor must contact within four working days:

- [~~4~~- a.] The Central Criminal Records Exchange of the Department of State Police; or
- [~~2~~- b.] The Child Protective Services Unit of the department.

[2.] If the request was not received, the requestor must submit another request within five working days after the contact.

E. If the department or a local agency becomes aware that a person covered by this regulation has a disqualifying background, the department or local agency may release this information to centers. Those centers must not further disseminate this information.

F. Centers must inform compensated employees and [~~staff~~] volunteers that the centers are requesting child protective services registry checks and criminal history record reports for them.

G. A center may choose to request a national criminal background check instead of the criminal history record check for employees and [~~staff~~] volunteers. The center must adhere to Department of State Police requirements for obtaining fingerprints in accordance with § 19.2-392.02 of the Code of Virginia.

[1.] The department will accept a national criminal background check result of "qualified" from the Department of State Police.

[2.] If the screening result is "disqualified," the center must obtain a satisfactory criminal history record check from the Central Criminal Record Exchange for the person if:

- [~~4~~- a.] The center wishes to employ the person or approve the person as a staff volunteer; or
- [~~2~~- b.] The center wishes the department to issue a license.

[H.] The center may also require a background check from another state per the provisions in 22 VAC 15-51-50 B 3.

[I.] A center that does not comply with this regulation may have its license revoked or denied. If a center has knowledge that a person required to have a background check has an offense, this person does not have a waiver, and if the center refuses to separate the person from

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employment or service, its license must be revoked or denied.

22 VAC 15-51-70. Keeping background checks records.

A. A center must keep background checks reports and findings at the location where the person is an applicant, agent, employee, contract employee, [~~staff~~] volunteer, or is any other adult who is involved in the day-to-day operations of the center or who is alone with, in control of, or supervising one or more children.

1. If a center is among two or more owned by the same entity, the background checks reports and findings may be kept at corporate headquarters or at the center, and must be made available to the department representative upon request.

2. If a center is not the primary work place for a person, the center may keep copies on site, if there:

a. Is documentation of the place where original background check records are kept; and

b. Are copies of the sworn [~~disclosure~~] statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original, and the [original or a copy of the] child protective services central registry [~~check finding~~].

B. Centers must keep all background check information for [~~one year~~ two years] after a person required to provide background checks terminates his duties with a center.

C. Background checks information must be stored in locked files. Applicants, agents, and their designees are the only center staff who may have access to these documents.

D. If a [~~person~~ center] is denied licensure because of background checks information, the center must provide a copy of the documentation to the [disqualified] person.

[E.] If a person is denied employment or [~~staff~~] volunteer service because of background checks information, the center must provide a copy of the documentation to the person.

[F.] A center must also release a copy of the information when the subject of the information requests it.

[G.] Further dissemination of the background check information is prohibited other than to the commissioner's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. Note – See the provisions at 22 VAC 15-51-60 E.

22 VAC 15-51-80. Describing the waiver of criminal conviction.

The waiver of criminal conviction is the department's canceling the consequences of an unsatisfactory criminal history record check only for specific convictions. Waiver provisions are found in 22 VAC 40-191-90 through 22 VAC 40-191-170.

VA.R. Doc. Nos. R03-85 and R03-86; Filed July 13, 2004, 10:29 a.m.

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22 VAC 40-80. General Procedures and Information for Licensure (amending 22 VAC 40-80-10, 22 VAC 40-80-30 through 22 VAC 40-80-60, 22 VAC 40-80-80 through 22 VAC 40-80-210, 22 VAC 40-80-230, 22 VAC 40-80-240, 22 VAC 40-80-260, 22 VAC 40-80-270, 22 VAC 40-80-290, 22 VAC 40-80-300, 22 VAC 40-80-310, 22 VAC 40-80-330, 22 VAC 40-80-340, 22 VAC 40-80-370; adding 22 VAC 40-80-375, 22 VAC 40-80-390 through 22 VAC 40-80-520; repealing 22 VAC 40-80-220, 22 VAC 40-80-350, 22 VAC 40-80-360, 22 VAC 40-80-380).

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1733 and 63.2-1734 of the Code of Virginia.

Effective Date: November 1, 2004.

Agency Contact: Kathryn Thomas, Program Development Consultant, Department of Social Services, 7 North Eighth St., Richmond, VA 23219, telephone (804) 726-7158, FAX (804) 726-7132, or e-mail kathryn.thomas@dss.virginia.gov.

Summary:

The amendments incorporate changes that have been made to the Code of Virginia since the last revision of the regulation. This regulation contains general requirements that are applicable to all the department's licensed programs but that are not included in the programmatic regulations. The regulation explains the application and licensing processes and the responsibilities of both the department and the applicant or licensee in those processes. These amendments reflect the current practices of the department as they relate to subject facilities. The most substantive changes were made to Part VIII regarding sanctions because amendments have been made to the Code of Virginia regarding negative actions since the regulation was last revised. Also, upon the advice of the Office of the Attorney General, a new part related to hearings has been added. These procedures affect licensed facilities when they are involved in negative actions.

Changes made since the proposed stage add the definition of substantial compliance, clarify language regarding appeal of notice of adverse action, add a provision regarding new information to the section on informal conferences, and make other clarifying changes.

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

PART I. INTRODUCTION.

22 VAC 40-80-10. Definitions.

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

"Administrative hearing" means a hearing that is conducted pursuant to § 2.2-4020 of the Administrative Process Act.

"Adult care facility" means a licensed ~~adult care residence~~ assisted living facility or adult day care center.

"Adverse action" means any case where the department either gives notice of revocation or refuses to issue a license for an assisted living facility, adult day care center or child welfare agency or imposes another administrative sanction pursuant to § 63.2-1709 of the Code of Virginia.

"Aggrieved party" means an applicant or licensee who has requested an appeal in accordance with instructions provided after the department has given written notice of the imposition of an administrative sanction or adverse action for an assisted living facility, adult day care center, or child welfare agency.

~~*"Allegation" means an accusation that a facility which is subject to licensure is operating without a license.*~~

~~*"Allowable variance" means (i) permission to meet the intent of a standard by some means other than as specified by the standard, or (ii) the suspension of enforcement of a particular standard or portion of the standard for a stated time period permission is granted by the department to a licensee or applicant for licensure to meet the intent of a standard by some means other than as specified by the standard when the applicant or licensee has demonstrated that (i) the implementation of a standard would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of persons in care.*~~

*"Applicant" means the person, corporation, partnership, association, *limited liability company* or public agency ~~which~~ that has applied for a license.*

"Board" means the State Board of Social Services.

"Child welfare agency" means a child day center, ~~child day center system~~, child-placing agency, child-caring institution, family day home, family day system, or independent foster home.

"Commissioner" means the Commissioner of the Department of Social Services.

~~*"Complaint" means an accusation that a licensed facility is not in compliance with licensing standards or law facility that is subject to licensure is operating without a license or that a licensed facility is not in compliance with licensing standards or law.*~~

"Conditional license" means a license ~~which~~ that may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with specified standards.

"Consent agreement" means an agreement between the licensee and the department that the licensee will perform specific actions for the purpose of correcting violations to come into compliance with standards or statutes.

"Council" means the Child Day-Care Council.

"Day" means a calendar day unless otherwise specified.

"Denial" means the act of refusing to grant a license after receipt of an ~~original~~ initial or renewal application.

"Department" means the Department of Social Services.

"Early compliance" means ~~replacement of that the licensee has demonstrated full compliance with requirements,~~ allowing the department to replace a provisional or conditional license with a regular license.

"Functional design" means the design features of building and grounds not regulated by the Building Code, necessary for particular activities and operations of a facility subject to licensure by the Department of Social Services.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships [~~which that~~] are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of children or adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Code of Virginia in connection with the making of regulations or (ii) a similar right of private parties of public agencies as provided in § 2.2-4020 of the Code of Virginia in connection with case decisions.

"Hearing coordinator" means the person designated by the Department of Social Services to perform certain administrative functions involved in setting up and carrying out the hearings concerning adverse action on a license for an assisted living facility, adult day care center or child welfare agency, as set out herein.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia to preside at hearings concerning adverse action on a license for an assisted living facility, adult day care center or child welfare agency.

"Informal conference" means the informal fact-finding procedures available pursuant to §§ 2.2-4019 and 2.2-3021 of the Code of Virginia.

*"Licensee" means the person, corporation, partnership, association, *limited liability company*, or public agency to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the facility.*

"Probationary status" means the placing of a licensee on notice that the ~~child welfare facility~~ or agency is

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substantially out of compliance with the terms of its license and the health, safety, and well-being of ~~children~~ *persons in care* are at risk. Probationary status is a precursor to more serious action such as revocation, denial, or injunctive action unless immediate corrective action occurs.

"Provisional license" means a license ~~which~~ *that* may be issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the ~~standards law and regulations~~.

"Recommended findings of fact and recommended decision" means the report prepared by the hearing officer upon evidence presented in the administrative hearing based on the applicable laws and regulations under which the department operates.

"Regular license" means a license ~~which~~ *that* is issued for 12 months or more as provided in ~~Chapters 9 and 10 of Title 63.1 Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2~~ of the Code of Virginia to a facility determined to be in substantial compliance with applicable standards and regulations. The actual duration of the licensure period is stated on the license.

"Revocation" means the act of terminating a license during its effective dates because of findings of serious noncompliance.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to Title 63.2 of the Code of Virginia by the commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. The 12-month period begins 30 days after notification of the issuance of a special order or at the conclusion of all appeal steps.

[*"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.]*

PART II. LICENSING STANDARDS REGULATIONS.

22 VAC 40-80-30. Responsibility of the department.

Through the administration of the licensing program, the Department of Social Services assumes responsibility to ensure that licensed facilities and agencies provide children and adults with at least a minimum level of care in accordance with ~~standards regulations~~ prescribed by the State Board of Social Services and Child Day-Care Council. The department also has the responsibility to investigate *allegations of illegal operations and to initiate action to suppress illegal operations*. The Virginia Code requires the State Board of Social Services to adopt ~~standards and regulations~~ for the licensure of the following categories of facilities and agencies:

1. Adult day-care centers;
2. ~~Adult care residences~~ Assisted living facilities;
3. Private child placing agencies;

4. Child caring institutions;
5. Independent foster homes;
6. Family day homes; *and*
7. Family day systems; *and*.
8. ~~Child day center systems.~~

The ~~Code of Virginia Code~~ requires the Child Day-Care Council to adopt ~~standards and regulations~~ for the licensure of child day centers.

22 VAC 40-80-40. Adoption of ~~standards regulations~~.

The State Board of Social Services or the Child Day-Care Council has adopted ~~a set of standards regulations~~ for each category listed above. The definition of each category and requirements for licensure are contained in each ~~set of standards regulation~~.

22 VAC 40-80-50. Standards Regulation development/revision process.

A. In developing or revising ~~standards regulations~~ for licensed facilities or agencies, the Department of Social Services, acting as agent for the State Board of Social Services and Child Day-Care Council, adheres to the requirements of the Administrative Process Act (~~§ 9-6.14:4 § 2.2-4000 et seq.~~ of the Code of Virginia) and the public participation process.

B. ~~The department solicits~~ Input from licensees, associations of licensees, experts in related fields, advocacy organizations, consumers, and the general public *is solicited* in the development or revision of licensing ~~standards regulations~~ through informal and formal comment periods and public hearings.

C. ~~The department conducts~~ Periodic reviews *are conducted* and, when necessary, comprehensive revisions of each ~~set of standards regulation~~ to assure that its standards continue to protect ~~vulnerable~~ children and adults in out-of-home care while considering the interests of both providers and consumers of care.

PART III. THE LICENSE.

22 VAC 40-80-60. General.

A. A license to operate a facility or agency is issued to a specific person or organization to provide out-of-home care to children or adults. An organization may be a partnership, association, corporation, *limited liability company*, or public entity.

B. Pursuant to § 63.2-1712 of the Code of Virginia, any person, officer, or member of a governing board of any association or corporation that operates an assisted living facility, adult day care center, or child welfare agency shall be guilty of a Class 1 misdemeanor if he:

1. *Interferes with any representative of the commissioner in the discharge of his licensing duties;*

2. Makes to the commissioner or any representative of the commissioner any report or statement with respect to [the operation of] any assisted living facility, adult day care center, or child welfare agency that is known by such person to be false or untrue;

3. Operates or engages in the conduct of these facilities without first obtaining a license as required or after such license has been revoked or has expired and not been renewed; or

4. Operates or engages in the conduct of one of these facilities serving more persons than the maximum stipulated [~~on~~ in] the license.

22 VAC 40-80-80. Conditional license.

The department may issue a conditional license to a new facility or agency in order to permit the applicant to demonstrate compliance with specified standards. A conditional license may be effective for any period not to exceed six consecutive months. ~~When this period expires, renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months. When the conditional period is over,~~ the facility or agency must substantially meet the standards or be denied a license. Conditional licenses may be used only for new facilities or agencies.

~~EXCEPTION: With the approval of the appropriate fire marshal, a second conditional license may be issued to a licensee to permit the licensee additional time to comply with the Fire Prevention Code when the licensee has purchased an existing licensed facility for adults.~~

22 VAC 40-80-90. Regular license.

A regular license is issued when the activities, services, facilities, and applicant's financial responsibility substantially meet the requirements for a license that are set forth by ~~standards regulations~~ adopted by the State Board of Social Services or the Child Day-Care Council and any additional requirements that may be specified by the Code of Virginia.

22 VAC 40-80-100. Duration of licensure.

Each license and renewal thereof may be issued for a period of up to three successive years. The criteria for determining the periods of licensure are based on the activities, services, management, and compliance history of the facility.

A ~~triennial~~ *three-year* license may be issued when a facility's activities, services, and management routinely ~~and~~ substantially exceed the minimum standards.

A ~~biennial~~ *two-year* license may be issued when a facility's services and management routinely meet and maintain compliance with minimum standards and may exceed on a sustained basis in some areas.

An annual license may be issued when a facility's activities, services, and management indicate an inconsistent level of compliance but substantial compliance is reached. Some

reinforcement and guidance are needed in order for the facility to meet or maintain minimum requirements.

~~EXCEPTION: A license, other than a conditional or provisional license, issued to a child day center shall have a duration of two years from the date of issuance.~~

22 VAC 40-80-110. Provisional license.

When a regular license expires and the applicant is temporarily unable to comply with the requirements of the ~~standards regulations~~, the department may issue a provisional license for any period not to exceed six months. A provisional license shall not be issued to a facility or agency ~~that holds immediately following~~ a conditional license. ~~At the conclusion of the provisional licensure period, the facility or agency must be in substantial compliance with licensing standards or be denied a license to continue operation.~~

~~When a period of six consecutive months of a provisional license expires, the facility or agency must substantially meet the standards and requirements or be denied a license.~~

~~EXCEPTION: With the approval of the appropriate fire marshal, a second provisional license may be issued to a facility for adults to permit the licensee additional time to comply with the Fire Prevention Code.~~

22 VAC 40-80-120. Terms of the license.

A. A facility or agency shall operate within the terms of its license [~~B. The terms of any license include~~ , which are]:

1. The operating name of the facility or agency;
2. The name of the individual, partnership, association, corporation, *limited liability company*, or public entity sponsoring the facility or agency;
3. The physical location of the facility or agency;
4. The maximum number of children or adults who may be in care at any time;
5. The period of time for which the license is effective; [~~and~~]
6. For child care facilities or agencies, the age range of children for whom care may be provided [~~;~~ and]

[~~C. The terms of a license may include~~ 7. Any] other limitations ~~which that~~ the department may prescribe within the context of the ~~standards regulations~~ for any [~~facility/agency facility or agency~~].

[~~D. B.~~] The provisional license cites the standards with which the licensee is not in compliance.

[~~E. C.~~] The conditional license cites the standards with which the licensee must demonstrate compliance when operation begins, and also any standards with which the licensee is not in compliance.

[~~F. D.~~] Prior to changes in operation ~~which that~~ would affect the terms of the license, the licensee shall secure a

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modification to the terms of the license from the department. (See 22 VAC 40-80-190.)

[~~G. E.] The following documents shall be posted, when applicable, in a prominent place at each public entrance of conspicuous place on the licensed premises, when applicable so that they are visible to the public:~~

- ~~1. The most recently issued license;~~
- ~~2. The most recent compliance plan or a written notice of where it may be reviewed in the facility violation notice;~~
- ~~3. Probationary status announcements; and~~
- ~~4. Denial and revocation notices; and~~
- ~~5. Any other documents required by the commissioner.~~

PART IV. THE LICENSING PROCESS.

22 VAC 40-80-130. ~~Preapplication consultation~~ Provider support services.

~~Upon request, the department's licensing representative will provide consultation to any person or persons seeking information about obtaining a license. The purpose of such consultation is:~~

- ~~1. To explain standards and the licensing process;~~
- ~~2. To help the potential applicant explore the operational demands of a licensed facility or agency;~~
- ~~3. To provide assistance in locating other sources of information;~~
- ~~4. To alert the potential applicant to the value of assessing the need for a facility or agency in the area to be served;~~
- ~~5. To review the potential applicant's proposed program plans, forms, etc., as they relate to standards; and~~
- ~~6. To alert the potential applicant regarding the need to meet other state and local ordinances, such as health, fire, and building codes, where applicable.~~

~~A. The [department's] programmatic regulations require both general and specific training in various subject areas. The department provides preapplication consultation, ongoing technical assistance and consultation, and formal training sessions. The department's licensing representatives will provide assistance to any person seeking information about obtaining a license and information about initial and ongoing training requirements.~~

~~B. Applicants for licensure shall complete a prelicensure orientation program that focuses on health and safety standards, and residents' rights where applicable, offered through or approved by the department. The commissioner may, at his discretion, waive the orientation requirement or issue a license conditioned upon the owner's or administrator's completion of the required training.~~

~~EXCEPTIONS: The following persons are exempt from the requirements of prelicensure training:~~

~~1. An applicant who has previously owned or managed a facility in satisfactory compliance with regulations; and~~

~~2. Applicants for adult day care centers and child welfare agencies if notified by the department that such training is unavailable.~~

22 VAC 40-80-140. The initial application.

A. Upon request, the department will provide an application form for a license to operate a facility or agency. There are a number of licensing offices located throughout the state. ~~The location, telephone number, and areas served by each office are provided in Attachment I of this document.~~

B. The department ~~shall~~ will consider an application complete when the application fee and all the required information is submitted in the form required by the department. The schedule of fees for licenses is provided in 22 VAC 40-160-10 ~~et seq.~~, Fee Requirements for Processing Applications. If the department finds the application incomplete, the applicant will be notified *in writing* within 15 days of receipt of the incomplete application. *If the applicant does not resubmit a complete application within 30 days from the notification, all materials except the nonrefundable fee will be returned to the applicant.*

C. The applicant shall complete and submit the application to the department at least 60 days prior to a planned opening date to allow the department time to act on the application.

D. The applicant may withdraw a request for a license.

22 VAC 40-80-150. Approval of buildings and functional design features.

A valid certificate of occupancy is one prerequisite for licensure. When an application is for licensure of a building ~~which that~~ has not previously been used for the type of license or use group being sought, or when renovations are made in the building, the department must approve functional design features of the building in accordance with applicable department regulations. The procedures are as follows:

1. Prior to beginning construction or renovation, the applicant or prospective applicant shall submit to the department floor plans ~~which that~~ clearly indicate the use of space and other plans for compliance with all requirements for the building, ~~use of space, and bathroom facilities and physical environment~~ contained in the applicable regulations.

(NOTE: Applicants and prospective applicants are urged to present their plans for compliance with departmental regulations to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations. Architects, contractors, or building officials may not be thoroughly familiar with these functional design requirements, and costly errors can be avoided through early review by the department. ~~The plan for structures must clearly indicate the use of space.~~)

2. The department will notify the applicant or prospective applicant within 10 working days of receipt if the plans to comply are incomplete, identifying the information still needed before the request can be considered complete.

3. When a complete plan is received, the department will issue *within 20 days* a Preliminary Approval Statement or a letter indicating disapproval of the plan and the reasons for disapproval.

(NOTE: A Preliminary Approval Statement does not imply that the department will approve the application for licensure since other factors will affect issuance decisions.)

4. All Preliminary Approval Statements are conditional upon there being no change in the proposal or the circumstances affecting them and upon approval of all required fire, health, or building officials.

5. The department will forward a copy of the Preliminary Approval Statement to the appropriate building official.

6. After construction or renovation, department staff will make an on-site inspection to evaluate compliance with the functional design requirements of the applicable regulations. Findings of this on-site inspection will be forwarded to the applicant and the local building official.

22 VAC 40-80-160. The investigation.

A. At the time of the initial application and annually thereafter, the applicant or licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.

EXCEPTION: Subsection A of this section does not apply to child placing agencies or family day systems.

1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed purpose.

2. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code.

3. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local health authorities ~~which that~~ shall include approval of general sanitation *and, if applicable,* water supply, sewage disposal systems, and food service operations for the building or buildings in which the facility is operated.

B. The department's representative ~~shall will~~ make an on-site inspection of the proposed facility or agency and an investigation of the proposed services, as well as an investigation of the character, reputation, and financial responsibility of the applicant. Compliance with all

standards will be determined by the Department of Social Services. The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.

NOTE: See 22 VAC 40-90, 22 VAC 40-190 or 22 VAC 15-50, as applicable.

C. The applicant or licensee shall make available to the department's representative the facility's or agency's books and records. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, residents, participants, and any person under its custody, control, direction, or supervision.

EXCEPTION: Section 63.2-1702 of the Code of Virginia provides for an exception in regard to inspection of financial records of child welfare agencies under specified conditions.

D. After the on-site inspection the licensing representative ~~shall will~~ discuss the findings of the investigation with the administrator ~~or~~, licensee *or designee*. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.

E. At any time during the investigation, an applicant or licensee may request an allowable variance to any standard ~~which that~~ creates a special hardship. (See Part V [of this chapter] Allowable [Variance Variances] (22 VAC 40-80-220 et seq.).)

22 VAC 40-80-170. Notice to the applicant of issuance or denial of a license.

A. When the investigation is completed, the department ~~shall will~~ notify the applicant of its decision regarding the issuance of a license.

~~B. When the decision is to issue a conditional or provisional license, a letter accompanying the license shall refer to any areas of noncompliance with standards or areas where compliance cannot be determined, as well as any limitations on the license. The letter may also contain recommendations for the licensee's consideration. A letter will routinely not accompany the issuance of a regular license.~~

~~C. B.~~ When the department intends to deny the license, the department ~~shall will~~ send a letter stating the reasons for this action and the applicant's right to appeal the decision. (See Part VIII (22 VAC 40-80-330 et seq.) [of this chapter].)

22 VAC 40-80-180. Determination of continued compliance (renewal and monitoring visits inspections).

A. In order to determine continued compliance with standards during the effective dates of the license, the department's licensing representative ~~shall will~~ make announced and unannounced ~~visits to~~ inspections of the facility or agency during the hours of its operation. The licensee is responsible for correcting any areas of

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noncompliance found during renewal or monitoring ~~visits inspections~~.

B. All licensed child welfare agencies shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.

C. ~~At least two inspections of each licensed adult care facility shall be made each year and in every instance the renewal inspection shall be unannounced. The commissioner may authorize such other announced or unannounced inspections as he considers appropriate. All adult care facilities issued a license for a period of six months shall be inspected at least two times during the six-month period, and at least one of those inspections shall be unannounced. All adult care facilities issued a license for a period of one year shall be inspected at least three times each year, and at least two of those inspections shall be unannounced. All adult care facilities issued a license for a period of two years shall be inspected at least two times each year, and at least one of those inspections shall be unannounced. All adult care facilities issued a license for a period of three years shall be inspected at least one time each year, and that visit shall be unannounced.~~

D. The department's representative may also make such ~~visits to inspections~~ of any homes or facilities that are approved by the licensee for the placement or care of children as one of the licensed services of the agency.

E. *For any licensed assisted living facility, adult day care center, or child welfare agency, the department may conduct such other announced or unannounced inspections as are considered appropriate.*

NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced ~~visits inspections~~ made to licensed facilities during the year.

22 VAC 40-80-190. Modification.

A. The licensee may request a modification of the terms of a license at any time during the period of the license. The request must be submitted in writing to the department's representative.

The department will evaluate written information about any planned changes in operation ~~which that~~ would affect either the terms of the license or the continuing eligibility for a license. A licensing representative may ~~visit inspect~~ the facility during the process of evaluating a proposed modification.

Examples of such changes are: changes in the number of children or adults to be served, staff responsibilities, availability and use of the physical plant, and changes in program focus or needs of the population to be served.

B. If a modification can be granted under the standards, the department ~~shall respond in writing with the modified license will issue a modified license reflecting the changes~~. In the event that a new application is needed, ~~the licensee shall receive written notification of such. When the or the~~

modification cannot be granted, the licensee ~~shall also will~~ be advised by letter.

22 VAC 40-80-200. Early compliance.

A. A provisional or conditional license may be voided and a regular license issued when all of the following conditions exist:

1. The facility or agency complies with all standards listed on the face of the provisional or conditional license ~~well in advance prior to the mid-point of the licensure period or within 90 days~~ of the expiration date of the provisional or conditional license, *whichever comes first*, and the facility or agency is in substantial compliance with all other standards.

2. Compliance has been verified by an on-site observation by the department's licensing representative or, when applicable, by written evidence provided by the licensee.

3. All other terms of the license remain the same.

B. The licensee shall make a written request to the licensing representative for replacement of a provisional or conditional license with a regular license.

C. When the request is approved by the department, the effective date of the new regular license ~~shall will~~ be the same as the beginning date of the voided license. When the request is not approved, the reasons for this action ~~shall will~~ be confirmed to the licensee in writing.

D. Early compliance shall not be considered once a ~~renewal application has been filed by the facility or agency has filed a renewal application~~.

22 VAC 40-80-210. Renewal process.

A. The department ~~shall will~~ send an application for renewal of the license to the licensee prior to the expiration date of the current license. *The licensee shall submit the completed application form, including all attachments and the licensing application fee, in a timely manner to assure adequate time for processing by the department. In order for the application to be considered complete, the licensee must have paid any outstanding civil penalty assessed in a case decision.*

B. ~~The licensee shall submit the completed application form along with any required attachments and the application fee prior to the expiration of the current license. It is the applicant's responsibility to complete and return the application prior to the expiration of the current license to assure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect provided that the completed application was filed and a decision for licensure is pending. The department will not process a renewal application that is not complete or when the current license is being denied or revoked in accordance with the provisions of the Administrative Process Act.~~

C. *Should a current license expire before a new license is issued, the current license shall remain in effect provided*

that a complete application was filed prior to expiration of the current license and a decision for licensure is pending.

G. D. The department ~~shall~~ will follow the procedure for investigation and notice to the applicant previously outlined in 22 VAC 40-80-160, 22 VAC 40-80-170, and 22 VAC 40-80-180.

PART V.
USE OF ALLOWABLE VARIANCE VARIANCES.

22 VAC 40-80-220. Use of allowable variances. (Repealed.)

~~Allowable variances are used for one or more of the following:~~

- ~~1. To allow the department some degree of flexibility in the enforcement of requirements, given the rapid and ever changing nature of programs and their unique settings;~~
- ~~2. To allow for greater development of innovative and pilot programs, which were not anticipated in the regulations; and~~
- ~~3. To promote equity across all programs by allowing for variable compliance methods when a regulation places special hardship on a particular facility.~~

22 VAC 40-80-230. Conditions for initiating a request.

A licensee or applicant may request an allowable variance when he believes that the existing ~~regulations pose standard or requirement poses a special substantial financial or programmatic~~ hardship and when he believes that either an alternative method of compliance with the intent of the ~~regulation which standard that~~ is causing the hardship, or the actual suspension of all or part of that ~~regulation standard~~, would neither endanger the safety or well-being of persons in care nor create a violation of statutes or of the requirements of another regulatory agency.

22 VAC 40-80-240. Process.

A. ~~Consideration of an allowable variance is initiated when a written request to the licensing office is received from the applicant or licensee. The licensee or applicant shall make a written request for consideration of an allowable variance.~~ The department's licensing representative may provide consultation to the applicant or licensee in the development of the written request and throughout the allowable variance process.

- ~~1. The licensee or applicant shall make a written request for an allowable variance which describes describe~~ the special hardship or hardships to the existing program or to a planned innovative or pilot program *that will be* caused by the enforcement of the requirement or requirements.
- ~~2. When possible,~~ The licensee or applicant shall propose alternatives to meet the purpose of the requirement ~~which that~~ will ensure the protection and well-being of persons in care.

3. The licensee or applicant ~~should~~ shall obtain, when requested by the department, the opinions of professionals in the field or documented research, or both, that the proposed activities, facilities, or equipment are not injurious to persons in care.

4. The department can authorize allowable variances only to its own licensing standards, not to regulations of another agency or to any requirement in federal, state, or local laws.

B. The department's licensing representative ~~shall will~~ notify the petitioning applicant or licensee of ~~the receipt of his request for an allowable variance and send a recommendation to the person delegated decision-making authority by the department~~ *the department's decision*.

~~The decision is transmitted in writing to the petitioning applicant or licensee with a copy to the department's licensing representative.~~

C. Approval.

1. The ~~designated authority department~~ may attach conditions to the granting of the allowable variance in order to protect persons in care.

2. Allowable variances are conditional upon there being no change in the circumstances ~~which that~~ were the basis for the approval. Any allowable variance may be rescinded or modified if *needs or* conditions change; additional information becomes known ~~which that~~ alters the basis for the original decision; the applicant or licensee fails to meet any conditions attached to the allowable variance; or results of the allowable variance jeopardize the safety, comfort, or well-being of persons in care.

3. Allowable variances expire automatically when there is a change in the facility's location or a change in the sponsorship of the facility or agency.

EXCEPTION: Allowable variances issued to private child placing agencies and family day systems are transferable when agencies change location.

4. The department's licensing representative ~~shall will~~ review each allowable variance at least annually. At minimum, this review shall address the impact ~~if~~ of the allowable variance on persons in care, adherence to any conditions attached, and the continuing need for the allowable variance.

D. Denial.

1. When the decision is to deny a request for an allowable variance, the reason or reasons ~~shall will~~ be provided in writing to the applicant or licensee.

2. When a request for an allowable variance is denied, it may be reconsidered if the applicant or licensee submits another written request and provides new or additional supporting information *within 30 days of denial*.

NOTE: After the 30-day period, the applicant or licensee may submit a new allowable variance request describing changed conditions.

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~~3. When a request for an allowable variance is denied by the designated decision maker and if the petitioner believes that decision was unreasonable, arbitrary, or capricious, the petitioner may request a desk review of that decision. The following shall apply when a desk review is requested:~~

~~a. The petitioner shall request this desk review, in writing, within 15 days of the issuance of the denial and shall include such information as necessary to explain the belief that the decision was unreasonable, arbitrary, or capricious.~~

~~b. The desk review shall be conducted by the person who supervises the designated decision maker, unless a different person has been assigned desk review responsibility by the Director of the Division of Licensing Programs.~~

~~c. The decision of the reviewer shall be reported in writing to the petitioner within 30 days of receiving a complete request for a desk review.~~

~~d. 3. The reviewer's decision shall be final and not appealable department will reconsider the new request and the additional information and will notify the applicant or licensee of the decision within 30 days of receipt of the second request. This decision will be considered final and is not appealable.~~

E. When an allowable variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed.

F. The applicant or licensee may at any time withdraw a request for an allowable variance.

PART VI.

PROBLEM SOLVING CONFERENCES.

22 VAC 40-80-260. First step review.

A. The applicant or licensee may request either a desk review by, or a meeting with, the assigned licensing representative's immediate supervisor.

B. If the request stems from a desire to contest the findings or conclusions of an inspection, the following procedures shall apply:

1. The applicant or licensee shall make the request within 15 days of receiving the compliance plan.

2. The request shall specify the contested finding or conclusion and shall specify whether a desk review or conference is being requested.

3. The request shall include the applicant's or licensee's reasons or other evidence supporting the request for a review or a conference.

C. The first step informal desk review or conference will be held at the supervisor's office unless the supervisor designates a different location. The following procedures shall apply:

1. The supervisor shall will report the findings of a desk review in writing within 10 days of receiving the request

and supporting materials or shall will hold the requested conference within 30 days of receipt of such request and materials.

2. When the request is for a conference, the supervisor shall will, within 10 days following the conference, confirm to the applicant or licensee in writing the results of the conference and any subsequent decisions made by the supervisor.

22 VAC 40-80-270. Second step review.

A. If after the first step review, the applicant or licensee believes that the laws, regulations, or departmental policies have been applied or interpreted in a manner that was unreasonable, arbitrary or capricious, he may request a second step review by program supervisory personnel as assigned by the Director of Licensing Programs according to the provisions of this section.

B. A second step review shall not be requested to challenge the content of an established law, regulation, or policy. However, the application of a law, regulation, or policy may be challenged.

C. When a second step reviews are review is requested, the request must be in writing and must specify whether the applicant or licensee is requesting a desk review or a conference. Conferences shall be held in the region or in Richmond as designated by the director; the designated location shall be as close to the operation as possible.

D. The second step review request shall:

1. Be made within 15 days of the date of the first step response;

2. Specify the reason for requesting the second step informal review and include such information, explanation, or additional materials as necessary to support the applicant's or licensee's belief that the decision reached at the first step was unreasonable, arbitrary, or capricious; and

3. Include a copy of relevant materials and correspondence developed at the first step of the informal appeal process.

E. Within 30 days of receipt of this request, the director's office shall will respond in writing or schedule the conference with the results of the desk review or schedule a conference.

~~F. When the request is for a conference, the designated program management staff shall, within 10 days following the conference, confirm to the applicant or licensee in writing the results of the conference and any subsequent decisions made by program management staff.~~

PART VII.

COMPLAINT INVESTIGATION.

22 VAC 40-80-290. Receipt of complaints.

Complaints may be received in written or oral form and may be anonymous. The department maintains a parental hot line to respond to complaints regarding child care

operations toll-free telephone line to receive complaints on all licensed facilities.

22 VAC 40-80-300. Investigation of complaints.

The department has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse and neglect of persons in care.

NOTE: In an investigation of *involving suspected* adult or child abuse, neglect, or exploitation in a licensed facility, the investigation shall ~~shall~~ be conducted jointly with the local department of social services whenever possible in accordance with departmental policy.

22 VAC 40-80-310. Notification of findings.

When the investigation is completed, the licensee shall ~~shall~~ be notified of the findings of the investigation. Any necessary corrective action will be identified.

PART VIII. SANCTIONS.

22 VAC 40-80-330. Violation of standards or statutes.

A. The Commissioner of the Department of Social Services may impose such sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse or neglect of persons in care. ~~Such sanctions include administrative sanctions and the imposition of a civil penalty or appointment of receivership.~~

B. *The following reasons may be considered by the department for the imposition of administrative sanctions:*

1. *Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;*
2. *Permitting, aiding or abetting the commission of any illegal act in the licensed facility or agency;*
3. *Engaging in conduct or practices that are in violation of statutes and standards relating to abuse, neglect, or exploitation of children or adults; or*
4. *Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the department, or failure to correct such deviations within a specified time.*

22 VAC 40-80-340. Administrative sanctions.

~~The following are administrative sanctions which may be imposed against a licensed facility:~~

1. ~~Reducing the capacity of any licensed facility;~~
2. ~~Restricting or prohibiting new admissions to any licensed facility;~~
3. ~~Placing a child welfare agency on probationary status;~~
4. ~~Mandating training for the licensee or staff of a child welfare agency with any costs to be borne by the licensee;~~

~~5. Denying renewal of the license of any licensed facility; and~~

~~6. Revoking the current license of any licensed facility.~~

The commissioner may impose administrative sanctions or initiate court proceedings, severally or jointly, when appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation in assisted living facilities, adult day care centers and child welfare agencies as discovered through any inspection or investigation conducted by the Department of Social Services, the Virginia Department of Health, the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, or by state and local building or fire prevention officials. These administrative sanctions include:

1. *Petitioning the court to appoint a receiver for any assisted living facility or adult day care center;*
2. *Revoking or denying renewal of a license for any assisted living facility or adult day care center that fails to comply with the limitations and standards set forth in its license for violation that adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of residents, or for permitting, aiding or abetting the commission of any illegal act in an adult care facility;*
3. *Revoking or denying renewal of a license for any child welfare agency that fails to comply with the limitations and standards set forth in its license;*
4. *Imposing administrative sanctions through the issuance of a special order as provided in § 63.2-1709 D of the Code of Virginia. These include:*
 - a. *Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of residents, participants or children are at risk;*
 - b. *Reducing the licensed capacity or prohibiting new admissions when [~~it has been~~ the commissioner has] determined that the licensee cannot make necessary corrections to achieve compliance with the regulations except by a temporary restriction of its scope of service;*
 - c. *Requiring that probationary status announcements [, provisional licenses] and denial and revocation notices be posted in a conspicuous place on the licensed premises and be of sufficient size and distinction to advise consumers of serious or persistent violation;*
 - d. *Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when [~~it has been~~ the commissioner has] determined that the lack of such training has led directly to violations of regulations;*
 - e. *Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee is substantially out of compliance with the terms of its*

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license and the health and safety of residents, participants or children are at risk;

f. Requiring licensees to contact parents, guardians or other responsible persons in writing regarding health and safety violations; and

g. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

22 VAC 40-80-350. Civil penalty or appointment or receivership. (Repealed.)

In addition to the administrative sanctions listed in 22 VAC 40-80-340 the commissioner may:

1. Petition the circuit court or the city or county in which the facility is located to impose a civil penalty against any adult care facility; or

2. Petition the circuit court for the city or county in which the facility is located to appoint a receiver for any adult care facility.

22 VAC 40-80-360. Imposition of sanctions or civil penalties. (Repealed.)

The following reasons may be considered by the department for the imposition of administrative sanctions or the imposition of civil penalties:

1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;

2. Permitting, aiding, or abetting the commission of any illegal act in the licensed facility or agency;

3. Engaging in conduct or practices which are in violation of statutes and standards relating to abuse, neglect, or exploitation of children or adults; or

4. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the department, or failure to correct such deviations within a specified time.

22 VAC 40-80-370. Appeal process.

A. The applicant or licensee will receive a notice of the department's intent to impose an administrative sanction. This notice shall describe the sanction or sanctions and the reasons for the imposition of the administrative sanction. Service of the notice of adverse action is achieved by mailing the notice to the applicant or licensee, unless service is made by other means and acknowledged by the applicant or licensee. If the applicant or licensee wishes to [request an informal conference or, when available, an administrative hearing, appeal the notice of adverse action,] he shall have 15 days after service of the notice to [make such a request note his appeal]. If service is accomplished by mail, three days shall be added to the 15-day period.

B. Upon receipt of the notice to impose an administrative sanction, the applicant or licensee has the right to appeal the decision in accordance with the Administrative Process

Act (§ 9-6.14:1 § 2.2-4000 et seq. of the Code of Virginia). The procedures for filing an appeal shall be outlined in the notice. All appeals from notice of imposition of administrative sanctions shall be received in writing from the applicant or licensee within 15 days of the date of receipt of the notice. The applicant or licensee shall submit any appeal of imposition of an administrative sanction in writing within 15 days of receipt of the notice.

C. In the event the applicant or licensee does not request an appeal within 15 days, the facility or agency must modify the operation to conform to the pertinent law or regulation or accept imposition of the sanction.

D. If the facility or agency continues to operate in violation of the imposed sanction or sanctions after the date the sanction or sanctions were to have been met, the department shall initiate appropriate administrative or legal action.

E. In requesting the imposition of a civil penalty for any violation in an adult care facility, the department will recommend that the penalty not exceed the lesser of \$5.00 per licensed capacity or \$250 per day for each day the adult care facility is in violation, beginning on the date the facility was first notified of the violation. The date of notification under this sanction shall be deemed to be the date of receipt by the facility of written notice of the alleged violation. This notice shall include specifics of the violation charged and it shall be hand delivered or sent by overnight express mail or by registered or certified mail, return receipt requested.

C. If the applicant or licensee fails to [request an informal conference appeal the notice of adverse action] within 15 days of receipt of the notice, the notice will constitute the department's final decision. The decision will take effect 30 days after receipt of the notice.

F. Upon filing of a petition for appointment of a receiver, the court shall hold a hearing, at which time the department and the licensee of the adult care facility may participate and present evidence. D. The appeal process available is governed by law. Where the sanction is imposed by means of a special order as provided in § 63.2-1709 of the Code of Virginia, the case decision is issued by the commissioner following findings and conclusions resulting from the informal conference. Other sanctions include a provision for an administrative hearing, which is described in § 2.2-4020 of the Code of Virginia, prior to the issuance of the case decision. For ease of reference, the process steps are displayed in the following chart:

List of Sanctions with Appeal Provisions

	Informal Conference	Administrative Hearing	Circuit Court Review of Case Decision
ADMINISTRATIVE SANCTION			
Place licensee on probation	X		X
Reduce licensed	X		X

capacity			
Restrict admissions	X		X
Mandate training for licensee or staff	X		X
Assess civil penalty	X		X
Require written contact with responsible persons	X		X
Prevent receipt of public funds	X		X
Deny application for new or renewal license	X	X	X
Revoke license	X	X	X
File petition for appointment of a receiver			X

22 VAC 40-80-375. Failure to pay civil penalty.

A. If an outstanding civil penalty assessed after a case decision is not paid as required, the commissioner shall have the authority to:

1. Assess a late fee if the civil penalty payment is 60 days overdue [, provided the total of the civil penalty and late fee do not exceed the penalty set forth in § 63.2-1709 of the Code of Virginia];
2. Reduce the duration of the licensure period if the civil penalty payment is 60 days overdue; and
3. Deny renewal or revoke the license if the civil penalty payment is 90 days overdue.

B. The department will also institute legal collection procedures to collect unpaid penalties.

[C. If a licensee appeals the imposition of a civil penalty, the provisions of this section shall not apply until the appeal is complete.]

22 VAC 40-80-380. Appeals. (Repealed.)

~~A. Any applicant or licensee has the right to appeal the department's decision to impose an administrative sanction.~~

~~B. Appeals may be heard through an informal conference or a formal hearing.~~

~~C. If the applicant or licensee requests an appeal, he has the right to be represented by counsel at the conference or hearing.~~

~~D. An informal conference is the initial hearing of evidence in making a case decision, unless there is a waiver or agreement between the parties to go directly to a formal hearing. An informal conference shall be conducted by the department's designee.~~

~~E. In the event of an adverse decision following the informal conference, the applicant or licensee may request a formal hearing.~~

~~A formal hearing shall be conducted by an individual appointed from a roster of attorneys approved to serve as hearing officers. This roster is maintained by the Supreme Court of Virginia.~~

~~F. Once the informal conference or formal hearing is completed, the applicant or licensee shall receive written notice of a decision.~~

~~The department's designee shall render a decision within 90 days of the informal conference or from a later date agreed to by the applicant or licensee and the agency.~~

~~A hearing officer shall render findings and recommendations within 90 days from the date of the formal hearing or from a later date agreed to by the applicant or licensee and the agency.~~

~~The commissioner shall render a decision within 30 days from the date that the agency receives the hearing officer's recommendation.~~

~~G. If the commissioner authorizes the imposition of the sanction or sanctions, the time frame in which the facility or agency must conform to the requirements of the sanction or sanctions shall be included in the final order. The applicant or licensee may appeal the decision to the appropriate circuit court under the provisions of §§ 63.1-180 and 63.1-194.10 of the Code of Virginia.~~

~~H. If the licensee wishes to appeal the imposition of a civil penalty or the appointment of a receiver, such appeal must be made to the appropriate court in the city or county where the facility is located.~~

**PART IX.
HEARINGS PROCEDURES.**

22 VAC 40-80-390. Scope.

The appeal process as set forth in this part shall apply whenever the Department of Social Services takes adverse action on a license for an assisted living facility, adult day care center or child welfare agency. Therefore, whenever the department either revokes or refuses to issue or renew a license or imposes any other sanction for an assisted living facility, adult day care center, or child welfare agency, the procedures specified in this part to produce a case decision shall be initiated.

22 VAC 40-80-400. Statutory basis for appeal process.

The Department of Social Services is mandated by statute to enforce the standards adopted by the State Board of Social Services or the Child Day Care Council pursuant to § 63.2-1734 of the Code of Virginia, regarding facilities required to be licensed under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia. As part of this enforcement duty, §§ 63.2-1709 D and 63.2-1710 of the Code of Virginia require that the procedures under the Administrative Process Act (§ 2.2-4000 et seq., of the Code of Virginia) shall apply whenever the department takes adverse action.

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22 VAC 40-80-410. Duties of the hearing coordinator.

The hearing coordinator is the person designated by the Department of Social Services to perform certain administrative functions involved in setting up and carrying out the appeal process. The hearing coordinator's duties include, but are not limited to, the following:

1. Making a request to the Supreme Court for a hearing officer upon timely request for a formal administrative hearing.
2. Scheduling the date, time and location for the hearing.
3. Ensuring that a court reporter has been hired to record the hearing.
4. Preparing appropriate material for distribution to all participants. This includes the appointment of the hearing officer, preparing the notice of the hearing, and preparing the forms for the hearing officer to subpoena witnesses. It also includes submission of documents in the record, appropriate standards and any other pertinent information to all participants.
5. Monitoring the status of proceedings and the observance of timeframes throughout the appeal process.

22 VAC 40-80-420. Informal conference.

A. Section 2.2-4019 of the Code of Virginia provides the aggrieved party the right to request an informal conference. In the case of administrative sanctions that include a provision for an administrative hearing, the named party and the agency may consent to waive such a conference to go directly to the hearing.

B. The informal conference is a fact-finding process. The purpose of an informal conference is to give the aggrieved party an opportunity to present information or evidence he believes indicates that the intended sanction was based on factual error or on misinterpretation of facts, or to determine if the dispute may be resolved by consent. The department will decide if the conference will be open to the public.

[C. If the aggrieved party presents exhibits or other documents that contain facts previously unknown to the conference chair, the conference chair may determine that the new information requires verification. Upon making such a determination, the conference chair shall notify the aggrieved party that the information needs to be verified. The report on the informal conference shall be held open for 14 days to allow for the verification of the exhibits or other documents. The conference chair has the option to require the aggrieved party to provide such verification.

[D.] If the aggrieved party believes the matter can be resolved by consent, a written proposal must be submitted to the department-appointed chair of the conference no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the conference.

[E.] Following the informal conference, the chair will prepare a written report and recommended decision to the department that will include statutory authority or legal basis for the remaining steps in the administrative appeals process; a summary of the conference; the previous disposition as set out in the notice of adverse action, i.e., those issues on appeal; the findings of fact; the description of evidence; and the recommended decision or options. Within 90 days from the date of the informal conference, or from a later date agreed to by the aggrieved party and the agency, the department will issue its official decision in writing to the aggrieved party, including information concerning the named party's right to continue his appeal. The written report prepared by the chair will be attached to the letter and will be incorporated by reference.

[F.] When an informal conference is conducted following notification of an intent to issue a special order, the issuance of the special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. Service of the decision following the informal conference shall be achieved by mailing the decision to the licensee, unless service is made by other means and acknowledged in writing by the licensee. If the licensee wishes to appeal the decision, he shall have 30 days after service of the notice to make such a request. If service is accomplished by mail, three days shall be added to the 30-day period. Any appeal following an informal conference related to special orders shall be made to the circuit court. All other appeals shall follow procedures set forth in the Administrative Process Act.

22 VAC 40-80-430. Consent agreements.

A. A consent agreement may be proposed by a licensee in lieu of adverse action. The proposed consent agreement shall be submitted no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the informal conference. The duration and terms of the consent agreement are negotiable. A licensing representative will negotiate the proposed agreement with the licensee and submit the proposed agreement to the division director, who will make the decision to accept or reject the consent agreement on behalf of the department or recommend such acceptance or rejection to the commissioner.

B. [~~Elements of an acceptable consent agreement.~~] An acceptable consent agreement shall contain the following specific elements:

1. Dates of key actions, such as letter of sanction, timely appeal, the informal conference (if already held), and the names of the parties;
2. The assertion that all violations detailed in the letter of denial or revocation have been corrected or will be corrected by a time specified in the proposed agreement;
3. A description in detail of the case-specific systemic solution proposed that addresses the causes of the past history of violations, including the methods the licensee has in place to prevent violations and to monitor results;

4. A statement agreeing to future maintenance of substantial compliance with all regulations;

5. Statements outlining and acknowledging the process and timelines for moving the proposed agreement through the steps that will follow submission of the proposal signed by the provider, including statements that (i) the Director of the Division of Licensing Programs will evaluate the proposal and respond by letter and (ii) the licensee understands that if the proposal is conditionally accepted, final approval and the division director's signature will be withheld until after satisfactory on-site verification of results, including the information that the duration of the agreement will begin when the director accepts and signs the document;

6. The duration of the consent agreement, including the information that the period begins when the division director signs;

7. A statement that when the division director signs the agreement, signifying final acceptance, the division director is also agreeing to rescind the outstanding adverse action and that the licensee is agreeing to withdraw all appeals to that action; and

8. A statement outlining conditions for termination of the final agreement for cause and the nature of the licensee's appeal rights in that event.

C. Recommendation and approval process.

1. The department appointed negotiator will review the draft agreement and either make a final suggestion or advise the licensee that a recommendation will be made to the division director.

2. Two originals of the final proposal, signed by the licensee and dated, shall be mailed to the negotiator.

3. The negotiator will review the submissions to assure conformity with his expectations and return them to the division director with any recommendations.

4. The division director will review the proposal and write to the licensee, copying the negotiator, either affirming conditional approval to proceed to verification stage or stating changes required before the proposal will be conditionally approved.

5. Licensing staff will perform on-site verification, advise the division director of results, and submit a written recommendation with rationale.

6. If the results warrant it, the division director will prepare a cover letter enclosing one of the original signed consent agreements, and will forward a copy to the licensing unit and all other parties who were copied on the adverse action letter.

7. If the on-site inspection is unsatisfactory, the division director will advise the licensee by letter.

D. [~~Oversight responsibilities during the effective dates of consent agreements.~~] Throughout the duration of the consent agreement, licensing staff will make frequent inspections to determine whether the terms of the consent

agreement are being implemented and whether its intended results are being achieved.

22 VAC 40-80-440. Acknowledgment of request for an administrative hearing.

Upon receipt of the written request from the aggrieved party for an administrative hearing pursuant to §§ 2.2-4020 and 2.2-4021 of the Code of Virginia, a hearing will be scheduled in the locality where the aggrieved party operates unless he expressly waives this venue provision (§ 8.01-261 of the Code of Virginia). The hearing coordinator will request appointment of a hearing officer from the list of qualified attorneys kept by the Supreme Court of Virginia. After a hearing officer is appointed and duly designated by the commissioner, a notice of hearing will be sent to the aggrieved party with a copy to the agency representative for the case. The department may be represented either by counsel or by agency staff authorized by § 2.2-509 of the Code of Virginia. After the hearing officer is appointed, the hearing coordinator will forward a copy of the relevant licensing standards and appeal procedures to the hearing officer. The hearing coordinator will not be directly involved in any investigation or litigation function in connection with the case.

22 VAC 40-80-450. Continuances.

A request for continuance shall be made to the hearing officer at least five days prior to the time designated for the hearing, except in cases of emergency. No continuance of an administrative hearing shall be granted except at the discretion of the hearing officer, for good cause shown and with due consideration of the potential risks to residents, participants or children in the facility from extended exposure to conditions detailed in the agency's revocation or denial letter. All parties involved in a hearing shall avoid delay caused by unnecessary postponements or continuances so that a decision can be made expeditiously.

22 VAC 40-80-460. Recesses and postponements.

The hearing officer has authority to grant recesses and postponements where necessary for the convenience and comfort of the parties, witnesses, and the court reporter.

22 VAC 40-80-470. Prehearing conferences.

The hearing officer has the statutory power to hold conferences for the settlement or simplification of issues by the parties. The hearing officer may hold a prehearing conference for the stipulation of certain facts or for any other purposes that might be accomplished by such a preliminary process. It may be useful for the hearing officer to direct the parties to submit to him and exchange in advance of the conference: proposed statements of issues, proposed stipulations, requests for information, statements of position, proposed procedural data, and the exchange of exhibits. The notice for such a prehearing conference must be established by the hearing officer as to the date, time and place for such conference. It will not be necessary to provide a verbatim reporting of the prehearing conference. A report summarizing the results of this conference must be prepared, consisting of a list of appearances, agreements reached, the hearing officer's rulings, and other matters

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decided. A copy of this report shall be provided to all persons who entered appearances, which shall become part of the agency record.

22 VAC 40-80-480. Conduct of hearing.

A. To initiate the proceedings, the hearing officer will call the hearing to order and make a brief statement giving the name of the proceeding, its case number, the names of all persons present and involved in the proceeding, and other appropriate introductory remarks such as the general rules of decorum and conduct. The parties shall be entitled to be accompanied by and represented by counsel. Before the formal presentation of evidence begins, the parties should be given an opportunity to bring up any preliminary matters or motions. If a hearing officer has questions or issues regarding the procedures in the hearing or his role in conducting the hearing, these questions shall be directed to the hearing coordinator. The parties at administrative hearings have the right to conduct cross-examination to obtain full and fair disclosure of the facts. The hearing officer will decide if the hearing will be open to the public.

B. The following shall be the order of proceedings at all hearings, subject to modification by the hearing officer before such hearing is commenced, for good cause:

1. Presentation, argument, and disposition of all preliminary matters and motions.
2. Presentation of opening statements. Such statements are not subject to cross-examination or an opportunity to present argumentative testimony.
3. Agency representative presents the case, calling witnesses in such order as is seen fit. Each witness should be subject to direct, cross, and redirect examination. Both the counsel for the adverse party and the hearing officer may direct questions to the witness.
4. The aggrieved party should present its case, using the same guidelines as established in subdivision 3 of this subsection.
5. Rebuttal evidence by the agency representative should be permitted.
6. At the close of the presentation of evidence, the parties may exercise their rights pursuant to §§ 2.2-4020 and 2.2-4021 of the Code of Virginia. The parties, on request, shall be given the opportunity for closing argument and may submit for the record, in writing, proposed findings and conclusions.

22 VAC 40-80-490. Rules of evidence.

A. The burden of proof shall be upon the proponent. Therefore, if this is a situation where the department has revoked a license or imposed another administrative sanction subject to appeal by administrative hearing, the department is the proponent and has the burden of proof. However, in cases where the department has refused to grant an initial or renewal license, the proponent is the applicant and has the burden of proving that it should be granted a license.

B. The formal rules of evidence shall not apply. The hearing officer [~~should~~ shall] receive any probative evidence, and should strike, on objection or own motion, evidence that is irrelevant, immaterial, insubstantial, privileged, or repetitive, as required by §§ 2.2-4020 and 2.2-4021 of the Code of Virginia. If a question or answer at hearing is irrelevant, improper, or excludable, the hearing officer [~~should~~ may] strike it without waiting for an objection.

C. A party to the hearing may conduct examinations or cross examinations without rigid adherence to formal rules of evidence, provided the examination or cross examination does not become abusive or constitute harassment of the witness, and the examination can be shown to be necessary to result in full and fair disclosure of the facts bearing upon matters in issue. The hearing officer may examine all or any of the witnesses at the hearing.

22 VAC 40-80-500. The record at hearing.

All testimony in the administrative hearing must be recorded either stenographically or by mechanical means. All documents or other evidence received are also part of the record and must be maintained. In addition, a record must be maintained of all evidence offered but excluded. See Rule 2A: 3 (c) of the Rules of the Supreme Court of Virginia. As a matter of practice, it would be appropriate for the hearing officer to conditionally receive evidence and thereafter, if it is excludable, to avoid considering it in making the decision. In this way, if it is determined on judicial review that the hearing officer erroneously decided that the evidence was excludable, the case can be remanded for reconsideration of the evidence submitted but rejected as exhibits.

22 VAC 40-80-510. Recommendations of the hearing officer.

A. By statute, the hearing officer shall recommend findings of fact and a decision upon the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia.). The recommended decision of the hearing officer shall be made upon consideration and review of the record as a whole or such portions of the record as may be cited by any party to the proceedings. The findings of fact shall be based exclusively on admissible evidence or matters that are officially noticed. The recommendation shall be in writing and shall include specific findings on all the major facts in issue.

B. The hearing officer shall provide a recommendation within 90 days from the date the agency record is closed (that is, the date of the final hearing or the date by which the hearing officer prescribes that all evidence shall be submitted) or from a later date if agreed to by the aggrieved party and the agency (§ 2.2-4024 of the Code of Virginia). If the hearing officer does not render a recommended decision within 90 days, the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no recommended decision is made by

the hearing officer within 30 days from receipt of the notice, then the Executive Secretary of the Supreme Court, pursuant to § 2.2-4024 of the Code of Virginia, shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause can be shown for the delay.

C. The available remedies offered by the hearing officer shall be to (i) uphold the decision of the department; (ii) recommend reversing the decision; or (iii) recommend issuance of a different sanction as provided in § 63.2-1709 D of the Code of Virginia.

D. The findings, conclusions and recommended decision shall be provided to the parties and thereafter either party has 10 days to submit any exceptions in writing to the hearing coordinator for review by the commissioner regarding the recommended decision of the hearing officer. The hearing officer [~~should~~ may] incorporate the procedure for making exceptions to his recommended decision within the text of his report and recommendation.

E. The hearing officer shall forward the agency record, including the recommendation; all documents submitted by the parties; a listing of all exhibits presented, received and rejected; and the transcript of the hearing to the hearing coordinator.

22 VAC 40-80-520. Case decision.

A. The commissioner, after review of the findings of fact and recommended decision of the hearing officer, shall make a case decision and issue an order in the case within 30 days from the date that the commissioner receives the hearing officer's recommendation (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia). The commissioner shall provide notification to the aggrieved party of the decision within 30 days of receipt of the hearing officer's recommendation. If the commissioner does not render a decision within 30 days, the aggrieved party to the case decision may provide a written notice to the commissioner that a decision is due. If no decision is made within 30 days from the commissioner's receipt of the notice, the decision is deemed to be in favor of the aggrieved party. Service of the notice of the commissioner's decision is achieved by mailing the notice of the case decision to the licensee, unless service is made by other means and acknowledged in writing by the licensee. If service is accomplished by mail, three days shall be added to the 30-day period. If the licensee wishes to appeal the decision, he shall have 30 days after service of the notice of case decision to make such request.

B. The signed original case decision shall remain in the custody of the agency as a public record, subject to the agency's records retention policy. The signed originals or facsimiles thereof, together with the full record or file of the case, shall be made available for public inspection or copying except as the agency may, in its discretion under § 2.2-4023 of the Code of Virginia, decide to withhold part or all of the records.

C. The provisions for appealing the commissioner's order in accordance with the Administrative Process Act are found at §§ 2.2-4025 through 2.2-4030 of the Code of Virginia.

D. When issuance or renewal of a license as an adult care facility has been refused by the commissioner, the applicant shall not thereafter for a period of one year apply again for such license. When issuance or renewal of a license for a child welfare agency has been refused by the commissioner, the applicant shall not thereafter for a period of six months apply again for such license.

EXCEPTION: An adult care facility or a child welfare agency may apply again for such license before the end of the applicable specified period if the commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application.

ATTACHMENT I

~~An application form to operate a private child placing agency may be obtained from the following office:~~

~~Division of Licensing Programs
Department of Social Services
Theater Row Building
730 East Broad Street
Richmond, Virginia 23219
Telephone: (804) 692-1782~~

~~An application form to operate a licensed facility, excluding a private child placing agency, may be obtained from the following offices:~~

~~OFFICE~~

~~Abingdon Licensing Office
Piedmont Region
190 Patton Street
Abingdon, VA 24210
Telephone: (703) 628-5174~~

~~AREA SERVED~~

~~Serving Counties of: Bland, Buchanan, Carroll, Dickenson, Grayson, Lee, Patrick, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe; Serving Cities of: Bristol, Galax, Norton~~

~~OFFICE~~

~~Central Regional Office
Wythe Building, Suite 130
1604 Santa Rosa Road
Richmond, VA 23229-5008
Telephone: (804) 662-9743~~

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~~Serving Counties of: Amelia, Brunswick, Buckingham, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Westmoreland; Serving Cities of: Colonial Heights, Hopewell, Petersburg, Richmond, South Boston~~

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Pembroke IV Office Building
Suite 300
Virginia Beach, VA 23462-5496
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Fairfax, VA 22030
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Piedmont Regional Office
Commonwealth of Virginia Building
210 Church Avenue, S.W., Suite 100
Roanoke, VA 24011-1779
Telephone: (703) 857-7920

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FAST-TRACK REGULATIONS

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

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Title of Regulation: 18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18 VAC 150-20-10).

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

Public Hearing Date: September 30, 2004 - 8:30 a.m.
Public comments may be submitted until October 8, 2004.
(See Calendar of Events section for additional information)

Effective Date: October 23, 2004.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Veterinary Medicine the authority to promulgate regulations to administer the regulatory system.

The statutory definition of what constitutes the practice of veterinary medicine is found in § 54.1-3805 of the Code of Virginia and the mandate for licensure of veterinarians is found in § 54.1-3805 of the Code of Virginia.

Purpose: The definition of "surgery" specifies what surgery means and what it does not mean. By specifying that surgery does not include the extraction of single-rooted teeth or skin closures, the board will clarify those acts that may be performed by a licensed veterinary technician under the direction and supervision of a veterinarian. The current regulation is unclear and open to interpretations that could place patients at risk. Clarifying what is meant by a "routine dental extraction" and a "closure" will prevent the delegation of tasks for which the technician may not be qualified and is intended to protect the health and safety of animals in veterinary practices.

The definition of "immediate and direct supervision" specifies the proximity and availability of the veterinarian in delegating and supervising the activities of a licensed veterinary technician. The current definition requires the veterinarian to have observed and written an order for a patient within the last 24 hours. The 24-hour limitation creates a problem for veterinarians who may see an animal on a weekend and leave an order for care to be followed until the veterinarian returns to the practice on Monday. The board does not believe the 24-hour standard is necessary in order to protect patient health and safety because the licensed veterinarian must continue to

be immediately available to the technician who is charged with carrying out the specific order for the patient. A 36-hour limitation for the observation, diagnosis and written order is sufficient and will be more enforceable since it provides a more realistic standard of care.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments to definitions because the board believes the changes are mostly clarifying and reflective of current practice and do not alter the practice of veterinary medicine in any substantive way.

Substance: The proposed fast-track action amends definitions found in 18 VAC 150-20-10.

The definition of "immediate and direct supervision" currently means that the licensed veterinarian is immediately available to the licensed veterinary technician, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 24 hours; the amendment will require observation and diagnosis within the last 36 hours.

The definition of "surgery" currently means treatment through revision, destruction, incision or other structural alteration of animal tissue but does not include routine dental extractions or closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian. The amendment will clarify that the routine dental extraction is of a single-rooted tooth and the closure means a skin closure.

Issues: The board does not believe that there are any disadvantages to the public because of these amendments. The practice of surgery will be safer if it is clear that only routine dental extractions of single-rooted teeth and skin closures may be delegated to a technician. Animals will continue to be protected by an amended definition of immediate and direct supervision, since the veterinarian must be available for consultation if the technician believes there is a change in the patient's condition that would necessitate a change in the written order.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation will clarify terminology consistent with the board's interpretation and should reduce the need for licensees to seek clarification from board staff.

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

Fast-Track Regulations

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 Veterinary Medicine (board) proposes to amend two definitions, "Immediate and direct supervision" and "Surgery," for clarity.

Estimated economic impact. The current regulations define "immediate and direct supervision" to be "that the licensed veterinarian is immediately available to the licensed veterinary technician, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 24 hours." The board proposes to amend "the last 24 hours" to become "the last 36 hours." The regulations list "failure to provide immediate and direct supervision to a licensed veterinary technician in his employ" as unprofessional conduct. Section 54.1-3807 of the Code of Virginia lists unprofessional conduct as grounds for the board to suspend or revoke licensure. Thus, under the current language in the definition for "immediate and direct supervision," a veterinarian may have her license suspended or revoked if she allows a veterinary technician to work with a patient when she has not provided a specific order based on observation and diagnosis of the patient within the last 24 hours.

This conflicts with language elsewhere in the regulations. 18 VAC 150-20-172 c states that "a licensed veterinarian may delegate duties electronically to appropriate veterinary personnel provided the veterinarian has physically examined the patient within the previous 36 hours." According to the Department of Health Professions (department), it was the board's intent and has been their policy in practice to allow veterinarians to conduct immediate and direct supervision of a veterinary technician when the veterinarian has physically examined the patient within the previous 36 hours. Therefore, the proposal to amend "the last 24 hours" to become "the last 36 hours" in the definition will resolve the current conflict within the regulations, and will accurately describe the board's policy in practice. To the extent that any interested individuals were unsure of the intent of the board, the proposal to amend the definition will be beneficial in that it will reduce confusion and the time associated with potential inquiries.

The current definition of "surgery" is as follows: "Surgery" means treatment through revision, destruction, incision or other structural alteration of animal tissue. Surgery does not include routine dental extractions or closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian." The board proposes to amend the second sentence of the definition to: "Surgery does not include routine dental extractions of single-rooted teeth or skin closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian." According to the department the addition of the words "single-rooted teeth" and "skin" are solely for clarification, and do not reflect any change in policy. The board is proposing to add these words due to some inquiries about the definition. The addition of these words will produce no cost, while saving the time associated with inquiry for both interested individuals and department staff.

Businesses and entities affected. The proposed amendments affect the 3,094 licensed veterinarians and 936 licensed veterinary technicians in the Commonwealth.

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

Projected impact on employment. The proposed amendments will not affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a significant impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Veterinary Medicine concurs with the analysis of the Department of Planning and Budget for the proposed fast-track action on definitions in 18 VAC 150-20-10, Regulations Governing the Practice of Veterinary Medicine.

Summary:

The amendments change the definition of "immediate and direct supervision" to require the licensed veterinarian to provide a specific order for a patient based on observation and diagnosis made within the last 36 hours. The current language provides that the observation and diagnosis must be within the last 24 hours.

The definition of "surgery" is amended to (i) clarify the meaning of a "routine dental extraction" as an extraction of single-rooted teeth and (ii) clarify what is meant by a closure that may be performed by a licensed veterinary technician by adding the word "skin" before closure.

18 VAC 150-20-10. Definitions.

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

"Automatic emergency lighting" is lighting that is powered by battery, generator, or alternate power source other than electrical power, is activated automatically by electrical power failure, and provides sufficient light to complete surgery or to stabilize the animal until surgery can be continued or the animal moved to another establishment.

"AVMA" means the American Veterinary Medical Association.

"Board" means the Virginia Board of Veterinary Medicine.

"Full-service establishment" means a stationary or ambulatory facility that provides surgery and encompasses all aspects of health care for small or large animals, or both.

"Immediate and direct supervision" means that the licensed veterinarian is immediately available to the licensed veterinary technician, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 24 36 hours.

"Preceptorship" means a formal arrangement between an AVMA accredited college of veterinary medicine or an AVMA accredited veterinary technology program and a veterinarian who is licensed by the board and responsible for the practice of the preceptee.

"Professional judgment" includes any decision or conduct in the practice of veterinary medicine, as defined by § 54.1-3800 of the Code of Virginia.

"Restricted service establishment" means a stationary or ambulatory facility which does not meet the requirements of a full-service establishment.

"Surgery" means treatment through revision, destruction, incision or other structural alteration of animal tissue. Surgery does not include routine dental extractions of *single-rooted teeth* or *skin* closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian.

"Veterinarian in charge" means a veterinarian who holds an active license in Virginia and who is responsible for maintaining a veterinary establishment within the standards set by this chapter, for complying with federal and state laws and regulations, and for notifying the board of the establishment's closure.

"Veterinary establishment" means any fixed or mobile practice, veterinary hospital, animal hospital or premises wherein or out of which veterinary medicine is being conducted.

NOTICE: The forms used in administering 18 VAC 150-20, Regulations Governing the Practice of Veterinary Medicine, 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, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Licensure Procedure for Veterinarians (rev. 10/02).

Application for a License to Practice Veterinary Medicine (rev. ~~10/02~~ 7/03).

Instructions to the Veterinary Technician Applicant (rev. 10/02).

Application for a License to Practice Veterinary Technology (rev. ~~10/02~~ 7/03).

Applicant Instructions for New, Upgrading to Full Service, or Change of Location Inspections (eff. 10/02).

Application for Veterinary Establishment Permit (rev. 7/02).

Application for Reinstatement (rev. 10/02).

Renewal Notice and Application--0301 (rev. 7/02).

Renewal Notice and Application--0302 (rev. 7/02).

Licensure Verification--Veterinarian (rev. ~~11/02~~ 07/04).

Licensure Verification--Veterinary Technician (rev. 11/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

VA.R. Doc. No. R04-232; Filed July 20, 2004, 9:26 a.m.

EMERGENCY REGULATIONS

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (amending 12 VAC 30-70-291 and 12 VAC 30-70-301).**

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

Effective Dates: September 1, 2004, through August 31, 2005.

Agency Contact: Steve Ford, Manager, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7355, FAX (804) 786-1680, or e-mail steve.ford@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia Appropriation Act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at § 2.2-4011 (ii).

This regulatory action proposes to eliminate the Disproportionate Share Hospital (DSH) payment for Medicaid-recognized Neonatal Intensive Care Unit (NICU) programs and to modify indirect medical education payments.

12 VAC 30-70-291. Payment for indirect medical education costs.

A. Hospitals shall be eligible to receive payments for indirect medical education. These payments recognize the increased use of ancillary services associated with the educational process and the higher case-mix intensity of teaching hospitals. The payments for indirect medical education shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for IME shall be determined as follows:

1. Type One hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

$$\text{IME Percentage for Type One Hospitals} = [1.89 \times ((1 + r)^{0.405} - 1)]$$

2. Type Two hospitals shall receive an IME payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows:

$$\text{IME Percentage for Type Two Hospitals} = [1.89 \times ((1 + r)^{0.405} - 1)] \times 0.4043 \quad 0.5695$$

In both equations, r is the ratio of full-time equivalent residents to staffed beds, excluding nursery beds. The IME payment shall be calculated each year using the most recent reliable data regarding the number of full-time equivalent residents and the number of staffed beds, excluding nursery beds.

C. An additional IME payment shall be made for inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers. This payment shall be equal to the hospital's hospital specific operating rate per case, as determined in 12 VAC 30-70-311, times the hospital's HMO paid discharges times the hospital's IME percentage, as determined in subsection B of this section.

12 VAC 30-70-301. Payment to disproportionate share hospitals.

A. Payments to disproportionate share hospitals (DSH) shall be prospectively determined in advance of the state fiscal year to which they apply. The payments shall be made on a quarterly basis, shall be final, and shall not be subject to settlement except when necessary due to the limit in subsection D of this section.

B. Hospitals qualifying under the 15% inpatient Medicaid utilization percentage shall receive a DSH payment based on the hospital's type and the hospital's Medicaid utilization percentage.

1. Type One hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433.

2. Type Two hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times the hospital's Medicaid operating reimbursement, times 1.2074 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times the hospital's Medicaid operating reimbursement, times 1.2074.

C. Hospitals qualifying under the 25% low-income patient utilization rate shall receive a DSH payment based on the hospital's type and the hospital's low-income utilization rate.

1. Type One hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times 17, times the hospital's Medicaid operating reimbursement.

2. Type Two hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

3. Calculation of a hospital's low-income patient utilization percentage is defined in 42 USC § 1396r-4(b)(3).

D. No DSH payments shall exceed any applicable limitations upon such payments established by federal law or regulations and OBRA 1993 § 13621. A DSH payment during a fiscal year shall not exceed the sum of:

1. Medicaid allowable costs incurred during the year less Medicaid payments, net of disproportionate share payment adjustments, for services provided during the year. Costs and payments for Medicaid recipients enrolled in capitated managed care programs shall be considered Medicaid costs and payments for the purposes of this section.

2. Costs incurred in serving persons who have no insurance less payments received from those patients or from a third party on behalf of those patients. Payments made by any unit of the Commonwealth or local government to a hospital for services provided to indigent patients shall not be considered to be a source of third party payment.

E. Each hospital's eligibility for DSH payment and the amount of the DSH payment shall be calculated at the time of each rebasing using the most recent reliable utilization data and projected operating reimbursement data available. The utilization data used to determine eligibility for DSH payment and the amount of the DSH payment shall include days for Medicaid recipients enrolled in capitated managed care programs. In years when DSH payments are not rebased in the way described above, the previous year's amounts shall be adjusted for inflation.

~~1. Each hospital with a Medicaid recognized Neonatal Intensive Care Unit (NICU), a unit having had a unique NICU operating cost limit under subdivision 6 of 12 VAC 30-70-50, shall have its DSH payment calculated separately for the NICU and for the remainder of the hospital as if the two were separate and distinct providers. This calculation shall follow the methodology provided in this section.~~

2. For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most recently settled Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

/s/ Mark R. Warner
Governor
Date: July 13, 2004

VA.R. Doc. No. R04-244; Filed July 14, 2004, 11:14 a.m.

* * * * *

Title of Regulation: 12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (amending 12 VAC 30-70-391).

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

Effective Dates: September 1, 2004, through August 31, 2005.

Agency Contact: Steve Ford, Manager, Division of Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7355, FAX (804) 786-1680, or e-mail steve.ford@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation

in which Virginia statutory law, the Virginia Appropriation Act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at § 2.2-4011 A (ii).

Item 326 NN of the 2004 Appropriation Act (the Act) directs DMAS not to rebase per diem rates of freestanding psychiatric facilities licensed as hospitals. The Act directs DMAS to continue reimbursement based on SFY 2004 rates for these providers.

The purpose of this action is to exclude freestanding psychiatric hospitals from the standard rebasing action that will be conducted for the reimbursement methodology for other types of hospitals.

12 VAC 30-70-391. Recalibration and rebasing policy.

A. The department recognizes that claims experience or modifications in federal policies may require adjustment to the DRG payment system policies provided in this part. The state agency shall recalibrate (evaluate and adjust the DRG relative weights and hospital case-mix indices) and rebase (review and update the base year standardized operating costs per case and the base year standardized operating costs per day) the DRG payment system at least every three years. Recalibration and rebasing shall be done in consultation with the Medicaid Hospital Payment Policy Advisory Council noted in 12 VAC 30-70-490. When rebasing is carried out, if new rates are not calculated before their required effective date, hospitals required to file cost reports and freestanding psychiatric facilities licensed as hospitals shall be settled at the new rates, for discharges on and after the effective date of those rates, at the time the hospitals' cost reports for the year in which the rates become effective are settled.

~~B. Effective from July 1, 2003 through June 30, 2004, although most hospital rates will be based on the 2001 base year, rates for freestanding psychiatric facilities licensed as hospitals shall continue to be based on the 1998 base year until rates for all inpatient hospitals are rebased subsequent to SFY 2005. That is, the rebasing of rates effective in SFY2004, shall be effective for all hospitals except freestanding psychiatric facilities licensed as hospitals. Effective July 1, 2004, rates for freestanding psychiatric facilities licensed as hospitals, will be set pursuant to the applicable policy in this section.~~

/s/ Mark R. Warner
Governor
Date: July 13, 2004

VA.R. Doc. No. R04-245; Filed July 14, 2004, 11:13 a.m.

Emergency Regulations

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13 VAC 5-51. Virginia Statewide Fire Prevention Code (adding 13 VAC 5-51-134).**

Statutory Authority: § 27-97 of the Code of Virginia and Chapter 138 of the 2004 Acts of Assembly.

Effective Dates: July 8, 2004, through July 7, 2005.

Agency Contact: Steve Calhoun, Regulatory Coordinator, Board of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or e-mail steve.calhoun@dhcd.virginia.gov.

Preamble:

Fire caused by inappropriate use or placement of natural cut Christmas trees is an important fire prevention issue in Virginia. The Board of Housing and Community Development convened a meeting of interested and knowledgeable parties, including state and local fire code officials and local building code officials, to discuss Christmas tree fire issues. Developing regulatory provisions that would protect the public from the threat of fire hazards due to Christmas trees without overly restricting the use of natural cut Christmas trees was the objective of the meeting. The board developed regulatory provisions to meet the legislative mandate of the 2004 Session of the General Assembly.

Chapter 138 of the 2004 Session of the General Assembly strongly suggests an intent that the regulation go into effect very rapidly, if not immediately. The General Assembly gave a clear mandate to the board that it must promulgate a regulation that permits the use of natural cut Christmas trees in places of worship and apartment dwelling units. The General Assembly stated that "an emergency exists and this act is in force from its passage." Such language, by itself, may not be sufficient to evidence a legislative intent that emergency regulations are authorized, but according to the Office of the Attorney General, such intent may be derived from the context of the legislation. The statute was enacted on March 15, 2004. If the amendment to the existing regulation was not handled as an emergency regulation, it would be impossible to have the amended regulation in effect in time for the 2004 Christmas season. Clearly, this was the result that the General Assembly intended to avoid. Therefore, the Board of Housing and Community Development has adopted provisions to meet the legislative mandate through emergency regulation to be effective by the 2004 Christmas season.

While extremely limited, the board had some discretion in the development of provisions for the regulation. Consequently, the regulation could not be promulgated as exempt from the Administrative Process Act.

13 VAC 5-51-134. IFC Chapter 8 interior finish, decorative materials and furnishings.

Change section 804.1.1 to read:

804.1.1 Restricted occupancies. Natural cut trees shall be prohibited in Group A, E, I-1, I-2, I-3, I-4, M, R-1, R-2 and R-4 occupancies.

Exceptions

- 1. Trees located in areas protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 shall not be prohibited in Groups A, E, M, R-1 and R-2.*
- 2. Trees shall be permitted within dwelling units in Group R-2 occupancies.*
- 3. Trees shall be permitted in places of worship in Group A occupancies.*

/s/ Mark R. Warner
Governor
Date: July 7, 2004

VA.R. Doc. No. R04-228; Filed July 8, 2004, 9:47 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Title of Regulation: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-20; adding 18 VAC 60-20-91).**

Statutory Authority: §§ 54.1-2400 and 54.1-2711.1 of the Code of Virginia.

Effective Dates: July 15, 2004, through July 14, 2005.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Dentistry is required to comply with statutory language in § 54.1-2711.1 of the Code of Virginia and the second enactment clause of HB 1049 passed by the 2004 Session of the General Assembly (Chapter 754 of the Acts of Assembly). Section 54.1-2711.1 B of the Code of Virginia authorizes the board to adopt regulations for licensure of persons enrolled in advanced dental education programs: "The Board may prescribe such regulations not in conflict with existing law and require such reports from any hospital or the school of dentistry operating an accredited advanced dental education program in the Commonwealth as may be necessary to carry out the provisions of this section."

The second enactment clause of Chapter 754 states "That the Board of Dentistry shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment," requiring the adoption of the regulation as an emergency in accordance with the Administrative Process Act, § 2.2-4011, which states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia Appropriation Act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 754 was enacted on April 12, 2004, the day HB1049 was signed by the Governor.

18 VAC 60-20-91 is adopted to (i) set out the educational requirements for issuance of a temporary license, including a recommendation from the dean or director of the advanced dental program; (ii) establish the limitations on practice; (iii) provide for renewal of the license based on continued recommendation by the program and limited to five times; and (iv) specify that the temporary license holder is accountable to a licensed dentist who is a member of staff where the residency or internship is being served. This emergency action also establishes fees and annual expiration date for the temporary resident's license.

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

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

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

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

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

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

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

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

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

2. Practicing in Virginia with an expired license may subject the licensee to disciplinary action and additional fines by the board.

3. The executive director may reinstate such expired license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18 VAC 60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid renewal fee, the reinstatement fee and any fines or assessments.

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

18 VAC 60-20-91. Temporary licenses to persons enrolled in advanced dental education programs.

A. A dental intern, resident or post-doctoral certificate or degree candidate applying for a temporary license to practice in Virginia shall:

1. Successfully complete a D.D.S. or D.M.D. dental degree program required for admission to board-approved examinations and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.

2. Submit a recommendation from the dean of the dental school or the director of the accredited graduate program specifying the applicant's acceptance as an intern, resident or post-doctoral certificate or degree candidate in an advanced dental education program. The beginning and ending dates of the internship, residency or post-doctoral program shall be specified.

B. The temporary license applies only to practice in the hospital or outpatient clinics of the hospital or dental school where the internship, residency or post-doctoral time is served. Outpatient clinics in a hospital or other facility must be a recognized part of an advanced dental education program.

C. The temporary license may be renewed annually, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited graduate program.

D. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency or post-doctoral candidacy is served. The temporary licensee is prohibited from employment outside of the advanced dental education program where a full license is required.

Emergency Regulations

F. The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as approved by the Commission on Dental Accreditation of the American Dental Association.

NOTICE: The forms used in administering 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, 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, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Outline and Explanation of Documentation Required for Dental Licensure by Exam, Teacher's License, Restricted License, Full Time Faculty License, and Temporary Permit (rev. 12/02).

Application for Licensure to Practice Dentistry (rev. 12/02).

Application for Restricted Volunteer Licensure to Practice Dentistry and Dental Hygiene (eff. 7/98).

Requirements and Instructions for a Temporary Resident's License to Persons Enrolled in Advanced Dental Education Programs (eff. 7/04).

Application for Temporary Resident's License (eff. 7/04).

Form A, Certification of Dental School for Temporary Resident's License (eff. 7/04).

Form B, Certification from dean of dental school or director of accredited graduate program, Temporary Resident's License (eff. 7/04).

Form C, Certification of Dental Licensure, Temporary Resident's License (eff. 7/04).

Form D, Chronology, Temporary Resident's License (eff. 7/04).

Form A, Certification of Dental/Dental Hygiene School (rev. 12/02).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (eff. 7/98).

Form B, Chronology (rev. 12/02).

Form C, Certification of Dental/Dental Hygiene Boards (rev. 12/02).

Outline and Explanation of Documentation Required for Dental Hygiene Licensure by Exam, Teacher's License, Dental Hygiene by Endorsement, and Dental Hygiene Temporary Permit (rev. 12/02).

Application for Licensure to Practice Dental Hygiene (rev. 12/02).

Instructions for Reinstatement (rev. 12/02).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. 12/02).

Radiology Information for Dental Assistants (rev. 7/97).

Renewal Notice and Application, 0401 Dentist (rev. 12/02).

Renewal Notice and Application, 0402 Dental Hygienist (rev. 12/02).

Renewal Notice and Application, 0404 Dental Teacher (rev. 12/02).

Renewal Notice and Application, 0406 Dental Hygiene Teacher (rev. 12/02).

Renewal Notice and Application, 0411 Full-time Faculty (rev. 12/02).

Renewal Notice and Application, 0438 Cosmetic Procedure Certification (rev. 12/02).

Renewal Notice and Application, 0439 Oral and Maxillofacial (rev. 12/02).

Application for Certification to Perform Cosmetic Procedures (rev. 12/02).

Rhinoplasty/similar Procedures (rev. 7/02).

Blepharoplasty/similar Procedures (rev. 7/02).

Rhytidectomy/similar Procedures (rev. 7/02).

Submental liposuction/similar Procedures (rev. 7/02).

Browlift/either open or endoscopic technique/similar Procedures (rev. 7/02).

Otoplasty/similar Procedures (7/02).

Laser Resurfacing or Dermabrasion/similar Procedures (rev. 7/02).

Platysmal muscle plication/similar Procedures (rev. 7/02).

Application Review Worksheet (rev. 7/02).

Practitioner Questionnaire (rev. 12/02).

Oral and Maxillofacial Surgeon Registration of Practice (rev. 12/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

/s/ Mark R. Warner

Governor

Date: July 13, 2004

VA.R. Doc. No. R04-236; Filed July 15, 2004, 12:28 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: 18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers (adding 18 VAC 65-20-15).

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

Effective Dates: July 15, 2004, through July 14, 2005.

Agency Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 West Broad Street,

Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9943 or e-mail elizabeth.young@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Funeral Directors and Embalmers is required to comply with amendments to § 54.1-2400 (10) of the Code of Virginia and the third enactment clause of HB 577 of the 2004 Session of the General Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of the Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment" requires the adoption of the regulation as an emergency in accordance with the Administrative Process Act, § 2.2-4011, which states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia Appropriation Act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

18 VAC 65-20-15 is added to Part I, General Provisions, in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated and the individuals who may be designated as agency subordinates.

18 VAC 65-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate are those that involve:

- 1. Intentional or negligent conduct that causes or is likely to cause injury;*
- 2. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public;*
- 3. Impairment with an inability to practice with skill and safety;*
- 4. Inappropriate handling of dead human bodies;*

- 5. Sexual misconduct;*
- 6. Misappropriation of funds; or*
- 7. Aiding or abetting unauthorized practice.*

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

/s/ Mark R. Warner
Governor
Date: July 6, 2004

VA.R. Doc. No. R04-255; Filed July 15, 2004, 12:32 p.m.

BOARD OF NURSING

Title of Regulation: **18 VAC 90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18 VAC 90-30-80, 18 VAC 90-30-100 and 18 VAC 90-30-110).**

Statutory Authority: §§ 54.1-3030 through 54.1-3040 of the Code of Virginia.

Effective Dates: July 15, 2004, through July 14, 2005.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Nursing is required to comply with the second enactment clause of Chapter 49 of the 2004 Acts of the Assembly, which states "That the Board of Nursing shall promulgate regulations to implement the provisions of the Nurse Licensure Compact to be effective within 280 days of the enactment of this act." The date of enactment was March 4, 2004, the day the Governor approved HB 633.

Regulations for initial licensure as a nurse practitioner and for renewal or reinstatement of that license require that a person hold a current Virginia license as a registered nurse. Amended regulations include a multistate licensure privilege as an acceptable alternative to the license as a registered nurse.

Emergency Regulations

18 VAC 90-30-80. Qualifications for initial licensure.

A. An applicant for initial licensure as a nurse practitioner shall:

1. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;
2. Submit evidence of completion of an educational program designed to prepare nurse practitioners that is an approved program as defined in 18 VAC 90-30-10;
3. Submit evidence of professional certification by an agency identified in 18 VAC 90-30-90 as an agency accepted by the boards;
4. File the required application; and
5. Pay the application fee prescribed in 18 VAC 90-30-50.

B. Provisional licensure may be granted to an applicant who satisfies all requirements of this section with the exception of subdivision A 3 of this section only until the release of the results of the first national certifying examination for which he is eligible following his application.

18 VAC 90-30-100. Renewal of licensure.

A. Licensure of a nurse practitioner shall be renewed:

1. Biennially at the same time the license to practice as a registered nurse in Virginia is renewed; or
2. If licensed as a nurse practitioner with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in even-numbered years shall renew his license by the last day of the birth month in even-numbered years and a licensee born in odd-numbered years shall renew his license by the last day of the birth month in odd-numbered years.

B. The application for renewal of the license shall be mailed by the committee to the last known address of each nurse practitioner.

C. The licensed nurse practitioner shall complete the application and return it with his signature attesting to compliance with continuing competency requirements prescribed in 18 VAC 90-30-105 and the license renewal fee prescribed in 18 VAC 90-30-50.

18 VAC 90-30-110. Reinstatement of license.

A. A licensed nurse practitioner whose license has lapsed may be reinstated within one renewal period by payment of the current renewal fee and the late renewal fee.

B. An applicant for reinstatement of license lapsed for more than one renewal period shall:

1. File the required application and reinstatement fee;
2. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and
3. Provide evidence of current professional certification or, if applicable, licensure or certification in another jurisdiction.

C. An applicant for reinstatement of license following suspension or revocation shall:

1. Petition for a reinstatement and pay the reinstatement fee;
2. Present evidence that he is currently licensed as a Registered Nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and
3. Present evidence that he is competent to resume practice as a licensed nurse practitioner in Virginia.

The committee shall act on the petition pursuant to the Administrative Process Act, § ~~9-6.14:1 et seq.~~ 2.2-4000 et seq. of the Code of Virginia.

/s/ Mark R. Warner
Governor
Date: July 13, 2004

VA.R. Doc. No. R04-238; Filed July 15, 2004, 12:29 p.m.

* * * * *

Title of Regulation: 18 VAC 90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18 VAC 90-30-120).

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Dates: July 15, 2004, through July 14, 2005.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Boards of Nursing and Medicine is required to comply with the third enactment clause of Chapter 855 of the 2004 Acts of Assembly, which states "That the Board of Medicine and Board of Nursing shall amend regulations governing the licensure of nurse practitioners to be effective within 280 days of enactment of this act. Such amendments shall require inclusion of the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements in the written protocol between the supervising physician and the nurse practitioner." The law was enacted on April 14, 2004, the day HB 855 was signed by the Governor.

Subsection C is added to 18 VAC 90-30-120, which establishes the criteria for practice by a nurse practitioner. The new rule will require that the written protocol between the supervising physician and the nurse practitioner must include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided the signing of documents is (i) in accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician; (ii) permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and (iii) not in conflict with federal law or regulation.

18 VAC 90-30-120. Practice of licensed nurse practitioners.

A. A licensed nurse practitioner shall be authorized to engage in practices constituting the practice of medicine in collaboration with and under the medical direction and supervision of a licensed physician.

B. The practice of licensed nurse practitioners shall be based on specialty education preparation as a nurse practitioner in accordance with standards of the applicable certifying organization and written protocols as defined in 18 VAC 90-30-10.

C. *The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided it is:*

1. *In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician;*
2. *Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and*
3. *Not in conflict with federal law or regulation.*

~~C. D.~~ A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists (Guidelines and Standards for Nurse Anesthesia Practice, Revised 1998) and under the medical direction and supervision of a doctor of medicine or a doctor of osteopathy or the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry.

~~D. E.~~ A certified nurse midwife shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 1993) defined by the American College of Nurse-Midwives.

/s/ Mark R. Warner
Governor
Date: July 13, 2004

VA.R. Doc. No. R04-234; Filed July 15, 2004, 12:29 p.m.

BOARD OF OPTOMETRY

Title of Regulation: 18 VAC 105-20. Regulations Governing the Practice of Optometry (adding 18 VAC 105-20-41).

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

Effective Dates: August 25, 2004, through August 24, 2005.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Optometry is required to comply with amendments to § 54.1-2400 (10) of the Code of Virginia and the third

enactment clause of HB 577 of the 2004 Session of the General Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of the Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment" requires the adoption of the regulation as an emergency in accordance with the Administrative Process Act, § 2.2-4011, which states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia Appropriation Act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

18 VAC 105-20-41 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.

18 VAC 105-20-41. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases may be delegated to an agency subordinate upon approval by a committee of the board, except those in which an optometrist may have conducted his practice in such a manner as to endanger the health and welfare of his patients or the public.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on

Emergency Regulations

the qualifications of the subordinate and the type of case being heard.

/s/ Mark R. Warner
Governor
Date: July 19, 2004

VA.R. Doc. No. R04-231; Filed July 20, 2004, 9:28 a.m.

BOARD OF PHARMACY

Title of Regulation: 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (adding 18 VAC 110-20-15).

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

Effective Dates: July 15, 2004, through July 14, 2005.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9943 or e-mail scotti.russell@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Pharmacy is required to comply with amendments to § 54.1-2400 (10) of the Code of Virginia and the third enactment clause of HB 577 of the 2004 Session of the General Assembly. Subdivision 10 establishes authority for health regulatory boards to appoint special conference committees and to delegate an informal fact-finding proceeding to an appropriately qualified agency subordinate. It further adds a mandate for the adoption of regulations, "Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

The third enactment clause of Chapter 64 of the 2004 Acts of the Assembly, which states "That the health regulatory boards within the Department of Health Professions shall promulgate regulations to implement the provisions of this act relating to the delegation of fact-finding proceedings to an agency subordinate within 280 days of its enactment" requires the adoption of the regulation as an emergency in accordance with the Administrative Process Act, § 2.2-4011, which states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia Appropriation Act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Chapter 64 was enacted on March 10, 2004, the day HB 577 was signed by the Governor.

18 VAC 110-20-15 is added to Part I, General Provisions, in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated and the individuals who may be designated as agency subordinates.

18 VAC 110-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include those that involve:

- 1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;*
- 2. Drug diversion;*
- 3. Impairment with an inability to practice with skill and safety;*
- 4. Indiscriminate dispensing;*
- 5. Medication error in administration or dispensing.*

C. Criteria for an agency subordinate.

- 1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.*
- 2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.*
- 3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.*

/s/ Mark R. Warner
Governor
Date: July 6, 2004

VA.R. Doc. No. R04-253; Filed July 15, 2004, 12:33 p.m.



GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Consent Special Order for Yates Construction Company, Inc.

The Department of Environmental Quality, on behalf of the State Water Control Board, and Yates Construction Company, Inc. have agreed to a Consent Special Order in settlement of a civil enforcement action under the Virginia State Water Control Law regarding unpermitted stream impacts at Campus East on Liberty Mountain. The department will consider written comments to this order until 5 p.m. on September 8, 2004. Comments must include name, address, and telephone number and can be e-mailed to hfwaggoner@deq.state.va.us or mailed to Harry F. Waggoner, Department of Environmental Quality, South Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502.

The order is available at www.deq.state.va.us/enforcement/notices.html and at the above office during regular business hours. You may request copies from Mr. Waggoner by calling (434) 582-5120 ext. 6037.

Total Maximum Daily Loads Schedule

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the proposed list of impaired waterbody segments scheduled for development of Total Maximum Daily Loads (TMDLs) by May 1, 2006. The proposed TMDL project list can be accessed at <http://www.deq.state.va.us/tmdl/2006.html>, or by contacting David Lazarus (see contact information below). The subject stream segments are identified in Virginia's 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The public comment period will begin on August 9, 2004, and end on September 10, 2004. Questions or information requests should be addressed to David Lazarus. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to David Lazarus, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4299, FAX (804) 698-4116, or e-mail dslazarus@deq.virginia.gov.

Revised Water Quality Monitoring Strategy

The Virginia Department of Environmental Quality (DEQ) will release a revised water quality monitoring strategy on August 9, 2004, for public comment. DEQ is particularly seeking comment on the 2004-2014 implementation plan, found in Chapter IX. The implementation plan contains milestones for all water quality monitoring programs at DEQ.

DEQ first submitted a water quality monitoring strategy to the United States Environmental Protection Agency (EPA) in December 1999. That strategy has now been revised in accordance with the guidance document "Elements of a State Water Monitoring and Assessment Program" published by EPA in March 2003 and as required by federal grants.

The revised strategy addresses all 10 of the essential elements in the EPA guidance, including a 10-year implementation plan for the years 2005 – 2014. The 10-year implementation plan will be updated in 2007, 2010, and 2013. The entire strategy will be revised in 2007 and every six years thereafter. A six-year strategy revision schedule complements the six-year watershed rotation cycle that DEQ has used for several years.

The draft water quality monitoring strategy is only available via download on our website at <http://www.deq.virginia.gov/watermonitoring/> throughout the public comment period, which ends on September 10, 2004. A copy of the final strategy on CD-ROM can be pre-ordered on the website.

Written comments on the water quality monitoring strategy can be sent to Don Smith, Ph.D., DEQ Water Quality Monitoring and Assessment Program, via e-mail attachment to dhsmith@deq.virginia.gov, or via (US) mail to P.O. Box 10009, Richmond, VA 23240-0009. Please include your name, (US mail) address, telephone number, and e-mail address.

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The distribution lists referenced as Appendices A and B in the following order are not being published. However, the lists are 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, JULY 19, 2004

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC-2003-00118

Ex Parte: In the matter of establishing rules necessary to implement Article 5.1 of Chapter 15 of Title 56 of the Code of Virginia

FINAL ORDER

Article 5.1 of Chapter 15 of Title 56 of the Code of Virginia ("Code") entitled "Provision of Certain Communications Services," § 56-484.7:1 et seq., addresses conditions under which certain counties, cities, towns, electric commissions or boards, industrial development authorities, or economic

General Notices/Errata

development authorities may offer "qualifying communications services." Section 56-484.7:1 A of the Code defines "qualifying communications service" as "a communications service, which shall include but is not limited to, high-speed data service and Internet access service, of general application. ..." Section 56-484.7:1 E of the Code states that the State Corporation Commission ("Commission") "may promulgate rules necessary to implement this section." On August 1, 2003, the Commission issued an Order Establishing Proceeding and Inviting Comments, docketing this matter and allowing interested persons: (1) to comment on whether rules are necessary to implement § 56-484.7:1 of the Code; and (2) to propose any such rules.

Comments were received from the Alliance for Rural Broadband Infrastructure ("ARBI"); Charter Communications, Inc. ("Charter"); Central Telephone Company of Virginia, United Telephone-Southeast, Inc., and Sprint Communications Company of Virginia (collectively, "Sprint"); the Virginia Cable Telecommunications Association ("VCTA"); and the Virginia Telecommunications Industry Association ("VTIA").

ARBI stated that it is a group of Virginia cities, towns, and counties that seeks the benefits of competition in the provisioning of broadband and internet services for all residents of the Commonwealth. ARBI's constituent groups include the Virginia Municipal League and the Virginia Association of Counties. ARBI asserted that it is unnecessary for the Commission to promulgate rules because the Code is sufficiently clear. ARBI suggested that, if the Commission does indeed promulgate rules, such rules should be minimal.

Charter supported rules that would require a petitioning governmental entity to demonstrate affirmatively that it meets the statutory requirements set forth governing the provision of qualifying communications services.

Sprint supported promulgating rules and asked the Commission to clarify that "qualifying communications services" do not necessarily include the provision of local exchange service. Sprint also asked the Commission to consider a service "readily and generally ... available" under the statute if three companies in a given area have tariffs for a qualifying communications service or if the service is in fact offered without tariff. Additionally, Sprint stated its support for proposed rules filed by the VTIA in this proceeding.

The VCTA stated its belief that rules are necessary to implement § 56-484.7:1 et seq., and cited the need for clear guidelines that would assist the parties involved in a petition to provide qualifying communications services. The VCTA proposed language that would require petitioners to make specific showings regarding the availability of qualifying communications services in a particular area, the benefit to consumers of the petitioner's offering of qualifying communications services, and the pricing of such services.

The VTIA submitted proposed regulations with its comments, suggesting, in part, that: petitioners be required to demonstrate financial, managerial, and technical expertise sufficient to offer qualifying communications services; petitioners provide evidence that functionally equivalent qualifying communication services are not being provided by

three nonaffiliated entities; the phrase "readily and generally ... available" found in § 56-484.7:2 of the Code be interpreted to include tariffed and non-tariffed offerings that are capable of being provisioned by three nonaffiliated entities, even if those entities do not actually provision those services; the phrase "functionally equivalent" found in § 56-484.7:2 of the Code be interpreted from the viewpoint of potential customers; and that petitioners whose petitions are approved provide to the Commission status reports regarding the factors in § 56-484.7:2 of the Code to assist the Commission in any potential revocation of approval pursuant to § 56-484.7:4.

On March 5, 2004, the Commission issued an Order that directed the Commission's Staff ("Staff") to prepare a Report on the comments filed in this matter and include any rules proposed by the Staff. The Order also permitted interested persons to file comments on the Staff's Report.

The Staff filed its Report on May 17, 2004. The Staff concluded that rules are not necessary at this time and that the Commission is not required to adopt rules. In addition, the Staff submitted a draft set of minimal rules that the Commission could consider if it determines that rules are necessary and should be adopted at this time. The Staff stated that its proposed rules give sufficient guidance to an applicant and any opposing parties, while not making the process overly burdensome or restrictive. In addition, the Staff asserted that if the Commission believes more extensive rules are necessary, then the Staff's draft rules could be used as a starting point either for further comments from the parties or as a preliminary document to be used by a working committee of interested parties and the Staff in developing more specific rules.

The VTIA filed comments on the Staff Report on June 17, 2004. The VTIA stated that it concurs in the Staff's proposal to convene a working committee of all interested parties to work toward promulgating regulations. The VTIA believes that the ultimate drafting and promulgation of regulations consistent with the Code must be pursued diligently. The VTIA asserted, as referenced in the Staff Report, that § 56-484.7:2 of the Code does not define some important and relevant terms. In addition, the VTIA stated that the Commission's role under § 56-484.7:2 of the Code is explicit, lawful, and not limited by the type or nature of the "qualifying communications services" to be provided.

ARBI filed comments on the Staff Report on June 17, 2004. ARBI reiterated its view that there is no need for the Commission to promulgate rules given the clarity with which the General Assembly has laid out the process by which a municipality can provide "qualifying communications services." ARBI concluded that it is unnecessary for the Commission to promulgate specific rules that will merely mimic the General Assembly's directives. If the Commission promulgates rules, ARBI stated that the rules suggested by the Staff are appropriate, because they are minimal and create no barriers to thwart the clear legislative intent to encourage deployment of broadband services to underserved rural areas in the Commonwealth. ARBI also asserted that there is no need for a working committee of interested parties to consider further regulations.

NOW THE COMMISSION, having considered the pleadings and the applicable law, is of the opinion and finds as follows. We will not promulgate rules in this proceeding. Section 56-484.7:1 et seq., of the Code explicitly sets forth what must be demonstrated by the petitioner and any opposing parties. We agree with ARBI that rules mimicking the statute are not necessary. We also find that terms undefined in the statute, such as "readily and generally ... available" and "functionally equivalent for consumers," will be determined in the context of the specific proceeding in which a petitioner requests approval from the Commission to offer a particular qualifying communications service.

In addition, the Staff Report notes that the Commission previously dismissed, without prejudice, a petition from the City of Staunton requesting approval to provide certain qualifying communications services.¹ In the City of Staunton, we found that the petition should include evidence, under oath, to demonstrate that the proposed qualifying communications services do not meet the standards set forth in § 56-484.7:2 of the Code within the geographic area specified in the petition. We also explained that any party opposing the petition, which seeks to demonstrate that any of the standards in § 56-484.7:2 are met, also should include evidence submitted under oath. We noted that evidence in this regard, for example, could be in the form of an affidavit or of sworn pre-filed testimony. Thus, Commission precedent already establishes that a participant in a proceeding under these provisions of the Code must make an evidentiary showing, under oath, in support of the participant's position.

Finally, the Staff Report explains that, pursuant to § 56-484.7:1 A of the Code, the Commission must act on a petition in these matters within 60 days, which may be extended to a period not to exceed 120 days. The Staff concludes that this period provides a very short time to review a filed petition with all needed justifications and support, to have an opportunity for notice and hearing in the affected area, and to address any objections or interventions of other parties. We agree with the Staff's explanation that the time period will not start to run before the Staff finds that the petition is complete. In this regard, we believe that the Staff's proposed rules provide relevant guidance for developing a complete petition. Specifically, the information requirements contained in section 20 of the Staff's proposed rules accurately reflect the statute and provide a reasonable framework for the petitioner to follow in preparing a complete petition. Furthermore, section 40 of the Staff's proposed rules, which applies to parties objecting to the petition, also accurately reflects the statute and provides a reasonable framework for parties opposing the petition and seeking to provide a demonstration pursuant to § 56-484.7:2 of the Code.

Accordingly, IT IS ORDERED THAT this matter is hereby dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all Local Exchange Carriers in Virginia, as shown on Appendix A attached hereto; all Interexchange

¹ Petition of the City of Staunton, For approval of authority to provide qualifying communications services pursuant to Article 5.1 to Title 56 of the Code of Virginia, Case No. PUC-2003-00065, Order Dismissing Petition (June 26, 2003) ("City of Staunton").

Companies in Virginia, as shown on Appendix B attached hereto; Robert G. Scott, Esquire, Cole Raywid & Braverman, LLP, 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006; Edward Phillips, Attorney, Sprint, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Eric M. Page, Esquire, LeClair Ryan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Cliona M. Robb, Esquire, Christian & Barton, L.L.P., 1200 Building, Suite 1200, 909 East Main Street, Richmond, Virginia 23219-3095; Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.

SCC Study HJR153 – Underground Placement of Utility Distribution Lines

By resolution adopted on March 10, 2004 (HJR153), the Virginia General Assembly requested the Virginia State Corporation Commission to study the underground placement of utility distribution lines. The study is to address the feasibility of locating utility distribution lines underground, the costs of such activity, and the options for funding those costs.

To assist the Commission with this study, Commission staff invites any interested person to submit comments on this matter. **Comments are due on or before September 15, 2004.**

It would be helpful if such comments also address the following items:

- The potential benefits associated with undergrounding overhead distribution lines.
- The potential negatives associated with undergrounding overhead distribution lines.
- In order of importance, a list of criteria for determining whether certain overhead lines are eligible for being relocated underground.
- A list of potential options for funding the relocation of overhead distribution lines underground and the reasons for each option. Examples: an increase in rates on all customers, an increase in rates only on customers who directly benefit from undergrounding, a special tax assessment on affected customers.
- If public policy warrants placing underground all or a portion of existing and/or new overhead distribution lines, should the policy be established by state law or local ordinance? Explain why.

Comments may be submitted electronically to the Commission via the following website: www.state.va.us/scc/hjr153.htm. If written comments are submitted, send one copy to each of the persons listed below:

General Notices/Errata

Mr. W. Timothy Lough, PH.D., P.E.
Special Projects Engineer
Division of Energy Regulation
P.O. Box 1197
Richmond, VA 23218

Larry J. Kubrock
Senior Telecommunications Specialist
Division of Communications
P.O. Box 1197
Richmond, VA 23218

For additional information, contact Mr. Lough at (804) 371-9611 or Mr. Kubrock at (804) 371-9420.

STATE LOTTERY DEPARTMENT

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on July 19, 2004. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

[Director's Order Number Twenty-Five \(04\)](#)
Virginia's Instant Game Lottery 275; "Blackjack," Final Rules for Game Operation (effective 7/08/04)

[Director's Order Number Twenty-Six \(04\)](#)
Virginia's Instant Game Lottery 598; "Hit Me," Final Rules for Game Operation (effective 7/08/04)

STATE WATER CONTROL BOARD

Proposed Consent Special Order for DirecTV Operations, LLC

The State Water Control Board (board) proposes to enter into a Consent Special Order (order) with DirecTV Operations, LLC (DirecTV). The parties have agreed to the terms of an order for settlement of violations of State Water Control Law at their Aboveground Storage Tank (AST) facility, part of DirecTV's satellite uplink site, located at the intersection of Apple Valley Road and Shady Elm Road in Frederick County, Virginia.

DirecTV is the owner and operator of an AST facility within the meaning of § 62.1-44.34:14 of the Code of Virginia. On September 17, 2003, an unpermitted discharge of approximately 44 gallons of fuel oil occurred at the AST facility, caused by DirecTV's general contractor during construction at the site. This discharge was disclosed by the general contractor, on instruction from DirecTV, to the Department of Environmental Quality (DEQ) on January 14, 2004. A Notice of Violation (NOV) issued to DirecTV on February 12, 2004, for failure to register the AST facility in violation of Virginia State Water Control Law, § 62.1-44:19.1 and 9 VAC 25-91-100, for an unpermitted discharge of fuel oil in violation of § 62.1-44.34:18, and for failing to report the unpermitted discharge to DEQ or the board in violation of

§ 62.1-44.34:19. The proposed order requires DirecTV to register the AST facility with DEQ and would assess a civil charge against DirecTV in settlement of the violations.

The board will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to Ricard J. Dunay, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, and should refer to the order. The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA. A copy of the order may be obtained in person or by mail from the DEQ office.

Comments may also be submitted via electronic mail to rjdunay@deq.virginia.gov. 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.

Proposed Consent Special Order for DuVal Development, Inc.

The State Water Control Board proposes to issue a consent special order to DuVal Development, Inc. to resolve certain alleged violations of environmental laws and regulations occurring at the Oak Lake Business Center in Chesterfield County, Virginia. The proposed order requires DuVal to execute corrective action and pay a 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, Virginia 23060-6295; or sent to the email address of felupini@deq.state.va.us. All comments received by email must include sender's name, address and phone number. A copy of the order may be obtained in person or by mail from the above office.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

Forms for Filing Material for Publication in the Virginia Register of Regulations

All agencies are required to use the appropriate forms when furnishing material for publication in the Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: <http://register.state.va.us>.

FORMS:

NOTICE of INTENDED REGULATORY ACTION-RR01
NOTICE of COMMENT PERIOD-RR02
PROPOSED (Transmittal Sheet)-RR03
FINAL (Transmittal Sheet)-RR04
EMERGENCY (Transmittal Sheet)-RR05
NOTICE of MEETING-RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS-
RR08
RESPONSE TO PETITION FOR RULEMAKING-RR13

FAST-TRACK RULEMAKING ACTION-RR14

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-770. Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects.**

Publication: 20:23 VA.R. 2593-2596 July 26, 2004.

Correction to Final Regulation:

On page 2593, Title of Regulation should read:

Title of Regulation: **9 VAC 25-770. Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects (adding 9 VAC 25-770-10 through [~~9 VAC 25-770-180~~ 9 VAC 25-770-190]).**

On page 2596, last line should read:

9 VAC 25-770-120 through 9 VAC 25-770-190. [No change from proposed.]

CALENDAR OF EVENTS

Symbol Key

- † Indicates entries since last publication of the *Virginia Register*
♿ Location accessible to persons with disabilities
☎ Teletype (TTY)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

VIRGINIA AGRICULTURAL COUNCIL

August 30, 2004 - 8:30 a.m. -- Open Meeting
Holiday Inn, 2864 Prudin Boulevard, Suffolk, Virginia♿

The council's annual meeting will be held for two days, August 30, 2004, and resuming at 8 a.m. on August 31, 2004, to review grant projects as to progress and results, the financial status of the council for the current fiscal year, and plans for the coming year. The council will visit the sites of projects in the Suffolk area approved by council action. The council will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Thomas Yates at least five days before the meeting date so that suitable arrangements can be made.

Contact: Thomas R. Yates, Executive Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 509, Richmond, VA 23219, telephone (804) 786-6060, FAX (804) 371-8372, (800) 828-1120/TTY☎, e-mail tyates@vdacs.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Horse Industry Board

September 7, 2004 - 10 a.m. -- Open Meeting
Marion duPont Scott Equine Medical Center, 17690 Old Waterford Road, Library, Leesburg, Virginia♿

The board will review the minutes of the last meeting, the end of the fiscal year financial report, and the status of marketing projects. The board will also discuss grant guidelines. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S.

Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., 9th Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 786-3122, e-mail ahaid@vdacs.state.va.us.

STATE AIR POLLUTION CONTROL BOARD

† **August 19, 2004 - 11 a.m.** -- Public Hearing
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia♿
(Interpreter for the deaf provided upon request)


A public hearing on a proposed revision to the State Implementation Plan (SIP). The proposed revision consists of amendments to existing regulations for nonattainment area new source review. The amendments add new requirements for sources located or seeking to locate in the Ozone Transport Region. The department is seeking comment on the issue of whether the regulation amendments should be submitted to the Environmental Protection Agency as a revision to the SIP.

Contact: Karen G. Sabasteanski, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, (804) 698-4021/TTY☎, e-mail kgsabastea@deq.virginia.gov.

† **September 8, 2004 - 2 p.m.** -- Open Meeting
Main Street Centre, Lower Level Conference Room, 600 East Main Street, Richmond, Virginia♿

A public meeting to receive comment on the notice of intended regulatory action to consider amending the regulations that govern permitting for new major stationary sources and major modifications as necessary to meet the new source reform requirements of 40 CFR Part 51 (Rev. E03). The Notice of Intent will be published in the *Virginia Register* and the public comment period will begin on July 12, 2004, and the comment period will close on September 8, 2004.

Contact: Karen G. Sabasteanski, State Air Pollution Control Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, e-mail kgsabastea@deq.virginia.gov.


† **September 9, 2004 - 11 a.m.** -- Public Hearing
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. 
(Interpreter for the deaf provided upon request)

† **October 8, 2004** -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-20, General Provisions, and 9 VAC 5-40, Existing Stationary Sources**. The purpose of the proposed action is to develop a regulation concerning consumer products that will contribute to the achievement of the necessary VOC emissions reductions to stay within the budget limit in order to safeguard federal approval of transportation projects in Northern Virginia.

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

Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510 or e-mail ggraham@deq.virginia.gov.

† **September 9, 2004 - 11 a.m.** -- Public Hearing
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. 
(Interpreter for the deaf provided upon request)

† **October 8, 2004** -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-91, Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area**. The purpose of the proposed action is to develop regulation amendments that conform to state law concerning the on-road testing (remote sensing) of emissions from motor vehicles located or primarily operated in Northern Virginia and out of area commuters, the subsequent testing of those motor vehicles, and the operation of a program to subsidize repair costs of some vehicles identified by remote sensing.

Statutory Authority: §§ 46.2-1178.1, 46.2-1178.2 and 46.2-1180 of the Code of Virginia.

Contact: Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail mlmajor@deq.virginia.gov.

† **November 3, 2004 - 11 a.m.** -- Open Meeting
Virginia Beach area; location to be announced.

The annual meeting of the State Air Pollution Control Board and State Advisory Board on Air Pollution.

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.virginia.gov.


ALCOHOLIC BEVERAGE CONTROL BOARD

August 16, 2004 - 9 a.m. -- Open Meeting


August 30, 2004 - 9 a.m. -- Open Meeting

September 13, 2004 - 9 a.m. -- Open Meeting

September 27, 2004 - 9 a.m. -- Open Meeting

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

A meeting to receive and discuss reports and activities from staff members and to discuss other matters not yet determined.

Contact: W. Curtis Coleburn, III, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY , e-mail wccolen@abc.state.va.us.

September 27, 2004 - 11 a.m. -- Public Hearing
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.


September 27, 2004 - 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 Alcoholic Beverage Control Board intends to amend regulations entitled **3 VAC 5-40, Requirements for Product Approval**. The purpose of the proposed action is to remove certification and chemical analysis requirements for new beer and wine products proposed for sale in Virginia and allow the use of resealable "growlers" for the sale of beer in all on- and off-premises beer retail establishments.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Contact: W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

September 7, 2004 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. 

Calendar of Events

A quarterly meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Alzheimer's Disease and Related Disorders Commission, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail janet.honeycutt@vda.virginia.gov.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

† **August 10, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Landscape Architects Section to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

† **August 19, 2004 - 3 p.m.** -- Open Meeting
† **September 9, 2004 - 2 p.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Suite 453, Richmond, Virginia. ♿

A meeting to conduct an informal fact-finding conference.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

† **September 9, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified

Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

September 3, 2004 - 10 a.m. -- Open Meeting
October 1, 2004 - 10 a.m. -- Open Meeting
† **November 5, 2004 - 10 a.m.** -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. ♿

A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS forms at www.dgs.state.va.us. Request Submittal Form #DGS-30-905 or DGS Submittal Instructions Form #DGS-30-906.

Contact: Richard L. Ford, AIA Chairman, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0329, toll free (804) 786-6152, or e-mail rford@comarchs.com.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

August 19, 2004 - 9 a.m. -- Open Meeting
† **November 3, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business.

Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail alhi@dpor.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

August 19, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly business meeting to include 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 Audiology and Speech-Language Pathology, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

August 19, 2004 - Noon -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to hear possible violations of the laws and regulations governing the practice of audiology and speech-language pathology.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

VIRGINIA AVIATION BOARD

† **August 25, 2004 - 1:30 p.m.** -- Open Meeting

† **August 26, 2004 - 9 a.m.** -- Open Meeting

† **August 27, 2004 - 9 a.m.** -- Open Meeting

The Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke, Virginia. ♿

The 2004 Aviation Conference. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed.

Contact: Carolyn H. Toth, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3637, FAX (804) 236-3635, e-mail carolyn.toth@doav.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

† **August 24, 2004 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ♿

A meeting to conduct an informal fact-finding conference.

Contact: William H. Ferguson, II, Assistant Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8575, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.state.va.us.

September 27, 2004 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting to consider regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or 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: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.virginia.gov.

CHARITABLE GAMING BOARD

September 14, 2004 - 10 a.m. -- Open Meeting

Science Museum of Virginia, 2500 West Broad Street, Discovery Room, Richmond, Virginia. ♿

A general meeting. An agenda will be posted on the agency website.

Contact: Frances C. Jones, Office Manager, Department of Charitable Gaming, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-3014, FAX (804) 786-1079, e-mail Frances.Jones@dcg.virginia.gov.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **August 10, 2004 - 10 a.m.** -- Open Meeting

Chesapeake Bay Local Assistance Department, James Monroe Building, 101 North 14th Street, 17th Floor, Conference Room, Richmond, Virginia. ♿

The Northern Area Review Committee will conduct general business, including local Chesapeake Bay Preservation Area programs for the northern area.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail carolyn.elliott@cblad.virginia.gov.

† **August 10, 2004 - 2 p.m.** -- Open Meeting

Chesapeake Bay Local Assistance Department, James Monroe Building, 101 North 14th Street, 17th Floor, Conference Room, Richmond, Virginia. ♿

The Southern Area Review Committee will conduct general business, including local Chesapeake Bay Preservation Area programs for the southern area.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail carolyn.elliott@cblad.virginia.gov.

STATE BOARD FOR COMMUNITY COLLEGES


September 8, 2004 - 1:30 p.m. -- Open Meeting

James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia. ♿


Meetings of the Academic, Student Affairs and Workforce Committee, the Audit Committee, and the Budget and Finance Committee. The Facilities Committee and the Personnel Committee will meet at 3 p.m. The Executive Committee will meet at 4:30 p.m.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, VCCS, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎


Calendar of Events

September 9, 2004 - 9 a.m. -- Open Meeting
James Monroe Building, 101 N. 14th St., Godwin-Hamel Board Room, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the full board. Public comment may be received at the beginning of the meeting upon notification at least five working days prior to the meeting.

Contact: D. Susan Hayden, Director of Public Affairs, State Board for Community Colleges, Virginia Community College System, 15th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 


COMPENSATION BOARD

August 18, 2004 - 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 cindy.waddell@scb.virginia.gov.

DEPARTMENT OF CONSERVATION AND RECREATION

† **August 10, 2004 - 6:30 p.m.** -- Open Meeting
Williamsburg Regional Library, 7770 Croaker Road, Community Room, Williamsburg, Virginia. 

A meeting to present the draft master plan for the York River to the public and obtain input.

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 robert.munson@dcr.virginia.gov.

August 11, 2004 - 7 p.m. -- Open Meeting


August 25, 2004 - 4 p.m. -- Open Meeting

September 15, 2004 - 7 p.m. -- Open Meeting
Appomattox County Community Center, 220 Community Lane, Appomattox, Virginia.

A meeting of the Holliday Lake State Park Master Plan Advisory Committee to continue the development of a new park master plan.

Contact: Scott Bedwell, Environmental Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 371-2594, FAX (804) 371-7899, e-mail sbedwell@dcr.state.va.us.

† **August 18, 2004 - 9:30 a.m.** -- Open Meeting

† **September 9, 2004 - 9:30 a.m.** -- Open Meeting
University of Virginia/Virginia Tech Richmond Center, 2810 North Parham Road, Suite 300, Richmond, Virginia. 

A meeting of the Technical Advisory Committee to assist the department in considering Nutrient Management Training Certification Regulations.

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

† **September 8, 2004 - 4 p.m.** -- Open Meeting

† **October 6, 2004 - 7 p.m.** -- Open Meeting
Westmoreland State Park Conference Center, 1650 State Park Road, Montross, Virginia.

A meeting to discuss input from the August 4, 2004, public meeting and future park development as the committee continues work on development of a new park master plan for Westmoreland State Park.

Contact: Bill Conkle, Park Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-5492, FAX (804) 371-7899, e-mail william.conkle@dcr.virginia.gov.

Virginia Scenic River Board

† **September 23, 2004 - 10 a.m.** -- Open Meeting
Loudoun County Government Center, Lovettsville Room, 1 Harrison Street, S.E., Leesburg, Virginia.

A regular business meeting hosted by the Goose Creek Scenic River Advisory Committee.

Contact: Leon E. App, Chief Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

Virginia Soil and Water Conservation Board

† **September 16, 2004 - 9:30 a.m.** -- Open Meeting
Natural Resources Conservation Service, 1606 Santa Rosa Road, Richmond, Virginia.

A regular business meeting.

Contact: Leon E. App, Chief Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.


BOARD FOR CONTRACTORS

† **August 10, 2004 - 9 a.m.** -- Open Meeting

† **August 12, 2004 - 9 a.m.** -- Open Meeting

† **August 17, 2004 - 9 a.m.** -- Open Meeting

† **August 26, 2004 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

Informal fact-finding conferences.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230,

telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.state.va.us.

August 11, 2004 - 10 a.m. -- Canceled
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Tradesman and Education Committee to conduct committee business has been canceled.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

August 24, 2004 - 9 a.m. -- Open Meeting
October 19, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A regular scheduled meeting to address policy and procedural issues, review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session. The department fully complies with the Americans with Disabilities Act.

Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.virginia.gov.

† August 25, 2004 - 2 p.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

† October 8, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Contractors intends to amend regulations entitled **18 VAC 50-22, Board for Contractors Rules and Regulations**, and **18 VAC 50-30, Tradesman Rules and Regulations**. The purpose of the proposed action is to adjust the licensing fees for contractors and tradesmen regulated by the Board for Contractors.

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

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

BOARD OF COUNSELING

August 26, 2004 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
Board Room 1, Richmond, Virginia. ♿

† November 4, 2004 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
Board Room 3, Richmond, Virginia. ♿

A meeting of the Credential Review Committee to review applicants' credentials for licensure.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

August 27, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 1, Richmond, Virginia. ♿

† November 5, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 3, Richmond, Virginia. ♿

A business meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

September 9, 2004 - 9 a.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia.

September 10, 2004 - 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 Criminal Justice Services intends to amend regulations entitled **6 VAC 20-180, Crime Prevention Specialists**. The purpose of the proposed action is to expand the program to allow the chief executive of any local, state or federal government agency to designate staff who serve in law-enforcement, crime prevention or criminal justice capacities to become certified as crime prevention specialists. The current law restricts certification to staff from local and state law-enforcement agencies.

Statutory Authority: §§ 9.1-102 and 9.1-161 of the Code of Virginia.

Contact: Tami Wyrick, Program Analyst and Grants Coordinator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-5664, FAX (804) 692-0948 or e-mail twyrick@dcjs.state.va.us.

September 9, 2004 - 11 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia. ♿

A general business meeting.

Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, Eighth St. Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219,

Calendar of Events

telephone (804) 786-8003, FAX (804) 786-0410, e-mail jkirkendall@dcjs.state.va.us.


BOARD OF DENTISTRY

August 13, 2004 - 9 a.m. -- Open Meeting

August 20, 2004 - 9 a.m. -- Open Meeting


Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A Special Conference Committee will meet to hold informal conferences. There will not be a public comment period.


Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

September 10, 2004 - 9 a.m. -- Open Meeting

NOTE: CHANGE IN MEETING LOCATION

Norfolk Waterside Marriott, 235 East Main Street, Elizabeth Room, Norfolk, Virginia. 

A meeting to discuss regular board business. There will be a public comment period at the start of the meeting.


Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

August 19, 2004 - 11 a.m. -- Open Meeting

September 16, 2004 - 11 a.m. -- Open Meeting

October 21, 2004 - 11 a.m. -- Open Meeting

Department of General Services, Eighth Street Office Building, 3rd Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A monthly meeting to review requests submitted by localities to use design-build or construction-management-type contracts. Contact the Division of Engineering and Building to confirm the meeting.

Contact: Rhonda M. Bishton, Administrative Assistant, Department of General Services, 805 E. Broad Street, Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/, or e-mail rbishton@dgs.state.va.us.

BOARD OF EDUCATION

September 22, 2004 - 9 a.m. -- Open Meeting

† **October 27, 2004 - 9 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the board. The public is urged to confirm arrangements prior to each meeting by

viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency at least 72 hours in advance. Public comment will be received.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

September 22, 2004 - 11 a.m. -- Public Hearing

James Monroe Building, 101 North 14th Street, Conference Rooms C and D, Richmond, Virginia.

September 25, 2004 - 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 Education intends to adopt regulations entitled **8 VAC 20-690, Regulations for Scoliosis Screening Program**. The purpose of the proposed action is to implement § 22.1-273.1 of the Code of Virginia, which directs the Board of Education to promulgate regulations for the implementation of scoliosis screenings for pupils in grades five through 10 or a parent informational program for such parents. The regulation (i) requires training for school personnel and volunteers who conduct the screenings; (ii) provides procedures for the notification of parents when evidence of scoliosis is detected; and (iii) mandates a parent education program describing the purpose and need for scoliosis screening.

Statutory Authority: § 22.1-273.1 of the Code of Virginia.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **August 10, 2004 - 7 p.m.** -- Open Meeting

Appalachian Cultural Arts Center, Appalachia, Virginia. 


The first public meeting on the development of benthic and bacteria TMDLs for Callahan Creek in Wise County. The public notice will appear in the July 26, 2004 Virginia Register and the comment period runs from July 26 until September 13, 2004.

Contact: Nancy T. Norton, Department of Environmental Quality, Department of Environmental Quality, 355 Deadmore Street Abingdon, VA 24210, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.


† **August 11, 2004 - 7 p.m.** -- Open Meeting
Virginia Municipal Building, Constitution Road, Pennington Gap, Virginia.


The first public meeting on the development of bacteria and benthic TMDLs for Straight Creek and tributaries in Lee County. The public notice appeared in the July 26, 2004, Virginia Register and the public comment period will run from July 26 until September 13, 2004.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24210, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

† **August 18, 2004 - 1 p.m.** -- Open Meeting
Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 


A meeting for invited stakeholders and other interested public for a briefing on the efforts of agency staff and the Academic Advisory Committee on Freshwater Nutrient Criteria and to consult with the stakeholders on these efforts.

Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, (804) 698-4021/TTY , e-mail jwggregory@deq.virginia.gov.

† **August 19, 2004 - 7 p.m.** -- Open Meeting
Haysi Town Hall, Haysi, Virginia. 

The first public meeting on the development of a benthic TMDL for Russell Prater Creek in Buchanan and Dickenson Counties. The public notice appeared in the Virginia Register on July 26, 2004. The public comment period will run from July 26, 2004, until September 20, 2004.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24210, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

† **September 9, 2004 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the Community Involvement Task Force.


Contact: Bill Hayden, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4447, FAX (804) 698-4346, e-mail wphayden@deq.virginia.gov.

† **September 24, 2004 - 10:30 a.m.** -- Open Meeting
Henrico Training Center, Parham and Shrader Roads, Glen Allen, Virginia.

A regular meeting of the Recycling Markets Development Council.


Contact: Michael P. Benedetto, Tidewater Fibre Corp., 1958 Diamond Hill Road, Chesapeake, VA 23324, telephone (757) 543-5766, e-mail mike@tfcrcycling.com.

VIRGINIA FIRE SERVICES BOARD

August 20, 2004 - 1 p.m. -- Open Meeting
Clarion Hotel Roanoke Airport, 3315 Ordway Drive, NW, Classroom 3, Roanoke, Virginia.  (Interpreter for the deaf provided upon request)

Meetings of the Fire Education and Training Committee at 1 p.m.; Fire Prevention and Control Committee at 2:30 p.m.; and Administration, Policy and Finance Committee at 3:30 p.m.

Contact: Christy King, Policy, Planning and Legislative Affairs Manager, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@vdfp.state.va.us.

August 21, 2004 - 9 a.m. -- Open Meeting
Clarion Hotel Roanoke Airport, 3315 Ordway Drive, NW, Classroom 3, Roanoke, Virginia.  (Interpreter for the deaf provided upon request)


A meeting of the full board.

Contact: Christy King, Policy, Planning and Legislative Affairs Manager, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@vdfp.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS


September 7, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A quarterly business meeting to include 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, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

October 5, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting of the Task Force on Inspection Process to review current inspection procedures for funeral homes.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

BOARD OF GAME AND INLAND FISHERIES

August 19, 2004 - 9 a.m. -- Public Hearing
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Calendar of Events

The board will meet and receive staff's recommendations for migratory waterfowl (ducks and coots, geese and brant, swan, gallinules and moorhens) and falconry seasons and bag limits based on frameworks provided by the U.S. Fish and Wildlife Service. It will then solicit and hear comments from the public in a public hearing, at which time any interested citizen present shall be heard, and adopt 2004-2005 seasons and bag limits for those species. The board intends to consider for final adoption regulation amendments proposed on June 25, 2004, to (i) establish an annual hunting stamp required to hunt on private lands managed by the department through a lease agreement or similar memorandum of understanding and (ii) define waterfowl blinds. A public comment period on the proposed regulation amendments opened June 25 and will close August 19, 2004; to ensure the board has adequate opportunity to review written comments, however, they should be received by the Department of Game and Inland Fisheries no later than August 12, 2004. At the August 19, 2004, meeting, the board will solicit comments from the public in a public hearing, at which time any interested citizen present shall be heard; it will receive staff's recommendations regarding final adoption of amendments; and it then will determine whether the amendments proposed on June 25 will be adopted as final regulations. The board reserves the right to adopt final amendments that may be more liberal than, or more stringent than, the regulations currently in effect or the regulation amendments proposed at the June 25, 2004, meeting, as necessary for the proper management of wildlife resources. The board may also: review possible proposals for legislation for the 2005 Session of the General Assembly; discuss general and administrative issues; hold a closed session at some time during the meeting; and elect to hold a dinner Wednesday evening, August 18, or after the meeting on Thursday, August 19, at a location and time to be determined.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail regcomments@dgif.state.va.us.

BOARD FOR GEOLOGY

† **September 23, 2004 - 10 a.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4 West, Richmond, Virginia. ☎

† **October 8, 2004** - 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 Geology intends to amend regulations entitled **18 VAC 70-20, Rules and Regulations for the Virginia Board for Geology**. The purpose of the proposed action is to delete language redundant to the board's statutory authority; amend the language establishing the fee for the certification examination; amend the qualifications for certification to more clearly articulate the requirements that must be fulfilled prior to qualifying for certification; amend the

certification by reciprocity standards; add a section requiring the board to be notified in the event of a change in name or address of a regulant; and amend the grounds for certification denial or disciplinary action as the result of a criminal conviction.

Statutory Authority: §§ 54.1-201 and 54.1-1402 of the Code of Virginia.

Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128 or e-mail geology@dpor.virginia.gov.

October 13, 2004 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail geology@dpor.state.va.us.

STATE BOARD OF HEALTH

† **October 8, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to **repeal** regulations entitled **12 VAC 5-390, Regulations for the Licensure of Hospices**, and **adopt** regulations entitled **12 VAC 5-391, Regulations for the Licensure of Hospices**. The purpose of the proposed action is to comprehensively amend the regulations governing hospice care.

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Contact: Carrie Eddy, Department of Health, Center for Quality Health Care, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100, FAX (804) 367-2206 or e-mail carrie.eddy@vdh.virginia.gov.

DEPARTMENT OF HEALTH

August 17, 2004 - 7 p.m. -- Public Hearing
Warrenton Community Center, 430 East Shirley Avenue, Warrenton, Virginia.

August 18, 2004 - 7 p.m. -- Public Hearing
Henrico Training Center, 7701 East Parham Road, Room 2032, Richmond, Virginia.

August 19, 2004 - 7 p.m. -- Public Hearing
Prince Edward County Courthouse, 124 North Main Street, Farmville, Virginia.


September 24, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health intends to amend regulations entitled **12 VAC 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to provide requirements for (i) posting of information signs at land application sites; (ii) evidence of land applier financial responsibility; (iii) notifying local government of operation schedules; (iv) spill prevention and response plans; and (v) communicating information on complaints about land application of biosolids.

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

Contact: C.M. Sawyer, P.E., Director, Division of Wastewater Engineering, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475 or email cal.sawyer@vdh.virginia.gov.

† **August 25, 2004 - 10 a.m.** -- Open Meeting

† **September 15, 2004 - 10 a.m.** -- Open Meeting
Virginia Farm Bureau, 12580 West Creek Parkway, Richmond, Virginia. 

A meeting of representatives of state agencies, land appliers, local governments and municipalities, agricultural interests and other individuals to discuss the development of regulatory requirements for the training and certification of biosolids use land application field staff.

Contact: C.M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475, e-mail cal.sawyer@vdh.virginia.gov.

October 21, 2004 - 9 a.m. -- Open Meeting

October 22, 2004 - 9 a.m. -- Open Meeting
Richmond, Virginia.

A two-day quarterly board meeting.

Contact: Margot Fritts, VDH/Office of Health Policy and Planning, Department of Health, 109 Governor St., 10th Floor, Richmond, VA 23219, telephone (804) 864-7428, FAX (804) 864-7440, e-mail margot.fritts@vdh.virginia.gov.

BOARD OF HEALTH PROFESSIONS

August 13, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Health Professions intends to adopt regulations entitled **18 VAC 75-40, Regulations Governing the Criteria for Certification of Dialysis Technicians**. The purpose of the proposed action is to establish the criteria for certification as a dialysis technician.

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


Public comments may be submitted until August 13, 2004, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St.,


Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email Elaine.yeatts@dhp.virginia.gov.

DEPARTMENT OF HEALTH PROFESSIONS

† **August 18, 2004 - 9 a.m.** -- Public Hearing


Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. 

A public hearing of the Regulatory Research Committee pursuant to its study into the need to regulate directors of assisted living facilities. Although general comment related to assisted living oversight is welcome, the primary focus of the hearing is to obtain information relating to public health and safety issues, the fiscal impact that may result from regulation of this group, and how the activities of the current state agencies that deal with assisted living-related issues may be affected. The workplan for this study is located on the agency website at www.dhp.virginia.gov under Law and Policy, Legislative Studies. Written comment will be received through August 31, 2004.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7691, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.virginia.gov.

August 20, 2004 - 9 a.m. -- Open Meeting


October 8, 2004 - 9 a.m. -- Open Meeting

Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 

A meeting of the Intervention Program Committee for the Health Practitioners' Intervention Program (HPIP).

Contact: Donna P. Whitney, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9424, FAX (804) 662-7358, e-mail donna.whitney@dhp.virginia.gov.

September 8, 2004 - 11 a.m. -- Open Meeting

Virginia State Forensic Science Building, 6600 Northside High School Road, Roanoke, Virginia. 

A working meeting of the Advisory Committee Prescription Monitoring Program for the purpose of reviewing data collected for the Program Evaluation Workplan and planning for a fall conference. Public comments will be received during this meeting.

Contact: Ralph Orr, Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9129, FAX (804) 662-9240.

BOARD FOR HEARING AID SPECIALISTS

September 24, 2004 - 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 Hearing Aid Specialists intends to amend regulations entitled **18 VAC 80-10, Public**

Calendar of Events

Participation Guidelines. The purpose of the proposed action is to update the Public Participation Guidelines, which provide the process through which the public has access to the regulatory review process. The amendments further increase the agency's efficiency in seeking public input into the regulatory process.

Statutory Authority: §§ 2.2-4007 and 54.1-201 of the Code of Virginia.

Contact: Karen W. O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail Karen.O'Neal@dpor.virginia.gov.

† **November 8, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting to consider regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ♿, e-mail hearingaidspec@dpor.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† **August 27, 2004 - 10 a.m.** -- Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia. ♿

A regular business meeting of the board.

Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY ♿, e-mail steve.calhoun@dhcd.virginia.gov.

INNOVATIVE TECHNOLOGY AUTHORITY

† **August 18, 2004 - 10 a.m.** -- Open Meeting
Virginia Tech, 2100 Torgersen Hall, Torgersen Boardroom, Blacksburg, Virginia. ♿

A meeting to elect officers.

Contact: June Portch, Operations Manager, Innovative Technology Authority, 2214 Rock Hill Rd., Herndon, VA 20170, telephone (703) 689-3049, FAX (703) 464-1708, e-mail jportch@cit.org.

VIRGINIA INTERAGENCY COORDINATING COUNCIL

† **September 8, 2004 - 9:30 a.m.** -- Open Meeting
Henrico Area Mental Health, 10299 Woodman Road, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, as lead agency for Part C (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion focuses on issues related to Virginia's implementation of the Part C program.

Contact: LaKeisha White, Part C Office Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 9th Floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710, FAX (804) 371-7959.

JAMESTOWN-YORKTOWN FOUNDATION

† **October 6, 2004 - Noon** -- Open Meeting
The Library of Virginia, 800 East Broad Street, Conference Rooms A and B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Jamestown 2007 Steering Committee.

Contact: Stacy Ruckman, Administrative Office Manager, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4253, FAX (757) 253-5299, (757) 253-5110/TTY ♿, e-mail sruckman@jyf.state.va.us.

BOARD OF JUVENILE JUSTICE


† **September 9, 2004 - 10 a.m.** -- Public Hearing
Cedar Lodge Training Facility, 1701 Old Bon Air Road, Richmond, Virginia.

† **October 15, 2004** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Juvenile Justice intends to amend regulations entitled **6 VAC 35-140, Standards for Juvenile Residential Facilities**. As a result of the mandated periodic review of this regulation, and through discussions with the Virginia Commission on Youth and the superintendents of juvenile detention facilities, the department recommends that the regulation be amended to include additional standards for post-dispositional programs as mandated by the General Assembly in the 2000 Appropriations Act and § 16.1-284. 1 D of the Code of Virginia, which states: "Standards for these facilities shall require juveniles placed pursuant to this section for a period which exceeds 30 calendar days to be provided separate services for their rehabilitation, consistent with the intent of this section."

Statutory Authority: §§ 16.1-309.9, 66-10 and 66-25.1 of the Code of Virginia.


Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail carigndr@djj.state.va.us.

† **September 9, 2004 - 10 a.m.** -- Open Meeting
Cedar Lodge Training Facility, 1701 Old Bon Air Road, Richmond, Virginia. 


Committees of the board (Secure Services Committee and Non-Secure Services Committee) meet at 9 a.m. to receive certification audit reports. The full board meets at 10 a.m. to take certification action and to hear comments from the public on proposed changes to regulations governing juvenile residential facilities.

Contact: Donald Carignan, Regulatory Coordinator, State Board of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail carigndr@djj.state.va.us.


DEPARTMENT OF LABOR AND INDUSTRY

† **September 16, 2004 - 10 a.m.** -- Open Meeting
Confederate Hills Recreation Building, 302 Lee Avenue, Highland Springs, Virginia.  (Interpreter for the deaf provided upon request)


A quarterly meeting of the Virginia Apprenticeship Council.

Contact: Beverley Donati, Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail beverley.donati@doli.virginia.gov.


COMMISSION ON LOCAL GOVERNMENT

† **September 13, 2004 - 10 a.m.** -- Open Meeting
The Jackson Center, 501 North 2nd Street, 1st Floor Board Room, Richmond, Virginia. 


A regular meeting.

Contact: Ted McCormack, Associate Director, Commission on Local Government, 501 N. Second St., Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, (804) 828-1120/TTY , e-mail Ted.Mccormack@dhcd.virginia.gov.

VIRGINIA MANUFACTURED HOUSING BOARD

August 19, 2004 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting to receive and address complaints against manufactured housing licensees, review claims to the Transaction Recovery Fund, and carry out administration of the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, State Building Code Administrator, Virginia Manufactured Housing Board, 501 N. 2nd Street, Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail Curtis.McIver@dhcd.virginia.gov.


MARINE RESOURCES COMMISSION

† **August 11, 2004 - 10 a.m.** -- Public Hearing
Lafayette High School, James City County, Virginia.


A public hearing related to the King William Reservoir outtake permit application. The meeting will continue at 10 a.m. on August 12, 2004, if necessary. See http://www.mrc.virginia.gov/pn_kwr041004.htm for further information.

Contact: Jane McCroskey, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2215, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY , e-mail jmccroskey@mrc.state.va.us.


BOARD OF MEDICAL ASSISTANCE SERVICES

September 14, 2004 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. 


A quarterly meeting.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY , e-mail nancy.malczewski@dmas.virginia.gov.


DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 17, 2004 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. 

A meeting of the Pharmacy Liaison Committee to discuss current pharmacy issues and programs.

Contact: Javier Menendez, RPh, Pharmacy Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300 Richmond, VA 23219, telephone (804) 786-2196, (800) 343-0634/TTY , e-mail javier.menendez@dmas.virginia.gov.

August 23, 2004 - 9 a.m. -- Canceled

† **September 20, 2004 - 9 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Board Room, 13th Floor, Richmond, Virginia. 

A meeting of the Pharmacy and Therapeutics Committee to conduct the annual review of Phase I PDL drug classes.

Contact: Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone

Calendar of Events

(804) 786-4112, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail adrienne.fegans@dmas.virginia.gov.

August 27, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to conform the Medallion II regulations to the Balanced Budget Act of 1997, and to update these regulations with respect to the Medallion waiver and current program practices.

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

Public comments may be submitted until August 27, 2004, to Tammy Driscoll, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact: Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

August 27, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-120, Waivered Services**. The purpose of the proposed action is to conform the Medallion regulations to the Balanced Budget Act of 1997, and to update these regulations with respect to the Medallion waiver and current program practices.

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

Public comments may be submitted until August 27, 2004, to Alissa Nashwinter, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact: Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680 or e-mail Brian.McCormick@dmas.virginia.gov.

September 10, 2004 - 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 30-40, Eligibility Conditions and Requirements**. The purpose of the proposed action is to (i) eliminate the resource test for Low-Income Families with Children and for Individuals Under Age 21 for whom a public agency is assuming full or partial financial responsibility; (ii) eliminate the counting of all earned income of a child younger than age 19 who is a student; and (iii) eliminate the counting of all in-kind support and maintenance received by members of the family and children's covered groups.

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

Contact: Pat Sykes, Eligibility Manager, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail Patricia.sykes@dmas.virginia.gov.

September 15, 2004 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Board Room, Richmond, Virginia. ☎

A meeting of the Medicaid Transportation Advisory Committee to discuss issues and concerns about Medicaid transportation with the committee and the community.

Contact: Donna Garrett, Administrative Assistant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0194, FAX (804) 786-5799, (800) 343-0634/TTY ☎, e-mail donna.garrett@dmas.virginia.gov.

September 24, 2004 - 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 30-10, State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions, and 12 VAC 30-130, Amount, Duration and Scope of Selected Services**. The purpose of the proposed action is to modify the prospective drug utilization review provisions in order to better protect recipients from harmful drug interactions and potential prescription overdoses.

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

Public comments may be submitted until September 24, 2004, to Javier Menendez, R.Ph., Manager, Pharmacy Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov.

September 24, 2004 - 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 **12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**. The purpose of the proposed action is to expand Medicaid covered services in the schools for children in special education.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Item 325 XX and EEE of Chapter 1042 of the 2003 Acts of Assembly.

Public comments may be submitted until September 24, 2004, to Adrienne Fegans, Program Ops Administrator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov.

September 24, 2004 - 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 **12 VAC 30-50, Amount, Duration, and Scope of Medical and Remedial Care Services, 12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care; and 12 VAC 30-130, Amount, Duration and Scope of Selected Services**. The purpose of the proposed action is to promulgate permanent regulations to provide for the Preferred Drug List, Pharmacy and Therapeutics Committee, State Supplemental Rebates for drugs, and Utilization Review of High Drug Thresholds.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Item 325 ZZ of Chapter 1042 of the 2003 Acts of Assembly.

Public comments may be submitted until September 24, 2004, to Adrienne Fegans, Program Ops Administrator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vicki.simmons@dmas.virginia.gov.

Drug Utilization Review Board

† **November 4, 2004 - 2 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. ☎

A regular meeting.

Contact: Javier Menendez, Pharmacy Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300 Richmond, VA 23219, telephone (804) 786-2196, FAX (804) 786-1680, (800) 343-0634/TTY ☎, e-mail jmenende@dmas.state.va.us.

BOARD OF MEDICINE

NOTE: CHANGE IN MEETING TIME

August 11, 2004 - 11:30 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

August 17, 2004 - 9 a.m. -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

August 25, 2004 - 9 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

An informal conference committee 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. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Staff, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.virginia.gov.

August 13, 2004 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

The Executive Committee will consider regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

August 13, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

The full board or panel of the board will convene a formal administrative hearing to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. Further, the board may review cases with staff for case disposition including consideration of consent orders for settlement. The board will meet in open and closed

Calendar of Events

sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler, Renee Dixon, Staff, Board of Medicine, 6603 West Broad Street, Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.virginia.gov.

October 14, 2004 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A meeting to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.state.va.us.

October 14, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

The Credentials Committee will meet to consider applicants for licensure and other matters of the board. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.state.va.us.

October 14, 2004 - 1 p.m. -- Open Meeting

October 15, 2004 - 8 a.m. -- Open Meeting

October 16, 2004 - 8 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, Richmond, Virginia. ♿

Formal hearings and informal conferences 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 board may review cases with other staff members for case disposition including consideration of consent orders for settlement. The board will convene into open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler/Renee Dixon, Staff, Board of Medicine, Alcoa Bldg., Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.virginia.gov.

† October 29, 2004 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

The Legislative Committee will consider regulatory matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.state.va.us.

Advisory Board on Acupuncture

September 22, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of acupuncture. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Athletic Training

September 23, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of athletic training. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Physician Assistants

September 23, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of physician assistants. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Occupational Therapy

September 21, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of occupational therapy. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor,

Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Radiologic Technology

September 22, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of radiologic technology. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Respiratory Care

September 21, 2004 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

A meeting to consider issues related to the regulation of respiratory care. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 24, 2004 - 10 a.m. -- Public Hearing
Jefferson Building, 1220 Bank Street, 9th Floor Conference Room, Richmond, Virginia. ♿

A public hearing to receive comments on the Virginia Community Mental Health Services Performance Partnership Block Grant Application for federal fiscal year 2005. Copies of the application are available for review at the Office of Mental Health Services, Jefferson Building, 10th Floor, Richmond, VA 23219, and at each community services board office. Comments may be made at the hearing or in writing by no later than August 24, 2004, to the Office of the Commissioner, DMHMRSAS, P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact William T. Ferriss, LCSW. Copies of oral presentations should be filed at the time of the hearing.

Contact: William T. Ferriss, LCSW, Office of Mental Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-4837, FAX (804) 371-0091, (804) 371-8977/TTY ☎.

August 24, 2004 - 1 p.m. -- Open Meeting
September 24, 2004 - 9 a.m. -- Open Meeting
October 26, 2004 - 1 p.m. -- Open Meeting
Virginia Housing and Development Authority, 601 Belvidere Street, Richmond, Virginia. ♿

A meeting of the Olmstead Community Integration Implementation Team.

Contact: Viktoria Glenn, Administrative Assistant, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288, telephone (804) 662-7069, FAX (804) 662-7662, e-mail glennvh@drs.state.va.us.

September 8, 2004 - 11 a.m. -- Open Meeting
September 9, 2004 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Olmstead Community Integration Oversight Advisory Committee.

Contact: Viktoria Glenn, Admin. Asst., Department of Mental Health, Mental Retardation and Substance Abuse Services, 8004 Franklin Farms Dr., P.O. Box K300, Richmond, VA 23288, telephone (804) 662-7069, e-mail glennvh@drs.state.va.us.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **August 13, 2004 - 9 a.m.** -- Open Meeting
Catawba Hospital, 5525 Catawba Hospital Drive, Catawba, Virginia. ♿

A regular meeting of board.

Contact: Marlene A. Butler, State Board Secretary, State Mental Health, Mental Retardation and Substance Abuse Services Board, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-7945, FAX (804) 371-2308, e-mail mbutler@dmhmrsas.state.va.us.

STATE MILK COMMISSION

August 25, 2004 - 10:30 a.m. -- Open Meeting
Department of Forestry, Office Building, 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, Washington Bldg., 1100 Bank St., Suite 1019, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.


Calendar of Events

DEPARTMENT OF MINES, MINERALS AND ENERGY


† August 19, 2004 - 10 a.m. -- Open Meeting

Department of Mines, Minerals and Energy, Buchanan-Smith Building, 3405 Mountain Empire Road, U.S. Route 23 South, Big Stone Gap, Virginia.  (Interpreter for the deaf provided upon request)


A meeting of the Governor's Mined Land Reclamation Advisory Committee to review and discuss recent Interstate Mining Compact Commission (IMCC) issues with the coal industry. Public comments will not be received at this meeting. Special accommodations for the disabled will be made available at the public meeting or hearing on request. Anyone needing special accommodations should contact the department at least seven days prior to the meeting or hearing date.

Contact: Leslie S. Vincent, Customer Services Manager, Department of Mines, Minerals and Energy, P.O. Drawer 900 Big Stone Gap, VA 24219, telephone (276) 523-8156, (800) 828-1120/TTY , e-mail les.vincent@dmme.virginia.gov.


† August 26, 2004 - 9:30 a.m. -- Open Meeting

Oxbow Center, 16620 East Riverside Drive, St. Paul, Virginia.  (Interpreter for the deaf provided upon request)


A meeting of the Permit Streamline Standardization and Regulatory Work Group to review temporary cessations, contemporaneous reclamation, valley fills, electronic permitting and other agency copies. Public comments will be received as the last item of the meeting. Special accommodations for the disabled will be made available at the public meeting or hearing on request. Anyone needing special accommodations should contact the department at least seven days prior to the meeting or hearing date.

Contact: Les Vincent, Customer Services Manager, Department of Mines, Minerals and Energy, P.O. Drawer 900 Big Stone Gap, VA 24219, telephone (276) 523-8156, (800) 828-1120/TTY , e-mail les.vincent@dmme.virginia.gov.

† September 8, 2004 - 9:30 a.m. -- Open Meeting

Powell River Project Pavilion, Wise County off State Route 620, NW of Norton, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Virginia Remining Ad Hoc Advisory Work Group to provide updates on pending regulation changes and other remining incentives.

Contact: Bradley C. Lambert, Reclamation Specialist - Remining, Department of Mines, Minerals and Energy, Department P.O. Drawer 900 Big Stone Gap, VA 24219, telephone (276) 523-8286, (800) 828-1120/TTY , e-mail bradley.lambert@dmme.virginia.gov.

September 26, 2004 - 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 Mines, Minerals and Energy intends to amend regulations entitled **4 VAC 25-130, Coal Surface Mining Reclamation Regulations**. The

purpose of the proposed action is to amend alternative bond release procedures to be consistent with performance bond procedures.


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

Public comments may be submitted until September 26, 2004, to Butch Lambert, Reclamation Specialist, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8286.


Contact: Stephen Walz, Regulatory Coordinator, 202 N. 9th St., 8th Floor, Richmond, VA 23219, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail Stephen.Walz@dmme.virginia.gov.

Virginia Gas and Oil Board

† August 17, 2004 - 9 a.m. -- Open Meeting

Southwest Virginia Higher Education Center on the campus of the Virginia Highlands Community College, Abingdon, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to conduct general board business, which includes hearing petitions before the board. The public may address the board on individual items as they are called or at the close of the meeting. Those requiring special assistance should contact the DMME at least one week prior to the meeting date.

Contact: Bob Wilson, Division Director, Department of Mines, Minerals and Energy, 230 Charwood Dr., Abingdon, VA 24212, telephone (276) 676-5423, FAX (804) 692-3237, (800) 828-1120/TTY , e-mail bob.wilson@dmme.virginia.gov.


DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

August 11, 2004 - 8 a.m. -- Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A general business meeting.


Contact: Jacquelin Branche, R. N., Division Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond VA 23269-0001, telephone (804) 497-7188, FAX (804) 367-1604, toll-free (800) 435-5137, (804) 272-9268/TTY , e-mail dmvj3b@dmv.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

September 9, 2004 - 8 a.m. -- Open Meeting

October 5, 2004 - 8 a.m. -- Open Meeting

† November 2, 2004 - 8 a.m. -- Open Meeting

Virginia Museum of Fine Arts, Main Lobby Conference Room, 200 North Boulevard, Richmond, Virginia. 

A meeting for staff to update the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220-4007, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

September 21, 2004 - 1 p.m. -- Open Meeting
Virginia Museum of Fine Arts, CEO Parlor, 200 North Boulevard, Richmond, Virginia. ♿

A meeting for staff to orient new trustees. Public comment will not be heard.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220-4007, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

August 17, 2004 - 9 a.m. -- Open Meeting
August 24, 2004 - 9 a.m. -- Open Meeting
August 30, 2004 - 9 a.m. -- Open Meeting
September 2, 2004 - 9 a.m. -- Open Meeting
October 4, 2004 - 9 a.m. -- Open Meeting
October 12, 2004 - 9 a.m. -- Open Meeting
October 13, 2004 - 9 a.m. -- Open Meeting
October 19, 2004 - 9 a.m. -- Open Meeting
October 26, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

August 31, 2004 - 9 a.m. -- Open Meeting
October 14, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A Special Conference Committee comprised of two or three members of the Virginia Board of Nursing will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.virginia.gov.

September 9, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Nursing Practice Advisory Committee to discuss nursing practice issues.

Contact: Jay P. Douglas, Executive Director, Board of Nursing, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, e-mail nursebd@dhp.virginia.gov.

September 20, 2004 - 9 a.m. -- Open Meeting
September 22, 2004 - 9 a.m. -- Open Meeting
September 23, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 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: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.virginia.gov.

September 21, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

A general business meeting including committee reports, consideration of regulatory action, and disciplinary case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail jay.douglas@dhp.virginia.gov.

JOINT BOARDS OF NURSING AND MEDICINE

August 25, 2004 - 9 a.m. -- Open Meeting
October 20, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Joint Boards of Nursing and Medicine.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, e-mail nursebd@dhp.virginia.gov.

† **September 21, 2004 - 11 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

† **October 8, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Boards of Nursing and Medicine intend to amend regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to clarify that congruency in education, certification and licensure is required and that a graduate degree is necessary for initial licensure; to provide an avenue for licensure to those who may not meet current qualifications but who have been safely practicing in other states as

Calendar of Events


advanced practice nurses; and to update categories of nurse practitioners and names of certifying bodies.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.


Public comments may be submitted until October 8, 2004, to Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email Elaine.yeatts@dhp.virginia.gov.


BOARD OF NURSING HOME ADMINISTRATORS

† **October 13, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia 

A meeting to discuss regular board business. There will be a comment period at the beginning of the meeting.


Contact: Sandra Reen, Executive Director, Board of Nursing Home Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail sandra.reen@dhp.virginia.gov.

OLD DOMINION UNIVERSITY

† **August 16, 2004 - 3 p.m.** -- Open Meeting
† **October 18, 2004 - 3 p.m.** -- Open Meeting
Webb University Center, Old Dominion University, Norfolk, Virginia 

A regular meeting of the Board of Visitors' Executive Committee to discuss business of the board and the institution as determined by the Rector and the President.


Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Old Dominion University, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

† **September 10, 2004 - 1 p.m.** -- Open Meeting
Webb University Center, Old Dominion University, Norfolk, Virginia 


A quarterly meeting of the Board of Visitors to discuss business of the board and the institution as determined by the Rector and the President

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Old Dominion University, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.


BOARD FOR OPTICIANS

October 8, 2004 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 

The board will conduct a general business meeting to consider regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , or e-mail opticians@dpor.virginia.gov.


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September 24, 2004 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 


September 24, 2004 - 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 Opticians intends to amend regulations entitled **18 VAC 100-20, Board for Opticians Regulations**. The purpose of the proposed action is to amend regulations for registration for voluntary practice by out-of-state licensees in accordance with § 54.1-1701.5 of the Code of Virginia.

Statutory Authority: § 54.1-201 of the Code of Virginia and Chapter 740 of the 2002 Acts of Assembly.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8310, FAX (804) 367-6295, (804) 367-9753/TTY , or e-mail opticians@dpor.virginia.gov.


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† **September 24, 2004 - 10 a.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 


† **October 8, 2004** - 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 Opticians intends to amend regulations entitled **18 VAC 100-20, Board for Opticians Regulations**. The purpose of the proposed action is to amend regulations to adjust fees in accordance with the Callahan Act, § 54.1-113 of the Code of Virginia.


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

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8310, FAX (804) 367-6295, (804) 367-9753/TTY , or e-mail opticians@dpor.virginia.gov.

BOARD OF OPTOMETRY

† **August 9, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. 

A meeting of the the TPA Formulary Advisory Committee to develop amendments to the Therapeutic Pharmaceutical Agents Regulations (18 VAC 105-30) relating to the TPA formulary, in keeping with the requirements of HB 856 (Chapter 744 of the 2004 Acts of Assembly). Public comment will be received at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, (804) 662-7197/TTY , e-mail elizabeth.carter@dhp.virginia.gov.

PESTICIDE CONTROL BOARD

† **October 14, 2004 - 9 a.m.** -- Public Hearing
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, Room 204,
Richmond, Virginia.


† **November 1, 2004** - 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 Pesticide Control Board intends to amend regulations entitled **2 VAC 20-40, Rules and Regulations Governing Licensing of Pesticide Businesses by the Department of Agriculture and Consumer Services Operating Under Authority of the Virginia Pesticide Control Act.** The purpose of the proposed action is to review the regulations for effectiveness and continued need. The proposed regulations (i) establish standards for the licensure of pesticide businesses and for the denial, suspension, or revocation of the license; (ii) establish record keeping requirements for licensed pesticide businesses, as a means of ensuring that pesticides are stored and used safely; and (iii) protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.


Contact: W. Wayne Surles, Program Manager, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 371-8598, toll-free 1-800-552-9963, or e-mail wsurles@vdacs.state.va.us.

BOARD OF PHARMACY


† **August 12, 2004 - 9 a.m.** -- Open Meeting
† **August 26, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. 


A Special Conference Committee will discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.


† **August 24, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. 

A panel of the board will discuss disciplinary matters. No public comment will be received.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail scottirussell@dhp.virginia.gov.

† **September 15, 2004 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. 


The Board will consider such regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail scottirussell@dhp.virginia.gov.


BOARD OF PHYSICAL THERAPY

October 15, 2004 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

A quarterly business meeting to include 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, Alcoa Bldg., 6603 West Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

POLYGRAPH EXAMINERS ADVISORY BOARD


September 2, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business. The board fully complies with the Americans with Disabilities Act.


Contact: Eric Olson, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail eric.olson@dpor.virginia.gov.

Calendar of Events

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

September 20, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Conference Room 5W, Richmond, Virginia. 


A quarterly meeting.

Contact: Judy Spiller, Executive Secretary, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537, (804) 367-9753/TTY , e-mail judy.spiller@dpor.virginia.gov.


BOARD OF PSYCHOLOGY

October 12, 2004 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A business meeting to include reports from standing committees and any other disciplinary or regulatory matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.


VIRGINIA PUBLIC BROADCASTING BOARD

† August 18, 2004 - 10 a.m. -- Open Meeting
State Capitol, House Room 4, Richmond, Virginia. 


A regular meeting. Dates for future meetings will be voted on at this meeting. The Ed/Tech Subcommittee will meet following the board meeting.

Contact: Shannon Rainey, Research Assistant, Virginia Public Broadcasting Board, 202 N. 9th St., Richmond, VA 23219, telephone (804) 786-1201.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

September 23, 2004 - 10 a.m. -- Open Meeting
1610 Forest Avenue, Suite 100, Richmond, Virginia. 

A quarterly meeting.

Contact: Terry Raney, Guardianship Coordinator, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY , e-mail traney@vda.virginia.gov.

VIRGINIA RACING COMMISSION

August 13, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Racing Commission intends to promulgate regulations entitled **11 VAC 10-45, Advance Deposit Account Wagering**. The purpose of the proposed action is to establish licensure requirements for individuals and entities conducting advance deposit account wagering in Virginia, including the application and license renewal procedures.

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

Contact: David S. Lermond, Regulatory Coordinator, Virginia Racing Commission, P.O. Box 208, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7408, FAX (804) 966-7422, e-mail christner@vrc.state.va.us.

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September 10, 2004 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Racing Commission intends to promulgate regulations entitled **11 VAC 10-45, Advance Deposit Account Wagering**. The purpose of the proposed action is to establish licensure requirements for individuals and entities conducting advance deposit account wagering in Virginia, including the application and license renewal procedures.


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

Contact: David S. Lermond, Regulatory Coordinator, Virginia Racing Commission, P.O. Box 208, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7422, e-mail David.Lermond@vrc.state.va.us.


REAL ESTATE APPRAISER BOARD

August 17, 2004 - 10 a.m. -- Open Meeting
† November 9, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail Karen.O'Neal@dpor.virginia.gov.

REAL ESTATE BOARD

† August 9, 2004 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 

An informal fact-finding conference.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail Karen.O'Neal@dpor.virginia.gov.

DEPARTMENT OF REHABILITATIVE SERVICES

† **August 19, 2004 - 1 p.m.** -- Open Meeting
Department for the Blind and Vision Impaired, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Disability Services Council regarding the Rehabilitative Services Incentive Fund FY 2005.

Contact: Shirley S. Ferguson, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7070, FAX (804) 662-7696, e-mail fergusss@drs.state.va.us.

VIRGINIA RESOURCES AUTHORITY

August 10, 2004 - 9 a.m. -- Open Meeting
September 21, 2004 - 9 a.m. -- Open Meeting
Eighth and Main Building, 707 East Main Street, 2nd Floor, 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., Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bmcrac@vra.state.va.us.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

August 11, 2004 - 10 a.m. -- Open Meeting
September 15, 2004 - 10 a.m. -- Open Meeting
October 20, 2004 - 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 Sherertz, Secretary to the Board, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7464, FAX (804) 864-7475, e-mail susan.sherertz@vdh.virginia.gov.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **August 18, 2004 - Noon** -- Open Meeting
Department of Business Assistance, 707 East Main Street, 3rd Floor Board Room, Richmond, Virginia. ♿

A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. The meeting time is subject to change depending upon the board's agenda.

Contact: Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8256, FAX (804) 225-3384, toll-free (866) 248-8814, e-mail scott.parsons@dba.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

† **August 18, 2004 - 9 a.m.** -- Open Meeting
† **August 19, 2004 - 9 a.m.** -- Open Meeting
City Center at Oyster Point Fountain Plaza Office Building, 700 Town Center Drive, Newport News, Virginia. ♿

A business meeting.

Contact: Pat Rengnerth, Board Liaison, Office of Legislative and Regulatory Affairs, State Board of Social Services, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY ☎, e-mail patricia.rengnerth@dss.virginia.gov.

† **October 8, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to **repeal** regulations entitled **22 VAC 40-120, Minimum Standards for Licensed Family Day-Care Systems** and **adopt** regulations entitled **22 VAC 40-121, Standards for Licensed Family Day Systems**. The purpose of the proposed action is to repeal the current Minimum Standards for Licensed Family Day-Care Systems (22 VAC 40-120) and replace it with a new regulation, Standards for Licensed Family Day Systems (22 VAC 40-121).

Statutory Authority: §§ 63.2-217, 63.2-1701 and 63.2-1734 of the Code of Virginia.

Contact: Doris Sherrod, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7153, FAX (804) 726-7132 or e-mail doris.sherrod@dss.virginia.gov.

Calendar of Events

† **October 8, 2004** - 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 adopt regulations entitled **22 VAC 40-170, Voluntary Registration of Family Day Homes-Requirements for Contracting Organizations**. The purpose of the proposed action is to update statutory references in Title 63.2; eliminate requirements that have been found to be inefficient or burdensome; clarify contracting organizations' responsibilities; add requirements that establish time frames for submission of reports and for notification of the department of certain events and changes; transfer responsibility for providing certain information to parents and for processing all aspects of adverse enforcement actions from contracting organizations to the department.

Statutory Authority: §§ 63.2-217, 63.2-1704 and 63.2-1734 of the Code of Virginia.

Contact: Doris Sherrod, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7153, FAX (804) 726-7132 or e-mail doris.sherrod@dss.virginia.gov.

† **October 8, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to **repeal** regulations entitled **22 VAC 40-660, Child Day Care Services Policy**, and **adopt** regulations entitled **22 VAC 40-661, Child Care Program**. The purpose of the proposed action is to repeal the current regulation pertaining to the Child Care and Development Fund and replace it with a new regulation. New federal regulations and changes in policies in Virginia necessitate that new regulations be created.

Statutory Authority: §§ 63.2-217, 63.2-319, 63.2-510, 63.2-611, and 63.2-616 of the Code of Virginia; Child Care and Development Block Grant of 1990 as amended by the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) and the Balanced Budget Act of 1997 (P.L. 105-33), as implemented in regulation 45 CFR Parts 98 and 99; the Food Stamp Act of 1977 as amended.

Contact: Mary Ward, Program Consultant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7638, FAX (804) 726-7655 or e-mail mary.ward@dss.virginia.gov.

† **October 8, 2004** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to **repeal** regulations entitled **22 VAC 40-770, Standards and Regulations for Agency Approved Providers**, and **adopt** regulations entitled **22 VAC 40-771, Local Department-Approved Provider Standards**. The purpose of the proposed action is to repeal the existing regulation and replace it with a new regulation. The current regulation addresses standards used by local departments of social services to approve and regulate service providers including adult service providers, child care providers, and adoptive and foster providers.

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

Contact: Sue Murdock, Family Specialist, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7616, FAX (804) 726-7895 or e-mail susan.murdock@dss.virginia.gov.

DEPARTMENT OF TAXATION


State Land Evaluation Advisory Council

September 7, 2004 - 11 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. 

A meeting of the State Land Evaluation Advisory Council to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020, FAX (804) 367-8662, e-mail kmawyer@tax.state.va.us.


VIRGINIA TOBACCO SETTLEMENT FOUNDATION

† **August 31, 2004 - Noon** -- Open Meeting
701 East Franklin Street, Level B-1 Conference Room, Richmond, Virginia. 

A meeting to receive dates for the Program, Marketing and Research Committees.

Contact: Eloise Burke, Senior Executive Assistant, Virginia Tobacco Settlement Foundation, 701 E. Franklin St., Suite 501, Richmond, VA 23219, telephone (804) 786-2523, FAX (804) 225-2272, e-mail eburke@tsf.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD

† **August 10, 2004 - 4 p.m.** -- Public Hearing
Culpeper Train Depot, 109 South Commerce Street, Culpeper, Virginia. 


† **August 11, 2004 - 4 p.m.** -- Public Hearing
Thomas Nelson Community College, Moore Hall, Espada Conference Center, 99 Thomas Nelson Drive, Moore Hall, Hampton, Virginia.

† **August 12, 2004 - 4 p.m.** -- Open Meeting
Hampton Roads Planning District Commission, 723 Woodlake Drive, Chesapeake, Virginia.

A public hearing of the VTrans 2025 Multi-Modal Transportation Policy Committee to receive comments on VDOT's Highway Plan and VDRPT's Rail, Transit and TDM Needs Assessment. Meetings will run from 4 p.m. until 8 p.m. Comments can be provided electronically at www.vtrans.org. For information call 1-866-835-6070. The chairman and five others are members of the CTB.

Contact: Katherine Tracy, Assistant Secretary of the CTB, Commonwealth Transportation Board, Department of Transportation Policy Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-3090, FAX (804) 225-4700, e-mail Katherine.Tracy@virginiadot.org.

TREASURY BOARD

August 18, 2004 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. 

A regular meeting.

Contact: Melissa Mayes, Treasury Board Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 225-3187, e-mail melissa.mayes@trs.state.va.us.

BOARD OF VETERANS SERVICES

† **September 27, 2004 - 1 p.m.** -- Open Meeting
American Legion Building, 1708 Commonwealth Avenue, Richmond, Virginia.

A regular meeting.

Contact: Steven Combs, Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond VA 23219, telephone (804) 786-0286, e-mail steven.combs@dvs.virginia.gov.

DEPARTMENT OF VETERANS SERVICES

† **September 30, 2004 - 11:30 a.m.** -- Open Meeting
Richmond, Virginia; location to be determined.

A meeting of the Veterans Services Foundation.

Contact: Steven Combs, Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond VA 23219, telephone (804) 786-0286, e-mail steven.combs@dvs.virginia.gov.

BOARD OF VETERINARY MEDICINE

† **September 30, 2004 - 8:30 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

† **October 8, 2004** - 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 Veterinary Medicine intends to amend regulations entitled **18 VAC 150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to amend definitions of "immediate and direct supervision" and "surgery" for consistency with current board policies.

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

Public comments may be submitted until October 8, 2004, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or email Elaine.yeatts@dhp.virginia.gov.


BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **August 12, 2004 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. 

An informal fact-finding conference.

Contact: David E. Dick, Assistant Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail wastemgt@dpor.state.va.us.

STATE WATER CONTROL BOARD

August 11, 2004 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the technical advisory committee assisting the department in the reissuance of the general VPDES permit for domestic sewage discharges of less than or equal to 1,000 gallons per day.

Contact: Lily Choi, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4054, FAX (804) 698-4032, e-mail ychoi@deq.virginia.gov.

August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

Calendar of Events

August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk,
Virginia.

September 10, 2004 - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-260, Water Quality
Standards**. The purpose of the proposed action is to
amend the antidegradation policy of the Water Quality
Standards by designating a section of Ragged Island Creek
as an exceptional water.

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

Contact: Jean W. Gregory, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4113, FAX (804) 698-4522 or e-mail [jwgregory@
deq.virginia.gov](mailto:jwgregory@deq.virginia.gov).

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August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional
Office, 3019 Peters Creek Road, Roanoke, Virginia.

August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk,
Virginia.

September 10, 2004 - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-260, Water Quality
Standards**. The purpose of the proposed action is to
amend the antidegradation policy of the Water Quality
Standards by designating a section of Little Stony Creek as
an exceptional water.

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

Contact: Jean W. Gregory, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4113, FAX (804) 698-4522 or e-mail [jwgregory@
deq.virginia.gov](mailto:jwgregory@deq.virginia.gov).

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August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional
Office, 3019 Peters Creek Road, Roanoke, Virginia.

August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk,
Virginia.

September 10, 2004 - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-260, Water Quality
Standards**. The purpose of the proposed action is to
amend the antidegradation policy of the Water Quality
Standards by designating a section of Bottom Creek as an
exceptional water.

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

Contact: Jean W. Gregory, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4113, FAX (804) 698-4522 or e-mail [jwgregory@
deq.virginia.gov](mailto:jwgregory@deq.virginia.gov).

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August 11, 2004 - 7 p.m. -- Public Hearing
Department of Environmental Quality, West Central Regional
Office, 3019 Peters Creek Road, Roanoke, Virginia.

August 12, 2004 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

August 16, 2004 - 7 p.m. -- Public Hearing
Suffolk City Council Chambers, 441 Market Street, Suffolk,
Virginia.

September 10, 2004 - Public comments may be submitted
until this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled **9 VAC 25-260, Water Quality
Standards**. The purpose of the proposed action is to
amend the antidegradation policy of the Water Quality
Standards by designating Lake Drummond and portions of
Brown Mountain Creek, Laurel Fork, North Fork of the
Buffalo River, Pedlar River, Ramseys Draft and Whitetop
Laurel Creek as exceptional waters.

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

Contact: Jean W. Gregory, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4113, FAX (804) 698-4522 or e-mail [jwgregory@
deq.virginia.gov](mailto:jwgregory@deq.virginia.gov).

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August 13, 2004 - 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 25-191, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations**. The purpose of the proposed action is to develop and adopt a general permit regulation to comply with the requirements set forth in 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register, Volume 68, No. 29, dated February 12, 2003. This general permit regulation will govern the authorization to manage pollutants from concentrated animal feeding operations, including storage and land application of animal waste.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1 of the Code of Virginia.

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

August 13, 2004 - 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 25-192, Virginia Pollutant Abatement (VPA) General Permit Regulation for Animal Feeding Operations**. The purpose of the proposed action is to reissue the existing Virginia Pollution Abatement General Permit for Confined Animal Feeding Operations that governs the authorization to manage pollutants from confined animal feeding operations, including storage and land application of animal waste. This action is not related to implementation of the federal CAFO rule.

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

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

August 13, 2004 - 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 25-630, Virginia Pollutant Abatement General Permit for Poultry Waste Management**. The purpose of the proposed action is to amend the VPA general permit for poultry waste management, where applicable, to reflect changes to 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register on February 12, 2003.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.virginia.gov.

† **August 23, 2004 - 8:30 a.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

A meeting of the Steering Committee of the Water Policy Technical Advisory Committee.

Contact: Scott W. Kudlas, State Water Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4456, FAX (804) 698-4347, e-mail swkudlas@deq.virginia.gov.

August 26, 2004 - 3 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

September 10, 2004 - 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 25-660, Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre**. The purpose of the proposed action is to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

August 26, 2004 - 3 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

September 10, 2004 - 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 25-670, Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities**. The purpose of the proposed action is to allow for revisions to the general permit regulation to correct several administrative procedures,

Calendar of Events

clarify application and permitting requirements, and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

August 26, 2004 - 3 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

September 10, 2004 - 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 25-680, Virginia Water Protection General Permit for Linear Transportation Projects**. The purpose of the proposed action is to allow for revisions to the general permit regulation to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.


August 26, 2004 - 3 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

September 10, 2004 - 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 25-690, Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities**. The purpose of the proposed action is to correct several administrative procedures, clarify application and permitting requirements and allow for a more efficient application review process.


Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032 or e-mail egilinsky@deq.virginia.gov.

† **August 27, 2004 - 8:30 a.m.** -- Open Meeting
† **September 13, 2004 - 8:30 a.m.** -- Open Meeting
Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A meeting of the full reconvened Water Policy Technical Advisory Committee.


Contact: Scott W. Kudlas, State Water Control Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4456, FAX (804) 698-4346, e-mail swkudlas@deq.virginia.gov.

August 31, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 


A regular board meeting.

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS


September 14, 2004 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.

Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.virginia.gov.

INDEPENDENT


STATE LOTTERY BOARD

† **August 11, 2004 - 9 a.m.** -- Open Meeting
Doubletree Roanoke Hotel and Conference Center, 110 Shenandoah Avenue, N.E. Roanoke, Virginia. 

A regular meeting. There will be an opportunity for public comment after the meeting is convened. This meeting is in conjunction with the Lottery Sales Conference.

Contact: Frank S. Ferguson, Director, Legislative and Regulatory Affairs, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7901, FAX (804) 692-7905, e-mail ferguson@valottery.state.va.us.

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

† **August 12, 2004 - 10 a.m.** -- Open Meeting
Charlottesville, Virginia; location to be announced. 
(Interpreter for the deaf provided upon request)

A meeting of the PAIMI Advisory Council. Public comment is welcome and will be received at the beginning of the meeting. For those needing interpreter services or other accommodations, please contact Dee Vance.

Contact: Delicia (Dee) Vance, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, Virginia 23230, telephone (804) 662-7099, FAX (804) 662-7057, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail vancedm@vopa.state.va.us.

VIRGINIA RETIREMENT SYSTEM

August 17, 2004 - Noon -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Optional Retirement Plan Advisory Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@vrs.state.va.us

August 18, 2004 - 9 a.m. -- Open Meeting

August 19, 2004 - 9 a.m. -- Open Meeting
Jefferson Hotel, 101 West Franklin Street, Richmond, Virginia. ♿

The Board of Trustees annual retreat.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail lking@vrs.state.va.us.

August 18, 2004 - 11 a.m. -- Open Meeting
Virginia Retirement System Investment Department, Bank of America Building, 1111 East Main Street, Richmond, Virginia. ♿

The following committees will meet:

- 11 a.m. - Investment Advisory Committee
- 2:30 p.m. - Benefits and Actuarial Committee
- 4 p.m. - Administration and Personnel Committee
- 4 p.m. - Audit and Compliance Committee

Contact: Phyllis Henderson, Administrative Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6675, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail phenderson@vrs.state.va.us.

October 6, 2004 - 2:30 p.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Benefits and Actuarial Committee. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219,

telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3124/TTY ☎, e-mail lking@vrs.state.va.us.

October 7, 2004 - 9 a.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 E. Main Street, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

Contact: LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main Street, Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, or e-mail lking@vrs.state.va.us.

LEGISLATIVE

JOINT COMMISSION ON ADMINISTRATIVE RULES

† **September 8, 2004 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A meeting to discuss certain agency regulations.

Contact: Heather K. Butros, Joint Commission on Administrative Rules, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail hbutros@leg.state.va.us.

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **September 13, 2004 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A meeting to review the study on Replacing Income Tax Revenues with Sales and Use Tax Revenues, to review proposed Child Day Care Regulations, and to review DGS Internal Service Funds.

Contact: Trish Bishop, Principal Legislative Analyst, Joint Legislative Audit and Review Commission, General Assembly Bldg., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258, FAX (804) 371-0101, e-mail tbishop@leg.state.va.us.

VIRGINIA CODE COMMISSION

August 18, 2004 - 10 a.m. -- Open Meeting
† **September 15, 2004 - 10 a.m.** -- Open Meeting
† **October 20, 2004 - 10 a.m.** -- Open Meeting
† **November 17, 2004 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿


A meeting to continue with the revisions of Titles 1, 3.1 and 37.1 and to conduct any other business that may come

Calendar of Events

before the commission. A brief public comment period is scheduled at the end of the meeting.


Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

September 16, 2004 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 2nd Floor, Room 250, Richmond, Virginia. 

FOIA and Geographic Information System Subcommittee meeting.


Contact: Lynda Waddill, Administrative Assistant, or Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiacouncil@leg.state.va.us.

September 16, 2004 - 2 p.m. -- Open Meeting
NOTE: CHANGE IN MEETING LOCATION
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 

A regular meeting.


Contact: Lynda Waddill, Administrative Assistant, or Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiacouncil@leg.state.va.us.

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

September 22, 2004 - 1:30 p.m. -- Open Meeting
October 20, 2004 - 1:30 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the JCOTS Nanotechnology Advisory Committee.


Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

August 10, 2004 - 9:30 a.m. -- Open Meeting
September 21, 2004 - 9:30 a.m. -- Open Meeting
October 19, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the JCOTS Computer Crimes Advisory Committee.


Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910

Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

August 17, 2004 - 9:30 a.m. -- Open Meeting
October 5, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 


A meeting of the JCOTS's Integrated Government Advisory Committee.

Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

August 18, 2004 - 1:30 p.m. -- Open Meeting
October 6, 2004 - 1:30 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A meeting of the JCOT's Privacy Advisory Committee.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

September 8, 2004 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 

A full commission meeting to discuss computer security.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, e-mail jcots@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 9

- † Optometry, Board of
- † Real Estate Board

August 10

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- † Chesapeake Bay Local Assistance Board
- † Conservation and Recreation, Department of
- † Contractors, Board for
- † Environmental Quality, Department of Resources Authority, Virginia
- † Technology and Science, Joint Commission on

August 11

- † Conservation and Recreation, Department of
- † Environmental Quality, Department of
- † Lottery Board, State
- † Medicine, Board of
- † Motor Vehicles, Department of
- Medical Advisory Board
- † Sewage Handling and Disposal Appeal Review Board

Water Control Board, State

August 12

- † Contractors, Board for
- † Pharmacy, Board of
- † Protection and Advocacy, Virginia Office for
- † Waste Management Facility Operators, Board for

August 13

- Dentistry, Board of
- Medicine, Board of
- † Mental Health, Mental Retardation and Substance Abuse Services Board, State

August 16

- Alcoholic Beverage Control Board
- † Old Dominion University

August 17

- † Contractors, Board for
- Medical Assistance Services, Department of
 - Pharmacy Liaison Committee
- Medicine, Board of
- † Mines, Minerals and Energy, Department of
 - Virginia Gas and Oil Board
- Nursing, Board of
- Real Estate Appraiser Board
- Retirement System, Virginia
- Technology and Science, Joint Commission on

August 18

- Code Commission, Virginia
- Compensation Board
- † Conservation and Recreation, Department of
- † Environmental Quality, Department of
- † Innovative Technology Authority
- † Public Broadcasting Board, Virginia
- Retirement System, Virginia
- † Small Business Financing Authority, Virginia
- † Social Services, State Board of
- Technology and Science, Joint Commission on
- Treasury Board

August 19

- † Air Pollution Control Board, State
- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Asbestos, Lead, and Home Inspectors, Virginia Board for
- Audiology and Speech-Language Pathology, Board of
- Design-Build/Construction Management Review Board
- † Environmental Quality, Department of
- Manufactured Housing Board, Virginia
- † Mines, Minerals and Energy, Department of
- † Rehabilitative Services, Department of
- Retirement System, Virginia
- † Social Services, State Board of

August 20

- Dentistry, Board of
- Fire Services Board, Virginia
- Health Professions, Department of

August 21

- Fire Services Board, Virginia

August 23

- † Water Control Board, State

August 24

- † Barbers and Cosmetology, Board for
- Contractors, Board for

- Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Nursing, Board of
- † Pharmacy, Board of

August 25

- † Aviation Board, Virginia
- Conservation and Recreation, Department of
- † Health, Department of
- † Medicine, Board of
- Milk Commission, State
- Nursing and Medicine, Joint Boards of

August 26

- † Aviation Board, Virginia
- † Contractors, Board for
- Counseling, Board of
- † Mines, Minerals and Energy, Department of
- † Pharmacy, Board of

August 27

- † Aviation Board, Virginia
- Counseling, Board of
- Housing and Community Development, Board of
- † Water Control Board, State

August 30

- Agricultural Council, Virginia
- Alcoholic Beverage Control Board
- Nursing, Board of

August 31

- Nursing, Board of
- † Tobacco Settlement Foundation, Virginia
- Water Control Board, State

September 2

- Nursing, Board of
- Polygraph Examiners Advisory Board

September 3

- Art and Architectural Review Board

September 7

- Agriculture and Consumer Services, Department of
 - Virginia Horse Industry Board
- Alzheimer's Disease and Related Disorders Commission
- Funeral Directors and Embalmers, Board of
- Taxation, Department of
 - State Land Evaluation Advisory Council

September 8

- † Administrative Rules, Joint Commission on
- † Air Pollution Control Board, State
- Community Colleges, State Board for
- † Conservation and Recreation, Department of
- Health Professions, Department of
- Interagency Coordinating Council, Virginia
- Mental Health, Mental Retardation and Substance Abuse Services, Department of
- † Mines, Minerals and Energy, Department of
- Technology and Science, Joint Commission on

September 9

- † Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Community Colleges, State Board for
- † Conservation and Recreation, Department of
- Criminal Justice Services Board
- † Environmental Quality, Department of
- † Juvenile Justice, State Board of

Calendar of Events

- Mental Health, Mental Retardation and Substance Abuse Services, Department of
Museum of Fine Arts, Virginia
Nursing, Board of
- September 10**
Dentistry, Board of
† Old Dominion University
- September 13**
Alcoholic Beverage Control Board
† Audit and Review Commission, Joint Legislative
† Local Government, Commission on
† Water Control Board, State
- September 14**
Charitable Gaming Board
Medical Assistance Services, Board of
Waterworks and Wastewater Works Operators, Board for
- September 15**
† Code Commission, Virginia
Conservation and Recreation, Department of
† Health, Department of
Medical Assistance Services, Department of
- Medicaid Transportation Advisory Committee
† Pharmacy, Board of
Sewage Handling and Disposal Appeal Review Board
- September 16**
† Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
Design-Build/Construction Management Review Board
Freedom of Information Advisory Council, Virginia
† Labor and Industry, Department of
- September 20**
† Medical Assistance Services, Department of
- Pharmacy and Therapeutics Committee
Nursing, Board of
Professional and Occupational Regulation, Board for
- September 21**
Medicine, Board of
- Advisory Board of Occupational Therapy
- Advisory Board on Respiratory Care
Museum of Fine Arts, Virginia
Nursing, Board of
Resources Authority, Virginia
Technology and Science, Joint Commission on
- September 22**
Education, Board of
Medicine, Board of
- Advisory Board of Acupuncture
- Advisory Board on Radiologic Technology
Nursing, Board of
Technology and Science, Joint Commission on
- September 23**
† Conservation and Recreation, Department of
- Virginia Scenic River Board
Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physician Assistants
Nursing, Board of
Public Guardian and Conservator Advisory Board, Virginia
- September 24**
† Environmental Quality, Department of
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Opticians, Board for
- September 27**
Alcoholic Beverage Control Board
Barbers and Cosmetology, Board for
† Veterans Services, Board of
- September 30**
† Veterans Services, Department of
- October 1**
Art and Architectural Review Board
- October 4**
Nursing, Board of
- October 5**
Funeral Directors and Embalmers, Board of
Museum of Fine Arts, Virginia
Technology and Science, Joint Commission on
- October 6**
† Conservation and Recreation, Department of
Jamestown-Yorktown Foundation
Retirement System, Virginia
Technology and Science, Joint Commission on
- October 7**
Retirement System, Virginia
- October 8**
Health Professions, Department of
Opticians, Board for
- October 12**
Nursing, Board of
Psychology, Board of
- October 13**
Geology, Board for
Nursing, Board of
† Nursing Home Administrators, Board of
- October 14**
Medicine, Board of
Nursing, Board of
- October 15**
Medicine, Board of
Physical Therapy, Board of
- October 16**
Medicine, Board of
- October 18**
† Old Dominion University
- October 19**
Contractors, Board for
Nursing, Board of
Technology and Science, Joint Commission on
- October 20**
† Code Commission, Virginia
Nursing and Medicine, Joint Boards of
Sewage Handling and Disposal Appeal Review Board
Technology and Science, Joint Commission on
- October 21**
Design-Build/Construction Management Review Board
Health, Department of
- October 22**
Health, Department of
- October 26**
Mental Health, Mental Retardation and Substance Abuse Services, Department of
Nursing, Board of
- October 27**
† Education, Board of

October 29

† Medicine, Board of

November 2

† Museum of Fine Arts, Virginia

November 3

† Air Pollution Control Board, State

† Asbestos, Lead, and Home Inspectors, Board for

November 4

† Medical Assistance Services, Department of

- Drug Utilization Review Board

† Counseling, Board of

November 5

† Art and Architectural Review Board

† Counseling, Board of

November 8

† Hearing Aid Specialists, Board for

November 9

† Real Estate Appraiser Board

November 17

† Code Commission, Virginia

September 22

Education, Board of

September 23

† Geology, Board for

September 24

† Opticians, Board for

September 26

† Water Control Board, State

September 27

Alcoholic Beverage Control Board

September 30

† Veterinary Medicine, Board of

October 14

† Pesticide Control Board

PUBLIC HEARINGS

August 10

† Transportation Board, Commonwealth
- VTrans 2025 Multi-Modal Transportation Policy
Committee

August 11

† Transportation Board, Commonwealth
- VTrans 2025 Multi-Modal Transportation Policy
Committee

† Marine Resources Commission
Water Control Board, State

August 12

† Transportation Board, Commonwealth
- VTrans 2025 Multi-Modal Transportation Policy
Committee
Water Control Board, State

August 16

Water Control Board, State

August 17

Health, Department of

August 18

Health, Department of

† Health Professions, Department of

August 19

Game and Inland Fisheries, Board of
Health, Department of

August 24

Mental Health, Mental Retardation and Substance Abuse
Services, Department of

August 25

† Contractors, Board for

August 26

Water Control Board, State

September 9

† Air Pollution Control Board, State

Criminal Justice Services Board

† Juvenile Justice, State Board of

September 21

† Nursing and Medicine, Joint Boards of

Calendar of Events
