



**GOVERNMENT AND REGULATORY REFORM TASK FORCE
INTERIM REPORT
ATTORNEY GENERAL ROBERT F. MCDONNELL
JANUARY 5, 2007**

***COMMONWEALTH of VIRGINIA
Office of the Attorney General
Robert F. McDonnell
Attorney General
900 East Main St
Richmond, Virginia 23219***

Task Force Membership

TASK FORCE MEMBERS:

Jim Beamer, JWB Consulting, Richmond
Jeff Brooke, Attorney, Huff Poole & Mahoney, P.C., Norfolk
Dr. Alvin Bryant, US Army Retired, Surgeon, Hampton
Dan Clemente, CDC Real Estate Holdings, Vienna
Walter Curt, Businessman, Harrisonburg
Gordon Dixon, Director, National Federation of Independent Businesses, Richmond
Dr. Jerry Ellig, Ph.D., Senior Research Fellow, Mercatus Center, Arlington
Frank Genovese, President, The Rothbury Corporation, Richmond
Kevin Gentry, Vice President, Charles G. Koch Charitable Foundation
Nancy Howell Agee, Chief Operating Officer, Carilion Health System, Roanoke
The Honorable Steve Landes, Member, House of Delegates, Weyers Cave
Irene Leech, President, Virginia Citizens Consumer Council, Blacksburg
Jorge Lozano, CEO & President, Condortech Services, Inc., Annandale
Donna Pugh Johnson, President, Virginia Agribusiness Council, Richmond
John Olivieri, President, Associated Development Management Corp., Virginia Beach
Mike Quillen, President and CEO, Alpha Natural Resources, Abingdon
Scott Rigell, Owner/President, Freedom Automotive, Virginia Beach
Tim Robertson, President, Bay Shore Enterprises, Virginia Beach
Mark Rubin, Senior Advisor to the Governor, Richmond
The Honorable Jack Rust, Attorney, Annandale
Larry Sartoris, President, Virginia Hospital and Healthcare Association, Glen Allen
Cliff Schroeder, Sr., President, Chronos, Ltd., Richmond
Rick Sharp, Chairman, Carmax, Inc., Richmond
Brenda Skidmore, Senior Vice President, Suntrust, Richmond
Jacquelyn Stone, Esq., Partner, McGuireWoods, Richmond
Brett Vassey, President & CEO, Virginia Manufacturers Association, Richmond
The Honorable Frank Wagner, Member, State Senate, Virginia Beach
Michel Zajur, Founder/CEO, Virginia Hispanic Chamber of Commerce, Richmond

AGRICULTURE WORKING GROUP

The Honorable William Barlow, Member, House of Delegates, Smithfield
Hobey Bauhan, President, Virginia Poultry Federation, Harrisonburg
John Boyd, President, National Black Farmers' Association, Baskersville
Jonathan Cavin, Farmer, Ewing
Bill Dickinson, Deputy Secretary of Agriculture and Forestry
Lynn Gayle, Farmer, Onancock
Lisa Guthrie, Executive Director, Virginia League of Conservation Voters, Richmond
The Honorable Charlie Hawkins, Member, Senate of Virginia, Chatham
Paul Howe, Executive Vice President, Virginia Forestry Association, Richmond
Bill McKinnon, Executive Secretary, Virginia Cattlemen's Association, Daleville
Martha Moore, Director of Government Relations, Virginia Farm Bureau Federation, Richmond
The Honorable Phil Puckett, Member, State Senate, Tazewell
The Honorable Chris Saxman, Member, House of Delegates, Staunton
Dennis Treacy, Vice President, Environmental and Corporate Affairs, Smithfield Foods, Smithfield
Tucker Watkins, Randolph

SMALL BUSINESS WORKING GROUP

The Honorable Charles Colgan, Member, State Senate, Manassas
Leonard Edloe, Edloe's Pharmacy, Richmond
Rhoda Elliot, President, Bill's Barbecue, Richmond
Randall Seibert, Representative, Virginia Petroleum, Convenience and Grocery Association,
Richmond
Geoff Hinshelwood, Representative, Virginia Manufacturers Association, Hampton
Thomas Johnson, Thomas A. Johnson Furniture Co., Lynchburg
Jack Kreuter, President, Jack Kreuter Jewelers, Richmond
Howard Lee, Esq., Managing Director and Executive Secretary, Cosmos Alliance, Lorton
Lowell Morse, President, Morse and Associates, Inc., Virginia Beach
George Peyton, Vice President, Government Relations, Retail Merchants Association, Richmond
David Smith, Deputy Secretary of Commerce and Trade, Richmond
Ann Sullivan, President, Madison Services Group, Inc., McLean
The Honorable Lee Ware, Member, House of Delegates, Powhatan

HEALTHCARE WORKING GROUP

Mary Lynne Bailey, Vice President, Legal & Government Affairs, VA Healthcare Association,
Richmond
Doug Bevelacqua, Healthcare Consultant, Newport News
William Caldwell, CEO, Retreat Hospital, Richmond
Nancy Davenport-Ennis, CEO & President, National Patient Advocate Foundation, Newport
News
Kimberly Ellison-Taylor, Director of Health Care Technology/Public Sector, Oracle
Teresa Haller, MSN, MBA, RN, President, Virginia Nurses Association, Richmond
Gail Jaspén, Deputy Secretary of Health and Human Resources, Richmond
The Honorable Benjamin Lambert, Member, State Senate, Richmond
The Honorable Stephen Newman, Member, State Senate, Forest
The Honorable John O'Bannon, M.D., Member, House of Delegates, Richmond
Dr. Dianne Reynolds-Cane, M.D., Past President of Virginia Board of Medicine, Glen Allen
Dr. Lou Rossiter, Ph.D., Senior Research Fellow, William and Mary, Williamsburg
Dr. Norris Royston, Jr., M.D., President, Medical Society of Virginia, Warrenton
The Honorable Mark Sickles, Member, House of Delegates, Alexandria
Rebecca Snead, R.Ph., Executive Director, Virginia Pharmacists Association, Richmond
Laura Lee Viergever, Legislative Chairman, Virginia Association of Health Plans, Richmond
Dr. William Ward, D.C., Vice President, Virginia Chiropractic Association, Fredericksburg
The Honorable John Welch, Member, House of Delegates, Virginia Beach
Cal Whitehead, Whitehead Consulting, LLC, Richmond

**** Approved **** (10-04-06)

Review of Regulations – Decision Matrix

In reviewing regulations, the staff and members of the Task Force will take into consideration the following factors:

- Does the regulation have a bona fide purpose that makes sense in the 21st Century?
- Does the regulation exceed its statutory authority?
- Does the regulation conflict with another regulation on the books?
- Is the regulation necessary to protect the health, safety and/or welfare of the citizens of the Commonwealth?
- Do monitoring and enforcement of the regulation impose unreasonable costs on the Commonwealth? If so, can the objective be met by more effective and alternative means?
- Can reporting requirements be fulfilled more effectively through electronic or other means?

If the regulation passes the above tests, it will be considered as a regulation worthy of retention.

If a regulation has been deemed by the above criteria to require further consideration, it will be put into one of four categories:

Modify- The regulation is outdated, overly burdensome, or does not serve a worthwhile or the desired purpose, but the issue can be corrected through changes to the regulation. The Task Force will recommend to the AG that he take steps to have the regulation amended.

Eliminate- The regulation is outdated, overly burdensome, or does not serve a worthwhile or the desired purpose. The Commonwealth is best served by the regulation being repealed and the Task Force will recommend to the AG that he take steps to have the regulation removed.

External Action Required (e.g.-Federal & State Government)- The regulation is in place as a result of a federal or other requirement. The Task Force will recommend to the AG the proper federal agency or branch where to best request relief from these requirements and what type of relief is most appropriate.

Retain- The regulation is troublesome, but circumstances require maintaining it. The Task Force will compile a list of these regulations, but no official action will be taken.

Government and Regulatory Reform Task Force

Attorney General Robert F. McDonnell

--Progress Report of the Working Groups--

- I. General Comments**
 - II. Agriculture Working Group**
 - III. Healthcare Working Group**
 - IV. Small Business Working Group**
 - V. Administrative Process Act Working Group**
 - VI. Looking Forward**
-

I. General Comments

Since the establishment of the Government and Regulatory Reform Task Force, the Working Groups have held multiple meetings to receive and consider recommendations from the Task Force staff, the public, and from within the Working Group. The Working Groups will make formal reports to the Task Force at the conclusion of their work, but this report seeks to provide the Task Force and the Attorney General with an update of these efforts, a summary of the regulations being considered for amendment or modification, and a look forward as to the future activities of the Working Groups.

Each of the Task Force's Working Groups has held meetings attended by members of the Attorney General's Office, the Governor's Office and other Executive branch officials, industry representatives, and members of the public. These meetings each provided opportunities for public input and have been conducted with an emphasis on transparency and openness.

The format of each meeting was as follows:

- Welcome and recognition of any guests
- Introductory remarks by Martin Kent, Counsel to the Attorney General
- Review and vote on approval of the Task Force's last meeting actions (when appropriate)
- Review of regulations recommended for review by the Working Group staff from the Attorney General's office

- Discussion of any proposals by members of the Working Group
 - Public Comment
 - Conclusion
-

II. Agriculture Working Group

The Agriculture Working Group held meetings on:

November 1, 2006

December 13, 2006

This Office has conducted a systematic review of approximately one-half of the Department of Agriculture and Consumer Services (DACS) regulations (2 VAC 5). Based on the review, this Office has made the following recommendations to the Agriculture Working Group:

A. Reducing Burdensome and Unnecessary Regulations

1. Examining the recordkeeping and reporting requirements regarding controlled atmosphere apple storage to see if they are overly burdensome and unnecessary. This regulation requires daily recordkeeping of atmospheric conditions, three day reporting requirement for removal of stored apples and requirement for notice of filling of the room within thirty days. (2 VAC 230-20)
2. Consolidating the rules and regulations governing the production, processing and sale of ice cream, frozen desserts, and similar products (2 VAC 510) in order to reduce the sheer size of the regulations and make them more “user-friendly.”
3. Revising the regulations regarding approval of wines for sale in the Commonwealth in order to eliminate redundant and potentially confusing regulations that are duplicative of federal requirements. The Working Group recommended instead referring to the federal regulations in the state regulation. This recommendation still requires further comment and input from the Alcoholic Beverage Control Board (ABC).

B. Making Regulations More Understandable and “User-Friendly”

1. Clarification of sanitary standard references made in the farm bulk milk pickup tanker and milk transport tank requirements (2 VAC 5-501-80).

2. Clarifications within the interpretation and enforcement section of the milk cooling storage, sampling and transporting regulation (2 VAC 5-501-100) calling for “formal hearing[s]” rather than “conference[s].”
3. Clarifying references to federal regulations in the meat and poultry inspection regulations (2 VAC 5-210-10) as well as adding a preamble to the regulation required by statute.
4. Clarifications to vague references made in the mandatory meat inspection (2 VAC 5-210-30), voluntary inspection (2 VAC 5-210-40), and mandatory poultry inspection (2 VAC 5-210-50) regulations.
5. Clarifications to references made in the regulations governing milk facilities (2 VAC 5-10-500) and equipment (2 VAC 5-510-510) as well as modifications to confusing language in the milk manufacturing regulation (2 VAC 5-531-50).
6. Clarifications to the interpretation and enforcement section of the milk manufacturing regulation (2 VAC 5-531-140).

C. *Technical Corrections*

1. Correcting Code references in the interpretation and enforcement section of the milk cooling storage, sampling and transporting regulation (2 VAC 5-501-100).
2. A typographical change in the frozen dessert sale regulation (2 VAC 5- 510-410).

The following above recommendations were adopted by the Agriculture Working Group have been submitted to the full task force: A-2, B-1, B-2, B-3, B-4, B-5, B-6, C-2 and C-3. Recommendation A-1 was tabled for further analysis and input. As stated above, recommendation A-3 requires further consultation and input from ABC.

III. Healthcare Working Group

The Healthcare Working Group held meetings on:
October 25, 2006
November 28, 2006

This Office has conducted a systematic review of approximately one-third of the regulations Department of Health Professions (DHP) regulations. Based on the review, this Office has made the following recommendations to the Healthcare Working Group.

A. Reducing Burdensome and Unnecessary Regulations

1. Elimination of the regulation governing data collection of nursing workforce information (18 VAC 90-20-36) as the regulation mostly restates the statute. The regulation is required by statute, so to eliminate it would require a statutory change.
2. Review of the regulation governing continuing competency requirements for nurse practitioners (18 VAC 90-30-105, 18 VAC 90-40-55) to determine whether the 1% audit rate best promotes safety, compliance and efficiency as opposed to a potential public database.
3. Review of the process regarding hearings by the Joint Boards of Nursing and Medicine (18 VAC 90-30-230, 18 VAC 90-40-140) to determine if a less burdensome process can be established while maintaining the integrity of the process.
4. Review of the regulations regarding filing of written protocols for licensed nurse practitioners (LNPs) (18 VAC 90-40-90, 18 VAC 90-30-120) to determine if the Commonwealth would be best served by requiring all LNPs to file written protocols or just those seeking prescriptive authority.
5. A slight change to the statute governing education of funeral directors would allow for elimination of the regulation (18 VAC 65-20-235) since the regulation's only purpose is to delegate authority to an outside group.
6. Consideration of whether the regulations for disciplinary actions of funeral directors (18 VAC 65-20-235) should be incorporated in statute to provide for a consolidated reference point. Also proposed was consideration of whether the section dealing with sanctions regulating advertising considering other statutes govern false advertising.
7. Changes to the regulation regarding reports dealing with the Funeral Service Internship Program (18 VAC 65-40-320) to allow for electronic filing of reports in order for ease of compliance and more public information.

B. Making Regulations More Understandable and “User-Friendly”

1. Elimination of duplicative and redundant information in the regulation regarding information filed by oral and maxillofacial surgeons (18 VAC 60-20-260) because much of the regulation is repetitive of the statute.
2. Changes to the regulation providing definitions for nursing regulations (18 VAC 90-20-10) in order to provide consistency between the regulations and the statute.

C. Technical Corrections

1. A change to the regulations governing the nursing education programs (18 VAC 90-20-60) to correct a statutory reference.

D. Other Actions

1. Changes to the regulations regarding dental hygienists (18 VAC 60-20-200) and registration of oral and maxillofacial surgeons (18 VAC 60-20-250) but determined that these proposed changes were discussed and resulted in the compromise solutions that exist currently in the regulation.

The following above recommendation was approved by the Healthcare Working Group and submitted to the full task force: C-1. The following above recommendations were tabled for further review and consultation: A-3, A-4 and D-1. The working group also decided that changes were not necessary for the following above recommendations: A-2, A-5, A-6, A-7, B-1 and B-2. The consensus of the Healthcare Working group was that the benefit of maintaining the current regulations was greater than any benefit provided by the recommended changes.

IV. Small Business Working Group

The Small Business Working Group held meetings on:

November 21, 2006

December 18, 2006

This Office has conducted a systematic review of approximately one-third of the Department of Taxation’s (TAX) regulations (23 VAC 10) that impact small businesses and the Department of Professional and Occupational Regulation’s (DPOR) regulations. TAX recently began a comprehensive review of its regulatory framework, so there are only a few recommendations for this department. Based on the review, this office has made the following recommendations to the Small Business Working Group:

A. Reducing Burdensome and Unnecessary Regulations

1. The Working Group recommended review of the regulation regarding qualifications for a salesperson's license as a business entity (23 VAC 135-20-45) to eliminate redundancies with other regulations.
2. The Working Group discussed possible repeal of the Common Interest Community Management Information Fund Regulations (18 VAC 135-60-10 and 18 VAC 135-60-60) because of lack of purpose, redundancy, cost to users with little benefit to the Commonwealth.
3. The Working Group recommended review of the filing fees required under the condominium registration section (18 VAC 135-30-120) as they are potentially excessive and overly burdensome.

B. Making Regulations More Understandable and "User-Friendly"

1. The Working Group discussed TAX regulations where the statutory record-keeping requirements conflicted with the record-keeping requirement in the regulation. This conflict existed in the Virginia Corn Excise Tax regulation (23 VAC 10-55-50), the Virginia Peanut Excise Tax (23 VAC 10-65-40), the Virginia Soybean Excise Tax (23 VAC 10-75-20), the Virginia Watercraft Sales & Use Tax and Virginia Aircraft Sales & Use Tax (23 VAC 10-230-110). The Department of Taxation will review these requirements as part of their ongoing comprehensive review of TAX regulations.
2. The Working Group discussed potentially confusing regulations governing exemptions under the corporate income tax (23 VAC 10-120-90). This regulation lists some, but not all, of the exemptions provided under statute but provides some information that may be helpful to taxpayers. TAX officials stated that they are working on redrafting this regulation as part of their comprehensive review.
3. The Working Group recommended changes to the regulation providing definitions under the Real Estate Board section (18 VAC 135-20-10) to provide definitions for terms of art that are not defined in the regulation or in statute.
4. The Working Group recommended changes to a potentially confusing section governing real estate broker's licenses (18 VAC 135-20-20) to provide more clarity and make it more "user-friendly."

5. The Working Group recommended review of the real estate license reciprocity regulation (18 VAC 135-20-60) to include the testing requirement included elsewhere in the regulations. Leaving it out of this section could lead to confusion by users as to the requirements for licensees.
6. The Working Group recommended providing consistency to the regulations governing return of terminated licenses (18 VAC 135-20-170) and improper conduct (18 VAC 135-20-260) to provide consistency throughout the regulations.
7. The Working Group recommended changes to a potentially confusing section governing maintenance and management of escrow accounts (18 VAC 135-20-180) to provide more clarity and make it more “user-friendly.”
8. The Working Group recommended changes to the regulation providing definitions under the Fair Housing regulations (18 VAC 135-50-10) to provide definitions for terms of art that are not defined in the regulation or in statute.
9. The Working Group recommended changes to the section detailing real estate practices that are prohibited (18 VAC 135-50-70, 18 VAC 135-50-100) to make it clear that the list of prohibited activities is not all-inclusive and that the statute includes others.
10. The Working Group recommended clarifications to the loan and financial assistance discrimination regulation (18 VAC 135-50-160) to make clear that this section does not include all possible bases for discrimination.
11. The Working Group recommended adding statutory of limitations information to the regulation governing complaints of discriminatory housing practices (18 VAC 135-50-300) to make it more “user-friendly.”
12. The Working Group recommended changes to the regulation providing definitions under the Condominium regulations section (18 VAC 135-30-30) to provide definitions for terms of art that are not defined in the regulation or in statute.
13. The Working Group recommended changes to a number of potentially confusing sections regarding condominium registration (18 VAC 135-30-40, 18 VAC 135-30-130, 18 VAC 135-30-150, 18 VAC 135-30-240, 18 VAC 135-30-250) to provide more clarity and make them more “user-friendly.”

14. The Working Group recommended new language to the regulations governing marketing activities for condominiums (18 VAC 135-30-170) and literature for condominiums (18 VAC 135-30-190) to include guidance on Internet and e-mail marketing.

C. Other Actions

1. The Working Group discussed ongoing changes being discussed to the Board of Accountancy Regulations and statutes. These changes will likely be proposed at the 2007 General Assembly session, so a review of the regulations at this point would not be useful as they may soon become obsolete.

A quorum was not present at the second meeting of the Small Business Working Group so no formal votes were taken and all recommendations made at this meeting are not formal recommendations of the Working Group. Their informal suggestions were forwarded to the Task Force for consideration.

It is the recommendation of the Working Group and Office of the Attorney General staff to add two additional members to this Working Group. This is currently the smallest working group and additional members would facilitate the mission of the Task Force.

V. Administrative Process Act (APA) Working Group

The APA Working Group is currently working on legislation for submission in the 2007 General Assembly session to provide for “fast-track” repeal of regulations. A “fast-track” process is already in place for adding new regulations, and it was determined that a similar process for repeals could help in the reduction of burdensome or problematic regulations. Additionally, changes have been recommended that ensure a timely review of those proposals by DPB. A copy of these proposed amendments are attached to this report for your review.

VI. Looking Forward

Upon conclusion of the 2007 Session of the Virginia General Assembly, the Working Groups will continue meeting and conducting the work of the systematic review of regulations. The Agriculture Working Group will begin reviewing the Department of Conservation and Recreation (DCR) regulations that deal with agriculture when it has completed reviewing the DACS regulations.

The Healthcare Working Group will complete the review of the DHP regulations, and has already begun a review of those regulations promulgated by the Department of Medical Assistance Services (DMAS). Given the volume of DMAS regulations and their extensive overlap with federal regulations, these are being reviewed in two stages. The first stage will be to look for ways to improve the process of reporting and compliance. The second stage will look at the federal authority granted to and requirements placed upon DMAS as it administers the Medicaid program. Additionally, the Working Group will begin a review of regulations promulgated by the Department of Health (DOH).

The Small Business Group has requested a detailed review of the Department of Labor and Industry's regulations. Specifically, we will be looking at those regulations with regard to duplicity and inconsistency with U.S. Department of Labor regulations.

Finally, several working groups have expressed an interest in reviewing the expansion of the ability of state agencies to resolve disputes through means other than those found in the APA. The APA Working Group will be exploring the frequency of which Virginia's Administrative Dispute Resolution Act found at § 2.2-4115 *et seq.* is currently used and ways in which it may be expanded to be further utilized.