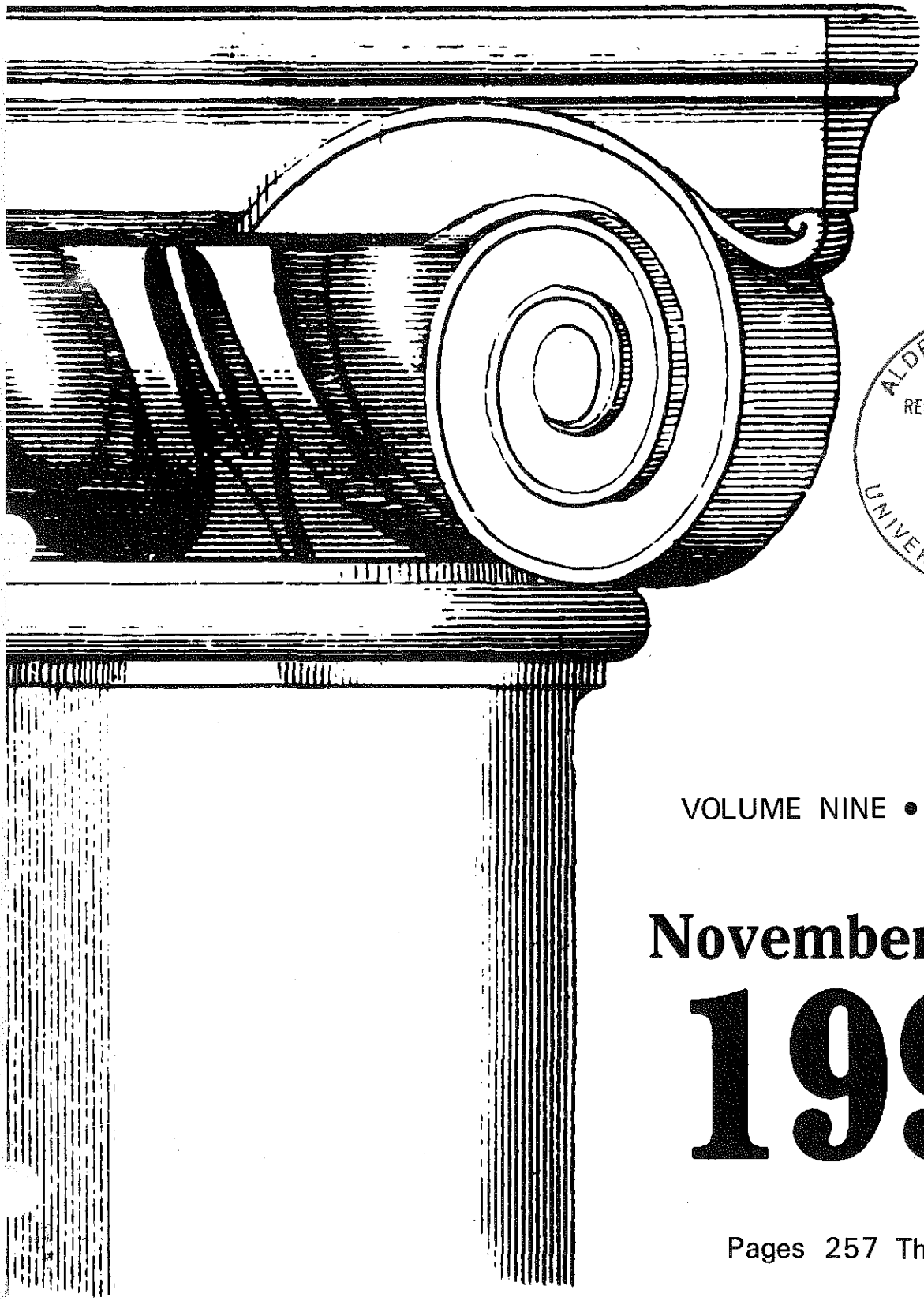
THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME NINE • ISSUE THREE

November 2, 1992

1992

Pages 257 Through 440

VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations.*

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the Virginia Register a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register,* sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register.*

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register.* Within twenty-one days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative Committee, and the Governor

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register.*

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register.* If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

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

EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register.*

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The Virginia Register is cited by volume, issue, page number, and date. **1:3 VA.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the Virginia Register issued on November 12, 1984.

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for $100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the Virginia Register of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

The Virginia Register of Regulations is published pursuant to Article 7 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for $4 each from the Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

July 1992 through September 1993

MATERIAL SUBMITTED BY Noon Wednesday	PUBLICATION DATE
Volume 8 - 1992	
June 24	July 13
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July 22	Aug. 10
Aug. 5	Aug. 24
Aug. 19	Sept. 7
Sept. 2	Sept. 21
Final Index - Volume 8	
Volume 9 - 1992-93	
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Sept. 30	Oct. 19
Oct. 14	Nov. 2
Oct. 28	Nov. 16
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Dec. 9	Dec. 28
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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †
† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agencys' public participation guidelines that the Board of Agriculture and Consumer Services intends to consider promulgating regulations entitled: **VR 115-04-28. Regulations Governing the Oxygenation of Gasoline.** The purpose of the proposed action is to adopt a regulation to supersede a recommended emergency regulation adopted by the Board of Agriculture and Consumer Services on September 30, 1992, governing oxygenation of gasoline.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Written comments may be submitted until December 4, 1992.

Contact: J. Alan Rogers, Program Manager, Office of Weights and Measures, P.O. Box 1163, Room 402, Richmond, VA 23209, telephone (804) 786-2476.

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution–Incorporating Requirements of Title V of the Clean Air Act.** The purpose of the proposed action is to amend § 120-08-04 to incorporate the requirements of Title V of the Clean Air Act, as amended in November 1990.

Public meeting: A public meeting will be held by the Department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on November 18, 1992, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad hoc advisory group: The Department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business October 21, 1992, and provide your name, address, phone number and the organization you represent (if any). Facsimile copies will be accepted only if followed by receipt of the original within three business days. Notification of the composition of the ad hoc advisory group will be sent to all applicants by November 4, 1992. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus.

Federal statutory requirements: Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

The operating permits issued under this program should enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act; clarify for the permitted sources exactly which air quality requirements apply; and also aid in implementing the Act by providing states with permit fees to support their programs.

A permit sets out for both the Department and the owner the regulatory requirements appropriate to that source's operation. The benefits are that the operator or owner knows what requirements must be fulfilled and the Department has an agreement with the owner through the permit that these requirements will be carried out. It enables the Department to more efficiently and effectively carry out its source surveillance activities while providing a clear mandate for each source on what its responsibility entails. An operating permit inclusive of all requirements pertaining to the source ensures that the owner of the source is fully informed of all applicable state and federal regulations. The operating permit program provides that both the Department and the owner conduct a periodic review of polluting activities to ensure that effective emission reductions are taking place.

At all facilities, operating conditions change over time, new technologies become available, and new regulatory requirements are developed that may necessarily change

original permit conditions. Operating permits provide a mechanism to adapt to these changing conditions.

Owners of sources subject to compliance programs through new regulatory initiatives or other air quality planning requirements must sign a consent order which is, in effect, an agreement between the Department and the owner for the source to meet those initiatives or requirements. An operating permit program supplants the use of consent orders under these conditions and removes the negative connotation that comes with signed consent orders. Consent orders are generally used after a facility has been found in violation of the regulations when the Department needs an enforceable administrative mechanism to ensure that the facility's operation will change to avoid a violation in the future.

Current federal policy allows the use of emissions trading activities by sources to meet emission standards in a more cost effective manner. These activities include bubbling, netting, offsetting and banking. The operating permit provides a mechanism for implementing and enforcing emissions trading activities, provided EPA policy or a state generic policy, as appropriate, is followed. Currently these activities are enforced using consent orders which, as explained above, have a negative connotation.

An operating permit provides the mechanism for the Department to assess any facility's compliance with the air quality standards and regulations that provide a basis to protect human health and the environment. The permit provides a direct enforcement mechanism for the Department to determine a facility's compliance whereas the enforcement of the standards and regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those standards and regulations.

The public participation requirements of the operating permit program provide an opportunity for citizens to review and to provide comments about the compliance performance of facilities emitting air pollutants along with the Department.

The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source.

Section 502 (a) requires that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the Act.

2. Major sources, defined as follows:

a. any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;

b. in nonattainment areas designated as serious, any source emitting 50 tpy or more (in Virginia, the northern Virginia area is designated serious for ozone); for severe or extreme nonattainment areas, sources emitting 25 and 10 tpy, respectively; and

c. any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under section 112.

3. Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

4. Any source subject to new source performance standards under section 111.

5. Any source required to have a preconstruction review permit pursuant to the requirements of the PSD program under Title I, part C or the nonattainment area new source review program under Title I, part D.

6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

Section 502 (b) sets out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications.

2. Monitoring and reporting requirements.

3. A permit fee system.

4. Provisions for adequate personnel and funding to administer the program.

5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act.

6. Authority to issue permits for a fixed term, not to exceed five years.

7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan.

8. Authority to terminate, modify, or revoke and reissue permits for cause, which is not further defined, and a requirement to reopen permits in

certain circumstances.

9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than $10,000 per day, and appropriate criminal penalties.

10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion.

11. Procedures for (a) expeditiously determining when applications are complete, (b) processing applications, (c) public notice, including offering an opportunity for public comment, and a hearing on applications, (d) expeditious review of permit actions, and (e) state court review of the final permit action.

12. Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application.

13. Authority and procedures to make available to the public any permit application, compliance plan, permit emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of section 114(c) of the Act; the contents of the permit itself are not entitled to confidentiality protection.

14. Provisions to allow operational flexibility at the permitted facility.

Section 503 (b) requires that applicants shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the Act. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

Section 503 (d) specifies that a source's failure to have an operating permit shall not be a violation of the Act if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

Section 503 (e) requires that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection from disclosure under section 114 (c) of the Act can be submitted separately.

Section 504 specifies what is to be included in each operating permit issued under this program. Section 504 (a) requires that each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

Section 504 (b) indicates that the EPA administrator may prescribe, by rule, procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated by the Act. Continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

Section 504 (c) requires that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under 504 (b). Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official, who shall certify its accuracy.

Section 504 (d) allows the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

Section 504 (e) allows the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the Act. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

Section 504 (f) provides a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with Section 502, or with the program. And unless otherwise provided by the EPA administrator and by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee, if:

1. the permit includes the applicable requirements of those provisions, or

2. the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Section 503 (c) specifies that all sources required to be permitted under a Title V program are required to submit an application within 12 months after the date EPA approves the state's program. The state permitting authority may specify an earlier date for submitting applications. The state permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

Section 505 (a) requires the state permitting authority to send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA, Section 505 (a) also requires the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. Section 505 (b) provides for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the Act or with the applicable State Implementation Plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period, if no objections were submitted by the EPA administrator. Furthermore the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and submit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under section 505 (d), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. Section 505 (e) allows the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program, if he finds that cause exists for such action.

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

Written comments may be submitted until November 20, 1992, to Director of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240.

Contact: Nancy S. Saylor, Policy Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution–Permit Fee Requirements.** The purpose of the proposed action is to develop a regulation to meet the permit fee requirements of Title V of the Clean Air Act and of § 10.1-1322 of the Code of Virginia.

Public meeting: A public meeting will be held by the Department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on November 19, 1992, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad hoc advisory group: The Department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business October 21, 1992, and provide your name, address, phone number and the organization you represent (if any). Facsimile copies will be accepted only if followed by receipt of the original within three business days. Notification of the composition of the ad hoc advisory group will be sent to all applicants by November 4, 1992. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus.

Federal and state statutory requirements. Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

One of the requirements of Title V is for states to develop permit fee programs to use in funding the costs of

developing, implementing and enforcing the other requirements of Title V. The permit fees obtained should fund the resources necessary for states to carry out their programs. The basis of the required permit fees is a charge per ton of emissions of regulated pollutants emitted by stationary sources covered under Title V. While the permit fee program provides a benefit to state agencies, the program also provides other benefits related to air quality. Permit fees charged for emissions may provide an incentive to stationary sources to keep their emissions as low as possible. The charging of permit fees also more directly allows the costs of the air quality programs to be paid for by those who create the pollution, rather than indirectly through the state taxation system.

The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. In addition to requiring that states develop operating permit programs, Congress is also requiring that states develop permit fee programs to pay for the cost of the programs.

Section 502 (b)(3) sets out the minimum elements that must be included in each permit fee program. The owner or operator of all sources subject to the requirement to obtain a permit must pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V, including the costs of the small business technical assistance program. Section 502 (b)(3)(A) specifies what is meant by reasonable costs, as follows:

1. Reviewing and acting upon any application for a permit.

2. Implementing and enforcing the terms and conditions of the permit, but not including any court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

Section 502 (b)(3)(B) specifies the requirements for the total amount of fees to be collected by the state permitting authority, as follows:

1. The state must demonstrate that, except as otherwise provided, the program will collect in the aggregate from all sources subject to the program an amount not less than $25 per ton of each regulated pollutant, or such other amount as the EPA administrator may determine adequately reflects the reasonable costs of the permit program.

2. "Regulated pollutant" means (a) a volatile organic compound; (b) each pollutant regulated under Section 111 or 112 of the Act; and (c) each pollutant for which a national primary ambient air quality standard has been promulgated (except carbon monoxide).

3. In determining the amount to be collected, the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that pollutant.

4. The requirements of paragraph 1 above will not apply if the permitting authority can demonstrate that collecting an amount less than $25 per ton of each regulated pollutant will meet the requirements of 502 (b)(3)(A).

5. The fee calculated under paragraph 1 above shall be increased consistent with the need to cover the reasonable costs authorized by 502 (b)(3)(A) in each year beginning after the year of the enactment of the Act by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

Section 502 (b)(3)(C) specifies the requirements of a permit fee program if the EPA administrator finds that the fee provisions of a state program are inadequate or if the Title V operating permit program itself is inadequate and EPA has to administer the fee program itself.

Section 507 (f) concerning fees and the Small Business Technical Assistance Program specifies that the state may reduce any fee required under Title V to take into account the financial resources of small business stationary sources.

Section 408 (c)(4) of Title IV concerning sources of acid deposition states that Phase I affected units shall not be required to pay permit fees during the years 1995 through 1999.

The Department has the statutory authority under state law to develop a Title V permit fee program. Section 10.1-1322 of the Air Pollution Control Law of Virginia specifies the supplementary requirements for developing the Title V fee program in Virginia.

Section 10.1-1322 B specifies that the board may require the payment and collection of annual permit program fees for air pollution sources. The law directs that the fees must be based on actual emissions of each regulated pollutant as defined in Section 502 of the Act, in tons per

year. The law stipulates that the regulation cannot charge for emissions in excess of 4,000 tons per year of each pollutant for each source. The law restricts the program to obtaining a base year amount of $25 per ton, using 1990 as the base year. It does allow annual adjustments of this amount using the Consumer Price Index, as directed in Section 502 (b)(3)(B). The fees obtained are to approximate the direct and indirect costs of the program as directed in Section 502 (b)(3)(A).

When adopting regulations for these fees, the board is directed to take into account permit fees charged in neighboring states so that existing or prospective industry in Virginia will not be placed at an economic disadvantage.

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Written comments may be submitted until November 20, 1992, to Director of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240.

Contact: Kathleen Sands, Policy Analyst, Division of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240, telephone 225-2722.

BOARD FOR COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Cosmetology intends to consider promulgating regulations entitled: **Virginia Board for Cosmetology Esthetician/Skin Care Regulations.** The purpose of the proposed action is to regulate the practice of invasive skin care performed by estheticians who administer cosmetic treatments.

Statutory Authority: § 54.1-1202 of the Code of Virginia.

Written comments may be submitted until December 5, 1992.

Contact: Demetra Kontos, Assistant Director, Cosmetology Board, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8509.

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider amending regulations entitled: **VR 255-01-1. Board of Dentistry Regulations.** The purpose of the proposed action is to consider the following amendments:

1. The Public Participation Guidelines - § 1.2 D.

2. Certification of dental assistants for Schedule VI topical medicinal agents - §§ 1.4 M and 5.4 1 (Emergency Regulation).

3. Reinstatement Fees and Procedures - § 1.3 D.

4. Reinstatement procedure following suspension or revocation of license and fee.

5. Licensure examinations - grace period for licensure - § 2.2 A and B.

6. Reciprocal licensure for dentists - § 2.3 A.

7. Endorsement for dentists.

8. Clarification of § 3.1 A 2 regarding educational requirements to administer general anesthesia.

9. Requirement for dentists to keep all insurance claim forms - § 4.1 B 6.

10. Regulation of dental hygiene, except level of supervision.

11. Controlled use of trade names.

12. Advertisement, claiming to be a specialist - § 4.4 F 4.

13. Develop Continuing Education requirements for dentists and dental hygientists.

14. Other minor clarifications and nonsubstantive changes.

Virginia Board of Dentistry Regulatory - Legislative Committee will meet on November 21, 1992, to discuss and recommend changes to the regulation of dentistry and dental hygiene.

Statutory Authority: §§ 54.1-2700 through 54.1-2728 of the Code of Virginia.

Written comments may be submitted until November 17, 1992.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005, telephone (804) 662-9906.

BOARD FOR GEOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Board for Geology intends to consider amending regulations entitled: **VR 335-01-2. Rules and Regulations of the Board for Geology.** The purpose of the proposed action is to review regulatory content and fees.

Statutory Authority: §§ 54.1-1400 through 54.1-1405 of the Code of Virginia.

Written comments may be submitted until November 20, 1992.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **Virginia State Medical Facilities Plan.** The purpose of the proposed action is to revise the State Medical Facilities Plan to provide guidance for assessing the public need for projects subject to review according to the 1992 amendments to the Certificate of Public Need Law.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until November 19, 1992.

Contact: Paul E. Parker, Director, Virginia Department of Health, Division of Resources Development, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **Virginia Medical Care Facilities Certificate of Public Need (COPN) Rules and Regulations.** The purpose of the proposed action is to amend the existing certificate of public need regulations to be consistent with the 1992 amendments to the COPN law.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until November 19, 1992.

Contact: Wendy V. Brown, Project Review Manager, Virginia Department of Health, Division of Resources Development, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled **VR 355-28-100. Regulations for Disease Reporting and Control.** The purpose of the proposed action is to amend the regulations to make childhood lead poisoning reportable and to change the confidential morbidity report form.

Statutory Authority: §§ 32.1-12 and 32.1-35 through 32.1-38 of the Code of Virginia.

Written comments may be submitted until December 2, 1992.

Contact: Diane Woolard, M.P.H., Senior Epidemiologist, Virginia Department of Health, Office of Epidemiology, 1500 East Main Street, Room 113, P.O. Box 2448, Richmond, VA 23219, telephone (804) 786-6261.

BOARD FOR HEARING AID SPECIALISTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Hearing Aid Specialists intends to consider amending regulations entitled **VR 375-01-02. Board for Hearing Aid Specialists Rules and Regulations.** . The purpose of the proposed action is to solicit public comment on all existing regulations as to the assessment of their effectiveness, clarity and simplicity. Specifically to (i) clarify § 54.1-1505 A of the Code of Virginia as to a "reasonable charge" for services provided by the hearing aid specialists, and (ii) clarify and simplify § 4.10 1 f of the Board's regulations as to the use of the terminology used in this section to avoid confusion among the users of the services being offered.

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

Written comments may be submitted until December 4, 1992.

Contact: Geralde W. Morgan, Administrator, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8543.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing

and Community Development intends to consider amending regulations entitled: **VR 394-01-4. Virginia Amusement Device Regulations/1990.** The purpose of the proposed action is to receive public input prior to developing regulations for Bungee Jumping as part of the Amusement Device Regulations.

Statutory Authority: § 36-98.3 of the Code of Virginia.

Written comments may be submitted until November 13, 1992.

Contact: Carolyn Williams, Building Code Supervisor, The Jackson Center, 501 North 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Apprenticeship Council intends to consider amending regulations entitled: **VR 425-01-26. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.** The purpose of the proposed action is to establish regulations on the numeric ratio of apprentices to journeymen on worksites covered by the Davis-Bacon and related federal prevailing wage laws.

The Department of Labor and Industry requests comments on the following sample language concerning the numeric ratio of apprentices to journeymen.

1. APPRENTICESHIP RATIO. Effective June 1, 1989, the minimum numeric ratio of apprentices to journeymen shall be 1:1 except as noted in (2) of these regulations, below; these provisions are nonseverable. Individual program sponsors shall propose, as part of their apprenticeship standards, a ratio of apprentices to journeymen consistent with proper supervision, training, safety and continuity of employment, applicable provisions in collective bargaining agreements, and applicable requirements of recognized licensing boards or authorities.

APPRENTICESHIP RATIO ON DAVIS-BACON WORKSITES. Effective July 1, 1993, the minimum numeric ratio of apprentices to journeymen for individual program sponsors and for individual contractors signatory to joint and nonjoint apprenticeship programs performing work under the Davis-Bacon and related federal prevailing wage laws shall be worksite-specific and shall be as follows:

one apprentice to the first journeyman;
two apprentices to the fist two journeymen;
two apprentices to the first three journeymen;
two apprentices to the first four journeymen; and
one additional apprentice for each two journeymen thereafter.

The ratio for service trucks on Davis-Bacon worksites shall be one apprentice to one journeyman.

Bids submitted for Davis-Bacon work on or after July 1, 1993, must observe these minimum ratio requirements.

These ratio provisions shall apply until either the Congress of the United States or the U.S. Department of Labor mandate different or uniform ratios for Davis-Bacon work.

3. OTHER REQUIREMENTS RELATED TO DAVIS-BACON WORKSITES: Sponsors must notify the Virginia Apprenticeship Council within 30 days of receipt of a citation alleging violation of the Davis-Bacon Act affecting an apprentice. The notice must be in a form specified by the policies of the Apprenticeship Council. Failure to report citations shall be an omission for which council may consider requiring a remedial action plan or deregistration of the sponsor's program.

The Apprenticeship Council may deregister sponsors who receive final orders of the U.S. Department of Labor or the courts confirming willful or repeated violations of the Davis-Bacon Act affecting registered apprentices.

Statutory Authority: § 40.1-118 of the Code of Virginia.

Written comments may be submitted until November 17, 1992.

Contact: R.S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2381.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled **Methods and Standards Used for Establishing Payment Rates - Inpatient Hospital Services, Other Types of Care, and Long-Term Care: Collection of Overpayments.** The purpose of the proposed action is to conform the State Plan for Medical Assistance to the Code of Virginia with regard to the collection of overpayments.

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

Written comments may be submitted until November 16, 1992, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, DMAS, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-02-4.1940. Methods and Standards for Establishing Payment of Rates - Long Term Care: Nursing Home Payment System.** The purpose of the proposed action is to promulgate permanent regulations to supersede the existing emergency regulation which provides for the same policy.

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

Written comments may be submitted until November 2, 1992, to Shelley Platt, Hearing Officer, Division of Cost Settlement and Audit, DMAS, 600 E. Broad St., 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) 786-7933.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.** The purpose of the proposed action is to promulgate permanent regulations that remove Medicare cap for physician services fees.

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

Written comments may be submitted until November 2, 1992, to Scott Crawford, Reimbursement Consultant, Division of Policy and Research, DMAS, 600 E. Broad St., 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) 786-7933.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-03-3.1100. Amount, Duration, and Scope of Services:** The purpose of the proposed action is to promulgate permanent regulations to discontinue coverage of Minoxidil.

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

Written comments may be submitted until November 2, 1992, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, DMAS, 600 E. Broad St., 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) 786-7933.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Client Appeals** The purpose of the proposed action is to promulgate permanent regulations to take the timeframes required for ALJ review outside of timeframes for the handling of client appeals. The permanent regulations will also contain other minor changes.

Statutory Authority § 32.1-325 of the Code of Virginia

Written comments may be submitted until November 2, 1992, to Tom Czelusta, Sr. Admin. Law Judge, Division of Client Appeals, DMAS, 600 E. Broad St., 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) 786-7933.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Cost Sharing (copayments) Obligations for Recipients.** The purpose of the proposed action is to promulgate permanent regulations to equitably apply copay policies on rehabilitative services.

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

Written comments may be submitted until November 2, 1992, to Betty Cochran, Director, Division of Quality Care Assurance, DMAS, 600 E. Broad St., 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) 786-7933.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Criteria for Pre-Admission Screening and Continued Stay; Noncovered Services Under Home Health Services.** The purpose of the proposed action is to: (i) clarify the requirements and the process for determining that long-term care criteria are and continue to be met; (ii) clarify services which have not been and continue to not be covered under home health; and (iii) make other technical corrections consistent with previous regulatory actions.

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

Written comments may be submitted until November 2, 1992, to Mary Chiles, Manager, Division of Quality Care Assurance, DMAS, 600 E. Broad St., 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) 786-7933.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-01. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to (i) amend §§ 4.1 B 4 and 4.1 C 4 by deleting "more than"; (ii) delete the untitled statement following § 2.2 3 D 6 as not being applicable; and (iii) establish a fee to take the United States Medical Licensing Examination.

Statutory Authority § 54.1-2900 of the Code of Virginia.

Written comments may be submitted until November 19, 1992, to Hilary H. Connor, M.D., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005.

Contact: Eugenia A. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

BOARD OF NURSING

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled **VR 495-01-1. Board of Nursing Regulations.** . The purpose of the proposed action is to conduct a biennial review of existing regulations as to cost of compliance and propose amendments which may result from the review. Included in the review are requests from (i) the Board of Education to reconsider certification and program approval of Nurse Aide Education Programs in the public schools, and (ii) Tidewater Tech for recognition of the Career College Association as an accrediting agency in § 2.2 A 2 of the regulations.

A public hearing to receive oral comments on the existing regulations will be held on January 27, 1993, at 1:30 p.m. at the Department of Health Professions, Conference Room, 6606 W. Broad Street, Richmond, VA.

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

Written comments may be submitted until January 27, 1993 at 5 p.m.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909.

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **VR 585-01-3. Virginia Real Estate Time-Share Regulations.** The purpose of the proposed action is to review and seek public comment on the registration and disclosure requirements of time-share offered or disposed of in the Commonwealth of Virginia. Other changes to the regulations which may be necessary will be considered.

Statutory Authority § 55-396 of the Code of Virginia.

Written comments may be submitted until November 20, 1992.

Contact: Emily O. Wingfield, Property Registration Administrator, Department of Commerce, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8510.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations

entitled: **VR 615-01-47. Disability Advocacy Project.** The purpose of the proposed regulation is to adopt for statewide implementation the Disability Advocacy Project included in emergency regulation VR 615-01-47.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until November 4, 1992, to Ms. Diana Salvatore, Program Manager, Medical Assistance Unit, Division of Benefit Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Virginia 23229.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-0899, telephone (804) 662-9217.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled **VR 615-27-02. Minimum Standards for Licensed Private Child Placing Agencies.** The purpose of the proposed action is to revise certain sections of the standards related to independent living placements, foster and adoptive home studies, and related foster care standards. These are the standards private agencies must meet in order to obtain a license to place children in foster or adoptive homes.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until December 16, 1992, to Doris Jenkins, Division of Licensing Programs, 8007 Discovery Drive, Richmond, VA 23229.

Contact: Peggy Friedenberg, Policy Analyst, Bureau of Governmental Affairs, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-21-00. Water Quality Standards.** The purpose of the proposed action is to conduct the triennial review of water quality standards as required by federal and state law. As part of this triennial review, public meetings are being held to receive comments and suggestions which the State Water Control Board will consider in proposing specific changes in the standards that will be formally considered at public hearings during 1993.

The type of information which would help the board conduct this review includes information on the following Environmental Protection Agency requirements:

– information to update existing standards or to add new standards (especially for toxic pollutants),

– suggestions for a narrative biological criteria,

– evaluations of the 1986 Environmental Protection Agency's bacteria and dissolved oxygen criteria, and

– provisions to ensure that standards apply to wetlands and appropriate numeric criteria for wetlands.

In addition, staff will be considering nominations previously received for water bodies to be included as exceptional waters under VR 680-21-01.3 C as well as seeking additional recommendations for this category. The nominations received thus far include the Rappahannock River from the headwaters to its confluence with Carter's Run, the Rappahannock River from the head of Kelly's Ford rapids to its confluence with Mott's Run and the Maury River from Goshen to Rockbridge Baths.

Finally, any other information which may indicate that modifications are necessary in other sections of the regulation will also be considered.

Any amendments to the water quality standards proposed as a result of this triennial review have the potential to impact every VPDES permit holder in the Commonwealth of Virginia. The impact on an individual VPDES permit hold would range from additional monitoring costs through upgrades to existing wastewater treatment facilities.

The board will hold six public meetings to receive views and comments and to answer questions of the public. (See Calendar of Events Section).

Applicable laws and regulations include § 303(c)(2)(B) and § 307(a) of the Clean Water Act, State Water Control Law, VR 680-21-00 (Water Quality Standards Regulation) and VR 680-14-01 (Permit Regulation).

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until November 16, 1992.

Contact: Elleanore Daub, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 527-5091.

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.

DEPARTMENT OF COMMERCE

REGISTRAR'S NOTICE: Due to its length, the proposed regulation entitled VR 190-05-01:1, Asbestos Licensing Regulations, filed by the Department of Commerce is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Commerce, 3600 West Broad Street, Richmond, VA 23230.

Title of Regulation: **VR 190-05-1. Asbestos Licensing Regulations. REPEALED.**

Title of Regulation: **VR 190-05-1:1. Asbestos Licensing Regulations.**

Statutory Authority: §§ 54.1-500 through 54.1-517 of the Code of Virginia.

Public Hearing Dates:
December 4, 1992 - 10:30 a.m.
December 10, 1992 - 10:30 a.m.
Written comments may be submitted until January 4, 1993.
(See Calendar of Events section for additional information)

Summary:

The regulations have been reorganized to include (i) a "General entry requirement" section, (ii) a combined asbestos worker and supervisor licensing requirement section, and (iii) an addition of a "Standard of practice and conduct" section. The exemption section has been amended to delete the requirement for employers to develop training and provides guidelines for an asbestos safety program. For clarity, definitions have been added and altered, fee adjustments have been made for an Asbestos Contractors license, an Asbestos Analytical Laboratory license and training course evaluations. On-site analysts will be required to register with the AIHA Asbestos Analysts Register. After April 1, 1993, applicants for a project designer license will be required to meet experience qualifications.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **VR 460-04-8.14. Managed Care: "MEDALLION" Regulations.**

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

Public Hearing Date: N/A – Written comments may be submitted until 4:30 p.m. on January 2, 1993.
(See Calendar of Events section for additional information)

Summary:

House Bill 30, passed by the 1990 session of the General Assembly, directed the Department of Medical Assistance Services (DMAS) to develop a plan to test the feasibility of establishing a statewide managed care system for Medicaid patients. The plan was developed and submitted to the Committee on Health Care for All Virginians (SJR 118) on October 1, 1990. The committee examined the plan based on three criteria: (i) the feasibility of expanding the system, (ii) alternatives for the design and staffing of such a system, (iii) costs and benefits associated with the preferred options. DMAS subsequently was instructed to proceed with its coordinated care program, named "MEDALLION."

The Commonwealth has requested and received approval from the Health Care Financing Administration (HCFA) for a waiver under § 1915(b) of the Social Security Act. DMAS will provide coordinated care services to those selected Medicaid recipients of the Commonwealth.

The services provided by this waiver would establish and support primary care providers (PCP) who would become recipient care managers responsible for coordination of "MEDALLION" recipients' overall health care. The PCP will assist the client in gaining access to the health care system and will monitor on an ongoing basis the client's condition, health care needs, and service delivery to include referrals to specialty care. This form of health care delivery is expected to foster a more productive physician/patient relationship, reduce inappropriate use of medical services, and increase client knowledge and use of preventive care.

DMAS is the single state agency responsible for supervision of the administration of these waiver services. DMAS will contract with those providers of services which meet all licensing and certification criteria required in these regulations and which are willing to adhere to DMAS policies and procedures.

VR 460-04-8.14. Managed Care: "MEDALLION" Regulations.

§ 1. Definitions.

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

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

"ADC related" means those recipients eligible for assistance as an extension of the ADC program, such as pregnant women and indigent children under specific ages. It shall not include foster care or spend-down medically needy clients.

"Ancillary services" means those services accorded to a client that are intended to support the diagnosis and treatment of that client. These services include, but are not necessarily limited to, laboratory, pharmacy, radiology, physical therapy, and occupational therapy.

"Client" or "clients" means an individual or individuals having current Medicaid eligibility who shall be authorized to participate as a member or members of "MEDALLION."

"Comparison group" means the group of Medicaid recipients whose utilization and costs will be compared against similar groups of "MEDALLION" clients.

"Covering provider" means a provider designated by the primary care provider to render health care services in the temporary absence of the primary provider.

"DMAS" means the Department of Medical Assistance Services.

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

1. Placing the client's health in serious jeopardy;

2. Serious impairment to bodily functions; or

3. Serious dysfunction of any bodily organ or part.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment program.

"Gatekeeper" means the function performed by the "MEDALLION" primary care provider in controlling and managing assigned clients through appropriate levels of medical care.

"General practitioner" means a licensed physician who provides routine medical treatment, diagnosis, and advice to maintain a client's health and welfare.

"Primary care provider" or "PCP" means that "MEDALLION" provider responsible for the coordination of all medical care provided to a "MEDALLION" client and shall be recognized by DMAS as a Medicaid provider.

"Site" means, for purposes of these regulations, the geographical areas that best represent the health care delivery systems in the Commonwealth. In certain areas (sites), there may be two or more identifiable health care delivery systems.

"Specialty" or "specialist services" means those services, treatments, or diagnostic tests intended to provide the patient with a higher level of medical care or a more definitive level of diagnosis than that routinely provided by the primary care provider.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses.

"State" means the Commonwealth of Virginia.

§ 2. Program purpose.

The purpose of "MEDALLION" shall be to provide management in the delivery of health care services by linking the primary care provider (PCP) with targeted clients. The PCP shall provide medical services as appropriate for clients' health care needs and shall coordinate clients' receipt of other health services. This shall include, but not be limited to, referral to specialty providers as medically appropriate.

§ 3. "MEDALLION" clients.

Clients of "MEDALLION" shall be individuals receiving Medicaid as ADC or ADC-related categorically needy and medically needy (except those becoming eligible through spend-down) and except for foster care children, whether or not receiving cash assistance grants. The following exclusions shall apply:

1. Exclusions. The following individuals shall be excluded from participating in "MEDALLION":

a. Individuals who are inpatients in mental hospitals and skilled nursing facilities;

b. Individuals who are receiving personal care services;

c. Individuals who are participating in foster care or subsidized adoption programs, who are members of spend-down cases, or who are refugees.

d. A client may be excluded from participating in "MEDALLION" if any of the following apply:

(1) Client not accepted to the caseload of any participating PCP.

(2) Client whose enrollment in the caseload of assigned PCP has been terminated and other PCPs have declined to enroll the client.

2. Client enrollment process.

a. All ADC or ADC-related recipients excepting those meeting one of the exclusions of § 3 shall be enrolled in "MEDALLION."

b. Newly eligible individuals shall not participate in "MEDALLION" until completion of the Medicaid enrollment process. This shall include initial enrollment at the time of eligibility determination by Department of Social Services staff, or any subsequent reenrollment that may occur.

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

d. Once clients are fully registered as "MEDALLION" clients, they will receive a "MEDALLION" identification card to replace the Medicaid card.

3. PCP selection. Clients shall be given the opportunity to select the PCP of their choice.

a. Clients shall notify DMAS of their PCP selection within 30 days of receiving their "MEDALLION" enrollment notification letter. If notification is not received by DMAS within that timeframe, DMAS shall select a PCP for the client.

b. Selected PCP shall be a "MEDALLION" enrolled provider.

c. PCP will provide 24-hour access, which shall include as a minimum a 24-hour telephone number to be placed on each client's "MEDALLION" card.

d. DMAS shall review client requests in choosing a specific PCP for appropriateness and to ensure client accessibility to all required medical services.

4. Mandatory assignment of PCP. Assignments shall be made for those clients not selecting a PCP as described in subdivision 3 of this section. The selection process shall be as follows:

a. Clients shall be assigned to "MEDALLION" providers on a random basis. The age, gender, and any special medical needs shall be considered in assigning a provider with an appropriate specialty. Any prior patient-provider relationships shall be maintained if appropriate. Families will be grouped and assigned to the same provider when possible.

b. Each site having two or more separately identifiable provider groups shall be divided into separate regions for client assignment. Clients shall initially be assigned to a PCP according to the region in which they reside. Should insufficient PCPs exist within the client's specific region, clients shall be assigned a PCP in an adjacent region.

c. Each PCP shall be assigned a client, or family group if appropriate, until the maximum number of clients the PCP has elected to serve has been reached, or until there are no more clients suitable for assignment to that PCP, or all clients have been assigned.

5. Changing PCPs. "MEDALLION" clients shall remain with the assigned PCP for a period of not less than six months. After that time clients may elect to change PCPs. Changes may be made annually thereafter.

a. Requests for change of PCP "for cause" are not subject to the six-month limitation, but shall be reviewed and approved by DMAS staff on an individual basis. Examples of changing providers "for cause" may include but shall not be necessarily limited to:

(1) Client has a special medical need which cannot be met in his service area or by his PCP.

(2) Client has a pre-existing relationship with a Medicaid provider rendering care for a special medical need.

(3) Mutual decision by both client and provider to sever the relationship.

(4). Provider or client moves to a new residence, causing transportation difficulties for the client.

(5) Provider cannot establish a rapport with the client.

b. The existing PCP shall continue to retain the client in the caseload, and provide services to the client until a new PCP is assigned or selected.

c. PCPs may elect to release "MEDALLION" clients from their caseloads for cause with review and approval by DMAS on a case-by-case basis. In such circumstances, § 3 5 b shall apply.

6. "MEDALLION" identification card. Each client enrolled shall receive a "MEDALLION" card, which shall replace and be distinct from the Medicaid card in appearance, and embossed with the "MEDALLION" logo.

a. The front of the card shall include the client's name, Medicaid case identification number, birthdate, sex, PCPs name, address, 24-hour access telephone number, and the effective time period covered by the card.

b. The "MEDALLION" Hot Line 800 number will be listed on the card.

c. Clients shall contact their assigned PCP or designated covering provider to obtain authorization prior to seeking nonemergency care.

d. Emergency services shall be provided without delay or prior authorization. However, the emergency nature of the treatment shall be documented by the provider providing treatment and should be reported to the PCP after treatment is provided. Clients should inform the PCP of any emergency treatment received.

§ 4. Providers of services.

Providers who may enroll to provide "MEDALLION" services include, but are not limited to, physicians of the following primary care specialties: general practice, family practice, internal medicine, and pediatrics. Exceptions may be as follows:

1. Providers specializing in obstetric/gynecologic care may enroll as "MEDALLION" providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

2. Physicians with primary care subspecialties may enroll as "MEDALLION" providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

3. Other specialty physicians may enroll as PCPs under extraordinary, client-specific circumstances when DMAS determines with the provider's and recipient's concurrence that the assignment would be in the client's best interests. Such circumstances may include, but are not limited to, the usual-and-customary practice of general medicine by a board-certified specialist, maintenance of a pre-existing patient-physician relationship, or support of the special medical needs of the client.

4. DMAS shall review applications from physicians and other health care professionals to determine appropriateness of their participating as a "MEDALLION" PCP.

§ 5. "MEDALLION" provider requirements.

A. PCPs must require their clients to present their currently effective "MEDALLION" card upon presentation for services.

B. PCPs shall track and document any emergency care provided to "MEDALLION" clients.

C. PCPs shall function as "gatekeeper" for assigned clients. Specific requirements shall include but are not necessarily limited to:

1. Providing patient management for the following services: physician, pharmacy, hospital inpatient and outpatient, laboratory, ambulatory surgical center, radiology, and durable medical equipment and supplies.

2. Providing or arranging for physician coverage 24 hours per day, seven days per week.

3. Determining the need for and authorizing when appropriate, all nonemergency care.

4. Being an EPSDT provider, or having a referral relationship with one, and providing or arranging for preventive health services for children under the age of 21 in accordance with the periodicity schedule recommended in the Guidelines for Health Supervision of the American Academy of Pediatrics (AAP).

5. Making referrals when appropriate, conforming to standard medical practices, to medical specialists or services as required. The referral duration shall be at the discretion of the PCP, and must be fully documented in the patient's medical record.

6. Coordinating inpatient admissions either by personally ordering the admission, or by referring to a specialist who may order the admission. The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to DMAS for admissions by a physician who does have admitting privileges.

7. Maintaining a legibly written, comprehensive, and unified patient medical record for each client consistent with documentation requirements set forth in DMAS' Physician Manual.

8. Documenting in each client's record all authorizations for referred services.

9. Providing education and guidance to assigned clients for the purpose of teaching correct methods of accessing the medical treatment system and promoting good health practices.

§ 6. Services exempted from "MEDALLION."

A. The following services shall be exempt from the supervision and referral requirements of "MEDALLION":

1. Obstetrical services;

2. Psychiatric and psychological services, to include

but not be limited to mental health, mental retardation services;

3. Family planning services;

4. Routine newborn services when billed under the mother's Medicaid number;

5. Annual or routine vision examinations;

6. Dental services; and

7. Emergency services.

B. While reimbursement for these services does not require the referral from or authorization by the PCP, the PCP must continue to track and document them to ensure continuity of care.

§ 7. PCP payments.

A. DMAS shall pay for services rendered to "MEDALLION" clients through the existing fee-for-service methodology and an incentive payment plan.

B. Incentive plan.

"MEDALLION" providers may opt to participate in the following incentive plan:

Case management fees. A PCP can opt to receive a monthly $2.00 case management fee for each client assigned, plus an additional $2.00 per client incentive fee for each month the PCPs utilization is below the mean of his comparison group. Payment of fees shall be quarterly. reduction accrued to the State due to management of inappropriate services within the PCP's caseload. Payment of fee shall be annually.

C. PCPs may serve a maximum of 1,000 "MEDALLION" clients. Groups or clinics may serve a maximum of 1,000 "MEDALLION" clients per authorized PCP in the group or clinic. Exceptions to this will be considered on a case-by-case basis predicated upon client needs.

§ 8. Utilization review.

A. DMAS shall review claims for services provided by or resulting from referrals by authorized PCPs. Claims review shall include, but not be limited to, review for the following:

1. Excessive or inappropriate services;

2. Unauthorized or excluded services; and

3. Analysis of possible trends in increases or reductions of services.

§ 9. Client and provider appeals.

A. Client appeals.

Clients shall have the right of appeal of any adverse action taken by DMAS consistent with the provisions of VR 460-04-8.7.

B. Provider appeals.

Providers shall have the right to appeal any adverse action taken by DMAS under these regulations pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

§ 10. "MEDALLION" phase-in across the Commonwealth.

DMAS presently has federal authority to administer "MEDALLION" in its initial phase consistent with its approved waiver. At such time as DMAS receives approval from the federal funding authority to expand "MEDALLION," the program shall be expanded in a phased-in manner to encompass the larger geographic areas.

STATE OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Addendum to Provider Agreement for Participation as a Primary Care Provider in MEDALLION

This Addendum is entered into by the Department of Medical Assistance Services (the Department)

and_____(the Provider).
(Name of Physician)

of_____
(Street Address) (City & State) (Zip Code)

on this_____day of_____19___

1. This is an addendum to the Provider's Medicaid Participation Agreement ("the Agreement"). The Agreement will continue in force in accordance with its terms.

2. The provider agrees to function in the role of Primary Care Provider, hereafter referred to as the "PCP", as an authorized provider for MEDALLION. In this role, the Provider will provide, or arrange for the provision of, all routine preventative and treatment services normally provided by a primary care physician. This will include EPSDT services and the maintenance of a comprehensive medical record for each patient assigned to MEDALLION. In particular, the Provider will provide and/or coordinate patient management for the following services: physician services; hospital inpatient and outpatient services; ambulatory surgical center services and rural health center services; ancillary services to include laboratory, pharmacy, and radiology; and durable medical equipment and supplies. Providers must have admitting privileges at a local accredited hospital or must make arrangements for admissions with a physician who does have admitting privileges.

3. The Provider will provide or arrange for coverage for primary care services twenty-four (24) hours per day, seven (7) days per week. In the event the Provider fails to comply with this provision appropriate sanctions, up to and including termination of this Agreement, will be applied by the Department. See paragraph (10) of the Medicaid Provider Participation Agreement with respect to appeals, and the MEDALLION supplement to the Provider Manual with respect to sanctions.

4. The Provider will coordinate all other Medicaid authorized care for each patient enrolled in his or her MEDALLION caseload including referral to specialty providers for diagnosis or treatment. In referring for specialized evaluation and/or treatment, the PCP will provide the specialist with authorization to cover appropriate testing and treatment. This authorization may be verbal or written for a period appropriate to the illness. All subsequent referral claims must have the PCP's MEDALLION identification number on the claim form.

5. The Provider will not be required to authorize emergency care, obstetrical care, psychiatric or psychological care, annual or routine vision examinations, dental care, or other Medicaid authorized care exempted from MEDALLION as identified in the MEDALLION Medicaid Provider Manual Addendum (Section III).

6. Providers will receive the usual Medicaid fees for services rendered, and may participate in one of the two following incentive plans.

a. Provider receives monthly two dollar ($2) case management fee for each client assigned, plus an additional two dollar ($2) per client incentive fee for each month the Provider's utilization is lower than the mean of his control group.

b. Provider shares in fifty percent (50%) of annual savings accrued to the State due to reduction of inappropriate services with his caseload.

Specifics relating to the payment of incentive fees will be fully described in provider manual addenda published by the Department.

7. Participating Providers may not change their incentive plan choices until the current incentive has been in place for one year.

8. MEDALLION clients approved by the Department to be released from the care of their designated Provider will continue to receive care from that designated provider until another Provider has been assigned.

FOR ENROLLMENT PURPOSES
PLEASE PROVIDE THE FOLLOWING ESSENTIAL INFORMATION

I. MEDALLION providers may enroll a maximum of 1,000 clients. I would like to establish an initial caseload of_____ clients.

II. Special medical services that I can provide for MEDALLION clients are as follows (example: bilingual capability, separate well and sick pediatric waiting rooms, etc.):
a)_____ b)_____
c)_____ d)_____

III. Locations where I provide service; Medicaid numbers associated with that location, and 24 hour accessible telephone number that patients will use to contact me. (Please list your locations in descending order by Medicaid caseload.)

a. Medicaid ID # Telephone # Address

(This data will appear on client's MEDALLION identification card)

b. Medicaid ID # Telephone # Address

(This data will appear on client's MEDALLION identification card)

ATTACH SEPARATE PAGE FOR ADDITIONAL LOCATIONS.

c. If part of a group practice, please list other physicians in your group who have enrolled in MEDALLION:

1) _____
2) _____
3) _____
4) _____
5) _____

IV. I select incentive plan (place X in block of choice)

_____ a) $2 case management fee plus $2 incentive per client per month

_____ b) 50% of annual savings from reduction of inappropriate services to provider's caseload.

_____
(Print Name) (Signature) (Date)

Mail completed copy to:

MEDALLION
Department of Medical Assistance Services
P.O. Box 537
Richmond, Virginia 23204

Note to Emergency Room Staff: In the event that a MEDALLION client presents to the ER with a non-emergent complaint, and refuses to contact their assigned Primary Care Provider (PCP) for further medical care, use this form to document and to notify the MEDALLION office of the incident.

NOTICE OF REFUSAL

§1. You, as a MEDALLION client, are enrolled under the care of a Primary Care Provider (PCP) who is your personal doctor and is responsible for coordinating your medical needs. All **non-emergent care must be authorized by your personal doctor** in order for payment for those services to be received.

§2. The purpose of MEDALLION is to provide appropriate care for you through your personal doctor. Unless it is a true emergency, you are requested to contact your personal doctor for further care.

§3. The staff of this Emergency Room has determined that your medical condition is considered to be a non-emergency, and would more appropriately be treated by your personal doctor. Your personal doctor, or his designated representative, is required to provide access to care for you 24 hours a day, 7 days a week. You can contact your personal doctor by calling the phone number listed on the front of your MEDALLION I.D. card.

§4. Should you insist upon treatment of your non-emergency medical condition in the Emergency Room, this action will be reported to MEDALLION.

§5. Questions should be directed to MEDALLION, 1-800-643-2273.

Client's signature _____ Date _____

Street or PO Box _____

City _____ State _____ Zip Code _____

Client's telephone number _____

Witness _____ Date _____

E.R. Staff Comments: (Use reverse side of sheet if necessary)

_____

_____

Name of Hospital _____

Address _____

Contact person _____ Telephone number _____

Forward original and pertinent documentation to: Director, MEDALLION

Copy to: 1) Client
2) Hospital Emergency Room

CHANGE OF DOCTOR REQUEST

92 OCT 16 AM 9:41

Client's Name _____

Address 1 _____

Address 2 _____

City, State, Zip Code _____

Client's Medicaid I.D. Number: _____

IF YOU WANT ANOTHER DOCTOR INSTEAD OF THE ONE NAMED IN YOUR LETTER, LOOK AT YOUR LIST OF MEDALLION DOCTORS AND CHOOSE THE DOCTOR YOU WANT.

It is very IMPORTANT that you also give us your telephone number so we can reach you if necessary.

** THE DAYTIME TELEPHONE NUMBER WHERE YOU CAN BE REACHED IS:

_____

WRITE DOWN THE INFORMATION ABOUT THE DOCTOR YOU WANT ON THE LINES BELOW.

Doctor's Name: _____

Doctor's Office Address Code: _____

Doctor's Office Address
(If Doctor has more than one office listed on sheet (ex. 2a, 2b), indicate office address nearest you). _____

_____

Please mail this completed form using the enclosed self-addressed envelope.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

DEPARTMENT OF AIR POLLUTION CONTROL (STATE BOARD OF)

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution - Emission Standards for Petroleum Liquid Storage and Transfer Operations.**

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

Effective Date: January 1, 1993.

Summary:

The regulation amendments require owners of gasoline dispensing facilities, pumping more than 10,000 gallons per month, in certain localities in the Richmond and Northern Virginia areas to install and operate Stage II vapor recovery systems. An exemption has been allowed for facilities pumping 50,000 gallons per month or less that are owned by independent small business gasoline marketers. Stage II systems must be installed between January 1, 1993, and November 15, 1994, depending on date of facility construction and amount of gasoline pumped monthly. The amendments also allow an exemption for gasoline dispensing devices which are used exclusively to refuel marine vehicles, aircraft, farm equipment and emergency vehicles. Requirements for Stage II vapor recovery system operator training, equipment approval, testing, inspection, maintenance and all associated recordkeeping and reporting are included in the amendments to ensure compliance. Detailed procedures for these compliance requirements are contained in an air quality program policies and procedures document.

VR 120-01. Regulations for the Control and Abatement of Air Pollution - Emission Standards for Petroleum Liquid Storage and Transfer Operations.

PART IV.
EMISSION STANDARDS FOR PETROLEUM LIQUID STORAGE AND TRANSFER OPERATIONS.
(RULE 4-37)

§ 120-04-3701. Applicability and designation of affected facility.

A. Except as provided in subsection C of this section, the affected facility to which the provisions of this rule apply is each operation involving the storage or transfer of petroleum liquids or both.

B. The provisions of this rule apply to sources of volatile organic compounds in volatile organic compound emissions control areas designated in Appendix P. The provisions of this rule shall apply in localities outside the volatile organic compound emissions control areas according to the following schedule of effective dates:

1. On January 1, 1993, for facilities subject to the emission standards in § 120-04-3703 A, B, and C and associated tank trucks that load at these facilities.

2. On January 1, 1996, for facilities subject to the emission standard in § 120-04-3703 D and associated account trucks that load or unload at these facilities.

3. On January 1, 1999, for facilities subject to the emission standard in § 120-04-3703 E.

C. The provisions of this rule do not apply to affected facilities using petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions. (Kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this rule when used or stored at ambient temperatures).

D. The burden of proof of eligibility for exemption from this rule is on the owner. Owners seeking such an exemption shall maintain adequate records of average monthly throughput and furnish these records to the board upon request.

§ 120-04-3702. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this rule, all terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

C. Terms defined.

"Average monthly throughput" means the average monthly amount of gasoline pumped at a gasoline dispensing facility during the two most recent consecutive calendar years [or some other two-year period which is representative of normal source operation. If the board

determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Downtime, such as a full or significant shutdown of a facility's operation due to construction, shall not be included when calculating average monthly throughput.]

"Begin actual construction" means initiation of permanent physical on-site construction of a new gasoline dispensing facility. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Bulk gasoline plant" means a secondary distribution point for delivering gasoline to local farms, businesses, service stations and other distribution points, where the total gasoline throughput is 20,000 gallons or less per working day, based on the daily average for the most recent 12-month period.

"Bulk gasoline terminal" means a primary distribution point for delivering gasoline to bulk plants, service stations and other distribution points, where the total gasoline throughput is greater than 20,000 gallons per working day, based on the daily average for the most recent 12-month period.

"Certified Stage II vapor recovery system" means any system certified by California Air Resources Board as having a vapor recovery or removal efficiency of at least 95%, and approved under the provisions of AQP-9, Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities (see Appendix S).

"Condensate" means a hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure or both and remains liquid at standard conditions.

"Crude oil" means a naturally occurring mixture which consists of any combination of hydrocarbons, sulfur, nitrogen or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

"Custody transfer" means the transfer of produced crude oil or condensate, after processing or treating or both in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

"Defective equipment" means any absence, disconnection, or malfunctioning of a Stage II vapor recovery system component required by this rule including, but not limited to, the following:

a. A vapor return line that is crimped, flattened, blocked, or that has any hole or slit that allows vapors to leak out.

b. A nozzle bellows that has any hole large enough to allow a 1/4-inch diameter cylindrical rod to pass through it or any slit one inch or more in length.

c. A nozzle faceplate or cone that is torn or missing over 25% of its surface.

d. A nozzle with no automatic overfill control mechanism, or an inoperable overfill control mechanism.

e. An inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline or is required by this rule.

"External floating roof" means a storage vessel cover in an open top consisting of a double deck or pontoon single deck which rests upon and is supported by the liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

"Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds per square inch or greater.

"Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle tanks from stationary storage tanks.

"Independent small business gasoline marketer" means a person [engaged in the marketing of gasoline] who owns one or more gasoline dispensing facilities [~~who is engaged in the marketing of gasoline~~ and is required to pay for procurement and installation of vapor recovery equipment] , unless such owner:

a. Is a refiner; controls, or is controlled by, or is under common control with, a refiner; or is otherwise directly or indirectly affiliated with a refiner [or with a person who controls, is controlled by, or is under a common control with a refiner] (unless the sole affiliation is by means of a supply contract or an agreement or contract to use a trademark, tradename, service mark, or other identifying symbol or name owned by such refiner or [any] such person); or

b. Receives less than 50% of [~~their~~ his] annual income from refining or marketing of gasoline.

For the purposes of this definition, "control" of a corporation means ownership of more than 50% of its stock and "control" of a partnership, joint venture or other nonstock entity means ownership of more than a 50% interest in such partnership, joint venture or other nonstock entity. [The lessee of a gasoline dispensing facility, for which the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet, shall be considered an independent

small business marketer if ithe lessee by lease agreement with the owner is required to pay for the cost of procurement and installation of vapor recovery equipment over a reasonable period.]

"Internal floating roof" means a cover or roof in a fixed roof tank which rests upon or is floated upon the liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

"Liquid-mounted" means a primary seal mounted so the bottom of the seal covers the liquid surface between the tank shell and the floating roof.

"Major system modification" means the replacement, repair or upgrade of 75% of a facility's Stage II vapor recovery system equipment.

"Owner" means, for the purposes of [~~*subsections E and F of § 120-04-3703 and § 120-04-3704 this rule*~~] , *any person* [~~*who owns or operates a gasoline storage and dispensing system*~~ , *including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals who own, lease, operate, control or supervise an operation involving the storage or transfer of petroleum liquids or both*] .

"Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

"Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or other products through distillation of petroleum or through redistillation, cracking, rearrangement or reforming of unfinished petroleum derivatives.

"Refiner" means any person or entity that owns or operates a facility engaged in the production of gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or similar products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives and whose total refinery capacity (including the refinery capacity of any person or entity who controls, is controlled by or is under common control with, such refiner) is greater than 65,000 barrels per day.

"Stage II vapor recovery system" means any equipment designed and used to collect, recover, or destroy [, *or any combination thereof,*] *gasoline vapors displaced during the transfer of gasoline into a motor vehicle fuel tank.*

"Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches above the bottom of the tank; or, when applied to a tank which is loaded from the side, any fill pipe the discharge opening of which is entirely submerged when at the minimum operating level.

"Vapor-mounted" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank shell, the liquid surface, and the floating roof.

"Vapor tight" means capable of holding a pressure of 18 inH20 and a vacuum of 6 inH20 without sustaining a pressure change of more than 3 inH20 in 5 minutes.

"Waxy, heavy pour crude oil" means a crude oil with a pour point of 50°F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils" (see Appendix M).

§ 120-04-3703. Standard for volatile organic compounds.

A. Petroleum liquid storage - fixed roof tanks.

1. No owner or other person shall use or permit the use of any fixed roof tank of more than 40,000 gallons capacity for storage of petroleum liquids, unless such tank is equipped with a control method which will remove, destroy or prevent the discharge into the atmosphere of at least 90% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision A 1 of this section by use of methods in § 120-04-3704 A will be acceptable to the board.

3. The provisions of subsection A of this section shall not be applicable to fixed roof tanks having capacities less than 400,000 gallons for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer.

4. The owner of a fixed roof tank subject to the provisions of subdivision A 1 of this section shall:

a. When the fixed roof tank is equipped with an internal floating roof, perform a visual inspection annually of the floating cover through roof hatches, to ascertain compliance with the specifications in subdivisions A 4 a (1) and (2).

(1) The cover should be uniformly floating on or above the liquid and there should be no visible defects in the surface of the cover or liquid accumulated on the cover.

(2) The seal must be intact and uniformly in place around the circumference of the cover between the cover and tank wall.

b. Perform a complete inspection of the cover and seal and record the condition of the cover and seal when the tank is emptied for nonoperational reasons such as maintenance, an emergency, or other similar purposes.

c. Maintain records of the throughput quantities and types of petroleum liquids stored, the average monthly storage temperature and true vapor pressure of the liquid as stored, and the results of the inspections performed under the provisions of subdivisions A 4 a and b of this section.

B. Petroleum liquid storage - floating roof tanks.

1. No owner or other person shall use or permit the use of any floating roof tank of more than 40,000 gallons capacity for storage of petroleum liquids, unless such tank is equipped with a control method which will remove, destroy or prevent the discharge into the atmosphere of at least 90% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision B 1 of this section by use of methods in § 120-04-3704 B will be acceptable to the board.

3. The provisions of subsection B of this section shall not be applicable to the following:

a. Floating roof tanks having capacities less than 400,000 gallons for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer.

b. Floating roof tanks storing waxy, heavy pour crude oil.

4. The owner of a floating roof tank subject to the provisions of subdivision B 1 of this section shall:

a. Perform routine inspections annually which shall include a visual inspection of the secondary seal gap.

b. When the floating roof is equipped with a vapor-mounted primary seal, measure the secondary seal gap annually in accordance with subdivisions B 4 b (1) and (2) of this section.

(1) Physically measuring the length and width of all gaps around the entire circumference of the secondary seal in each place where a 1/8-inch. uniform diameter probe passes freely (without forcing or binding against the seal) between the seal and tank wall; and

(2) Summing the area of the individual gaps.

c. Maintain records of the types of petroleum liquids stored, the maximum true vapor pressure of the liquid as stored, and the results of the inspections performed under the provisions of subdivisions B 4 a and b of this section.

C. Gasoline bulk loading - bulk terminals.

1. No owner or other person shall cause or permit the discharge into the atmosphere from a bulk gasoline terminal (including any appurtenant equipment necessary to load the tank truck compartments) any volatile organic compound in excess of .67 pounds per 1,000 gallons of gasoline loaded.

2. Achievement of the emission standard in subdivision C 1 of this section by use of methods in § 120-04-3704 C will be acceptable to the board.

D. Gasoline bulk loading - bulk plants.

1. No owner or other person shall use or permit the use of any bulk gasoline plant (including any appurtenant equipment necessary to load or unload tank trucks and account trucks) unless such plant is equipped with a vapor control system that will remove, destroy or prevent the discharge into the atmosphere of at least 77% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision D 1 of this section by use of methods in § 120-04-3704 D will be acceptable to the board.

3. The provisions of subsection D of this section shall not be applicable to facilities whose ~~total~~ average ~~gasoline~~ *daily* throughput *of gasoline* is less than 4,000 gallons per working day *when based on a 30-day rolling average. Average daily throughput means the average daily amount of gasoline pumped at a gasoline dispensing facility during the most recent 30-day period. Average daily throughput shall be calculated for the two most recent consecutive calendar years. If during this two-year period or any period thereafter, the average daily throughput exceeds 4,000 gallons per working day, the facility is no longer exempt from the provisions of subdivision D 1 of this section.*

E. Transfer of gasoline - gasoline dispensing facilities - stage I *vapor control systems* .

1. No owner or other person shall transfer or permit the transfer of gasoline from any tank truck into any stationary storage tank unless such tank is equipped with a vapor control system that will remove, destroy or prevent the discharge into the atmosphere of at least 90% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision E 1 of this section by use of methods in § 120-04-3704 E will be acceptable to the board.

3. The provisions of subsection E of this section shall not apply to the following:

a. Transfers made to storage tanks that are either less than 250 gallons in capacity or located at

facilities whose ~~total~~ average ~~gasoline~~ *monthly* throughput *of gasoline* is less than 10,000 gallons ~~per month~~ .

b. Transfers made to storage tanks equipped with floating roofs or their equivalent.

F. Transfer of gasoline - gasoline dispensing facilities - Stage II vapor recovery systems.

1. No owner or other person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any affected gasoline dispensing facility unless the transfer is made using a certified Stage II vapor recovery system that is designed, operated, and maintained such that the vapor recovery system removes, destroys or prevents the discharge into the atmosphere of at least 95% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision F 1 of this section by use of methods in § 120-04-3704 F will be acceptable to the board.

3. The provisions of subsection F of this section shall apply to affected facilities in the Northern Virginia and Richmond Volatile Organic Compound Emissions Control Areas designated in Appendix P. The affected gasoline facilities shall be in compliance with the emissions standard in subdivision F 1 of this section according to the following schedule:

a. Facilities which begin actual construction on or after January 1, 1993, must comply upon start-up unless the facility can prove it is exempt under the provisions of subdivision F 4 of this section.

b. Facilities which begin actual construction after November 15, 1990, and before January 1, 1993, must comply by May 15, 1993.

c. Facilities which begin actual construction on or before November 15, 1990, and dispense an average monthly throughput of 100,000 gallons or more of gasoline must comply by November 15, 1993.

d. All other affected facilities which begin actual construction on or before November 15, 1990, must comply by November 15, 1994.

4. The provisions of subsection F of this section shall not apply to the following facilities:

a. Gasoline dispensing facilities with an average monthly throughput of 10,000 gallons or less.

b. Gasoline dispensing facilities owned by independent small business gasoline marketers with an average monthly throughput of [~~less than~~] 50,000 gallons [or less] .

c. Gasoline dispensing devices that are used exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles.

5. Any gasoline dispensing facility subject to the provisions of subsection F of this section shall also comply with the provisions of subsection E of this section (Stage I vapor controls).

6. In accordance with the provisions of AQP-9, Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities (see Appendix S), owners of affected gasoline dispensing facilities shall:

[a. Register the Stage II system with the board and submit Stage II vapor recovery equipment specifications at least 90 days prior to installation of the Stage II vapor recovery system. Owners of gasoline dispensing facilities in existence as of January 1, 1993, shall contact the board by February 1, 1993, and register the Stage II vapor recovery system according to the schedule outlined in AQP-9. Any repair or modification to an existing Stage II vapor recovery system that changes the approved configuration shall be reported to the board no later than 30 days after completion of such repair or modification.]

[~~a.~~ b.] Perform tests, before the equipment is made available for use by the public, on the entire Stage II vapor recovery system to ensure the proper functioning of nozzle automatic shut-off mechanisms and flow prohibiting mechanisms where applicable, and perform a pressure decay/leak test, a vapor space tie test, and a liquid blockage test. [In cases where use of one of the test methods in AQP-9 is not feasible for a particular Stage II vapor recovery system, the owner may, upon approval of the board, use an alternative test method.]

[~~b.~~ c.] No later than 15 days after system testing is completed, submit to the board documentation showing [~~that the entire Stage II vapor recovery system has passed~~ the results of] the tests outlined in subdivision F 6 [~~a~~ b] of this section.

[~~c.~~ d.] Ensure that the Stage II vapor recovery system is vapor tight by performing a pressure decay/leak test and a liquid blockage test at least every five years, upon major system replacement or modification, or if requested by the board after evidence of a system malfunction which compromises the efficiency of the system.

[~~d.~~ e.] Notify the board at least two days prior to Stage II vapor recovery system testing as required by subdivisions [~~F 6 a and F 6~~ e F 6 b and F 6 d] of this section.

[~~e.~~ f.] Conspicuously post operating instructions for

the vapor recovery system [~~in the gasoline dispensing area~~ on each gasoline dispensing pump] which includes the following [information]:

[(1) A statement, as described in Part III F 1 of AQP-9 (see Appendix S), describing the benefits of the Stage II vapor recovery system.]

[~~(1)~~ (2)] A clear description of how to correctly dispense gasoline with the vapor recovery nozzles.

[~~(2)~~ (3)] A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off) may result in spillage or recirculation of gasoline.

[~~(3)~~ (4)] A telephone number to report problems experienced with the vapor recovery system to the board.

[~~f.~~ g. Promptly and] conspicuously post "Out Of Order" signs on any nozzle associated with any [~~aboveground~~] part of the vapor recovery system which is defective [~~until said system has been repaired~~ if use of that nozzle would allow escape of gasoline vapors to the atmosphere] . ["Out of order" signs shall not be removed from affected nozzles until said system has been repaired.]

[~~g.~~ h.] Provide adequate training and written instructions [for facility personnel] to assure proper operation of the vapor recovery system.

[~~h.~~ i.] Perform routine maintenance inspections of the Stage II vapor recovery system on a daily and monthly basis and record the [monthly] inspection results.

[~~i.~~ j.] Maintain records on site, in a form and manner acceptable to the board, of [~~the type and duration of any failures of the system,~~ operator training, system registration and equipment approval] , [and] maintenance, repair and testing of the system [~~, inspections, and enforcement actions.~~]. Records shall be retained for a period of at least two years, unless specified otherwise, and shall be made immediately available for inspection by the board upon request.

~~F~~ *G* . Tank trucks/account trucks and vapor collection systems.

1. No owner or other person shall use or permit the use of any tank truck or account truck that is loaded or unloaded at facilities subject to the provisions of subsection C, D or E of this section unless such truck is designed, maintained and certified to be vapor tight. In addition, there shall be no avoidable visible liquid leaks. Invariably there will be a few drops of liquid from disconnection of dry breaks in liquid lines even when well maintained; these drops are allowed.

2. Vapor-laden tank trucks or account trucks exclusively serving facilities subject to subsection D or E of this section may be refilled only at facilities in compliance with subsection C of this section.

3. Tank truck and account truck hatches shall be closed at all times during loading and unloading operations (periods during which there is liquid flow into or out of the truck) at facilities subject to the provisions of subsection C, D or E of this section.

4. During loading or unloading operations at facilities subject to the provisions of subsection C, D or E of this section, there shall be no volatile organic compound concentrations greater than or equal to 100% of the lower explosive limit (LEL, measured as propane) at 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector. In addition, there shall be no avoidable visible liquid leaks. Invariably there will be a few liquid drops from the disconnection of well-maintained bottom loading dry breaks and the raising of well-maintained top loading vapor heads; these few drops are allowed. The vapor collection system includes all piping, seals, hoses, connection, pressure-vacuum vents and other possible leak sources between the truck and the vapor disposal unit and between the storage tanks and vapor recovery unit.

5. The vapor collection and vapor disposal equipment must be designed and operated to prevent gauge pressure in the tank truck from exceeding 18 inH2O and prevent vacuum from exceeding 6 inH2O.

6. Testing to determine compliance with subdivision ~~F~~ ~~1~~ *G 1* of this section shall be conducted and reported and data shall be reduced as set forth in procedures approved by the board using test methods specified therein. All tests shall be conducted by, or under the direction of, a person qualified by training or experience in the field of air pollution testing, or tank truck maintenance and testing and approved by the board.

7. Monitoring to confirm the continuing existence of leak tight conditions specified in subdivision ~~F~~ 4 *G 4* of this section shall be conducted as set forth in procedures approved by the board using test methods specified therein.

8. Owners of tank trucks and account trucks subject to the provisions of subdivision ~~F~~ ~~1~~ *G 1* of this section shall certify, each year that the trucks are vapor tight in accordance with test procedures specified in subdivision ~~F~~ ~~6~~ *G 6* of this section. Trucks that are not vapor tight must be repaired within 15 days of the test and be tested and certified as vapor tight.

9. Each truck subject to the provisions of subdivision

~~F 1~~ *G 1* of this section shall have information displayed on the tank indicating the expiration date of the certification and such other information as may be needed by the board to determine the validity of the certification. The means of display and location of the above information shall be in a manner acceptable to the board.

10. An owner of a vapor collection/control system shall repair and retest the system within 15 days of the testing, if it exceeds the limit specified in subdivision ~~F 4~~ *G 4* of this section.

11. The owner of a tank/account truck or vapor collection/control system or both subject to the provisions of this section shall maintain records of all certification testing [*and*] repairs. The records must identify the tank/account truck, vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records must be maintained in a legible, readily available condition for at least two years after the date testing or repair was completed.

12. The records of certification tests required by subdivision ~~F 11~~ *G 11* of this section shall, as a minimum, contain the following:

a. The tank/account truck tank identification number.

b. The initial test pressure and the time of the reading.

c. The final test pressure and the time of the reading.

d. The initial test vacuum and the time of the reading.

e. The final test vacuum and the time of the reading.

f. Name and the title of the person conducting the test.

13. Copies of all records and reports required by this section shall immediately be made available to the board, upon verbal or written request, at any reasonable time.

14. The board may, at any time, monitor a tank/account truck, vapor collection system, or vapor control system, by the method referenced in subdivision ~~F 6~~ *G 6* or ~~F 7~~ *G 7* of this section to confirm continuing compliance with subdivision ~~F 1~~ *G 1* or ~~F 4~~ *G 4* of this section.

15. If, after over one year of monitoring (i.e., at least two complete annual checks), the owner of a truck subject to the provisions of subdivision ~~F 6~~ *G 6* of this section feels that modification of the requirements are in order, he may request in writing to the board that a revision be made. The request should include data that have been developed to justify any modifications in the monitoring schedule. On the other hand, if the board finds an excessive number of leaks during an inspection, or if the owner finds an excessive number of leaks during scheduled monitoring, consideration shall be given to increasing the frequency of inspection.

§ 120-04-3704. Control technology guidelines.

A. Petroleum liquid storage - fixed roof tanks.

1. The tank should be a pressure tank maintaining working pressure sufficient at all times to prevent vapor loss to the atmosphere, or be designed and equipped with one of the following vapor control systems:

a. An internal floating roof resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and tank shell. All tank gauging and sampling devices should be vapor tight except when gauging or sampling is taking place.

b. Any system of equal or greater control efficiency to the system in subdivision A 1 a of this section, provided such system is approved by the board.

2. There should be no visible holes, tears or other openings in the seal or any seal fabric.

3. All openings, except stub drains, should be equipped with a cover, seal or lid. The cover, seal or lid should be in a closed position at all times except when the device is in actual use. Automatic bleeder vents should be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents, if provided, should be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

4. The exterior above ground surfaces (exposed to sunlight) should be painted white, light pastels, or light metallic and such exterior paint should be periodically maintained in good condition. Repainting may be performed during normal maintenance periods.

B. Petroleum liquid storage - floating roof tanks.

1. The tank should be designed and equipped with one of the following vapor control systems:

a. An external floating roof resting on the surface of the liquid contents and equipped with a seal closure device (meeting the specifications set forth in subdivisions B 2 and 3 of this section) to close the space between the roof edge and tank shell. All

tank gauging and sampling devices should be vapor tight except when gauging or sampling is taking place.

b. Any system of equal or greater control efficiency to the system in subdivision B 1 a of this section, provided such system is approved by the board.

2. Unless the tank is a welded tank fitted with a metallic-type shoe seal which has a secondary seal from the top to the shoe seal to the tank wall (a shoe-mounted secondary), the tank should be fitted with a continuous secondary seal extending from the floating roof to the tank wall (a rim-mounted secondary) if:

a. The tank is a welded tank, the true vapor pressure of the contained liquid is 4.0 psi or greater, and the primary seal is one of the following:

(1) A metallic-type shoe seal.

(2) A liquid-mounted foam seal.

(3) A liquid-mounted liquid-filled type seal.

(4) Any other seal closure device which can be demonstrated equivalent to the primary seals specified in subdivisions B 2 a (1) through (3) of this section.

b. The tank is a riveted tank, the true vapor pressure of the contained liquid is 1.5 psi, or greater, and the seal closure device is as described in subdivision B 2 a of this section.

c. The tank is a welded or riveted tank, the true vapor pressure of the contained liquid is 1.5 psi, or greater, and the primary seal is vapor mounted. When such primary seal closure device can be demonstrated equivalent to the primary seals described in subdivision B 2 a of this section, the provisions of that subdivision apply.

3. The seal closure devices should meet the following requirements:

a. There should be no visible holes, tears or other openings in the seal or any seal fabric.

b. The seal should be intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall.

c. The areas where the gap between the secondary seal, installed pursuant to subdivision B 2 c of this section, and the tank wall exceeds 1/8 inch in width shall be calculated in square inches. The sum of all such areas shall not exceed 1.0 square inch per foot of tank diameter.

4. All openings, except for automatic bleeder vents, rim space vents and leg sleeves, should provide a projection below the liquid surface. All openings, except stub drains, should be equipped with a cover, seal or lid. The cover, seal or lid should be in a closed position at all times except when the device is in actual use. Automatic bleeder vents should be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents, if provided, should be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Any emergency roof drain should be provided with a slotted membrane fabric cover or equivalent cover that covers at least 90% of the area of the opening.

5. The exterior above ground surfaces (exposed to sunlight) should be painted white, light pastels, or light metallic and such exterior paint should be periodically maintained in good condition. Repainting may be performed during normal maintenance periods.

C. Gasoline bulk loading - bulk terminals.

The control system should consist of the following:

1. A vapor collection and disposal system with the vapor disposal portion consisting of one of the following:

a. Compression - refrigeration - adsorption system.

b. Refrigeration system.

c. Oxidation system.

d. Any system of equal or greater control efficiency to the systems in subdivisions C 1 a through c of this section, provided such system is approved by the board.

2. A vapor collection and disposal system with the vapor collection portion meeting the following criteria:

a. Loading should be accomplished in such manner that all displaced vapor and air will be vented only to the vapor disposal system. Measures should be taken to prevent liquid drainage from the loading device when it is not in use or to accomplish substantially complete drainage before the loading device is disconnected.

b. The pressure relief valves on storage containers and tank trucks should be set to release at no less than 0.7 psi or the highest possible pressure (in accordance with the following National Fire Prevention Association Standards: NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids; NFPA 30, Flammable and Combustible Liquids Code; NFPA 30A, Automotive and Marine Service Station Code (see Appendix M)).

c. Pressure in the vapor collection lines should not exceed tank truck pressure relief valve settings.

d. All loading and vapor lines should be equipped with fittings which make vapor tight connections and which close when disconnected.

D. Gasoline bulk loading - bulk plants.

1. The control system should consist of one of the following:

a. Submerged filling of account trucks and storage tanks (either top-submerged or bottom-fill) plus a vapor balance (displacement) system to control volatile organic compounds displaced by gasoline delivery to the storage tank and account truck.

b. Top loading vapor recovery method of filling account trucks and storage tanks plus a vapor balance (displacement) system to control volatile organic compounds displaced by gasoline delivery to the storage tank and account truck.

c. Any system of equal or greater control efficiency to the system in subdivision D 1 a or b of this section, provided such system is approved by the board.

2. The control system in subdivisions D 1 a and b of this section should meet the following equipment specifications and operating procedures:

a. For top-submerged and bottom-fill. The fill pipe should extend to within six inches of the bottom of the storage tank and account truck during top-submerged filling operations. Any bottom fill is acceptable if the inlet is flush with the tank bottom.

b. For the balance system:

(1) There should be no leaks in the account trucks' and tank trucks' pressure vacuum relief valves and hatch covers, nor tank trucks, account trucks, storage tanks or associated vapor return lines during loading or unloading operations.

(2) The pressure relief valves on storage tanks, account trucks and tank trucks should be set to release at no less than 0.7 psi or the highest possible pressure (in accordance with the following National Fire Prevention Association Standards: NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids; NFPA 30, Flammable and Combustible Liquids Code; NFPA 30A, Automotive and Marine Service Station Code (see Appendix M)).

(3) Pressure in the vapor collection lines should not exceed account truck or tank truck pressure relief valve settings.

(4) All loading and vapor lines should be equipped with fittings which make vapor tight connections and which close when disconnected.

E. Transfer of gasoline - gasoline dispensing facilities - stage I *vapor control systems* .

The control system should consist of the following:

1. A submerged fill pipe.

2. A vapor control system with the vapor recovery portion consisting of one of the following:

a. A vapor tight return line from the storage container to the tank truck which shall be connected before gasoline is transferred into the container.

b. Any adsorption system or condensation system.

c. Any system of equal or greater control efficiency to the systems in subdivision E 2 a or b of this section, provided such system is approved by the board.

3. A vapor control system with the vapor balance portion meeting the following criteria:

a. There should be no leaks in the tank trucks' pressure vacuum relief valves and hatch covers, nor truck tanks, storage tanks and associated vapor return lines during loading or unloading operations.

b. The pressure relief valves on storage containers and tank trucks should be set to release at no less than 0.7 psi or the highest possible pressure (in accordance with the following National Fire Prevention Association Standards: NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids; NFPA 30, Flammable and Combustible Liquids Code; NFPA 30A, Automotive and Marine Service Station Code (see Appendix M)).

c. Pressure in the vapor collection lines should not exceed tank truck pressure relief valve settings.

d. All loading and vapor lines should be equipped with fittings which make vapor tight connections and which close when disconnected.

F. Transfer of gasoline - gasoline dispensing facilities - Stage II vapor recovery systems.

1. Stage II vapor recovery systems shall be limited to those certified systems approved under the provisions of AQP-9, Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities (see Appendix S), which utilize coaxial hoses and vapor check valves in the nozzle [~~*(i.e., no remote check valves)*~~ *or remote*

vapor check valves which do not impede the performance of the functional tests required in subdivision F 6 b of § 120-04-3703] .

2. Stage II vapor recovery systems installed prior to January 1, 1993, must meet the specifications of a system certified by the California Air Resources Board. Owners of Stage II vapor recovery systems utilizing remote check valves [*which will impede the performance of the functional tests required in subdivision F 6 b of § 120-04-3703*] *and dual vapor recovery hoses shall replace these components with check valves in the nozzle and with coaxial hoses by January 1, 1995.*

§ 120-04-3705. Standard for visible emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply.

§ 120-04-3706. Standard for fugitive dust/emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply.

§ 120-04-3707. Standard for odor.

The provisions of Rule 4-2 (Emission Standards for Odor) apply.

§ 120-04-3708. Standard for noncriteria pollutants.

The provisions of Rule 4-3 (Emission Standards for Noncriteria Pollutants) apply.

§ 120-04-3709. Compliance.

The provisions of § 120-04-02 (Compliance) apply.

§ 120-04-3710. Test methods and procedures.

The provisions of § 120-04-03 (Emission testing) apply.

§ 120-04-3711. Monitoring.

The provisions of § 120-04-04 (Monitoring) apply.

§ 120-04-3712. Notification, records and reporting.

The provisions of § 120-04-05 (Notification, records and reporting) apply.

§ 120-04-3713. Registration.

The provisions of § 120-02-31 (Registration) apply.

§ 120-04-3714. Facility and control equipment maintenance or malfunction.

The provisions of § 120-02-34 (Facility and control equipment maintenance or malfunction) apply.

§ 120-04-3715. Permits.

A permit may be required prior to beginning any of the activities specified below and the provisions of Part V (New and Modified Sources) and Part VIII (Permits for New and Modified Sources) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.

A. Construction of a facility.

B. Reconstruction (replacement of more than half) of a facility.

C. Modification (any physical change to equipment) of a facility.

D. Relocation of a facility.

E. Reactivation (restart-up) of a facility.

APPENDIX P.
VOLATILE ORGANIC COMPOUNDS *AND NITROGEN OXIDES* EMISSIONS CONTROL AREAS.

~~Volatile Organic Compound Emissions Control Areas are geographically defined as follows:~~

~~Air Quality Control Region 1~~	~~None~~
~~Air Quality Control Region 2~~	~~None~~
~~Air Quality Control Region 3~~	~~None~~
~~Air Quality Control Region 4~~	~~Stafford County~~
~~Air Quality Control Region 5~~	~~Richmond City~~ ~~Chesterfield County~~ ~~Henrico County~~
~~Air Quality Control Region 6~~	~~Chesapeake City~~ ~~Hampton City~~ ~~Newport News City~~ ~~Norfolk City~~ ~~Portsmouth City~~ ~~Suffolk City~~ ~~Virginia Beach City~~
~~Air Quality Control Region 7~~	~~Alexandria City~~ ~~Fairfax City~~ ~~Falls Church City~~ ~~Manassas City~~ ~~Manassas Park City~~ ~~Arlington County~~ ~~Fairfax County~~ ~~Loudoun County~~ ~~Prince William County~~

Emissions Control Areas are geographically defined below by locality for the pollutants indicated.

A. Volatile Organic Compounds

1. Northern Virginia Emissions Control Area

Arlington County	*Alexandria City*
Fairfax County	*Fairfax City*
Loudoun County	*Falls Church City*
Prince William County	*Manassas City*

Stafford County	*Manassas Park City*

2. Richmond Emissions Control Area

Charles City County	*Colonial Heights City*
Chesterfield County	*Hopewell City*
Hanover County	*Richmond City*
Henrico County	

3. Hampton Roads Emissions Control Area

Chesapeake City	*Portsmouth City*
Hampton City	*Suffolk City*
Newport News City	*Virginia Beach City*
Norfolk City	

B. Nitrogen Oxides

1. Northern Virginia Emissions Control Area

Arlington County	*Alexandria City*
Fairfax County	*Fairfax City*
Loudoun County	*Falls Church City*
Prince Willism County	*Manassas City*
Stafford County	*Manassas Park City*

2. Richmond Emissions Control Area

Charles City County	*Colonial Heights City*
Chesterfield County	*Hopewell City*
Hanover County	*Richmond City*
Henrico County	

3. Hampton Roads Emissions Control Area

Chesapeake City	*Portsmouth City*
Hampton City	*Suffolk City*
Newport News City	*Virginia Beach City*
Norfolk City	

APPENDIX S.
AIR QUALITY PROGRAM POLICIES AND PROCEDURES.

I. General.

A. In order for the Commonwealth to fulfill its obligations under the federal Clean Air Act, some provisions of these regulations are required to be approved by the U.S. Environmental Protection Agency as part of the State Implementation Plan and when approved those provisions become federally enforceable.

B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing or specifically provide for decisions to be made by the board or department, it may also be necessary to have such actions (approvals, determinations, exemptions, exclusions, or decisions) approved by the U.S. Environmental Protection Agency as part of the State Implementation Plan in order to make them federally enforceable. In accordance with U.S. Environmental Protection Agency regulations and policy, it has been determined that it is necessary for the procedures listed in Section II of this appendix to be approved as part of the State Implementation Plan.

C. Failure to include in this appendix any procedure mentioned in the regulations shall not invalidate the applicability of the procedure.

D. Copies of materials listed in this appendix may be examined by the public at the headquarters office of the Department of Air Pollution Control, Eighth Floor, Ninth Street Office Building, 200-202 North Ninth Street, Richmond, Virginia between 8:30 a.m. and 4:30 p.m. of each business day.

II. Specific documents.

A. Procedures for Testing Facilities Subject to Emission Standards for Volatile Organic Compounds, AQP-1, July 1, 1991.

B. Procedures for Determining Compliance with Volatile Organic Compound Emission Standards Covering Surface Coating Operations, AQP-2, July 1, 1991.

C. Procedures for the Measurement of Capture Efficiency for Determining Compliance with Volatile Organic Compound Emission Standards Covering Surface Coating Operations, AQP-3, July 1, 1991.

D. Procedures for Maintaining Records for Surface Coating Operations and Graphic Arts Printing Processes, AQP-4, July 1, 1991.

E. (Reserved)

F. Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems For Gasoline Dispensing Facilities, AQP-9, January 1, 1993.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF AIR POLLUTION CONTROL

STAGE II VAPOR RECOVERY SYSTEM REGISTRATION AND EQUIPMENT APPROVAL FORM

PLEASE TYPE OR PRINT CLEARLY.

☐ 1. FACILITY OWNER:

Name:_____ Phone:(_____)_____

Business Mailing Address:_____

City, State:_____ ZIP:_____

☐ 2. FACILITY OPERATOR/LESSEE:

Name:_____ Phone:(_____)_____

Business Mailing Address:_____

City, State:_____ ZIP:_____

☐ 3. FACILITY INFORMATION:

Name:_____ Phone:(_____)_____

Street Address:_____

City, State:_____ ZIP:_____

☐ 4. TYPE OF VAPOR COLLECTION AND CONTROL SYSTEM (check one only):
☐ Vapor Balance ☐ Vacuum Assist ☐ Other:_____

☐ 5. VAPOR COLLECTION AND CONTROL EQUIPMENT INFORMATION: Only equipment which has already been approved and certified by the California Air Resources Board (CARB) is acceptable.

Equipment	No. of	Manufacturer's Name	Model No.	CARB Number (i.e., Executive Order #)
NOZZLES				
HOSES				
DISPENSERS				

☐ 6. ANTICIPATED DATES OF INSTALLATION:

Underground Piping:_____/_____/_____ (mm dd yy) Aboveground Equipment:_____/_____/_____ (mm dd yy)

☐ 7. STATEMENT OF NOTIFICATION (Sign and return the white copy):
I certify that I have provided the above information, and to the best of my knowledge it is true and complete.

_____ _____
Signature of legally responsible person Date

Name:_____ Title:_____

Business Address:_____ Phone:(_____)_____

City, State:_____ ZIP:_____

☐ 8. STATEMENT OF COMPLIANCE (Sign and return the yellow copy when installation of equipment has been completed): I certify that the equipment listed in item #5 above has been installed and is operating in compliance with Rule 4-37 of VR 120-01.

_____ _____
Signature of legally responsible person (#7 above) Date

DEPARTMENT OF AIR POLUTION CONTROL (STATE BOARD OF)

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution - New and Modified Stationary Sources.**

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

Effective Date: January 1, 1993.

Summary:

The regulation amendments concern provisions covering new and modified stationary source permits. The major provisions of the revision are summarized below:

1. The 1990 Clean Air Act Amendments mandate certain changes to each state's nonattainment permit requirements; Virginia's requirements appear in § 120-08-03. The major changes related to the requirements of the Clean Air Act appear in the definitions and in subsections F, M and N. The definitions of "major stationary source," "net emissions increase," "nonattainment pollutant" and significant" have been amended to meet various requirements of Title I of the Clean Air Act. Subsection F, regarding standards, and subsection M, regarding offsets, have been amended to meet the requirements of §§ 173(a) and 182 of the Clean Air Act. Subsection N, regarding de minimis increases and modification alternatives, has been added to meet the requirements of § 182(c)(6) through (8). Where appropriate, nitrogen oxides has been added to the language in this section regarding the relevant nonattainment pollutants.

2. Through these amendments, the department is expanding the opportunity for public participation with regard to permitting. Current public participation requirements have been combined with new requirements in a separate public participation section in §§ 120-08-01, 120-08-02 and 120-08-03. In §§ 120-08-02 and 120-08-03, the revision requires the applicant to provide public notice and an informational briefing in addition to the public hearing and public comment period now provided by the department. In § 120-08-01, the revision requires the applicant to provide public notice only, in addition to the current public participation provisions.

3. The definition of "building, structure, or facility" in § 120-08-03 has expanded to include installation. The definition of "installation" has been deleted. This change removes the dual definition from this section making the definition of "building, structure, facility or installation" identical to that in § 120-08-02.

4. The revision amends the provision concerning who signs applications for permits in §§ 120-08-01, 120-08-02 and 120-08-03 to conform to similar provisions in the regulations of other state environmental agencies.

5. The revision adds a provision to §§ 120-08-01, 120-08-02 and 120-08-03 concerning the statutory requirement for all applicants to provide notification from the locality that the location and operation of the facility are consistent with certain local ordinances.

6. The revision adds subsections on reactivation and shutdown, transfer of permits, and revocation and enforcement of permits to §§ 120-08-01, 120-08-02 and 120-08-03.

7. The revision amends Appendix R to provide an increase in some general exemption levels and in some specific exemption levels. The revision also amends section IX, regarding exemption levels for sources emitting toxic pollutants, by allowing sources applying for modification permits to be exempt from the permit requirements on the basis of the increased emissions alone.

VR 120-01. Regulations for the Control and Abatement of Air Pollution - New and Modified Stationary Sources.

PART VIII.
PERMITS FOR NEW AND MODIFIED SOURCES.

§ 120-08-01. Permits - new and modified stationary sources.

A. Applicability.

1. Except as provided in subsection A 3 of this section, the provisions of this section apply to the construction, reconstruction, relocation or modification of any stationary source.

2. The provisions of this ~~rule~~ *section* apply throughout the Commonwealth of Virginia.

3. The provisions of this section do not apply ~~to the reactivation of any emissions unit and~~ to any facility exempted by Appendix R. *Exemption from the requirement to obtain a permit under this section shall not relieve any owner of the responsibility to comply with any other applicable provisions of these regulations or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any facility which is exempt from the provisions of this section based on the criteria in Appendix R but which exceeds the applicability thresholds for any emmission standard in Part IV if it were an existing source or any standard of performance in Part V shall be subject to the more restrictive of the provisions of either the emission standard in Part IV or the standard of performance in Part V.*

4. Where a source is constructed or modified in [*contemporaneous*] *increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section.* [*An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.*]

~~4.~~ *5.* Unless specified otherwise, the provisions of this section are applicable to various sources as follows:

a. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" are applicable to the construction, reconstructi or modification of all stationary sources (including major stationary sources and major modifications) and the emissions therefrom to the extent that such sources and their emissions are not subject to the provisions of § 120-08-02 or § 120-08-03.

b. Provisions referring to "major stationary sources" are applicable to the construction, reconstruction or modification of all major stationary sources.

c. In cases where the provisions of § 120-08-02 or § 120-08-03 conflict with those of this section, the provisions of § 120-08-02 or § 120-08-03 shall prevail.

B. Definitions.

1. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection B 3 of this section.

2. As used in this section, all terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

3. Terms defined.

"Allowable emissions" means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state [~~or~~ *and*] federally enforceable limits which restrict the operating rate and/or hours of operation) and the most stringent of the following:

(1) Applicable emission standards.

(2) The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date.

(3) Any other applicable emission limitation, including those with a future compliance date.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable facility, this term refers to the delivery of any portion of the portable facility to the site.

"Commence," as applied to the construction, reconstruction or modification of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

(1) Begun, or caused to begin, a continuous program of actual on-site construction, reconstruction or modification of the unit, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be ~~cancelled~~ *canceled* or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or modification of the unit, to be completed within a reasonable time.

"Construction" means fabrication, erection or installation of an emissions unit.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or Part VIII , *including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.*

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Major modification" means any modification defined as such in § 120-08-02 or § 120-08-03, as may apply.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any air pollutant.

"Modification" means any physical change in, change in the method of operation of, or addition to, an emissions unit which increases the ~~amount~~ *uncontrolled emission rate* of any air pollutant emitted into the atmosphere by

the unit or which results in the emission of any air pollutant into the atmosphere not previously emitted, except that the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:

(1) Maintenance, repair and replacement which the board determines to be routine for a source type *and which does not fall within the definition of reconstuction* .

(2) An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit.

(3) An increase in the hours of operation.

(4) Use of an alternative fuel or raw material if, prior to the date any provision of these regulations becomes applicable to the source type, the emissions unit was designed to accommodate that alternative use. A unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications.

~~(5) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act.~~

~~(6) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act.~~

~~(7)~~ *(5)* The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the board considers to be less efficient.

~~(8) The change in ownership of an emissions unit.~~

"Modified source" means any stationary source (or portion thereof), the modification of which commenced on or after March 17, 1972.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control law and regulations which are part of the State Implementation Plan.

"New source" means any stationary source (or portion thereof), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion thereof), the reconstruction of which commenced on or after December 10, 1976.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state [~~or~~ *and*] federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction"

(1) Means the replacement of an emissions unit or its components to such an extent that:

(a) The fixed capital cost of the new components exceeds 50% of the fixed capital *cost* that would be required to construct a comparable entirely new unit, and

(b) It is technologically and economically feasible to meet the applicable emission standards prescribed under these regulations.

(2) Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;

(b) The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

(c) The extent to which the components being replaced cause or contribute to the emissions from the unit; and

(d) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do

not come from the stationary source itself. For the purpose of this section, secondary emissions must be specific, well defined, and quantifiable; and must impact upon the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to § 120-02-11, requirements within any applicable order or variance, and any permit requirements established pursuant to Part VIII.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the Supplement (see Appendix M).

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollutant control equipment includes control equipment which is not vital to its operation, except that its use enables the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted or processed may be used in determining the uncontrolled emission rate of a source. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

C. General.

1. No owner or other person shall begin actual construction, reconstruction or modification of any of the following types of sources without first obtaining from the board a permit to construct and operate or to modify and operate such source:

a. Any stationary source.

b. Any stationary source of hazardous air pollutants to which an emission standard prescribed under Part VI became applicable prior to the beginning of construction, reconstruction or modification. In the event that a new emission standard prescribed under Part VI becomes applicable after a permit is issued but prior to initial startup, a new permit must be obtained by the owner.

2. No owner or other person shall relocate any emissions unit subject to the provisions § 120-02-31 without first obtaining from the board a permit to relocate the unit.

3. No owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any pollutant from an affected facility subject to the provisions of § 120-02-31 without first obtaining a permit from the board.

~~4. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing will be held.~~

~~a. Applications for stationary sources of hazardous air pollutants as specified in subsection C 1 b of this section.~~

~~b. Applications for major stationary sources.~~

~~c. Applications for stationary sources which have the potential for public interest, as determined by the board. The identification of such sources shall be made using the following criteria:~~

~~(1) Whether the project is opposed by any person.~~

~~(2) Whether the project has resulted in adverse media comment.~~

~~(3) Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency.~~

~~(4) Whether the project has generated adverse comment by a local official, governing body or advisory board.~~

~~d. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by paragraphs 1 and 2 of the GEP definition. The demonstration specified in paragraph 3 of the GEP definition must be available during the public comment period.~~

4. The board may combine the requirements of and the permits for [~~emission~~ emissions] units within a stationary source subject to §§ 120-08-01, 120-08-02,

and 120-08-03 into one permit. Likewise the board may require that applications for permits for [~~emission~~ emissions] units within a stationary source required by §§ 120-08-01, 120-08-02, and 120-08-03 be combined into one application.

D. Applications.

~~1. Application for a permit shall be made in the following manner. If the applicant is a partnership, a general partner shall sign the application. If the applicant is a corporation, association or cooperative, an officer shall sign the application. If the applicant is a sole proprietorship, the proprietor shall sign the application.~~

~~2.~~ *1.* A single application is required identifying [*at a minimum*] each [*emissions point within the*] emissions unit. The application shall be submitted according to procedures approved by the board. However, where several [*emissions*] units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

~~3.~~ *2.* For projects with phased development, a single application should be submitted covering the entire project.

3. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

a. For a [business entity, such as a] corporation, association or cooperative, a responsible official is either [:]

[~~(i)~~ (1)] The president, secretary, treasurer, or a vice-president of the [~~corporation~~ business entity] in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the [~~corporation,~~ business entity;] or

[~~(ii)~~ (2)] A duly authorized representative of such corporation if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either [~~(a)~~ (i)] the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or [~~(b)~~ (ii)] the authority to sign documents has been assigned or delegated to such representative in accordance with [~~corporate~~] procedures [of the business entity] .

b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

4. Any person signing a document under subsection D 3 above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

E. Information required.

1. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emission standards which are applicable. The information required shall include, but is not limited to, the following:

a. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources.

b. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the source, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

2. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

~~F. Standards for granting permits.~~

~~No permit will be granted pursuant to this section unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of these regulations and that the following standards have been met:~~

~~1. Stationary sources.~~

~~The source shall be designed, built and equipped to comply with standards of performance prescribed under Part V.~~

~~2. Stationary sources of hazardous air pollutants.~~

~~The source shall be designed, built and equipped to comply with emission standards prescribed under Part VI.~~

~~3. Stack elevation reductions under § 120-08-01 C 3.~~

~~The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard.~~

~~G.~~ *F.* Action on permit application.

1. Within 30 days after receipt of an application ~~or any additional information~~ , the board shall ~~advise~~ *notify* the applicant of ~~any deficiency in such application or information~~ *the status of the application . The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of Part VIII are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information.* ~~In the event that additional information is required,~~ The date of receipt of ~~the~~ *a complete* application for processing under subsection ~~G 2~~ *F 2* of this section shall be the date on which the board received all required information.

2. Processing time for a permit is normally 90 days following receipt of a complete application. ~~The board may extend this period if additional information is required.~~ Processing steps normally are as follows:

a. Completion of the preliminary review and analysis in accordance with subsection ~~L~~ *I* of this section and the preliminary decision of the board. This step may constitute the final step if ~~no public comment period or public hearing is required~~ *the provisions of subsection G of this section concerning public participation are not applicable* .

b. ~~Public comment period and public hearing, when required by subsection C 4 of this section.~~ *When required, completion of the public participation requirements in subsection G of this section.*

c. Completion of the final review and analysis and the final decision of the board.

~~3. When a public comment period or public hearing is required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected Air Quality Control Region, of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subsection G 3 a of this section.~~

~~a. Information on the permit application (exclusive of confidential information under § 120-02-30), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected Air Quality Control Region.~~

~~b. A copy of the notice shall be sent to all local air pollution control agencies having State Implementation Plan responsibilities in the affected Air Quality Control Region, all states sharing the affected Air Quality Control Region, and to the Regional Administrator, U.S. Environmental Protection Agency.~~

~~4.~~ *3.* The board normally will take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments therefrom) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with subsection ~~H~~ *J* of this section.

~~5.~~ *4.* The applicant may appeal the decision pursuant to § 120-02-09.

~~6.~~ *5.* Within 5 days after notification to the applicant pursuant to subsection ~~G 4~~ *F 3* of this section, the

notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in subsection ~~G 3 a~~ [*~~G 7 a~~ G 5 a*] of this section.

G. Public participation.

1. No later than 15 days after [~~*submitting an application to the board, an*~~ *receiving the initial determination notification required under subsection F 1 of this section, the*] *applicant for a permit for a major stationary source or a major modification with a net emissions increase of 100 tons per year of any single pollutant shall notify the public of the proposed source as required in subsection G 2 of this section.*

2. The public notice required under this subsection shall be placed by the applicant in at least one newpaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

a. The source name, location, and type.

b. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants.

c. The control techology proposed to be used at the time of the publication of the notice.

d. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

3. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection G 2 of this section.

4. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection [~~*G 6 G 5*~~] *of this section.*

a. Applications for stationary sources of hazardous air pollutants as specified in subsection C 1 b of this section.

b. Applications for major stationary sources and major modifications with a net emissions increase of 100 tons per year of any single pollutant.

c. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following criteria:

(1) Whether the project is opposed by any person.

(2) Whether the project has resulted in adverse media.

(3) Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency.

(4) Whether the project has generated adverse comment by a local official, governing body or advisory board.

d. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by paragraphs 1 and 2 of the GEP definition. The demonstration specified in paragraph 3 of the GEP definition must be available during the public comment period.

5. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subsection [~~*G 6 a*~~ *G 5 a*] *of this section. The notification shall be published at least 30 days prior to the day of the public hearing.*

a. Information on the permit application (exclusive of confidential information under § 120-02-30), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

b. A copy of the notice shall be sent to all local air pollution control agencies having State Implemenation Plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

H. Standards for granting permits.

No permit will be granted pursuant to this section unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of these regulations and that the following standards have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under Part V and with emission standards prescribed under Part VI.

2. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard.

3. Stack evaluation reductions under § 120-08-01 C 3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard.

I. Application review and analysis.

No permit shall be granted pursuant to this section unless compliance with the standards in subsection H of this section is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Stationary sources.

a. Applications for stationary sources shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under Part V.

b. Applications shall be subject to an air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.

2. Stationary sources of hazardous air pollutants. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under Part VI.

3. Stack elevation reductions under § 120-08-01 C 3. Applications under § 120-08-01 C 3 shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions.

~~H.~~ *J.* Compliance determination and verification by performance testing.

1. For stationary sources other than those specified in [~~subsection H~~ *subdivision*] 2 of this [~~section~~ *subsection* , compliance with standards of performance shall be determined in accordance with the provisions of § 120-05-02 and shall be verified by performance tests in accordance with the provisions of § 120-05-03.

2. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of § 120-06-02 and shall be verified by emission tests in accordance with the provisions of § 120-06-03.

3. Testing required by subsections ~~H 1 and 2~~ *J 1 and 2* of this section shall be conducted *by the owner* within 60 days after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided *by the owner* with two or, upon request, more copies of a written report of the results of the tests.

4. For sources subject to the provisions of Rule 5-5 or 6-1, the requirements of subsections ~~H 1 through 3~~ *J 1 through 3* of this section shall be met in all cases.

5. For sources other than those specified in subsection ~~H 4~~ *J 4* of this section, the requirements of subsection ~~H 1 through 3~~ *J 1 through 3* of this section shall be met unless the board:

a. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

b. Approves the use of an equivalent method;

c. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

d. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably excepts the new or modified source to perform in compliance with applicable standards; or

e. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

6. The provisions for the granting of waivers under subsection ~~H 5~~ *J 5* of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

~~I.~~ *K.* ~~Revocation of permit~~ *Permit invalidation, revocation and enforcement* .

1. A permit granted pursuant to this section shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the ~~later~~ *latest* of the following timeframes:

a. 18 months from the date the permit is granted.

b. 9 months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this section) from any governmental entity.

c. 9 months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this section [~~*from any governmental entity*~~]).

2. A permit granted pursuant to this section shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. The board may extend the periods prescribed in subsections ~~1~~ 1 ~~and~~ 2 *K 1 and 2* of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the [~~procedural~~] requirements of [*subsection G of*] this section.

4. Any owner who constructs or operates a new or modified source not in accordance (i) with the application submitted pursuant to this section or (ii) with the terms and conditions of any [~~*approval*~~ *permit*] *to construct or operate, or any owner of a new or modified source subject to this section who commences construction or operation without applying for and receiving* [~~*approval*~~ *a permit*] *hereunder, shall be subject to appropriate enforcement action* [*including, but not limited to, any specified in this subsection*] .

5. Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

6. The board may revoke any permit if the permittee:

a. Knowingly makes material misstatements in the permit application or any amendments thereto;

b. Fails to comply with the terms or conditions of the permit;

c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that an application is submitted; or

e. Fails to comply with the applicable provisions of this section.

7. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection K 6 of this section or for any other violations of these regulations.

8. Violation of these regulations shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in Part II of these regulations and the Virginia Air Pollution Control Law.

9. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

~~J.~~ *L.* Existence of permit no defense.

The existence of a permit under this section shall not constitute defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

~~K.~~ *M.* Compliance with local zoning requirements.

The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under § 120-02-14 of these Regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

~~L. Application review and analysis.~~

~~No permit shall be granted pursuant to this section unless compliance with the standards in subsection F of this section is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:~~

~~1. Stationary sources. Application for stationary sources shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under Part V.~~

~~2. Stationary sources of hazardous air pollutants. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under Part VI.~~

~~3. Stack elevation reductions under § 120-08-01 C 3. Applications under § 120-08-01 C 3 shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions.~~

N. Reactivation and permanent shutdown.

1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions N 2 through N 4 of this section or subdivision P 5 of § 120-08-04.

2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of Part VIII.

3. The final decision shall be rendered as follows:

a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

b. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.

4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subdivision N 3 of this section.

O. Transfer of permits.

1. No persons shall transfer a permit from one location to another, or from one piece of equipment to another.

2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

3. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

4. The provisions of this subsection concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this section by Section VII of Appendix R.

~~M.~~ *P.* Circumvention.

Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

§ 120-08-02. Permits - major stationary sources and major modifications locating in prevention of significant deterioration areas.

A. Applicability.

1. The provisions of this section apply to the construction of any major stationary source or major modification.

2. The provisions of this ~~rule~~ *section* apply in prevention of significant deterioration areas designated in Appendix L.

3. Where a source is constructed or modified in [*contemporaneous*] *increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added*

together for determining the applicability of this section. [*An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.*]

~~3.~~ *4.* Unless specified otherwise, the provisions of this section are applicable to various sources as follows:

a. Provisions referring to "sources," "new or modified sources" or "stationary sources" are applicable to the construction of all major stationary sources and major modifications.

b. Any emissions units not subject to the provisions of this section may be subject to the provisions of § 120-08-01 or § 120-08-03.

B. Definitions.

1. As used in this section, all words or terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

2. For the purpose of this section, § 120-05-0405 and any related use, the words or terms shall have the meaning given them in subdivision B 3 of this section:

3. Terms defined.

"Actual emissions"

(1) Means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions 3a (2) through 3a (4) of this subsection.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit [~~of~~ *on*] that date.

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

"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally [~~or~~ *and*] state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) The applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(3) The emissions rate specified as a federally or state enforceable permit condition, including those with a future compliance date.

"Baseline area"

(1) Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under [§ ~~107(d)(1)(D)~~ ~~or~~ ~~(E)~~ *§ 107(d)(1)(C)*] of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m³ (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under [§ ~~107(d)(1)(D)~~ ~~or~~ ~~(E)~~ *§ 107(d)(3)*] of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to this section or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

"Baseline concentration"

(1) Means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline

concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision (2);

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

(1) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(2) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this section submits a complete application under this section. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(3) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under [§ ~~107(d)(1)(D) or (E)~~ *§ 107(d)(1)(C)*] of the federal Clean Air Act for the pollutant on the date of its complete application under this section or 40 CFR 52.21; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the federal Clean Air Act which would be emitted from any proposed major stationary source or major modification which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, as amended by the Supplement (see Appendix M).

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program

of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be ~~cancelled~~ *canceled* or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or Part VIII, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

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

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Low terrain" means any area other than high terrain.

"Major modification"

(1) Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the federal Clean Air Act.

(2) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(3) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

~~(b) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;~~

~~(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the federal Clean Air Act;~~

~~(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~(e)~~ *(b)* Use of an alternative fuel or raw material by a stationary source which:

1. The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally [~~or~~ *and*] state enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or Part VIII; or

2. The source is approved to use under any permit issued under 40 CFR 52.21 or Part VIII;

~~(f)~~ *(c)* An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally [~~or~~ *and*] state enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or Part VIII ; .

~~(g) Any change in ownership at a stationary source.~~

"Major stationary source"

(1) Means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit,100 tons per year or more of any pollutant subject to regulation under the federal Clean Air Act:

1 Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

2 Coal cleaning plants (with thermal dryers).

3 Kraft pulp mills.

4 Portland cement plants.

5 Primary zinc smelters.

6 Iron and steel mill plants.

7 Primary aluminum ore reduction plants.

8 Primary copper smelters.

9 Municipal incinerators capable of charging more than 250 tons of refuse per day.

10 Hydrofluoric acid plants.

11 Sulfuric acid plants.

12 Nitric acid plants.

13 Petroleum refineries.

14 Lime plants.

15 Phosphate rock processing plants.

16 Coke oven batteries.

17 Sulfur recovery plants.

18 Carbon black plants (furnace process).

19 Primary lead smelters.

20 Fuel conversion plants.

21 Sintering plants.

22 Secondary metal production plants.

23 Chemical process plants.

24 Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input.

25 Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

26 Taconite ore processing plants.

27 Glass fiber processing plants.

28 Charcoal production plants.

(b) Notwithstanding the stationary source size specified in subdivision (1)(a), stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the federal Clean Air Act; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision (1)(a) or (1)(b) as a major stationary source, if the change would constitute a major stationary source by itself.

(2) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers).

(b) Kraft pulp mills.

(c) Portland cement plants.

(d) Primary zinc smelters.

(e) Iron and steel mills.

(f) Primary aluminum ore reduction plants.

(g) Primary copper smelters.

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(i) Hydrofluoric, sulfuric, or nitric acid plants.

(j) Petroleum refineries.

(k) Lime plants.

(l) Phosphate rock processing plants.

(m) Coke oven batteries.

(n) Sulfur recovery plants.

(o) Carbon black plants (furnace process).

(p) Primary lead smelters.

(q) Fuel conversion plants.

(r) Sintering plants.

(s) Secondary metal production plants.

(t) Chemical process plants.

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(w) Taconite ore processing plants.

(x) Glass fiber processing plants.

(y) Charcoal production plants.

(z) Fossil fuel-fired steam electric plants of more that 250 million British thermal units per hour heat input.

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

"Net emissions increase"

(1) Means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences; and

(b) The date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if the board has not relied on it in issuing a permit for the source under this section (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual [~~emission~~ *emissions*] is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally [~~or~~ *and*] state enforceable at and after the time that actual construction on the particular change begins; and

(c) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally [~~or~~ *and*] state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable; and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include

emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant"

(1) Means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM10	15 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl Chloride	1 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H2S)	10 tpy
Total Reduced Sulfur (including H2S)	10 tpy
Reduced Sulfur Compounds (including H2S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	*3.5 x 10- ^{6} tpy*
Municipal waste combustor metals (measured as particulate matter)	*15 tpy*
Municipal waste combustor acid gases (measured as the sum of SO2 and HCl)	*40 tpy*

(2) Means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the federal Clean Air Act that subdivision (1) does not list, any emissions rate.

(3) Notwithstanding subdivision (1), any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 ug/m³ (24-hour average).

"Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

~~*"Volatile organic compounds"* excludes each of the following compounds, unless the compound is subject to an emissions standard under Sections 111 or 112 of the federal Clean Air Act: methane; ethane; methylene chloride; 1,1,1 trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC-113) (Freon 113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); dichlorotetrafluoroethane (CFC-114); and chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dicloronfluoroethane (HCFC-141b); and chlorodifluoroethane (HCFC-142b).~~

C. General.

1. No owner or other person shall begin actual construction of any major stationary source or major modification without first obtaining from the board a permit to construct and operate such source.

2. No owner or other person shall relocate any emissions unit subject to the provisions of § 120-02-31 without first obtaining a permit from the board to relocate the unit.

3. Prior to the decision of the board, all permit applications will be subject to a public comment period ; ; a public hearing will be held as provided in subsection R of this section.

4. The board may combine the requirements of and the permits for [~~*emission*~~ *emissions*] *units within a stationary source subject to §§ 120-08-01, 120-08-02, and 120-08-03 into one permit. Likewise the board may require that applications for permits for* [~~*emission*~~ *emissions*] *units within a stationary source required by §§ 120-08-01, 120-08-02, and 120-08-03 be combined into one application.*

D. Ambient air increments.

In areas designated as class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE

(micrograms per cubic meter)

Class I

Particulate matter:

TSP, annual geometric mean 5

TSP, 24-hour maximum 10

Sulfur dioxide:

Annual arithmetic mean 2

24-hour maximum 5

Three-hour maximum 25

Nitrogen dioxide:

Annual arithmetic mean 2.5

Class II

Particulate matter:

TSP, annual geometric mean 19

TSP, 24-hour maximum 37

Sulfur dioxide:

Annual arithmetic mean 20

24-hour maximum 91

Three-hour maximum 512

Nitrogen dioxide:

Annual arithmetic mean 25

Class III

Particulate matter:

TSP, annual geometric mean 37

TSP, 24-hour maximum 75

Sulfur dioxide:

Annual arithmetic mean 40

Twenty-four hour maximum 182

Three-hour maximum 700

Nitrogen dioxide:

Annual arithmetic mean 50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

E. Ambient air ceilings.

No concentration of a pollutant shall exceed:

1. The concentration permitted under the national secondary ambient air quality standard, or

2. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

F. Applications.

~~1. Application for a permit shall be made in the following manner. If the applicant is a partnership, a general partner shall sign the application. If the applicant is a corporation, association or cooperative, an officer shall sign the application. If the applicant is a sole proprietorship, the proprietor shall sign the application.~~

~~2.~~ *1.* A single application is required [,] identifying [*at a minimum*] each [~~emission~~ *emissions point within the emissions*] unit. The application shall be submitted according to procedures approved by the board. However, where several [*emissions*] units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

~~3.~~ *2.* For projects with phased development, a single application may be submitted covering the entire project.

3. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

a. For a [*business entity, such as a*] *corporation, association or cooperative, a responsible official is either* [*:*]

[~~(i)~~ *(1)*] *The president, secretary, treasurer, or a vice-president of the* [~~corporation~~ *business entity*] *in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the* [~~corporation,~~ *business entity;*] *or*

[~~(ii)~~ *(2)*] *A duly authorized representative of such* [~~corporation~~ *business entity*] *if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either* [~~(a)~~ *(i)*] *the facilities employ more than 250*

persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or [~~*(b)*~~] *the authority to sign documents has been assigned or delegated to such representative in accordance with* [~~*corporate*~~] *procedures* [*of the business entity*] .

b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit ot the agency.

4. Any person signing a document under subdivision D 1 above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

G. Compliance with local zoning requirements.

The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under § 120-02-14 of these regulations and § ~~10-17.18(e)~~ ~~and~~ ~~(f)~~ *10.1-1307 E* of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

H. Compliance determination and verification by performance testing.

1. For stationary sources other than those specified in subdivision H 2 of this section, compliance with standards of performance shall be determined in accordance with the provisions of § 120-05-02 and shall be verified by performance tests in accordance with the provisions of § 120-05-03.

2. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of § 120-06-02 and shall be verified by emission tests in accordance with the provisions of § 120-06-03.

3. Testing required by subdivisions H 1 and 2 of this section shall be conducted within 60 days *by the owner* after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided *by the owner* with two or, upon request, more copies of a written report of the results of the tests.

4. For sources subject to the provisions of Rule 5-5 or 6-1, the requirements of subdivisions H 1 through 3 of this section shall be met in all cases.

5. For sources other than those specified in subdivision H 4 of this section, the requirements of subdivisions H 1 through 3 of this section shall be met unless the board:

a. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

b. Approves the use of an equivalent method;

c. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

d. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or

e. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

6. The provisions for the granting of waivers under subdivision H 5 of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

I. Stack heights.

1. The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by:

a. So much of the stack height of any source as exceeds good engineering practice, or

b. Any other dispersion technique.

2. Subdivision I 1 of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

J. Review of major stationary sources and major modifications - source applicability and exemptions.

1. No stationary source or modification to which the requirements of subsections K through S of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The board has authority to issue any such permit.

2. The requirements of subsections K through S of this section shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the federal Clean Air Act that it would emit, except as this section otherwise provides.

3. The requirements of subsections K through S of this section apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under [~~§ 107(d)(1)(D) or (E)~~ *§ 107 (d) (1) (C)*] of the federal Clean Air Act.

4. The requirements of subsections K through S of this section shall not apply to a particular major stationary source or major modification; if:

a. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor submits a request to the administrator that it be exempt from those requirements; or

b. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants.

(23) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber processing plants.

(27) Charcoal production plants.

(28) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Federal Clean Air Act; or

c. The source is a portable stationary source which has previously received a permit under this section, and

(1) The owner proposes to relocate the source and emissions of the source at the new location would be temporary; and

(2) The emissions from the source would not exceed its allowable emissions; and

(3) The emissions from the source would impact no class I area and no area where an applicable increment is known to be violated; and

(4) Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board; or

d. The source or modification was not subject to this section, with respect to particulate matter, as in effect before July 31, 1987, and the owner:

(1) Obtained all final federal, state and local preconstruction approvals or permits necessary under Part VIII before July 31, 1987;

(2) Commenced construction within 18 months after July 31, 1987, or any earlier time required under Part VIII; and

(3) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time; or

e. The source or modification was subject to this section or 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner submitted an application for a permit under this section before that date, and the board subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of subsections K through S of this section that were in effect before July 31, 1987, shall apply to such source or modification.

5. The requirements of subsections K through S of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the federal Clean Air Act.

6. The requirements of subsections L, N and P of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

a. Would impact no class I area and no area where an applicable increment is known to be violated, and

b. Would be temporary.

7. The requirements of subsections L, N and P of this section as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the federal Clean Air Act from the modification after the application of best available control technology would be less than 50 tons per year.

8. The board may exempt a stationary source or modification from the requirements of subsection N of this section with respect to monitoring for a particular pollutant if:

a. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 ug/m^3, 8-hour average

Nitrogen dioxide - 14 ug/m^3, annual average

Total suspended particulate - 10 ug/m^3, 24-hour average

PM10 - 10 ug/m^3, 24-hour average

Sulfur dioxide - 13 ug/m^3, 24-hour average

Ozone[1]

Lead - 0.1 ug/m^3, 3-month average

Mercury - 0.25 ug/m^3, 24-hour average

Beryllium - 0.001 ug/m^3, 24-hour average

Fluorides - 0.25 ug/m^3, 24-hour average

Vinyl chloride - 15 ug/m^3, 24-hour average

Total reduced sulfur - 10 ug/m^3, 1-hour average

Hydrogen sulfide - 0.2 ug/m^3, 1-hour average

Reduced sulfur compounds - 10 ug/m³, 1-hour average; or

.....

[1] No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this section would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

.....

b. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision J 8 a of this section, or the pollutant is not listed in subdivision J 8 a of this section.

9. a. At the discretion of the board, the requirements for air quality monitoring of PM10 in subdivisions N 1 a through N 1 d of this section may not apply to a particular source or modification when the owner submits an application for a permit under this section on or before June 1, 1988, and the board subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in subdivisions N 1 a through N 1 d.

b. The requirements for air quality monitoring of PM10 in subdivisions N 1 c and d and N 3 of this section shall apply to a particular source or modification if the owner submits an application for a permit under this section after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes otherwise complete in accordance with the provisions set forth under subdivision N 1 h of this section, except that if the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subdivision N 1 c requires shall have been gathered over that shorter period.

10. The requirements of subdivision L 2 of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable State Implementation Plan and the board subsequently determined that the application as submitted before that date was complete.

K. Control technology review.

1. A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

2. A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act that it would have the potential to emit in significant amounts.

3. A major modification shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

4. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

L. Source impact analysis.

The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any national ambient air quality standard in any air quality control region; or

2. Any applicable maximum allowable increase over the baseline concentration in any area.

M. Air quality models.

1. All estimates of ambient concentrations required under this section shall be based on the applicable air quality models, data bases, and other requirements specified in the U.S. Environmental Protection Agency Guideline, EPA-450/2-78-027R, Guideline on Air Quality Models (see Appendix M).

2. Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator must be

obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with subsection R of this section.

N. Air quality analysis.

1. Preapplication analysis.

a. Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(1) For the source, each pollutant that it would have the potential to emit in a significant amount;

(2) For the modification, each pollutant for which it would result in a significant net emissions increase.

b. With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the board determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would ~~effect~~ *affect* .

c. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

d. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the board determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

e. For any application which becomes complete, except as to the requirements of subdivision N 1 c and d of this section, between June 8, 1981, and February 9, 1982, the data that subdivision N 1 c of this section requires shall have been gathered over at least the period from February 9, 1981 to the date the application becomes otherwise complete, except that:

(1) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

(2) If the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not less than four months), the data that subdivision N 1 c of this section requires shall have been gathered over at least that shorter period.

(3) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the board may waive the otherwise applicable requirements of this subsection W to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

f. The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of Section IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subdivision N 1 of this section.

g. For any application that becomes complete, except as to the requirements of subdivision N 1 e and d pertaining to PM10, after December 1, 1988, and no later than August 1, 1989, the data that subdivision N 1 c requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subdivision N 1 c requires shall have been gathered over that shorter period.

h. With respect to any requirements for air quality monitoring of PM10 under subdivisions J 9 a and b, the owner shall use a monitoring method approved by the board and shall estimate the ambient concentrations of PM10 using the data collected by such approved monitoring method in accordance with estimating procedures approved by the board.

2. Post-construction monitoring. The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the board determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

3. Operation of monitoring stations. The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying subsection N of this section.

O. Source information.

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

1. With respect to a source or modification to which subsections K, L, N and P of this section apply, such information shall include:

a. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

b. A detailed schedule for construction of the source or modification;

c. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

2. Upon request of the board, the owner shall also provide information on:

a. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

b. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since the baseline date in the area the source or modification would affect.

P. Additional impact analyses.

1. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

2. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

3. The board may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the board deems necessary and appropriate.

Q. Sources impacting federal class I areas - additional requirements.

1. Notice to federal land managers. The board shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The board shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under subsection R of this section, and shall make available to them any materials used in making that determination, promptly after the board makes such determination. Finally, the board shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

2. Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the board, whether a proposed source or modification will have an adverse impact on such values.

3. Visibility analysis. The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subdivision Q 1 of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the board finds that such an analysis does not demonstrate to the satisfaction of the board that an adverse impact on visibility will result in the federal class I area, the board must, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

4. Denial - impact on air quality related values. The federal land manager of any such lands may demonstrate to the board that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the board concurs with such demonstration, then it shall not issue the permit.

5. Class I variances. The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and he so certifies, the board may, provided that the applicable requirements of this section are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Particulate matter:

TSP, annual geometric mean 19

TSP, 24-hour maximum 37

Sulfur dioxide:

Annual arithmetic mean 20

24-hour maximum 91

Three-hour maximum 325

Nitrogen dioxide:

Annual arithmetic mean 25

6. Sulfur dioxide variance by governor with federal land manager's concurrence. The owner of a proposed source or modification which cannot be approved under subdivision Q 5 of this section may demonstrate to the governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the board shall issue a permit to such source or modification pursuant to the requirements of subdivision Q 8, provided that the applicable requirements of this section are otherwise met.

7. Variance by the governor with the president's concurrence. In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the board shall issue a permit pursuant to the requirements of subdivision Q 8 of this section, provided that the applicable requirements of this section are otherwise met.

8. Emission limitations for presidential or gubernatorial variance. In the case of a permit issued pursuant to subdivision Q 6 or 7 of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

R. Public participation.

1. Within 30 days after receipt of an application ~~to construct, or any addition to such application,~~ the board shall ~~advise~~ *notify* the applicant of ~~any deficiency in the application or in the information submitted~~ *the status of the application . The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of Part VIII are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information.* ~~In the event of such a deficiency,~~ The

date of receipt of ~~the~~ *a complete* application shall be, for the purpose of this section, the date on which the board received all required information.

2. No later than [~~45~~ 30] days after receiving the initial determination notification required under subdivision R 1 of this section, [~~applicants~~ the applicant] shall notify the public about the proposed source as required in subdivision R 3 of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subdivision R 4 of this section.

3. The public notice required under subdivision R 2 of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the information briefing.

4. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

5. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subdivision R 3 of this section and for providing the informational briefing as required in subdivision R 4 of this section.

~~2.~~ *6.* Within one year after receipt of a complete application, the board shall make a final determination on the application. This involves performing the following actions in a timely manner:

a. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

b. Make available in at least one location in each air quality control region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

c. If appropriate, hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The board shall notify the public of the time and place of the briefing, by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification shall be published at least 30 days prior to the day of the briefing.

~~c.~~ *d.* Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification shall be *published* at least 30 days prior to the day of the hearing.

~~d.~~ *e.* Send a copy of the notice of public comment to the applicant, the administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: state and local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any state, federal land manager, or indian governing body whose lands may be affected by emissions from the source or modification.

~~e.~~ *f.* Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

~~f.~~ *g.* Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The board shall consider the applicant's response in making a final decision. The board shall make all comments available for public inspection in the same locations where the board made available preconstruction information relating to the proposed source or modification.

~~g.~~ *h.* Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

~~h.~~ *i.* Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the board made available preconstruction information and public comments relating to the source or modification.

S. Source obligation.

1. Any owner who constructs or operates a source or modification not in accordance *(i)* with the application submitted pursuant to this section or *(ii)* with the terms *and conditions* of any [~~approval~~ *permit*] to construct *or operate* , or any owner of a source or modification subject to this section who commences construction *or operation* after the effective date of these regulations without applying for and receiving [~~approval~~ *a permit*] hereunder, shall be subject to appropriate enforcement action [~~*as required under subsection Z of this section*~~ *including, but not limited to, any specified in subsection Z of this section*] .

2. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The board may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law.

4. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of subsections K through S of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

T. Environmental impact statements.

Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review conducted pursuant to this section shall be coordinated by the administrator with the broad environmental reviews under that Act and under Section 309 of the federal Clean Air Act to the maximum extent feasible and reasonable.

U. Disputed permits.

If a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any state which the governor of an affected state or indian governing body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected state or Indian reservation, the governor or indian governing body may request the administrator to enter into negotiations with the [~~parties~~ *persons*] involved to resolve such dispute. If requested by any state or Indian governing body involved, the administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the [~~parties~~ *persons*] involved do not reach agreement, the administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable state implementation plan and shall be enforceable as part of such plan.

V. Interstate pollution abatement.

1. The owner of each source or modification, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any air quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction.

2. Any state or political subdivision may petition the administrator for a finding that any source or modification emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the state implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

3. Notwithstanding any permit granted pursuant to this section, no owner or other person shall commence construction or modification or begin operation of a source to which a finding has been made under the provisions of subdivision V 2 of this section.

W. Innovative control technology.

1. An owner of a proposed major stationary source or major modification may request the board in writing no later than the close of the public comment period under subsection R to approve a system of innovative control technology.

2. The board shall determine that the source or modification may employ a system of innovative control technology, if:

a. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

b. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under subdivision K 2 of this section by a date specified by the board. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

c. The source or modification would meet the requirements of subsections K and L of this section based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the board;

d. The source or modification would not, before the date specified by the board:

(1) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(2) Impact any area where an applicable increment is known to be violated;

e. All other applicable requirements including those for public participation have been met; and

f. The provisions of subsection Q of this section (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

3. The board shall withdraw any approval to employ a system of innovative control technology made under this section, if:

a. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

b. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

c. The board decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

4. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subdivision W 3 of this section, the board may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

X. Reactivation and permanent shutdown.

1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions X 2 through X 4 of this section or subdivision P 5 of § 120-08-04.

2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of Part VIII.

3. The final decision shall be rendered as follows:

a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

b. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, decision to consider the shutdown permanent shall become final.

4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shut down permanently prior to any final decision rendered under subdivision X 3 of this section.

Y. Transfer of permits.

1. No person shall transfer a permit from one location to another, or from one piece of equipment to

another.

2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

3. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

4. The provisions of this subsection concerning the transfer of a permit from one location to another should not apply to the relocation of portable facilities that are exempt from the provisions of subsections K through S of this section by subdivision J 4 c of this section.

Z. Permit invalidation, revocation, and enforcement.

1. Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

2. The board may revoke any permit if the permittee:

a. Knowingly makes material misstatements in the permit application or any amendments thereto;

b. Fails to comply with the terms or conditions of the permit;

c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emision limitations, in the State Implementation Plan in effect at the time that an application is submitted; or

e. Fails to comply with the applicable provisions of this section.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subdivision Z 2 of this section or for any other violations of these regulations.

4. Violation of these regulations shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in Part II of these regulations and the Virginia Air Pollution Control Law.

5. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

AA. Circumvention.

Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

§ 120-08-03. Permits - major stationary sources and major modifications locating in nonattainment areas.

A. Applicability.

1. The provisions of this section apply to the construction or reconstruction of any major stationary source or major modification.

2. The provisions of this ~~rule~~ *section* apply in nonattainment areas.

3. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this section shall apply to the source or modification as though construction had not commenced on the source or modification.

4. Where a source is constructed or modified in [*contemporaneous*] *increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section.* [*An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.*]

~~4.~~ *5.* Unless specified otherwise, the provisions of this section are applicable to various sources as follows:

a. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" are applicable to the construction, reconstruction or modification of all major stationary sources and

major modifications.

b. Any emissions units not subject to the provisions of this section may be subject to the provisions of § 120-08-01 or § 120-08-02.

B. Definitions.

1. As used in this section, all words or terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

2. For the purpose of this section, § 120-05-0404 and any related use, the words or terms shall have the meaning given them in subsection B 3 of this section:

3. Terms defined.

"Actual emissions"

(1) Means the actual rate of emissions of a pollutant ~~form~~ *from* an emissions unit, as determined in accordance with subdivisions (2) through (4).

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit which has not begun normal opertions on the particular date, actual emissions shall equal the potential to emit of the unit [~~of~~ *on*] that date.

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

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally [~~or~~ *and*] state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) The applicable standards set forth in 40 CFR Parts 60 and 61;

(2) Any applicable State Implementation Plant emissions limitation including those with a future compliance date; or

(3) The emissions rate specified as a federally and state enforceable permit condition, including those with a future compliance date.

"Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Building, structure, ~~or~~ facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the Supplement (see Appendix M).

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be ~~cancelled~~ *canceled* or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and any permit requirements

established pursuant to 40 CFR 52.21 or Part VIII , *including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program .*

"Fixed capital cost" means the capital needed to provide all the depreciable components.

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

~~"Installation" means an identifiable piece of process equipment.~~

"Lowest achievable emission rate" means for any source, the more stringent rate of emissions based on the following:

(1) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) The most stringent emissions limitation which is achieved in practice by such class or category of stationary ~~source~~ *sources* . This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major modification"

(1) Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(2) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(3) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

~~(b) Use of an alternative fuel or rew material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;~~

~~(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act;~~

~~(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~(e)~~ *(b)* Use of an alternative fuel or raw material by a stationary source which:

1 The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally [~~or~~ *and*] state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or Part VIII; or

2 The source is approved to use under any permit issued under 40 CFR 52.21 or Part VIII;

~~(f)~~ *(c)* An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally [~~or~~ *and*] state enforceable pemirt conditiion which was established after December 21, 1976, pursuant to 40 CFR 52.21 or Part VIII.

~~(g) Any change in ownership at a stationary source.~~

"Major stationary source"

(1) Means:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, *(i)* 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act , *or (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in Apendix K, or (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in Appendix K* ; or

(b) Any physical change that would occur at a stationary source not qualifying under subdivision ~~(a)(1)~~ *(1)(a) of this definition* as a major stationary source, if the change would constitute a major stationary source by itself.

(2) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one

of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers).

(b) Kraft pulp mills.

(c) Portland cement plants.

(d) Primary zinc smelters.

(e) Iron and steel mills.

(f) Primary aluminum ore reduction plants.

(g) Primary copper smelters.

(h) Municipal incinerators (or combinations thereof) capable of charging more than 250 tons of refuse per day.

(i) Hydrofluoric acid plants.

(j) Sulfuric acid plants.

(k) Nitric acid plants.

(l) Petroleum refineries.

(m) Lime plants.

(n) Phosphate rock processing plants.

(o) Coke oven batteries.

(p) Sulfur recovery plants.

(q) Carbon black plants (furnace process).

(r) Primary lead smelters.

(s) Fuel conversion plants.

(t) Sintering plants.

(u) Secondary metal production plants.

(v) Chemical process plants.

(w) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(x) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(y) Taconite ore processing plants.

(z) Glass fiber manufacturing plants.

(aa) Charcoal production plants.

(bb) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(cc) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

"Net emissions increase"

(1) Means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. *For sources located in ozone nonattainment areas classified as serious or severe in Appendix K, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during* [~~*any*~~ *a*] *period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.*

(3) An increase or decrease in actual emissions is creditable only if:

(a) It occurs ~~within a reasonable period to be specified by the board~~ *between the date five years before construction on the change specified in subdivision (1) (a) of this definition commences and the date that the increase specified in subdivision (1)(a) of this definition occurs* ; and

(b) The board has not relied on it in issuing a pemit for the source pursuant to Part VIII which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emission is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally [~~or~~ *and*] state enforceable at and after the time that actual construction on the particular change begins; and

(c) The board has not relied on it in issuing any permit pursuant to Part VIII or the board has not relied on it in demonstrating attainment or reasonable further progress in the State Implementation Plan.

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"Nonattainment pollutant" means within an nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment ~~pollutant~~ *pollutants* shall be volatile organic compounds (including hydrocarbons) *and nitrogen oxides* .

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally [~~or~~ *and*] state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Qualifying pollutant" means with regard to a major stationary source, any pollutant emitted in such quantities or at such rate as to qualify the source as a major stationary source.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of a state implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the State Implementation Plan for such area.

"Reconstruction" means when the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of subdivisions (1) through (3) below. A reconstructed stationary source will be treated as a new stationary source for purposes of this section. [~~In determining lowest achievable emission rate for a reconstructed stationary source, the provisions of subdivision (4) below shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.~~]

(1) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility.

(2) The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility.

(3) The extent to which the components being replaced cause or contribute to the emissions from the facility.

[~~(4) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.~~]

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(1) Ozone nonattainment areas classified as serious or severe in Appendix K.

Pollutant	*Emissions Rate*

Carbon Monoxide	*100 tons per year (tpy)*
Nitrogen Oxides	*25 tpy*
Sulfer Dioxide	*40 tpy*
Particulate Matter	*25 tpy*
Ozone	*25 tpy of volatile organic compounds*
Lead	*0.6 tpy*

(2) Other nonattainment areas.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act.

C. General.

1. No owner or other person shall begin actual construction, reconstruction or modification of any major stationary source or major modification without first obtaining from the board a permit to construct and operate such source.

2. No owner or other person shall relocate any emissions unit subject to the provisions of § 120-02-31 without first obtaining from the board a permit to relocate the unit.

~~3. Prior to the decision of the board, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing will be held with notice in accordance with subsection G 3 of this section.~~

3. The board may combine the requirements of and the permits for [~~emission~~ emissions] units within a stationary source subject to §§ 120-08-01, 120-08-02 and 120-08-03 into one permit. Likewise the board may require that applications for permits for [~~emission~~ emissions] units within a stationary source required by §§ 120-08-01, 120-08-02, and 120-08-03 be combined into one application.

D. Applications.

~~1. Application for a permit shall be made in the following manner. If the applicant is a partnership, a general partner shall sign the application. If the applicant is a corporation, association or cooperative, an officer shall sign the application. If the applicant is a sole proprietorship, the proprietor shall sign the application.~~

~~2.~~ *1.* A single application is required identifying [*at a minimum*] each [~~*emission*~~ *emissions point within the emissions*] unit. The application shall be submitted according to procedures approved by the board. However, where several [*emissions*] units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

~~3.~~ *2.* For projects with phased development, a single application should be submitted covering the entire project.

3. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official. A responsible official is defined as follows:

a. For a [business entity such as a] corporation, association or cooperative, a responsible official is either [:]

[~~(i)~~ (1)] The president, secretary, treasurer, or a vice-president of the [~~corporation~~ business entity] in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the [~~corporation~~ business entity;] or

[~~(ii)~~ (2)] A duly authorized representative of such [~~corporation~~ business entity] if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either [~~(a)~~ (i)] the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or [~~(b)~~ (ii)] the authority to sign documents has been assigned or delegated to such representative in accordance with [~~corporate~~] procedures [of the business entity] .

b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having

responsibility for the overall operations of a principal geographic unit of the agency.

4. Any person signing a document under subdivision D 3 above shall make the following certification:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

E. Information required.

1. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emission standards which are applicable. The information required shall include, but is not limited to the following:

a. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources.

b. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the source, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

c. For major stationary sources, the location and registration number for all stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or *under* common control with the applicant) in the Commonwealth.

d. For major stationary sources, the analyses required by subdivision ~~K~~ *J* 2 of this section shall provided b the applicant. Upon request, the board will advise an applicant of the reasonable geographic limitation on the areas to be subject to an analysis to determine the air quality impact at the proposed source.

2. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

F. Standards/conditions for granting permits.

No permit will be granted pursuant to this section unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operated without causing a violation of the applicable provisions of these regulations and that the following standards and conditions have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under Part V and with emission standards prescribed under Part VI.

2. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard.

~~3. If the emissions of the qualifying nonattainment pollutant resulting from the source cause or contribute to emission levels which exceed the allowance permitted for such pollutant in the affected nonattainment area from new or modified sources in the applicable control strategy portion of the State Implementation Plan, then by the time the source begins operation the total allowable emissions for the qualifying nonattainment pollutants from all stationary sources (anticipated to be in operation, including the proposed source) in the affected nonattainment area must be sufficiently less than the total allowable emissions from stationary sources under these regulations prior to the application for a permit so as to not interfere with or prevent reasonable further progress.~~

3. The board determines that the following occurs:

a. By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained in accordance with subsection M of this section such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from

existing sources, as determined in accordance with the requirements of this section, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the State Implementation Plan) reasonable further progress; or

b. In the case of a new or modified major stationary source which is located in a zone, within the nonattainment area, identified by the administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the State Implementation Plan.

c. Any emission reductions required as a precondition of the issuance of a permit under subdivision F 3 a or F 3 b of this section shall be state and federally enforceable before such permit may be issued.

4. The applicant shall demonstrate that all major stationary sources owned or operated by such applicant (or by any entity controlling, controlled by, or under common control with such applicant) in the Commonwealth *are subject to emission limitations and* are ~~either~~ in compliance, or on a ~~schedule to achieve compliance~~ *schedule for compliance* , with all applicable emission *limitations and* standards under these regulations.

5. ~~The applicable provisions of the State Implementation Plan are being carried out for the affected nonattainment area.~~ *The administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this section.*

6. ~~The applicant shall demonstrate, through an analysis of alternative sites, size, production processes and environmental control techniques, that the benefits of the source significantly outweigh environmental and social costs imposed as a result of the source. This provision shall only apply to sources locating in nonattainment areas for ozone and carbon monoxide. This provision is only applicable to nonattainment areas designated in Appendix K as having a control stategy which does not demonstrate attainment of the applicable ambient air quality standard by December 31, 1982.~~ *The applicant shall demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source, that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.*

G. Action on permit application.

1. Within 30 days after receipt of an application ~~or any additional information~~ , the board shall ~~advise~~ *notify* the applicant of ~~any deficiency in such application or information~~ *the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of Part VIII are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information .* ~~In the event that additional information is required,~~ The date of receipt of ~~the~~ *a complete* application for processing under subsection G 2 of this section shall be the date on which the board received all required information.

2. Processing time for a permit is normally 90 days following receipt of a complete application. ~~The board may extend this time period if additional information is required.~~ Processing steps normally are as follows:

a. Completion of the preliminary review and analysis in accordance with subsection ~~K~~ *J* of this section and the preliminary decision of the board.

b. ~~Public comment period and public hearing~~ *Completion of the public participation requirements in accordance with subsection H of this section .*

c. Completion of the final review and analysis and the final decision of the board.

~~3. For the public comment period and public hearing, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected Air Quality Control Region, of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subsection G 3 a of this section.~~

~~a. Information on the permit application (exclusive of confidential information under § 120-02-30), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected Air Quality Control Region.~~

~~b. A copy of the notice shall be sent to all local air~~

~~pollution control agencies having State Implementation Plan responsibilities in the affected Air Quality Control Region, all states sharing the affected Air Quality Control Region, and to the Regional Administrator, U.S. Environmental Protection Agency.~~

~~4.~~ *3.* The board normally will take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments therefrom) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with subsection H of this section

~~5.~~ *4.* The applicant may appeal the decision pursuant to § 120-02-09.

~~6.~~ *5.* Within five days after notification to the applicant pursuant to subsection G ~~4~~ *3* of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in subsection ~~G 3 a~~ *H 6 a* of this section.

H. Public participation.

1. No later than [~~45~~ 30] days after receiving the initial determination notification required under subdivision G 1 of this section, applicants shall notify the public about the proposed source as required in subdivision H 2 of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subdivision H 3 of this section.

2. The public notice required under subdivision H 1 of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the informational briefing.

3. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

4. Upon determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subdivision H 2 of this section and for providing the informational briefing as required in subdivision H 3 of this section.

5. Prior to the decision of the board, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing shall be held with notice in accordance with subdivision H 6 of this section.

6. For the public comment period and public hearing, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subdivision H 6 a of this section. The notification shall be published at least 30 days prior to the day of the public hearing.

a. Information on the permit application (exclusive of confidential information under § 120-02-30), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

b. A copy of the notice shall be sent to all local air pollution control agencies having State Implementation Plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

7. If appropriate, the board may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subdivision H 6 concerning public notification shall be followed.

~~H.~~ *I.* Compliance determination and verfication by performance testing.

1. For stationary sources other than those specified in ~~subsection H~~ *subdivision I* 2 of this section, compliance with standards of performance shall be

determined in accordance with the provisions of § 120-05-02 and shall be verified by performance tests in accordance with the provisions of § 120-05-03.

2. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of § 120-06-02 and shall be verified by emission tests in accordance with the provisions of § 120-06-03.

3. Testing required by ~~subsections H~~ *subdivisions I* 1 and 2 of this section shall be conducted within 60 days *by the owner* after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided *by the owner* with two or, upon request, more copies of a written report of the results of the tests.

4. For sources subject to the provisions of Rule 5-5 or 6-1, the requirements of ~~subsections H~~ *subdivisions I* 1 through 3 of this section shall be met in all cases.

5. For sources other than those specified in ~~subsection H~~ *subdivision I* 4 of this section, the requirements of ~~subsections H~~ *subdivisions I* 1 through 3 of this section shall be met unless the board:

a. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

b. Approves the use of an equivalent method;

c. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

d. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or

e. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

6. The provisions for the granting of waivers under ~~subsection H~~ *subdivision I* 5 of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

~~I. Revocation of permit.~~

~~1. A permit granted pursuant to this section shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the later of the following time frames:~~

~~a. 18 months from the date the permit is granted,~~

~~b. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this section) from any government entity.~~

~~c. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this section).~~

~~2. A permit granted pursuant to this section shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.~~

~~3. The board may extend the periods prescribed in subsections I 1 and 2 of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the administrative requirements of this section.~~

~~J. Existence of permit no defense.~~

~~The existence of a permit under this section shall not constitute a defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.~~

~~K.~~ *J.* Application review and analysis.

No permit shall be granted pursuant to this section unless compliance with the standards in subsection F of this section is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under Part V and emission standards prescribed under Part VI.

2. Applications shall be subject to an air quality analysis to determine the impact of qualifying pollutant emissions.

~~L.~~ *K.* Circumvention.

Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

~~M.~~ *L.* Interstate pollution abatement.

1. The owner of each new or modified source, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction, reconstruction or modification.

2. Any state or political subdivision may petition the Administrator, EPA, for a finding that any new or modified source emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the state implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the Administrator, U.S. Environmental Protection Agency, will make such a finding or deny the petition.

3. Notwithstanding any permit granted pursuant to this section, no owner or other person shall commence construction, reconstruction or modification or begin operation of a source to which a finding has been made under the provisions of ~~subsection M~~ *subdivision L* 2 of this section.

~~N.~~ *M.* Offsets.

~~The current State Implementation Plan is accommodative in nature; therefore it is not expected that the use of offsets will be needed. However, should offsets be needed the following provisions will apply:~~

1. Owners shall comply with the offset requirements of this section by obtaining emission reductions from the same source or other sources in the same nonattainment area, except that [for ozone precursor pollutants] the board may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

2. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in nonattainment areas designated in Appendix K shall be at least the following:

a. Ozone nonattainment areas classified as marginal - 1.1 to one.

b. Ozone nonattainment areas classified as moderate - 1.15 to one.

c. Ozone nonattainment areas classified as serious - 1.2 to one.

d. Ozone nonattainment areas classified as severe - 1.3 to one.

3. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of subdivision M 1 of this section.

4. The board shall allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

a. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

b. The source demonstrates to the satisfaction of the board that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

c. The source has obtained a written finding from

the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

d. The owner will comply with an alternative measure, imposed by the board, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the board may impose an emissions fee to be paid to the board which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The board shall utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

~~1.~~ *5.* For sources subject to the provisions of this section, the baseline for determining credit for emissions reduction is the emissions limit under the applicable State Implementation Plan in the effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

a. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual [~~emission~~ *emissions*] of sources located within a designated nonattainment area; or

b. The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

~~2.~~ *6.* Where the emissions limit under the applicable State Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

~~3.~~ *7.* For an existing fuel combustion source, credit shall be based on the allowable ~~emission~~ *emissions* under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the *owner of the* existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The board will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

~~4. Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment credit for sue shutdown or curtailment may be applied to offset emissions from the new source.~~

8. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and state enforceable. In addition, the shutdown or curtailment is creditable only if it occured on or after January 1, 1991.

~~5.~~ *9.* No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

~~6. All emission reductions claimed as offset credit shall be federally and state enforceable.~~

~~7.~~ *10.* ~~Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in Section IV.D of~~ [*Where these regulations do not adequately address a particular issue,*] *the provisions of* Appendix S to 40 CFR Part 15 *shall be followed to the extent that they do not conflict with this subsection .*

~~8.~~ *11.* Credit for an emissions reduction can be claimed to the extent that the board has not relied on it in issuing any permit under Part VIII or has not relied on it in demonstrating attainment or reasonable further progress.

N. De minimis increases and stationary source modification alternatives for ozone nonattainment areas classified as serious or severe in Appendix K.

1. De minimis increases. Increased emissions of volatile organic compounds or nitrogen oxides resulting from any physical change in, or change in the method of operation of, a major stationary source located in an ozone nonattainment area classified as serious or severe in Appendix K shall be considered de minimis for purposes of determining the applicability of the permit requirements under this

section if the increase in net emissions of the same pollutant from such source is 25 tons or less when aggregated with all other net increases in emissions from the source over [~~any~~ a] period of five consecutive calendar years which includes the calendar year in which such increase occurred.

2. Modifications of major stationary sources emitting less than 100 tons per year of volatile organic compounds or nitrogen oxides.

a. Any physical change in, or change in the method of operation of, a major stationary source with a potential to emit of less than 100 tons per year of volatile organic compounds or nitrogen oxides which results in an increase in emissions of the same pollutant from any discrete operation, unit, or other pollutant emitting activity at that source that is not de minimis under subdivision N 1 of this section shall be considered a major modification under this section. However, in applying emission standards under Part V of these regulations to the source, the requirement to apply best available control technology shall be substituted for the requirement to comply with the lowest achievable emission rate.

b. If the owner elects to offset the increase of volatile organic compounds or of nitrogen oxides by a greater reduction in emissions of the pollutant being increased from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, such increase shall not be considered a major modification under this section.

3. Modifications of major stationary sources emitting 100 tons per year or more of volatile organic compounds or nitrogen oxides.

a. Any physical change in, or change in the method of operation of, a major stationary source with a potential to emit of 100 tons per year or more of volatile organic compounds or nitrogen oxides which results in an increase in emissions of the same pollutant from any discrete operation, unit, or other pollutant emitting activity at that source that is not de minimis under subdivision N 1 of this section shall be considered a major modification under this section.

b. In applying emission standards under Part V of these regulations to the source, the requirement to apply best available control technology shall be substituted for the requirement to comply with the lowest achievable emission rate, if the owner elects to offset the increase by a greater reduction in emissions of the pollutant being increased from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1.

O. Exception.

The provisions of this section do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in claculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers).

2. Kraft pulp mills.

3. Portland cement plants.

4. Primary zinc smelters.

5. Iron and steel mills.

6. Primary aluminum ore reduction plants.

7. Primary copper smelters.

8. Municipal incinerators capable of charging more than 250 tons refuse per day.

9. Hydrofluoric acid plants.

10. Sulfuric acid plants.

11. Nitric acid plants.

12. Petroleum refineries.

13. Lime plants.

14. Phosphate rock processing plants.

15. Coke oven batteries.

16. Sulfur recovery plants.

17. Carbon black plants (furnace process).

18. Primary lead smelters.

19. Fuel conversion plants.

20. Sintering plants.

21. Secondary metal production plants.

22. Chemical process plants.

23. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

24. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

25. Taconite ore processing plants.

26. Glass fiber processing plants.

27. Charcoal production plants.

28. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

29. Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

P. Compliance with local zoning requirements.

The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under § 120-02-14 of these regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

Q. Reactivation and permanent shutdown.

1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions Q 2 through 4 of this section or subdivision P 5 of § 120-08-04.

2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of Part VIII.

3. The final decision shall be rendered as follows:

a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

b. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.

4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subdivision Q 3 of this section.

R. Transfer of permits.

1. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

3. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

S. Permit invalidation, revocation, and enforcement.

1. A permit granted pursuant to this section shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

a. Eighteen months from the date the permit is granted.

b. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this section) from any government entity.

c. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this section).

2. A permit granted pursuant to this section shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18

months of the projected and approved commencement date.

3. The board may extend the periods prescribed in subdivisions S 1 and 2 of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the [~~administrative~~] requirements of subsection H of] this section.

4. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this section or (ii) with the terms and conditions of any [~~approval~~ permit] to construct or operate, or any owner of a source or modification subject to this section who commences construction or operation without applying for and receiving [~~approval~~ a permit] hereunder, shall be subject to appropriate enforcement action [including, but not limited to, any specified in this subsection] .

5. Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all requirements of the regulations.

6. The board may revoke any permit if the permittee:

a. Knowingly makes material misstatements in the permit application or any amendments thereto;

b. Fails to comply with the terms or conditions of the permit;

c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that an application is submitted; or

e. Fails to comply with the applicable provisions of this section.

7. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subdivision S 6 of this section or for any other violations of these regulations.

8. Violation of these regulations shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in Part II of these regulations and the Virginia Air Pollution Control Law.

9. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit or to render a permit invalid.

T. Existence of permit no defense.

The existence of a permit under this section shall not constitute a defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

APPENDIX K.
NONATTAINMENT AREAS.

Nonattainment Areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each nonattainment area, in parentheses, is the classification assigned pursuant to Section 181 (a) for ozone and Section 186 (a) for carbon monoxide of the Federal Clean Air Act.

A. Ozone.

1. Northern Virginia Ozone Nonattainment Area (serious).

Arlington County	Alexandria City
Fairfax County	Fairfax City
Loudoun County	Falls Church City
Prince William County	Manassas City
Stafford County	Manassas Park City

2. Richmond Ozone Nonattainment Area (moderate).

Charles City County	Colonial Heights City
Chesterfield County	Hopewell City
Hanover County	Richmond City
Henrico County	

3. Hampton Roads Ozone Nonattainment Area (marginal).

James City County	Poquoson City
York County	Portsmouth City
Chesapeake City	Suffolk City
Hampton City	Virginia Beach City
Newport News City	Williamsburg City
Norfolk City	

4. White Top Mountain Ozone Nonattainment Area (marginal - rural transport area). The portion above 4,500 feet elevation in Smyth County (located within the Jefferson National forest).

B. Carbon monoxide.

Northern Virginia Carbon Monoxide Nonattainment Area (moderate).

Arlington County	Alexandria City

APPENDIX P.
VOLATILE ORGANIC COMPOUND *AND NITROGEN OXIDES* EMISSIONS CONTROL AREAS.

~~Volatile Organic Compound Emissions Control Areas are geographically defined as follows:~~

~~Air Quality Control Region 1 None~~

~~Air Quality Control Region 2 None~~

~~Air Quality Control Region 3 None~~

~~Air Quality Control Region 4~~
~~Stafford County~~

~~Air Quality Control Region 5~~
~~Richmond City~~
~~Chesterfield County~~
~~Henrico County~~

~~Air Quality Control Region 6~~
~~Chesapeake City~~
~~Hampton City~~
~~Newport News City~~
~~Norfolk City~~
~~Portsmouth City~~
~~Suffolk City~~
~~Virginia Beach City~~

~~Air Quality Control Region 7~~
~~Alexandria City~~
~~Fairfax City~~
~~Falls Church City~~
~~Manassas City~~
~~Manassas Park City~~
~~Arlington County~~
~~Fairfax County~~
~~Loudoun County~~
~~Prince William County~~

Emissions Control Areas are geographically defined below by locality for the pollutants indicated.

A. Volatile Organic Compounds

1. Northern Virginia Emissions Control Area

Arlington County	*Alexandria City*
Fairfax County	*Fairfax City*
Loudoun County	*Falls Church City*
Prince William County	*Manassas City*
Stafford County	*Manassas Park City*

2. Richmond Emissions Control Area

Charles City County	*Colonial Heights City*
Chesterfield County	*Hopewell City*
Hanover County	*Richmond City*
Henrico County	

3. Hampton Roads Emissions Control Area

Chesapeake City	*Portsmouth City*
Hampton City	*Suffolk City*
Newport News City	*Virginia Beach City*
Norfolk City	

B. Nitrogen Oxides

1. Northern Virginia Emissions Control Area

Arlington County	*Alexandria City*
Fairfax County	*Fairfax City*
Loudoun County	*Falls Church City*
Prince William County	*Manassas City*
Stafford County	*Manassas Park City*

2. Richmond Emissions Control Area

Charles City County	*Colonial Heights City*
Chesterfield County	*Hopewell City*
Hanover County	*Richmond City*
Henrico County	

3. Hampton Roads Emissions Control Area

Chesapeake City	*Portsmouth City*
Hampton City	*Suffolk City*
Newport News City	*Virginia Beach City*
Norfolk City	

APPENDIX R.
STATIONARY SOURCE PERMIT EXEMPTION LEVELS.

I. ~~Determination of exemption levels~~ *General* .

A. In determining whether a facility is exempt from the requirements of § 120-08-01, the provisions of Sections II through VIII of this appendix are independent from the provisions of Section IX of this appendix. A facility must be determined to be exempt both under the provisions of Sections II through VIII taken as a group and under the provisions of Section IX to be exempt from § 120-08-01.

B. In determining whether a facility is exempt from the requirements of § 120-08-01 under the provisions of Sections II and III of this appendix, the definitions in the rule in Part IV that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.

II. New source exemption levels by size.

Facilities as specified below shall be exempt from the requirements of § 120-08-01 as they pertain to construction, reconstruction or relocation.

A. Fuel burning equipment.

1. Any unit using solid fuel with a maximum heat input of less than ~~350,000~~ *1,000,000* Btu per hour.

2. Any unit using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

3. Any unit using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

4. Any unit using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour , *unless subject to a new source performance standard in Rule 5-5* .

5. Any unit that powers a mobile source but is removed for maintenance or repair and testing.

B. Solvent metal cleaning operations.

Any solvent metal cleaning operation with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

C. Volatile organic compound storage and transfer operations.

Any storage or transfer operation involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

1. Volatile organic compound transfer operations.

a. Any tank of 2,000 gallons or less storage capacity.

b. Any operation outside the volatile organic compound emissions control areas designated in Appendix P.

2. Volatile organic compound storage operations. Any tank of 40,000 gallons or less storage capacity.

D. Large appliance coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

E. Magnet wire coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

F. Automobile and light duty truck coating application systems.

1. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

2. Any vehicle refinishing operation.

G. Can coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

H. Metal coil coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

I. Paper and fabric coating application system.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

J. Vinyl coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

K. Metal furniture coating application systems.

Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

L. Miscellaneous metal parts and products coating application systems.

1. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

2. Any vehicle customizing coating operation, if production is less than 20 vehicles per day.

3. Any vehicle refinishing operation.

4. Any fully assembled aircraft or marine vessel exterior coating operation.

M. Flatwood paneling coating application systems.

Any coating application system if it is within in a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

N. Graphic arts (printing processes).

Any printing process if it is within a plant that has an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

O. Petroleum liquid storage and transfer operations.

Any storage or transfer operation involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for

household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of § 120-08-01 when used or stored at ambient temperatures); and any operation specified below:

1. Bulk terminals - gasoline bulk loading operations. Any operation outside volatile organic compound emissions control areas designated in Appendix P.

2. Gasoline dispensing facilities. Any gasoline dispensing facility.

3. Bulk plants - gasoline bulk loading operations.

a. Any facility with an expected daily throughput of less than 4,000 gallons.

b. Any operation outside volatile organic compound emissions control areas designated in Appendix P.

4. Account/tank trucks. No permit is required for account/tank trucks, but permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

5. Petroleum liquid storage operations.

a. Any tank of 40,000 gallons or less storage capacity.

b. Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer.

c. Any tank storing waxy, heavy pour crude oil.

P. ~~Drying~~ *Dry* cleaning ~~systems~~ *plants* .

Any *petroleum* dry cleaning ~~system~~ *plant* with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in § 120-05-0502.

Q. Wood product manufacturing plants.

Any addition of, relocation of or change to a woodworking machine within a plant provided the system air movement capacity, expressed as the cubic feet per minute of air, and maximum control efficiency of the control system are not decreased.

R. Wood sawmills.

Any wood sawmill.

III. New sources with no exemptions.

Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of § 120-08-01 as they pertain to construction, reconstruction or relocation.

A. Petroleum ~~refinery operations~~ *refineries* .

B. Asphalt plants.

C. Chemical fertilizer manufacturing ~~operations~~ *plants* .

D. Kraft pulp mills.

E. Sand and gravel processing ~~operations~~ *facilities* .

F. Coal preparation plants.

G. Stone quarrying and processing ~~operations~~ *facilities* .

H. Portland cement plants.

I. Wood product manufacturing ~~operations~~ *plants* .

J. Secondary metal operations.

K. Lightweight aggregate process operations.

L. Feed manufacturing ~~operations~~ *plants* .

M. Incinerators.

N. Coke ovens.

O. Sulfuric acid production units.

P. Sulfur recovery operations.

Q. Primary metal operations.

R. Nitric acid production units.

S. Concrete batching plants.

T. Pharmaceutical products manufacturing ~~operations~~ *plants* .

U. Rubber tire manufacturing ~~operations~~ *plants* .

IV. New source exemption levels by emission rate.

Facilities not covered by Section II or III of this appendix ~~shall be exempt as specified below.~~

~~A.~~ ~~Facilities~~ with uncontrolled emission rates less than all of the significant emission rates specified below shall be exempt from the requirements of § 120-08-01 pertaining to construction, reconstruction or relocation.

~~SIGNIFICANT~~ EMISSION RATES

Carbon monoxide - 100 tons per year.

Nitrogen dioxide - ~~10~~ *40* tons per year.

Sulfur dioxide - ~~10~~ *40* tons per year.

Particulate matter *(PM10)* - ~~1 ton~~ *15 tons* per year.

Volatile organic compounds - ~~7~~ *25* tons per year.

Lead - 0.6 ton per year.

~~B. Where a source is constructed in increments which individually are not subject to approval under this section and which are not part of a program of construction in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section.~~

V. Modified source exemption levels by emission rate.

~~A.~~ Facilities with increases in uncontrolled emission rates less than all of the ~~significant~~ emission rates specified below shall be exempt from the requirements of § 120-08-01 pertaining to modification.

~~SIGNIFICANT~~ EMISSION RATES

Carbon monoxide - 100 tons per year.

Nitrogen dioxide - 10 tons per year.

Sulfur dioxide - 10 tons per year.

Particulate matter *(PM10)* - ~~1 ton~~ *10 tons* per year.

Volatile organic compounds - ~~7~~ *10* tons per year.

Lead - 0.6 ton per year.

~~B. Where a source is modified in increments which individually are not subject to approval under this section and which are not part of a program of modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section.~~

VI. New source performance standards and national emission standards for hazardous air pollutants.

Regardless of the provisions of Sections II, IV and V of this appendix, affected facilities subject to Rule 5-5 or subject to Rule 6-1 shall not be exempt from the provisions of § 120-08-01 , *with the exception of those facilities which would be subject only to recordkeeping or reporting requirements or both under Rule 5-5 or Rule 6-1* .

VII. Relocation of portable facilities.

Regardless of the provisions of Sections II, III, IV, V and VI of this appendix, a permit will not be required for the relocation of a portable emissions unit for which a permit has been previously granted under Part VIII provided that:

1. The emissions of the unit at the new location would be temporary;

2. The emissions from the unit would not exceed its allowable emissions;

3. The unit would not undergo modification or reconstruction;

4. The unit is suitable to the area in which it is to be located; and

5. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

VIII. Requirements for exempted facilities.

~~In determining whether a facility is exempt from the provisions of § 120-08-01 under the provisions of Sections II and III of this appendix, the applicability provisions in the rules in Part IV that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board. A new or modified source which would be exempt from the provisions of Part IV if it were an existing source shall also be exempt from the provisions of § 120-08-01. At no time shall a new or modified source be exempt from the provisions of § 120-08-01 if it meets the applicability criteria in this appendix. A new or modified source which is exempt from the provisions of § 120-08-01 based on the criteria in this appendix but which exceeds the applicability thresholds in Part IV if it were an existing source shall be subject to the provisions of Part IV.~~ *Any facility exempted from the provisions of § 120-08-01 by Section II of this appendix shall be subject to the provisions of any rule which would apply to the facility if it were an existing source unless specifically exempted by that rule.*

IX. Exemption levels for toxic pollutants.

A. Facilities with ~~a potential to emit~~ *an increase in the uncontrolled emission rate of* a toxic pollutant equal to or less than the exempt emission rate calculated using the ~~following~~ exemption formulas for the applicable TLV ® *in subsection D of this section* shall be exempt from the requirements of § 120-08-01 pertaining to ~~construction,~~ modification, ~~reconstruction or relocation~~ *provided the increase in the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year* .

B. Facilities with an uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV ® in subsection D of this section shall be exempt from the requirements of § 120-08-01 pertaining to construction, reconstruction or relocation, provided the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

C. If more than one exemption formula applies to a toxic pollutant emitted by a ~~source~~ *facility* , the ~~potential to emit~~ *uncontrolled emission rate of* that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV ® has been established.

D. Exemption formulas.

~~A.~~ *1.* For toxic pollutants with a TLV-C ® , the following exemption formula applies ; ~~provided the potential to emit does not exceed 22.8 pounds per hour~~ :

Exempt Emission Rate (pounds per hour) =

TLV-C (mg/m³) x 0.033

~~B.~~ *2.* For toxic pollutants with both a TLV-STEL ® and a TLV-TWA ® , the following exemption formulas apply ; ~~provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year~~ :

Exempt Emission Rate (pounds per hour) =

TLV-STEL ® (mg/m³) x 0.033

Exempt Emission Rate (tons per year) =

TLV-TWA ® (mg/m³) x 0.145

~~C.~~ *3.* For toxic pollutants with only a TLV-TWA ® , the following exemption formulas apply ; ~~provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year~~ :

Exempt Emission Rate (pounds per hour) =

TLV-TWA ® (mg/m³) x 0.066

Exempt Emission Rate (tons per year) =

TLV-TWA ® (mg/m³) x 0.145

~~D.~~ *E.* Exemption from the ~~provisions of this rule~~ *requirements of § 120-08-01* for any ~~stationary source or operation not part of a stationary source~~ *facility* which has ~~a potential to emit~~ *an uncontrolled emission rate of* any toxic pollutant without a TLV ® shall be determined by the board using available health effects information.

~~E.~~ *F.* The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in § 120-05-0305.

G. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of § 120-08-01 as they pertain to modification, construction, reconstruction or relocation.

1. Incinerators, unless the incinerator is used exclusively as air pollution control equipment.

2. Ethylene oxide sterilizers.

3. Boilers or industrial furnaces burning hazardous waste fuel for energy recovery or destruction, or processing for materials recovery or as an ingredient. For the purposes of this section, hazardous waste fuel means (i) hazardous waste that is burned for energy recovery or (ii) fuel produced from hazardous waste by processing, blending or other treatment (see § 1 of the Hazardous Waste Management Regulations, VR 672-10-1). Hazardous waste means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness, or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (§ 10.1-1400 of the Virginia Waste Management Act). This subsection shall not apply to boilers or industrial furnaces burning used oil, which is defined as any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities (§ 1 of the Hazardous Waste Management Regulations, VR 672-10-1).

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF AIR POLLUTION CONTROL

DOCUMENT CERTIFICATION FORM

INSTRUCTIONS FOR USE

Various provisions of the Regulations for the Control and Abatement of Air Pollution require that certain documents submitted to the Board or the Department be signed by a responsible official with certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. Documents covered by this requirement include, but are not limited to, permit applications, registrations, emission statements, emission testing and monitoring reports, or compliance certifications. The certification should include the full name, title, signature, date of signature, and telephone number of the responsible official. A responsible official is defined as follows:

1. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

(a) the president, secretary, treasurer, or a vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or

(b) a duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.

2. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

3. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF AIR POLLUTION CONTROL

DOCUMENT CERTIFICATION FORM

(see other side for instructions)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

SIGNATURE: _____ DATE: _____

NAME: _____

TITLE: _____

COMPANY: _____

PHONE: _____

DEPARTMENT OF COMMERCE

Title of Regulation: **VR 190-01-1. Regulations Governing Employment Agencies. REPEALED.**

Title of Regulation: **VR 190-01-1:1. Regulations Governing Employment Agencies.**

Statutory Authority: § 54.1-1302 of the Code of Virginia.

The Department of Commerce is **temporarily withdrawing** its final regulations governing employment agencies that were published in 9:2 VA.R. 186-193 October 19, 1992. The final regulations are being published in this issue of The Virginia Register with additional changes recommended by the Office of the Attorney General.

* * * * * * * *

Title of Regulation: **VR 190-01-1. Regulations Governing Employment Agencies. REPEALED.**

Title of Regulation: **VR 190-01-1:1. Regulations Governing Employment Agencies.**

Statutory Authority: § 54.1-1302 of the Code of Virginia.

Effective Date December 2, 1992.

Summary:

The regulation requires the licensure of employment agencies and the restriction of individuals who act as employment counselors at those businesses. This regulation applies to approximately 46 licensed employment agencies and an estimated 200 employment counselors. There is no requirement under the current regulation that employment counselors be registered and therefore the figure of 200 employment counselors is an estimate based upon information received from the industry.

The regulation separates entry, renewal and reinstatement requirements. It also separates standards of conduct from standards of practice. The regulation has been completely rewritten and reorganized. Certain requirements for receipts, records and contracts deleted from the statute are included in the final regulation. A number of provisions of the repealed regulations have been retained. Fees throughout the regulation have been adjusted in order to conform with the requirements of § 54.1-113 of the Code of Virginia to assure that the expenses of this program are adequately covered by revenues generated from the regulants.

The final regulation requires initial contracts and position acceptance contracts to have separate and more appropriate disclosure statements than the disclosure statement initially proposed. The minimum elements for job descriptions were also revised to limit the requirement to list benefits to just paid or unpaid health insurance benefits and to allow a written contract signed by the client and the employer to meet the job description requirements for occupations, such as teaching, where written contracts are customary. The proposed requirement for a $10,000 bond was changed to a requirement for a $5,000 bond in the final regulation.

It was determined that the final regulation published on October 19, 1992, needed two corrections in order to comply with the advice of the Office of the Attorney General. The final regulation was temporarily withdrawn, as was the repeal of the regulation promulgated in 1986, and again published on November 2, 1992. As a result the effective date of the final regulation is changed to December 2, 1992.

Section 2.6, which was published on page 187 of the October 19, 1992 edition of the Virginia Register ,was revised by adding the phrase"as an employment agency or employment counselor" to the end of the section.

Subsection D of § 5.6, which was published on page 190 of the October 19, 1992 edition of The Virginia Register , was deleted in its entirety and subsections E and F were renumbered as subsections D and E.

VR 190-01-1:1. Regulations Governing Employment Agencies.

PART I.
GENERAL.

§ 1.1. Definitions.

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

[*"Duties and tasks" means the principal responsibilities required of the incumbent and the activities identified by the employer as necessary to discharge those responsibilities. Incidental tasks normally associated with the occupation need not be included.*

"Laid off" means the loss of gainful employment with a specific employer for an indefinite period of time.]

"Licensee" means any person holding a license issued by the department to act as an employment agency as defined in § 54.1-1300 of the Code of Virginia.

"Registrant" means any person holding a registration issued by the department to act as an employment counselor as defined in § 54.1-1300 of the Code of Virginia.

PART II.

ENTRY.

§ 2.1. Requirement for licensure of employment agency.

Every person seeking a license as an employment agency shall file an application on a form furnished by the department, accompanied by a nonrefundable application fee in the amount of $150 and, if an individual, shall be at least 18 years of age.

§ 2.2. Bond.

Every applicant for an employment agency license shall submit to the department evidence that the applicant has secured a surety bond in the penal sum of [~~*$10,000*~~ *$5,000*] *for each license.*

§ 2.3. Controlling person.

A. Every applicant for an employment agency license shall designate a controlling person [*, who shall be at least 18 years of age,*] *at the time of application on a form furnished by the department. This controlling person shall be responsible for the employment agency's compliance with the provisions of Chapter 13 (§ 54.1-1300 et seq.) of Title 54.1 of the Code of Virginia and this regulation.*

B. Any person acting as a controlling person on June 30, 1992, shall be deemed designated as such with the department upon the department's receipt of notification on a form furnished by the department, accompanied by a nonrefundable application fee of $25. This notification and fee must be received by the department no later than December 31, 1992.

§ 2.4. Change of controlling person.

Each employment agency shall notify the department of a change in its controlling person. The employment agency shall designate the new controlling person in writing within 30 days after the change on a form furnished by the department, accompanied by a nonrefundable application fee in the amount of $25.

§ 2.5. Requirements for registration of employment counselors.

A. Every individual seeking registration as an employment counselor shall file an application on a form furnished by the department, accompanied by a nonrefundable application fee in the amount of $45, and shall be at least 18 years of age.

B. Any individual seeking registration as an employment counselor may request from the department at the time the application is received a written statement of conditional registration authorizing the individual to be employed as an employment counselor for no more than 30 days while the department determines if the applicant is eligible for registration. [~~*Such letter of conditional registration shall be valid for the shorter period of 30 days, or until registration is granted or denied.*~~]

C. Any person acting as an employment counselor on June 30, 1992, shall be deemed registered with the department upon the department's receipt of his application for registration on a form furnished by the department, accompanied by a nonrefundable application fee in the amount of $45. This notification and fee must be received by the department no later than December 31, 1992.

§ 2.6. Good standing.

All applicants for licensure as an employment agency [*, for approval as a controlling person*] *or* [*for*] *registration as an employment counselor shall be in good standing in every jurisdiction where licensed or registered to perform these activities. The department may deny the application of any person who has had a license or registration suspended, revoked or surrendered in conjunction with any disciplinary action as an employment agency or employment counselor.* [*The department may deny the application for approval as a controlling person of any person who was a part of the responsible management of any employment agency subject to disciplinary action by the Commonwealth or any other jurisdiction as an employment agency or employment counselor.*]

§ 2.7. Criminal conviction.

The department may deny licensure or registration to any applicant who has been convicted of a felony or misdemeanor involving fraud, misrepresentation or theft. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as [~~*prima facie*~~] *evidence of such conviction.*

PART III.
RENEWAL.

§ 3.1. Renewal required.

Licenses [~~*and registrations*~~] *issued under* [~~*these regulations*~~ *this regulation*] *shall expire on January 31 of each year.* [*Registrations issued under this regulation shall expire 12 months from the last day of the month wherein issued.*]

§ 3.2. Procedures for renewal.

A. The department shall mail a renewal application to the licensee or registrant at the last known address. The notice shall outline the procedure for renewal. Failure to receive a renewal notice shall not relieve the licensee or registrant of the obligation to renew. If the licensee or registrant fails to receive the renewal notice, a copy of

the license or registration may be submitted with the required fee as an application for renewal.

B. Prior to the expiration date shown on the license or registration, each licensee or registrant desiring renewal of a license or registration shall return to the department the renewal application forms and the appropriate fee as outlined in § 3.3 of these regulations. The date of receipt of the renewal application and fee by the department or its agent is the date which will be used to determine if receipt is timely.

§ 3.3. Renewal fees.

All fees for renewal are nonrefundable and are as follows:

Employment agency $100

Employment counselor ..... $ 25

§ 3.4. Denial of renewal.

The department may deny renewal of a license or registration for the same reasons as it may refuse initial licensure or registration or discipline a licensee or registrant.

PART IV.
REINSTATEMENT.

§ 4.1. Failure to renew - reinstatement required.

A. Any licensee or registrant failing to apply for renewal of a license or registration within 30 days following the expiration date printed on the license or registration shall be required to reinstate the license or registration.

B. Applicants for reinstatement shall meet the requirements of Part III of these regulations. An applicant for reinstatement of a license shall submit a reinstatement application fee of $200. An applicant for reinstatement of registration shall submit a reinstatement application fee of $50. Reinstatement fees are nonrefundable.

C. No license or registration shall be reinstated when the application and fee are received by the department more than six months after the expiration date printed on the license or registration. After that date the applicant shall meet the then current entry requirements and apply for a new license or registration. The date on which the application and fee are received by the department or its agent is the date which will be used to determine if receipt is timely.

§ 4.2. Denial of reinstatement.

The department may deny reinstatement of a license or registration for the same reasons as it may refuse initial licensure or registration or discipline a licensee or registrant.

PART V.
STANDARDS OF PRACTICE.

§ 5.1. Transfer of license or registration prohibited.

A. Each license shall be issued to the legal business entity named on the application, whether it is a sole proprietorship, partnership, corporation, association or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be transferred or otherwise assigned to another legal entity. [*All employment agency business shall be conducted under the name printed on the license.*]

B. Each registration shall be issued to the individual named on the application and shall be valid only for the individual named on the registration. No registration shall be transferred or otherwise assigned to another individual. [*All employment agency business shall be conducted under the name printed on the registration.*]

§ 5.2. Change of name or address.

A. Each licensee shall upon application and at all times keep the department informed of its physical address and shall report in writing to the department any change in its name or physical address no later than 15 days after the effective date of that change. Name change reports shall be accompanied by certified true copies of the documents which establish the name change. A post office box is not a physical address.

B. Each registrant shall upon application and at all times keep the department informed of his physical address and shall report in writing to the department any change in his name or physical address no later than 15 days after the effective date of that change. A post office box is not a physical address.

§ 5.3. Change of ownership or entity.

A. Each licensee shall report in writing to the department any change in its ownership or changes in the officers of a corporation which do not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change.

B. A new license is required whenever there is any change in the ownership or manner of organization of the licensee which results in the creation of a new legal entity.

§ 5.4. Employment agency office.

A. Each employment agency shall maintain an office located in the Commonwealth which meets the requirements established by § 54.1-1303 C of the Code of Virginia [*and shall allow the department or any of its*

agents access to its office during normal business hours.]

B. Any license issued to an employment agency and any registration issued to an employment counselor shall be displayed in a conspicuous place in the employment agency.

§ 5.5. Contracts.

A. Each contract between an employment agency and a client shall be in writing and an executed copy of each contract shall be provided to the client.

B. Each contract [~~*must include the name, address and telephone number of the department*~~ *shall state in a prominent place, in bold face letters, "Licensed by the Department of Commerce, Commonwealth of Virginia, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8500."*]

C. [~~*Each contract shall include the following statement: "If you sign this contract, you may be responsible for the payment of fees to the employment agency, even if you do not obtain lasting employment and even if you do not like the job. This contract contains our entire agreement with you and any oral representations made by your employment counselor or anyone else that are not contained in this contract may not be relied upon. Read this contract and be certain that you understand all provisions before you sign it." This statement*~~ *Each contract shall contain a disclosure statement as specified below which*] *shall be enclosed in a conspicuous border* [*or shall be printed in a bold face or distinctive type face*] *and shall be placed immediately above the signature line of the contract.*

[*1. Each initial contract shall include the following statement: "Read this contract and be certain that you understand all of its provisions before you sign it. If you sign this contract and accept a job found for you by this employment agency, you will be responsible for the payment of the fee stated on this contract unless your employer agrees to pay it for you. You are not obligated to accept any job found for you by this employment agency. The fee will be due when you start to work or when you sign a position acceptance agreement naming your employer and describing your job. The employment agency must give you a copy of this contract after you sign it."*

2. Each position acceptance contract shall include the following statement: "Read this contract and be certain that you understand all of its provisions before you sign it. If you sign this contract, you will be responsible for the payment of the fee to the employment agency unless your employer has agreed to pay it for you. This contract describes the job you are accepting or has information describing the job attached to it. This contract and its attachments constitute the entire agreement and any oral representations or promises made by the employment agency or anyone else may not be relied upon. Your fee may be refundable under certain circumstances but this contract does not constitute a guarantee that you have found lasting employment or that you will like the job. The employment agency must give you a copy of this contract after you sign it."]

D. Each initial contract shall state in bold letters enclosed in a conspicuous border the gross amount of any fee charged the client and the duration of time upon which the fee is based. Each initial contract shall also state the name and address of the employment agency, the time when the fee will first be due, how the fee is to be paid, and the period of time over which the fee is to be paid. Each initial contract shall disclose to the client the total cost to the client and if the agency uses a fee schedule, it shall be set out in the initial contract.

E. Each position acceptance contract shall disclose that the employment agency [~~*may*~~ *shall*] *not provide or offer to provide to any employer the placement fee paid by the client, or any portion of that fee, for the agency's services in obtaining employment for the client. Each position acceptance contract shall also disclose that no person or any member of his immediate family who has any interest in the employment agency shall refer any client to any lending institution in which the person or any member of his immediate family has a financial interest.*

F. Each position acceptance contract shall state the wage or salary of the position accepted and shall contain a job description of the position accepted by the client. The minimum elements of the job description shall include, but are not limited to:

1. Job title;

2. Name of the employer;

3. Address of the employer;

4. Location of the employment if different from the address of the employer;

5. Wage or salary;

6.[~~*Benefits*~~ *The provision of any paid or unpaid health insurance*] *;*

7. Days and hours of work;

8. Paid holidays;

9. Duties and tasks to be performed; and

10. Training and promotional opportunities.

[*The provisions of this subsection shall be deemed to be met when an employment contract of the nature customarily used in the client's occupation has been*

signed by the client and the employer and a copy of same is attached to the position acceptance contract.]

§ 5.6. Refunds.

A. If the employment is terminated within 12 weeks from the initial date of employment, and the client is due a refund, the employment agency shall refund to the client a portion of the fee equal to one-twelfth of that fee for each week or portion of a week that the client was not employed.

B. Circumstances where the client is due a refund as stated above include, but are not limited to:

1. When employment is terminated by the employer through no fault of the client; [*and*]

2. When the client voluntarily terminates the employment because the job was not as represented by the employment agency.

C. Circumstances that are deemed no fault of the client include, but are not limited to:

1. When the employer goes out of business;

2. When the client receives from the employer a payroll check which is not honored by the bank upon which it is drawn;

3. When the client is laid off;

4. When a change in the nature [*of the duties and tasks*] *of the job occurs;*

5. When the client [~~*is unable*~~ *does not have the knowledge, skills and abilities*] *to perform the* [~~*tasks and duties*~~ *duties and tasks*] *of the job; and*

6. When the employment agency caused to be published false or misleading advertising material.

E. A client shall not be due a refund if the client misrepresented his qualifications for the employment.

F. Any refund due to a client from an employment agency shall be made within 30 days from the date [~~*it becomes*~~ *the licensee determines a refund is*] *due.*

§ 5.7. Receipts.

Every transaction involving the making of a payment to an employment agency by a client shall require a numbered receipt. A copy of the receipt shall be provided to the client and one copy shall be maintained by the employment agency. Every receipt shall contain the following:

1. Name of applicant;

2. Date and amount of payment;

3. Purpose of payment;

4. Name and address of employment agency; and

5. Name and signature of person receiving the payment.

§ 5.8. Records.

The following records shall be maintained by the employment agency for a period of two years:

1. All initial and position acceptance contracts;

2. All receipts as required by § 54.1-1304 F of the Code of Virginia and [~~*§ 4.4*~~ *§ 5.7*] *of this regulation;*

3. The name and address of every client from whom a fee is received or to whom a fee is charged;

4. The amount of the fee actually received or charged;

5. The amount and date of any refunds made;

6. The name and address of the employer of each client;

7. The rate of compensation of every client;

8. All requests for client referrals by employers, each of which shall reflect the date of the request, the name and address of the employer, the rate of compensation, and the position description; and

9. Copies of all job advertisements identified by date and publication.

PART VI.
STANDARDS OF CONDUCT.

§ 6.1. Grounds for disciplinary action.

The department has the power to fine any licensee or registrant, and to suspend [~~*or*~~ *,*] *revoke* [*or fail to renew*] *any license or registration issued under the provisions of Chapter 13 of Title 54.1 of the Code of Virginia and the regulations of the department, where the licensee or registrant has been found to have violated or cooperated with others in violating any provision of Chapter 13 of Title 54.1 of the Code of Virginia or any regulation of the department.*

§ 6.2. Advertising.

A. All advertising shall include the name and [~~*address*~~ *telephone number*] *of the employment agency placing the advertisement.*

B. All advertising shall be truthful and contain no false or misleading statements with respect to the type of employment or salary available.

C. No employment agency shall advertise its services as free if the client is to assume any liability or contingent liability for any fees.

[*D. No salary shall appear in an advertisement except the one appearing in the actual job order. When the top salary range is quoted, it shall be preceded by the word "to."*

E. The word "open" or the symbols "$$$" or words and symbols of similar import may not be used as a substitute for the salary of any position or positions in an advertisement.

F. In group advertisements containing both "employer pays fee" and "applicant pays fee" listings, if the source of the fee is indicated for one job, it shall be indicated for all jobs.]

§ 6.3. Inspection of records.

All licensees shall produce during regular business hours to the department or any of its agents for inspection and copying any records required to be kept by the Code of Virginia or this regulation.

COMMONWEALTH of VIRGINIA, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917

EMPLOYMENT AGENCY BUSINESS LICENSE APPLICATION

92 SEP 30 AM 11:57

Post Office Box
Richmond, Virginia 23230

$150.00 Initial License Fee
Check or money order should be made payable to the Treasurer of Virginia

ALL APPLICATION FEES ARE NONREFUNDABLE

Please *print* or *type* when completing this form:

Business Name:_____

Trading As Name:_____

Business Street Address:_____ P. O. Box (if applicable):_____

City:_____ State:_____ Zip:_____

Business Telephone No. ( )_____

Please check one only of the following:

Business Type: ☐ Sole Proprietorship ☐ Partnership ☐ Corporation ☐ Association

Please answer the following questions with a Y = Yes or N = No in the appropriate box:

☐ 1) Has your firm been licensed in any other state? If yes, attach an explanation providing full details, including license certificate number.

☐ 2) Has your firm ever been convicted in any court of a felony, fraud, or misrepresentation? If yes, attach a full explanation.

☐ 3) Has your application for a business license ever been revoked, rejected, or suspended for fraud or misrepresentation in this state? If yes, attach a full explanation.

☐ 4) Have you read, or are you fully familiar with, the provisions of the Virginia Employment Agency Act?

MUST BE COMPLETED BY APPLICANT

I hereby certify that all information provided on this form and its attachments is true and complete. I agree and understand that any misrepresentation of information herein, regardless of time of discovery, may result in action to deny this application and/or to suspend or revoke any license, certification, or registration issued as a result of this application. I further state that I have read and understand the Employment Agency Regulations and Statutes and agree to abide by their provisions and any amendments or revisions to same promulgated in accordance with Virginia law.

_____
Signature

NOTORIZATION

In the State of _____, City/County of _____, I, _____, a Notary Public in and for said City/County and state aforesaid, DO HEREBY certify that _____ personally appeared before me this day in person, is personally known to me to be the same person whose signature (or mark) is affixed to the foregoing instrument and has acknowledged that he signed said instrument as a free and voluntary act for the uses and purposes therein set forth.

_____
Notary Public

Given under my hand this _____ day of _____ of _____.

My commission expires_____.

Affix Official Seal Here

BOND NO._____

WHEREAS,_____, located at _____, ("Principal"), and _____, ("Surety") a corporation of the State of _____, lawfully doing business in the Commonwealth of Virginia ("the Commonwealth"), are held and firmly bound unto the Commonwealth in the full sum of Five Thousand Dollars ($5,000.00), for the payment of which sum, said Principal and Surety bind themselves jointly and severally according to the conditions set forth below.

WHEREAS, the above Principal(s) has requested a license from the Commonwealth for the purpose of engaging in the business of an employment agency.

NOW, THEREFORE, if the Principal shall, during the period that this license is in effect, faithfully observe and honestly comply with the provisions of Virginia Code Section 54.1-300 through 54.1-1308, and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit of that Principal, its agents or employees, then this obligation shall become void. Otherwise, this obligation shall remain in full force and effect, subject to the following conditions:

1. The Surety shall have the right to cancel this bond at any time by a written notice which shall state when the cancellation is to take effect, and shall be hand delivered to, received by registered mail by, the Obligee at its offices at the Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230. Such notice shall also be delivered, by the same means, to the Principal, at the address given above, at least sixth (60) days prior to the date that the cancellation becomes effective. It is expressly agreed and understood that the Surety shall remain fully liable for any default hereunder occurring at any time between receipt of the notice by the Obligee and the date that the cancellation becomes effective.
2. This bond shall remain in full force and effect until canceled as provided above.
3. Any person aggrieved by any act of the Principal which constitutes a violation of the provisions of Virginia Code Sections 54.1-1300 through 54.1308, may proceed against the Principal or Surety on this bond, or both, to recover damages not in excess of the penalty of this bond.

PROVIDED, FURTHER, that in no event shall the Surety be liable for more than the face sum of this bond.

SIGNED, this _____ day of _____, ____.

_____
(Principal)

Witness:

_____ BY _____ (SEAL)

_____ (SEAL)
(Principal)

BY _____ (SEAL)

_____ (SEAL)

_____ BY _____ (SEAL)
(Registered Virginia Agent)

ACKNOWLEDGEMENT OF PRINCIPAL

State of Virginia:

_____ of _____, to wit:

I, _____, a Notary Public in and for the _____, aforesaid, in the State of Virginia, do certify that _____, aforesaid, and acknowledged the same.

Given under my hand this _____ day of _____, ____. My commission expires _____.

_____
(Notary Public)

Affix Official Seal Here

COMMONWEALTH of VIRGINIA, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917

EMPLOYMENT AGENCY CONTROLLING PERSON APPLICATION

92 SEP 30 AM11:57

Post Office Box 11066
Richmond, Virginia 23230

$25.00 Initial License Fee
Check or money order should be made payable to the Treasurer of Virginia

ALL APPLICATION FEES ARE NONREFUNDABLE

Please *print* or *type* when completing this form:

First Name | Middle Name (if none, leave blank) | Last Name | Generation (i.e.: III, Jr.)

Business Firm Name:_____

Street Address:_____ P. O. Box (if applicable):_____

City:_____ State:_____ Zip: _ _ _ _ _-_ _ _ _

Province:_____ Country:_____ Postal Code:_____

Residence Telephone No. ( )_____

Please check one only of the following:

Acting as Controlling Person on June 30, 1992 ☐ Not a Controlling Person as of June 30, 1992 ☐

If you were acting as a Controlling Person as of June 30, 1992, please submit notification to the department no later than December 31, 1992.

Please answer the following questions with a Y = Yes or N = No in the appropriate box:

☐ 1) Have you ever been licensed in any other state as an owner or manager of an Employment Agency? If yes, attach an explanation providing full details, including license certificate number.

☐ 2) Have you ever been convicted in any court of a felony, fraud, or misrepresentation? If yes, attach a full explanation.

☐ 3) Has your application for a license as an owner or manager of a business ever been revoked, rejected, or suspended for fraud or misrepresentation in this state, or any other state? If yes, attach a full explanation.

☐ 4) Have you read, or are you fully familiar with, the provisions of the Virginia Employment Agency Act?

MUST BE COMPLETED BY APPLICANT

I hereby certify that all information provided on this form and its attachments is true and complete. I agree and understand that any misrepresentation of information herein, regardless of time of discovery, may result in action to deny this application and/or to suspend or revoke any license, certification, or registration issued as a result of this application. I further state that I have read and understand the Employment Agency Regulations and Statutes and agree to abide by their provisions and any amendments or revisions to same promulgated in accordance with Virginia law.

_____
Signature

COMMONWEALTH of VIRGINIA, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917

EMPLOYMENT AGENCY COUNSELOR APPLICATION

Post Office Box 11066
Richmond, Virginia 23230

92 SEP 30 AM11:57

$45.00 Initial License Fee
Check or money order should be made payable to the Treasurer of Virginia

ALL APPLICATION FEES ARE NONREFUNDABLE

Please *print* or *type* when completing this form:

First Name | Middle Name (if none, leave blank) | Last Name | Generation (i.e.: III, Jr.)

Business Firm Name:_____

Street Address:_____ P. O. Box (if applicable):_____

City:_____ State:_____ Zip: _ _ _ _ _-_ _ _ _

Province:_____ Country:_____ Postal Code:_____

Residence Telephone No. ( )_____ Date of Birth:_____ Place of Birth:_____

Please check one only of the following:

Acting as an Employment Counselor on June 30, 1992 ☐ Not an Employment Counselor as of June 30, 1992 ☐

If you were acting as an Employment Counselor as of June 30, 1992, please submit notification to the department no later than December 31, 1992.

Please answer the following questions with a Y = Yes or N = No in the appropriate box:

☐ 1) Have you ever been licensed in any other state as a counselor of an Employment Agency? If yes, attach an explanation providing full details, including license certificate number.

☐ 2) Have you ever been convicted in any court of a felony, fraud, or misrepresentation? If yes, attach a full explanation.

☐ 3) Has your application for a license as a counselor of a business ever been revoked, rejected, or suspended for fraud or misrepresentation in this state, or any other state? If yes, attach a full explanation.

☐ 4) Have you read, or are you fully familiar with, the provisions of the Virginia Employment Agency Act?

MUST BE COMPLETED BY APPLICANT

I hereby certify that all information provided on this form and its attachments is true and complete. I agree and understand that any misrepresentation of information herein, regardless of time of discovery, may result in action to deny this application and/or to suspend or revoke any license, certification, or registration issued as a result of this application. I further state that I have read and understand the Employment Agency Regulations and Statutes and agree to abide by their provisions and any amendments or revisions to same promulgated in accordance with Virginia law.

_____
Signature

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **State Plan for Medical Assistance Relating to Disproportionate Share Adjustment Payments for State Teaching Hospitals.**
VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates–Inpatient Hospital Care.

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

Effective Date:: December 3, 1992.

Summary:

The purpose of this action is to promulgate permanent regulations to supersede the existing emergency regulation on the same issue. These final regulations are being adopted exactly as they were proposed for their comment period.

The section of the State Plan affected by this action is the Methods and Standards for Establishing Payment Rates–Inpatient Hospital Care (Attachment 4.19 A).

The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended § 1923(c) of the Social Security Act to give states greater flexibility in making required payment adjustments to hospitals which serve a disproportionate number of low income patients with special needs. This flexibility permits the payment to vary according to the type of hospital. The Commonwealth's prior methodology acknowledges only one type of hospital, and did not appropriately recognize the extraordinary costs, volume or proportion of services which the large state-owned teaching hospitals provide to low-income patients and patients eligible for medical assistance.

The emergency regulation provided for two types of hospitals (state-owned teaching hospitals and all other hospitals) and varied the payment adjustment for disproportionate share hospitals by type of hospital. Hospitals other than state-owned teaching hospitals are continuing to receive an adjustment equal to (i) their Medicaid utilization in excess of 8% times (ii) the lower of the prospective operating cost rate or ceiling. State-owned teaching hospitals are receiving (i) 11 times their Medicaid utilization in excess of 8% times (ii) the lower of the prospective operating cost rate or ceiling.

To date, the agency's experience with the emergency regulation has been to significantly increase disproportionate share payments to state-owned teaching hospitals.

VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates–Inpatient Hospital Care.

The state agency will pay the reasonable cost of inpatient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance.

I. For each hospital also participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the state agency will apply the same standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine services costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routing service charges or patient days as well as Title XVIII inpatient routine service cost.

II. For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

III. For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2), and/or lesser of reasonable cost or customary charges in 42 CFR 447.250.

IV. The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the Secretary, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in paragraphs I and II above.

V. The reimbursement system for hospitals includes the following components:

(1) Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural–0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban–0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

(2) Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement

ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for all hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia (DRI-V), as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points (200 basis points) (DRI-V+2), to the then current allowance for inflation. The escalation factor shall be applied in accordance with the current inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

The new method shall still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

(3) Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator.

(4) Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (Sec. 400), shall be considered as pass throughs and not part of the calculation.

(5) An incentive plan shall be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive shall be calculated based on the annual cost report.

The table below presents three examples under the

new plan:

Group Ceiling	Hospital's Allowable Cost Per Day	Difference $	Difference % of Ceiling	Sliding Scale Incentive $	Sliding Scale Incentive % of Difference
$230	$230	0	0	0	0
$230	207	23.00	10%	2.30	10%
$230	172	57.50	25%	14.38	25%
$230	143	76.00	33%	19.00	25%

(6) There shall be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) *Disproportionate share hospitals defined.* ~~Hospitals which have a disproportionately higher level of Medicaid patients and which exceed the ceiling shall be allowed a higher ceiling based on the individual hospital's Medicaid utilization. This shall be measured by the percent of Medicaid patient days to total hospital patient days. Each hospital with a Medicaid utilization of over 8.0% shall receive an adjustment to its ceiling. The adjustment shall be set at a percent added to the ceiling for each percent of utilization up to 30%.~~

~~Disproportionate share hospitals defined.~~

~~Effective July 1, 1988,~~ The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

A. Criteria.

1. A Medicaid inpatient utilization rate in excess of 8.0% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subsection A 2 does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

B. Payment adjustment.

1. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based *on the type of hospital and* on the individual hospital's Medicaid utilization. *There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals.* The Medicaid utilization shall be determined by dividing the total number of Medicaid inpatient days by the number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment.

2. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times 11, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

~~2. A payment adjustment for hospitals meeting the eligibility criteria in subsection A above and calculated under subsection B 1 above shall be phased in over a 3-year period. As of July 1, 1988, the adjustment shall be at least one-third the amount of the full payment adjustment; as of July 1, 1989, the payment shall be at least two-thirds the full payment adjustment; and as of July 1, 1990, the payment shall be the full amount of the payment adjustment. However, for each year of the phase-in period, no hospital shall receive a disproportionate share payment adjustment which is less than it would have received if the payment had been calculated pursuant to § V (5) of Attachment 4.19A to the State Plan in effect before July 1, 1988.~~

(8) Outlier adjustments.

a. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

b. DMAS shall pay to disproportionate share hospitals (as defined in V (7) above) an outlier adjustment in payment amount for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

c. The outlier adjustment calculation.

(1) Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. This log shall contain all Medicaid claims for such

individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

(2) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. Any hospital which qualifies for the extensive neonatal care provision (as governed by V (6) above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in (8) a or b above.

(3) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in (8) c (2) above.

(4) DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

d. Pursuant to § 1 of Supplement 1 to Attachment 3.1 A & B, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with the EPSDT program referred to in 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

VI. In accordance with Title 42 §§ 447.250 through 447.272 of the Code of Federal Regulations which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that shall be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Home office cost report, if applicable; and

6. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.

VII. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing an appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to A or B above.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with A and B above.

VIII. Refund of overpayments.

A. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

B. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

C. Payment schedule.

If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services ("the director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

D. Extension request documentation.

In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

E. Interest charge on extended repayment.

Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

IX. Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding sections I, II, III, IV, V, VI, VII, VIII and excluding V(6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals

which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of IX.

X. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

XI. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating costs shall be established for state-owned university teaching hospitals.

XII. Nonenrolled providers.

A. Hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable inpatient cost-to-charge ratio, updated annually, for enrolled hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Hospitals that are not enrolled shall submit claims using the required DMAS invoice formats. Such claims must be submitted within 12 months from date of services. A hospital is determined to regularly treat Virginia Medicaid recipients and shall be required by DMAS to enroll if it provides more than 500 days of care to Virginia Medicaid recipients during the hospitals' financial fiscal year. A hospital which is required by DMAS to enroll shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding Sections I, II, III, IV, V, VI, VII, VIII, IX, and X. The hospital shall be placed in one of the DMAS peer groupings which most nearly reflects its licensed bed size and location (Section V.(1) above). These hospitals shall be required to maintain separate cost accounting records, and to file separate cost reports annually, utilizing the applicable Medicare cost reporting forms, (HCFA 2552 Series) and the Medicaid forms (MAP-783 Series).

B. A newly enrolled facility shall have an interim rate determined using the provider's most recent filed Medicare cost report or a pro forma cost report or detailed budget prepared by the provider and accepted by DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider shall be limited to the lesser of its actual operating costs or its peer group ceiling. Subsequent rates shall be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of XII.A.

C. Once a hospital has obtained the enrolled status, 500 days of care, the hospital must agree to become enrolled as required by DMAS to receive reimbursement. This status shall continue during the entire term of the provider's current Medicare certification and subsequent recertification or until mutually terminated with 30 days written notice by either party. The provider must maintain this enrolled status to receive reimbursement. If an enrolled provider elects to terminate the enrolled agreement, the nonenrolled reimbursement status will not be available to the hospital for future reimbursement, except for emergency care.

D. Prior approval must be received from the DMAS Health Services Review Division when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

E. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

XIII. Payment Adjustment Fund.

A. A Payment Adjustment Fund shall be created in each of the Commonwealth's fiscal years during the period July 1, 1992, to June 30, 1996. The Payment Adjustment Fund shall consist of the Commonwealth's cumulative addition of $5 million in general funds and its corresponding federal financial participation for reimbursement to nonstate-owned hospitals in each of the Commonwealth's fiscal years during this period. Each July 1, or as soon thereafter as is reasonably possible, the Commonwealth shall, through a single payment to each nonstate-owned hospital, equitably and fully disburse the Payment Adjustment Fund for that year.

B. In the absence of any amendment to the State Plan, Attachment 4.19A, for the Commonwealth's fiscal year after 1996, the Payment Adjustment Fund shall be continued at the level established in 1996 and shall be disbursed in accordance with the methodology described below.

C. The Payment Adjustment Funds shall be disbursed in accordance with the following methodology:

1. Identify each nonstate-owned hospital provider

(acute, neonatal and rehabilitation) receiving payment based upon its peer group operating ceiling in May of each year.

2. For each such hospital identified in subdivision 1, identify its Medicaid paid days for the 12 months ending each May 31.

3. Multiply each such hospital's days under subdivision 2 by such hospital's May individual peer group ceiling (i.e, disregarding such hospital's actual fiscal year end ceiling) as adjusted by its then current disproportionate share factor.

4. Sum all hospital amounts determined in subdivision 3.

5. For each such hospital, divide its amount determined in subdivision 3 by the total of such amounts determined in subdivision 4. This then becomes the hospital adjustment factor ("HAF") for each such hospital.

6. Multiply each such hospital's HAF times the amount of the Payment Adjustment Fund ("PAF") to determine its potential PAF share.

7. Determine the unreimbursed Medicaid allowable operating cost per day for each such hospital in subdivision 1 for the most recent fiscal year on file at DMAS as of May 31, inflate such costs by DRI-V+2 from the midpoint of such cost report to May 31 and multiply such inflated costs per day by the days identified for that hospital in subdivision 2, creating the "unreimbursed amount."

8. Compare each such hospital's potential PAF share to its unreimbursed amount.

9. Allocate to all hospitals, where the potential PAF share exceeds the unreimbursed amount, such hospital's unreimbursed amount as its actual PAF share.

10. If the PAF is not exhausted, for those hospitals with an unreimbursed amount balance, recalculate a new HAF for each such hospital by dividing the hospital's HAF by the total of the HAFs for all hospitals with an unreimbursed amount balance.

11. Recompute each hospital's new potential share of the undisbursed PAF by multiplying such funds by each hospital's new HAF.

12. Compare each hospital's new potential PAF share to its unreimbursed amount. If the unreimbursed amounts exceed the PAF shares at all hospitals, each hospital's new PAF share becomes its actual PAF share. If some hospitals' unreimbursed amounts are less than the new potential PAF shares, allocate to such hospitals their unreimbursed amount as their actual PAF share. Then, for those hospitals with an unreimbursed amount balance, repeat steps 10, 11 and 12 until each hospital's actual PAF share is determined and the PAF is exhausted.

13. The annual payment to be made to each nonstate-owned hospital from the PAF shall be equal to their actual PAF share as determined and allocated above. Each hospital's actual PAF share payment shall be made on July 1, or as soon thereafter as is reasonably feasible.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Title of Regulation: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.**

Statutory Authority: §§ 54.1-201 5 and 54.1-404 of the Code of Virginia.

Effective Dates: October 9, 1992 through October 8, 1993.

Preamble:

The Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects is promulgating emergency regulations as provided for in Section 9-6.14:4.1 of the Code of Virginia, which establish the registration requirements and standards of practice for individuals, partnerships, corporations and professional corporations wishing to practice as professional limited liability companies. All of the amendments have been made to conform with the statutes which govern the practice of architecture, professional engineering, land surveying and landscape architecture by limited liability companies and professional limited liability companies in Virginia.

/s/ Bonnie S. Salzman, Secretary
Board for Architects, Professional Engineers,
Land Surveyors and Landscape Architects
Date: September 22, 1992

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: September 25, 1992
/s/ L. Douglas Wilder
Governor
Date: October 6, 1992

/s/ Joan W. Smith
Registrar of Regulations
Date: October 9, 1992

VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.

PART I.
GENERAL DEFINITIONS.

§ 1.1. As used in these regulations, unless the context requires a different meaning:

"Direct control and personal supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his supervision.

"Full time" means 60% or more of a licensee's gainfully employed time.

"Good moral character" shall include, but shall not be limited to, compliance with the standards of practice and conduct as set forth in these regulations.

"Place of business" means any location which offers to practice or practices through licensed or certified professionals the services of architecture, professional engineering, land surveying and landscape architecture. A temporary field office set up for temporary construction-related or land surveying services is not a place of business.

"Professional" means licensed architect, licensed professional engineer, licensed land surveyor, certified landscape architect or certified interior designer.

"Regulant" means licensee, certificate holder or registrant.

"Responsible charge" means the direct control and personal supervision of the practice of architecture, professional engineering, land surveying and certified landscape architecture.

PART II.
GENERAL ENTRY REQUIREMENTS.

§ 2.1. Application requirements.

A. Fully documented applications with the noted exception shall be submitted by applicants seeking consideration for licensure, certification or registration with the appropriate fee(s) (check or money order only made payable to the Treasurer of Virginia) to be received in the board's office no later than 120 days prior to the scheduled examination. Applicants for the Fundamentals of Engineering examination enrolled in an ABET accredited curriculum who are within 12 months of completion of degree requirements may submit applications to be received in the board's office no later than 60 days prior to the scheduled examination. The date the completely documented application and fee are received in the board's office shall determine if an application has been received by the deadline set by the board. All applications should be completed according to the instructions contained herein. Applications are not considered complete until all required documents, including but not limited to references, employment verifications and verification of registration are received by the board. All applications, accompanying materials and references are the property of the board.

B. Applicants shall meet applicable entry requirements at the time application is made.

C. Applicants who have been found ineligible for any reason, may request further consideration by submitting in writing evidence of additional qualifications, training or

experience. No additional fee will be required provided the requirements for licensure, certification or registration are met within a period of three years from the date the original application is received by the board. After such period, a new application shall be required.

D. The board may make further inquiries and investigations with respect to the qualifications of the applicant and all references, etc., to confirm or amplify information supplied. The board may also require a personal interview with the applicant.

E. Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, excepi in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

F. Applicants shall be held to the same standards of practice and conduct as set forth in these regulations.

G. National council information.

1. Architect applicants may obtain information concerning NCARB certification and the Intern Development Program from:

National Council of Architectural Registration Boards
(NCARB)
1735 New York Avenue, N.W., Suite 700
Washington, DC 20006
(202) 783-6500

2. Engineer and land surveyor applicants may obtain information concerning NCEES certificates from:

National Council of Examiners for Engineering and Surveying
(NCEES)
P.O. Box 1686
Clemson, South Carolina 29633-1686
(803) 654-6824

3. Landscape architect applicants may obtain information concerning CLARB registration from:

Council of Landscape Architectural Registration Boards
(CLARB)
Suite 110, 12700 Fair Lakes Circle
Fairfax, Virginia 22033
(703) 818-1300

4. Interior design applicants may obtain information concerning NCIDQ examination and certification from:

National Council for Interior Design Qualification
(NCIDQ)
118 East 25th Street
New York, New York 10010
(212) 473-1188

§ 2.2. Determining qualifications of applicants.

In determining the qualifications of an applicant for a license as an architect, a majority vote of only the architect members of the board shall be required. In determining the qualifications of an applicant for a license as a professional engineer, a majority vote of only the professional engineer members of the board shall be required. In determining the qualifications of an applicant for a license as a land surveyor, a majority vote of only the land surveyor members of the board shall be required. In determining the qualifications of an applicant for certification as a landscape architect, a majority vote of only the certified landscape architect members shall be required, and in determining the qualifications of an applicant for certification as an interior designer, a majority vote of only the certified interior designer members shall be required.

§ 2.3. Good standing of comity applicants.

An applicant licensed, certified or registered to practice architecture, professional engineering, land surveying, landscape architecture or interior design in another jurisdiction shall be in good standing in every jurisdiction where licensed, certified or registered, and shall not have had a license, certificate or registration suspended, revoked or surrendered in connection with a disciplinary action or who has been the subject of discipline in another jurisdiction prior to applying for licensure, certification or registration in Virginia.

§ 2.4. Transfer of scores to other boards.

The board, in its discretion and upon proper application, may forward the grades achieved by an applicant in the various examinations given under the board's jurisdiction to any other duly constituted registration board for use in evaluating such applicant's eligibility for registration within such board's jurisdiction or evaluation of such applicant's national certification. The applicant shall state his reason for requesting transfer and such transfer shall terminate the applicant's application pending before the board.

§ 2.5. Replacement of wall certificate.

Any licensee or certificate holder may obtain a replacement for a lost, destroyed, or damaged wall certificate only upon submission of a $20 fee accompanied by a written request indicating that the certificate was lost, destroyed, or damaged.

§ 2.6. Modifications to examination administration.

Requests for modifications to the examination administration to accommodate physical handicaps must be made in writing and received in the board office no less than 120 days prior to the first day of the examination. Such a request must be accompanied by a physician's report and/or a report by a diagnostic specialist, along with supporting data, confirming to the board's satisfaction

the nature and extent of the handicap. After receipt of the request from the applicant, the board may require that the applicant supply further information and/or that the applicant appear personally before the board. It shall be the responsibility of the applicant to timely supply all further information as the board may require. The board shall determine what, if any, modifications will be made.

PART III.
QUALIFICATIONS FOR LICENSING OF ARCHITECTS.

§ 3.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	$ 45
Renewal	75
ARE Exam (all divisions)	435
Division A	82
Division B written	67
Division B graphic	102
Division C	140
Division D/F	77
Division E	62
Division G	83
Division H	84
Division I	81
Out of State proctor	50

§ 3.2. Character.

Applicants must be of good moral character.

§ 3.3. Education.

A. All applicants shall obtain five years of professional education or equivalent education credits. Education credits shall be calculated in accordance with Table I.

B. On or after January 1, 1993, all applicants must hold a professional degree in architecture where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two years after termination of enrollment.

§ 3.4. Experience.

A. All applicants shall have three years of training in the essential areas of architectural practice as defined below. Evidence shall be in the form of official records of a structured internship development program approved by the board, or incorporated in the candidate's application and verified by employers. Experience shall include:

1. A minimum of 18 months in the area of design and construction documents directly related to the practice of architecture; and

2. A minimum of five months in the area of construction administration directly related to the practice of architecture; and

3. A minimum of three months in the area of office management directly related to the practice of architecture.

Training credits shall be calculated in accordance with Table I.

B. The Intern-architect Development Program (IDP) shall be required of all applicants on or after January 1, 1993. An applicant shall be enrolled in IDP for a period of one year or more prior to submitting an application for examination in Virginia. IDP training requirements shall be in accordance with Part II of Table I.

§ 3.5. References.

Eligibility for licensure is determined in part by the applicant's demonstrated competence and integrity to engage in the practice of architecture. Applicants shall submit three references with the application, all of whom are licensed architects in a jurisdiction or territory of the United States. These professionals shall have personal knowledge of the applicant's architectural experience and have known the applicant for at least one year. References shall be current for one year.

§ 3.6. Examination.

A. All applicants for original licensing in Virginia are required to pass an Architect Registration Examination (ARE) after meeting the education and training requirements as provided in these regulations.

B. The Virginia board is a member of the National Council of Architectural Registration Boards (NCARB) and as such is authorized to administer the NCARB examinations.

C. Grading of the examination shall be in accordance with the national grading procedure administered by NCARB. The board shall adopt the scoring procedures recommended by NCARB.

D. The Architect Registration Examination (ARE) will be offered at least once a year at a time designated by the board.

E. The board may approve transfer credits for parts of

the examination taken prior to the 1983 ARE. Transfer of credits will be in accordance with national standards.

F. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

G. Examinees will be given specific instructions as to the conduct of each division of the exam at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

H. Scores.

Examinees will be advised only of passing or failing the examination. Only the board and its staff shall have access to examination papers, scores and answer sheets.

I. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 3.7. License by comity.

A. Any person licensed in another state, jurisdiction or territory of the United States or province of Canada may be granted a license without written examination, provided that:

1. The applicant meets all the requirements for licensing in Virginia or possesses an NCARB certificate; and

2. The applicant holds a currently active valid license in good standing in another state, jurisdiction or territory of the United States or province of Canada.

3. Applicants who were registered in their jurisdiction of original licensure without IDP must submit a verified record of experience in accordance with § 3.4.

B. Applicants licensed in foreign countries may be granted a license in Virginia based on an NCARB certificate.

TABLE I.

REQUIREMENTS FOR ARCHITECTURAL LICENSURE

PART I
EDUCATION AND TRAINING REQUIREMENTS

EDUCATION AND TRAINING REQUIREMENTS RELEASED: JANUARY, 1990; THIS EDITION SUPERSEDES ALL PREVIOUS TABLES OF EQUIVALENTS.

INTERN-ARCHITECT DEVELOPMENT PROGRAM (IDP) APPLICANTS REFER TO PART II FOR THEIR TRAINING REQUIREMENTS. (Complete information may be obtained from NCARB.)

	Education Credits			Training Credits	
	First 2 Years	Succeeding Years	Max. Credit Allowed	Credit Allowed	Max. Credit Allowed
A-1 First professional degree in architecture, or credits toward the first professional degree, where the degree program has been approved by the board not later than two years after termination of enrollment.	75%	100%	5 years		
A-2 First professional degree in architecture, or credits toward that degree, where the degree program has not been approved by the board.	75%	75%	4 years		
A-3 Bachelor degree, or credits toward that degree, in architectural engineering, architectural technology, or in civil, mechanical, or electrical engineering, or in interior architecture, each of the above being approved by the board.	50%	75%	3 years		
A-4 Any other bachelor degree.			2 years		
A-5 Diversified experience in architecture as an employee in the offices of licensed architects.	50%	50%	5 years	100%	no limit
A-6 Diversified experience in architecture as a principal practicing in the office of a licensed architect with a verified record of substantial practice.	50%	50%	5 years	100%	no limit
A-7 Diversified experience in architecture as an employee of an organization (other than offices of registered architects) when the experience is under the direct supervision of a registered architect.	50%	50%	4 years	100%	2 years
A-8 Experience directly related to architecture, when under the direct supervision of a licensed architect but not qualifying as diversified experience or when under the direct supervision of a professional engineer, landscape architect, interior designer, or planner.		0		50%	1 year

See B-1.2

A-9 Experience, other than A-5, A-6, A-7 or A-8 experience, directly related to on-site building construction operations or experience involving physical analyses of existing buildings	0	50%	6 months
A-10 Other Education or Training Experience (see B-3.2)			

EXPLANATION OF REQUIREMENTS

B-1 Education Credits — Education Credits shall be subject to the following conditions:

B-1 .1 No education credits may be earned prior to graduation from high school.

.2 Applicants with the degree specified in A-1 through A-4 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in A-1 or A-2 may not accumulate more than 3 years of education credits in the aggregate from all degree programs.

.3 32 semester credit hours or 48 quarter credit hours are considered to be 1 year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.

.4 Foreign education credits will be granted only under classifications A-2 and A-4. Any cost of translation and evaluation will be borne by the applicant.

B-2 Training Credits — Training credits shall be subject to the following conditions:

B-2 .1 No training credits may be earned prior to accumulating 2 1/2 education credits.

.2 Every applicant must earn at least one year of training credit under A-5 or A-6 and must earn it after earning 5 years of education credits.

.3 No credit used as an education credit may be used as a training credit.

.4 Organizations will be considered to be "offices of registered architects": (a) the architectural practice of the organization in which the applicant works is in the charge of a person practicing as a principal and the applicant works under the direct supervision of a registered architect, and (b) the organization is not engaged in construction, and (c) the organization has no affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal.

.5 An organization (or an affiliate) is engaged in construction if it customarily engages in either of the following activities:

(a) providing labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation.

(b) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

.6 A person practices as a "principal" by being a registered architect and the person in charge of the organization's architectural practice, either alone or with other registered architects.

.7 In evaluating training credits the Board may, prior to licensure, require the applicant to substantiate training experience by comparing this experience to the training requirements as indicated for the Intern-Architect Development Program (IDP). See IDP Training Requirements below.

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B-3 General Evaluation Criteria

B-3 .1 To earn full education or training credits under A-5, A-6, A-7, A-8 and A-9 an applicant must work at least 35 hours per week for a minimum period of ten consecutive weeks under A-5 or 6 consecutive months under A-6, A-7, A-8 or A-9. An applicant may earn one-half the credit specified under A-5 for work of at least 20 hours per week in periods of 6 or more consecutive months; no credit will be given for part-time work in any category other than A-5.

.2 Other education and training may be substituted for the requirements outlined above, only insofar as the board considers them to be equivalent to the required qualifications.

.3 In evaluating credits, the Board may, prior to registration, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

PART II TRAINING REQUIREMENTS FOR INTERN-ARCHITECT DEVELOPMENT PROGRAM (IDP) APPLICANTS

IDP Applicant Defined: An IDP applicant for registration is a person who has completed the IDP training requirements listed below and satisfied the requirements of Part I.

Training Requirements: An IDP Applicant must acquire a total of 700 value units (VU's) to satisfy the training requirements. One VU equals 8 hours of acceptable activity. See Part I for acceptable experience descriptions.

The following chart lists the IDP training categories and areas and the value unit requirements for each.

CATEGORY A

Design and Construction Documents	Minimum VU's Required
1. Programming--Client Contact	10
2. Site and Environmental Analysis	10
3. Schematic Design	15
4. Building Cost Analysis	10
5. Code Research	15
6. Design Development	40
7. Construction Documents	145
8. Specifications & Materials Research	15
9. Documents Checking and Coordination	15
Minimum Total VU's Required	350*

CATEGORY B

Construction Administration	
10. Bidding & Contract Negotiation	10
11. Construction Phase-Office	15
12. Construction Phase-Observation	15
Minimum Total VU's Required	70*

CATEGORY C

Management	
13. Project Management	15
14. Office Management	10
Minimum Total VU's Required	35*

*The differences between the minimum total VU's differences between the minimum total VU's required in each of categories A, B and C and the sum of the minimums required for each training area within the category must be acquired by earning VU's from training areas within the same category.

CATEGORY D

Related Activities	
15. Professional and Community Service	10
Minimum Total VU's Required	**

This listing of required minimums in categories A, B, C and D totals 465 VU's, allowing for 235 additional VU's to be acquired in any of the listed categories. All of the 235 additional VU's may be acquired in one category or distributed among the categories.

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Explanation of Requirements

1. VU's in categories A, B and C may be acquired only if the applicant meets the time requirements of B-3.1 of Part I. VU's may be acquired in category D only if the activity is substantial and continuous.

   Full VU credit is earned for acceptable full-time employment in the settings described in A-8 and A-9 of Part I, and for acceptable part-time employment in the setting described in A-5 of Part I.

2. No VU's may be acquired prior to satisfactory completion of:

   1. three years in an NAAB accredited bachelor degree program, or
   2. the third year of a four year pre-professional degree program in architecture accepted for direct entry to an NAAB accredited master's degree program, or
   3. one year in an NAAB accredited master's degree program, or
   4. 96 semester credit hours as evaluated by EESA in accordance with NCARB Circular of Information No. 3 of which no more than 60 hours can be in the general education category or
   5. five education credits as of June 30, 1984.

   32 semester credit hours or 48 quarter credit hours shall equal one year in an academic program.

3. A master's or doctoral degree in architecture (except where the degree is the first professional degree) qualifies for 235 VU's under category D.

4. An IDP applicant may earn VU's by completing NCARB-approved supplementary education programs; credit to be in accordance with a table of credits established by NCARB. Supplementary education cannot be used to satisfy the minimum VU requirements in training areas 1-14. No VU's may be earned for supplementary education prior to meeting the requirements of A-1 of Part I or while enrolled in a second professional degree program in architecture.

5. The VU's which may be earned under paragraph 3 and 4 may not exceed in the aggregate 235 VU's.

6. To satisfy categories A and B of the training requirements, VU's (including VU's earned from supplementary education) in those categories must be acquired when employed in the settings described in A-5 or A-7 of Part I.

7. A minimum of 235 VU's must be acquired in the setting described in A-5 of Part I after having satisfied A-1.

8. In evaluating training, NCARB may, prior to certification, require substantiation of the quality and character of the training notwithstanding the fact that the IDP applicant has complied with the technical training requirements set forth above.

9. For detailed descriptions of the IDP training categories and supplementary education requirements, see IDP Guidelines available through NCARB.

PART IV.
QUALIFICATIONS FOR LICENSING OF PROFESSIONAL ENGINEERS.

§ 4.1. Definitions.

The following definitions shall apply in the regulations relating to the licensing of professional engineers.

"ABET" means the Accreditation Board for Engineering and Technology.

"Approved engineering curriculum" means an engineering curriculum of four years or more approved by the board. ABET approved engineering curricula are approved by the board.

"Approved engineering technology curriculum" means an ABET approved engineering technology curriculum.

"Approved professional experience" means a specific record of acceptable professional experience which the board, in its discretion, judges to be pertinent in acquiring engineering skills, on engineering projects of a grade and character indicating that the applicant may be competent to practice engineering.

"Engineering examination" means an eight-hour written examination in the Fundamentals of Engineering and an eight-hour written examination in the Principles and Practice of Engineering where required.

"Engineer-in-training (EIT) designation" means the designation of an applicant who completes any one of several combinations of education, or education and experience, and passes the Fundamentals of Engineering examination.

§ 4.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

FE Application	$ 25	
PE Application	65	
Renewal	65	
FE Examination	45	
PE Examination	100	110 (7-1-92)
PE Exam rescore	50	
FE/PE Out of State Proctor	50	
Oral Examination	100	(This fee will be deleted as of July 1, 1993)

§ 4.3. Character.

Applicants must be of good moral character.

§ 4.4. Requirements for Fundamentals of Engineering (FE) exam.

Applicants who are enrolled in an ABET accredited curriculum and are within 12 months of completion of degree requirements are eligible for the FE exam. Applications must be accompanied by a certificate of good standing from the dean of the engineering school.

All other applicants must meet the eligibility requirements in § 4.5 below.

§ 4.5. Requirements for engineer-in-training (EIT) designation.

The minimum education, experience and examination requirements for the engineer-in-training (EIT) designation are as follows:

1. An applicant who has graduated from an approved engineering or approved engineering technology curriculum of four years or more and has passed an eight-hour written examination in the Fundamentals of Engineering; or

2. An applicant who has graduated from a nonapproved engineering curriculum or a related science curriculum of four years or more, with a specific record of two or more years of approved professional experience and has passed the Fundamentals of Engineering examination; or

3. An applicant who has graduated from a nonapproved engineering technology curriculum or who has not graduated from an engineering or related science curriculum of four years or more but who, in the judgment of the board, has obtained the equivalent of such graduation as described, by self-study or otherwise, and has acquired six additional years of approved professional experience and has passed the Fundamentals of Engineering examination. Experience used to determine educational equivalency shall not be used in satisfying professional experience.

The engineer-in-training (EIT) designation shall remain valid indefinitely.

§ 4.6. Requirements for professional engineering license.

The minimum education, experience and examination requirements for licensing as a professional engineer are as follows:

1. An applicant who has graduated from an approved engineering curriculum, has passed the Fundamentals of Engineering examination or an equivalent exam, has a specific record of at least four years of progressive approved professional experience, and has passed the Principles and Practice of Engineering examination, provided, however, any applicant who has been awarded both an ABET accredited

undergraduate engineering degree and a doctorate degree in engineering from an engineering curriculum which is ABET accredited at the undergraduate level may have the Fundamentals of Engineering examination waived; or

2. An applicant who has graduated from a nonapproved engineering curriculum, a related science curriculum of four years or more, or an approved engineering technology curriculum, who has passed the Fundamentals of Engineering examination or an equivalent exam, has acquired a specific record of at least six years of progressive approved professional experience, and has passed the Principles and Practice of Engineering examination; or

3. An applicant who has not graduated from an approved engineering curriculum of four years or more but who has obtained the equivalent of such graduation by self-study or otherwise, has passed the Fundamentals of Engineering exam or an equivalent examination, has acquired 10 years of approved professional experience, and has passed the Principles and Practice of Engineering examination. Experience used to determine educational equivalency shall not be used in satisfying professional experience; or

4. An applicant who has graduated from an engineering, engineering technology or related science curriculum of four years or more, who has acquired a specific record of 20 years or more of approved progressive professional experience on engineering projects of a grade and character which the board judges to be pertinent to acquiring professional skills, such that the applicant may be competent to practice engineering, and has passed the examination in the Principles and Practice of Engineering; or

5. An applicant who has graduated from an engineering, engineering technology, or related science curriculum of four years or more, and who has acquired a specific record of 30 years or more of approved progressive professional experience on engineering projects of grade and character which the board judges to be pertinent to acquiring professional skills, demonstrating that the applicant is eminently qualified to practice engineering, shall pass an oral examination which indicates to the board that the applicant is eminently qualified to practice engineering. If the board has any doubt concerning an applicant's eminent qualifications, the applicant shall be reclassified as an examination candidate.

Applications from individuals qualifying under this section will be accepted by the board until July 1, 1993. All applicants for oral examination must qualify on or before July 1, 1993.

§ 4.7. References.

A. References for Fundamentals of Engineering examination.

Applicants for the Fundamentals of Engineering examination only shall provide one reference from a professional engineer, or from the dean of the engineering school or a departmental professor in the school attended by the applicant, or an immediate work supervisor. Any reference provided shall be from a person who has known the applicant for at least one year. References may not also verify professional experience.

B. References for Principles and Practice of Engineering examination.

To be eligible for admission to the Principles and Practice of Engineering examination, an applicant must indicate competence and integrity to engage in the engineering profession by submitting three references with the application, all of whom shall be licensed professional engineers in a state or territory of the United States. The professional engineers providing the references shall have personal knowledge of the applicant's engineering experience and shall have known the applicant for at least one year. References shall be no more than one year old at the time the applicant is approved to take the requisite examination. References may not also verify professional experience.

§ 4.8. Education.

Any applicant who has attended an institution not located in the United States shall have his degree evaluated by an educational evaluation service or by ABET if credit for such education is sought. The board reserves the right to reject any evaluation submitted by the applicant.

§ 4.9. Training and experience.

Professional engineering training and experience shall be progressive in complexity and based on a knowledge of engineering mathematics, physical and applied sciences, properties of materials, and fundamental principles of engineering design, provided:

1. In general, experience in sales, drafting, estimating, field surveying, nonengineering military service, and inspection are considered nonqualifying;

2. Engineering experience gained by graduate engineering study or by engineering teaching as an instructor or higher in an institution approved by the board may be deemed professional experience;

3. Engineering experience gained during a board-approved co-op program may be deemed professional experience to a maximum of one year of credit;

4. The board, in its sole discretion, may permit partial credit, not to exceed 1/4 of that required, for

approved professional experience obtained prior to graduation from an engineering curriculum.

§ 4.10. Language and comprehension.

Every applicant applying for licensure as a professional engineer shall be able to speak and write English. Such an applicant from a non-English speaking country or a country wherein the primary language is other than English shall submit to the board a TOEFL (Test of English as a Foreign Language) score report with a minimum score of 560, and a TSE (Test of Spoken English) score report with a minimum score of 255. Score reports shall not be over two years old at the time of application.

§ 4.11. Examinations.

A. The Virginia board is a member of the National Council of Examiners for Engineering and Surveying (NCEES) and as such is authorized to administer the NCEES examinations.

B. The Fundamentals of Engineering examination consists of an eight-hour test period on the fundamentals of engineering, and is given semiannually at times designated by the board.

C. The Principles and Practice of Engineering examination consists of an eight-hour test period on applied engineering and is given semiannually at times designated by the board.

D. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

E. A candidate eligible for admission to both parts of the examination must first successfully complete the fundamentals of engineering examination before being admitted to the principles and practice of engineering examination.

F. Examinees will be given specific instructions as to the conduct of each examination at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

G. The oral exam shall consist of a review of the engineering background and examples of the work of the professional engineering candidate in the presence of the Professional Engineer Section of the board. This examination may encompass any facts appearing in the application and supporting papers of the candidate and such direct evidence as the candidate may desire to present to the board to substantiate the breadth and depth of professional engineering experience, primarily in experience in engineering design and analysis.

1. Substantiating evidence shall be in the form of drawings, sketches, reports, specifications, calculations, published articles, textbooks, or other suitable information demonstrating the engineering experience of the candidate. Based upon this information, the candidate will be subject to questions regarding principles of engineering followed in the execution of such work.

2. The candidate shall demonstrate that the experience record is of a professional level and shall leave no doubt as to the ability to protect the public in the practice of engineering. Failure to demonstrate this ability shall result in reclassification.

H. Grading.

Grading of the examinations shall be in accordance with national grading procedures established by NCEES.

Each part of the written examination will have a value of 100. A passing score shall be 70 and above. Candidates will be notified of passing or failing and their actual scores.

I. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

J. Examination reviews.

The Fundamentals of Engineering examination may not be reviewed by the candidates. Examination scores are final and are not subject to change.

Upon written request to the board within 30 days of receiving exam results, candidates for the Principles and Practice of Engineering examination will be permitted to review only their own failed examination. Score appeals may be accepted in accordance with board policy.

§ 4.12. License by comity.

A person holding a license to engage in the practice of engineering, issued to the applicant by another state, territory or possession of the United States, or the District of Columbia, based on requirements that do not conflict with and are at least as vigorous as these regulations and supporting statutes of this board, may be licensed without further examination. No person shall be so licensed, however, who has not passed a written examination in another jurisdiction which is substantially equivalent to that administered by the board.

PART V.
QUALIFICATIONS FOR LICENSING AND STANDARDS OF PROCEDURE FOR LAND SURVEYORS.

§ 5.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Fundamentals of Surveying	$ 60
Application for Principles of Surveying	95
Renewal	155
Fundamentals of Surveying Examination	65 80 (7-1-92)
Principles of Surveying Examination	65 85 (7-1-92)
Principles (AM) and/or Colonial Domain Exam	65
Virginia State Examination	30
Application for Land Surveyor B	95
Examination for Land Surveyor B	35
Out of State Proctor	50

§ 5.2. Character.

Applicants must be of good moral character.

§ 5.3. Requirements for land surveyor-in-training.

The education or experience, or both, and examination requirements for land surveyor-in-training status are as follows:

1. An applicant who has graduated from a surveying or surveying technology curriculum of four years or more approved by the board as being of satisfactory standing shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

2. An applicant who has graduated from a curriculum related to surveying of four years or more as approved by the board and with a specific record of two years of progressive, approved professional experience in land surveying shall be admitted to an eight-hour examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

3. An applicant who has graduated from an unrelated to surveying curriculum of four years or more as acceptable to the board with a specific record of four years of approved professional experience in land surveying of which three of these years shall be progressive, shall be admitted to an eight-hour examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

4. An applicant who has graduated from a surveying curriculum of two years or more approved by the board with a specific record of six years of approved professional experience in land surveying of which four of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

5. An applicant who has successfully completed a survey apprenticeship program approved by the board with at least 480 hours of surveying related classroom instruction with a specific record of eight years of approved professional experience in land surveying of which six of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

6. An applicant who has graduated from high school with evidence of successful completion of courses in algebra, geometry and trigonometry with a specific record of ten years of approved professional experience in land surveying of which eight of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Applicants who have accumulated college credits may apply credit hours approved by the board to help meet the experience requirement. One year of experience credit will be given for 40 semester hours of approved college credit. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if he is otherwise qualified.

§ 5.4. Requirements for a licensed land surveyor.

A land surveyor-in-training with a specific record of four years of approved professional experience, of which a minimum of three years of progressive experience has been on land surveying projects under the supervision of a licensed land surveyor, shall be admitted to an eight-hour written examination in the Principles and Practice of Land Surveying. Upon passing such examination the applicant shall be granted a license to practice land surveying, provided the applicant is otherwise qualified.

§ 5.5. Requirements for a licensed land surveyor B.

A. An applicant shall hold a valid license as a land surveyor and present satisfactory evidence of two years of progressive professional experience in land surveyor B professional land surveying, as defined in § 54.1-408 of the

Code of Virginia, under the supervision and direction of a licensed land surveyor B or professional engineer.

B. An applicant shall also present satisfactory evidence of having passed college level courses in hydraulics, acceptable to the board.

C. An applicant shall pass an eight-hour written examination as developed by the board. Upon passing such examination the applicant shall be granted a license as a Land Surveyor B, if he is otherwise qualified.

§ 5.6. Education.

Any applicant who has attended an institution not located in the United States shall have his degree evaluated by an education evaluation service if credit for such education is sought. The board reserves the right to reject any evaluation submitted by the applicant.

§ 5.7. Experience standards.

A. "Approved professional experience" means diversified training in land surveying under the supervision and direction of a licensed land surveyor. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative and professional skill in the office and field. Experience may be gained either prior to or after education is obtained.

B. An applicant shall submit written verification from a licensed land surveyor of work experience from each employment engagement utilized as professional experience on forms provided by the board.

§ 5.8. Examinations.

A. The examination for land surveying under § 54.1-400 of the Code of Virginia shall consist of two parts, each part being of eight hours duration. Part I shall consist of an eight-hour examination in the Fundamentals of Land Surveying. Part II shall consist of a four-hour examination in the Principles and Practice of Land Surveying, a three-hour Colonial Domain examination, and a one-hour Virginia State examination. These examinations shall be given semiannually at times designated by the board.

B. The examination for land surveying under § 54.1-408 of the Code of Virginia (Land Surveyor B) shall be of eight hours duration and shall be given annually at a time designated by the board.

C. Unless otherwise stated, applicants approved to sit for an examination must register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

D. Grading.

Candidates shall be notified of passing or failing but shall not be notified of actual scores. Only the board and its staff shall have access to examination papers, scores and answer sheets. Examinations may not be reviewed.

1. Part I of the written examination shall have a value of 100. The passing grade shall be 70 or above.

2. Each portion of the Part II of the written examination shall have a value of 100. The passing grade shall be 70 or above.

3. For the Land Surveyor B examination, each applicant must obtain a minimum passing grade of 75 out of 100 for the entire eight-hour examination.

E. Reexamination.

Upon payment of a reexamination fee, an applicant may retake parts of the written examination which may have been failed. Should the applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 5.9. Licensure by comity.

A person holding a license to engage in the practice of land surveying issued on comparable qualifications from a state, territory or possession of the United States and experience satisfactory to the board, will be given comity consideration. Full credit will be given to an applicant who has passed the NCEES examinations for surveyors in other jurisdictions as required in Virginia. However, the applicant may be required to take such examinations as the board deems necessary to determine his qualifications, but in any event, he shall be required to pass a written Virginia State examination of not less than one hour in duration. The examination shall include questions on law, procedures and practices pertaining to land surveying in Virginia.

§ 5.10. Minimum standards and procedures for land boundary surveying practice.

The following minimum standards and procedures are to be used in the Commonwealth of Virginia. The application of the professional's seal and signature as required by these regulations shall be evidence that the boundary survey or other land survey to be used for conveyance of title or mortgage purposes is correct to the best of the professional's knowledge and belief, and complies with the minimum standards and procedures.

A. Research procedure.

The professional shall search the land records for the proper description of the land to be surveyed and obtain the description of adjoining land as it pertains to the common boundaries. The professional shall have the additional responsibility to utilize any other available data pertinent to the survey being performed from any other source that is known. Evidence found, from all sources,

shall be carefully compared with that located and found in the field survey in order to establish the correct boundaries of the land being surveyed. It is not the intent of this regulation to require the professional to research the question of title or encumbrances on the land involved.

B. Minimum field procedures.

1. Angular measurement. Angle measurements made for traverse or boundary survey lines will be made by using a properly adjusted transit type instrument which allows a direct reading to a minimum accuracy of 30 seconds of arc or metric equivalent. The number of angles turned a given station or corner will be the number which, in the judgment of the professional, can be used to substantiate the average true angle considering the condition of the instrument being used and the existing field conditions.

2. Linear measurement. Distance measurement for the lines of traverse or boundary surveys shall be made with metal tapes which have been checked and are properly calibrated as to incremental distances, or with properly calibrated electronic distance measuring equipment following instructions and procedures established by the manufacturer of such equipment. All linear measurements shall be reduced to the horizontal plane and other necessary corrections performed before using for computing purposes.

3. Field traverse and boundary closure. The maximum permissible error of closure for a field traverse in connection with a boundary survey located in a rural area shall be one foot in 5,000 feet or metric equivalent of perimeter length. The attendant angular closure shall be that which will sustain the 1/5,000 foot closure. The maximum permissible error of closure for a traverse in connection with a boundary survey located in an urban area shall be one foot in 10,000 feet or metric equivalent of perimeter length. The attendant angular closure shall be that which will sustain the 1/10,000 foot closure.

C. Office procedures.

1. Computations. The computation of field work data shall be accomplished by using the mathematical routines that produce closures and mathematical results that can be compared with descriptions and data of record. Such computations shall be used to determine the final boundary of the land involved.

2. Plats and maps. The following information shall be shown on all plats or maps, or both, used to depict the results of the boundary survey:

a. The title of the boundary plat identifying the land surveyed and showing the district and county or city in which the land is located.

b. The owner's name and deed book referenced where the acquisition was recorded.

c. Names of all adjacent owners or subdivision lot designations.

d. Names of highways and roads with route number, railroads, streams adjoining or running through the land, and other prominent or well-known objects or areas which are informative as to the location of the boundary survey.

e. Bearings of all property lines to nearest 10 seconds, or metric equivalent.

f. Distances of all property lines to the nearest one hundredth (.01) of a foot or metric equivalent.

g. Area to the nearest hundredth (.01) of an acre or metric equivalent for rural located surveys.

h. Area to the nearest square foot or decimal of an acre or metric equivalent for urban located surveys.

i. North arrow and source of meridian used for the survey.

j. On interior surveys, a reference distance to a property corner of an adjoining owner.

k. Tax map designation of parcel number if available.

l. Each monument found and each monument set by the professional.

m. A statement that the boundary survey shown is based on a current field survey.

n. Name and address of the land surveyor.

D. Monumentation.

1. Each boundary survey of a tract or parcel of land shall be monumented with objects made of permanent material at all corners and changes in direction on the boundary with the exceptions of meanders of streams, tidelands, swamps, and roads. Where it is not feasible to set actual corners, appropriate reference markers shall be set, preferably on line, and the location of each shown on the plat or map of the boundary.

2. Original subdivision surveys shall be monumented in accordance with subdivision 1 above. Corner monuments are required to be set on subdivision lots or parcels of land to be used for conveyance of title or mortgage purposes, or, if found to be correctly in place, identified by witness stakes. The plat of such survey shall show corner monuments found and those set.

PART VI.
QUALIFICATIONS FOR CERTIFICATION OF LANDSCAPE ARCHITECTS.

§ 6.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	$ 75		
Renewal	105		
UNE Examination	375	(1993)	405
Test 1	40		44
Test 2	45		49
Test 3	90		95
Test 4	85		90
Test 5	105		110
Test 6	95		100
Test 7	60		62
Out of State Proctor	50		

§ 6.2. Character.

Applicants must be of good moral character.

§ 6.3. Requirements for certification.

The education or experience, or both, and examination requirements for certification as a landscape architect are as follows:

1. An applicant who has graduated from an accredited landscape architecture curriculm approved by the board shall be admitted to a written examination. Upon passing such examination, the applicant shall be certified as a landscape architect, if he is otherwise qualified.

2. An applicant who has obtained eight years of combined education and experience, evaluated in accordance with Table II, shall be admitted to a written examination approved by the board. Upon passing such examination, the applicant shall be certified as a landscape architect, if he is otherwise qualified.

§ 6.4. Experience standard.

Professional landscape architectural training and experience shall be progressive in complexity and based on a knowledge of natural, physical and mathematic sciences, and the principles and methodology of landscape architecture.

§ 6.5. Examination.

A. All applicants for original certification in Virginia are required to pass a Uniform National Examination (UNE) after meeting the education and experience requirements as provided in these regulations.

B. The Virginia board is a member of the Council of Landscape Architectural Registration Boards (CLARB) and as such is authorized to administer the CLARB examinations.

C. The Uniform National Examination (UNE) will be offered at least once per year at a time designated by the board.

D. Grading of the examination shall be in accordance with the national grading procedures established by CLARB. The board shall adopt the scoring procedures recommended by CLARB.

E. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

F. Examinees will be given specific instructions as to the conduct of each section of the exam at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

G. Examinees will be advised only of passing or failing the examination. Only the board and its staff shall have access to examination papers, scores and answer sheets.

H. Examination reviews.

Upon written request to the board within 30 days of receiving examination results, examinees will be permitted to individually view only their own failed performance problems for informational purposes only. Examination appeals for grade changes are not permitted.

I. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 6.6. Certification by comity.

Any applicant who has passed an examination in another jurisdiction of the United States or province of Canada comparable to the examination required by these regulations or who is CLARB certified and who is currently licensed or certified in another jurisdiction of the United States or province of Canada may have the required Virginia examinations waived, provided that he meets all other qualifications.

DEPARTMENT OF COMMERCE
BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS,
LAND SURVEYORS AND LANDSCAPE ARCHITECTS

TABLE II.

TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE
FOR CERTIFIED LANDSCAPE ARCHITECTS.

DESCRIPTION	EDUCATION CREDITS			EXPERIENCE CREDITS	
	FIRST 2 YEARS	SUCCEEDING YEARS	MAXIMUM CREDIT ALLOWED	CREDIT ALLOWED	MAXIMUM CREDIT ALLOWED
A-1. Credits toward a degree in landscape architecture from an accredited school of landscape architecture.	100%	100%	4 years		
A-2. Degree in landscape architecture or credits toward that degree from a non-accredited school of landscape architecture.	100%	100%	4 years		
A-3. Degree or credits toward that degree in an allied professional discipline, i.e. architecture, civil engineering, environmental science, approved by the board	75%	100%	3 years		
A-4. Any other bachelor degree, or credits toward that degree.	50%	75%	2 years		
A-5. Diversified experience in landscape architecture under the direct supervision of a certified landscape architect.				100%	no limit
A-6. Diversified experience directly related to landscape architecture when under the direct supervision of an architect, civil engineer or "credentialed" planner.				50%	4 years

EXPLANATION OF REQUIREMENTS

B-1 Education Credits. Education credits shall be subject to the following conditions:

B-1.1. Applicants with a degree specified in A-1 through A-4 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree progam.

.2. With a passing grade, 32 semester credit hours or 48 quarter credit hours is considered to be one year. Fractions greater than one-half year will be counted one-half year and smaller fractions will not be counted.

B-2 Experience Credits. Experience credits shall be subject to the following conditions:

B-2.1. Every applicant must earn at least two years of experience credit under category A-5.

PART VII.
QUALIFICATIONS FOR CERTIFICATION OF INTERIOR DESIGNERS.

§ 7.1. Definitions.

The following definitions shall apply in the regulations relating to the certification of interior designers:

"Diversified experience" includes the identification, research and creative solution of problems pertaining to the function and quality of the interior environment.

"Monitored experience" shall mean diversified experience in interior design under the supervision of a person eligible for certification as an interior designer, a certified or licensed interior designer, an architect or a professional engineer.

§ 7.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	$150
Renewal	$150

§ 7.3. Character.

Applicants must be of good moral character.

§ 7.4. Experience standard.

Experience in interior design shall be diversified in accordance with these regulations. Monitored experience gained under the supervision of a professional engineer shall be discounted at 50% with a maximum credit of six months. Periods of self-employment shall be verified with a list of projects, dates, scope of work and letters of verification by at least three clients.

§ 7.5. References.

Applicants shall submit three references from persons who know of the applicant's work and have known the applicant for at least one year. Persons supplying references may be persons eligible to be certified interior designers, certified or licensed interior designers, architects or professional engineers.

PART VIII.
QUALIFICATIONS FOR REGISTRATION AS A PROFESSIONAL CORPORATION.

§ 8.1. Definitions.

"Employee" of a corporation, for purposes of stock ownership, is a person regularly employed by the corporation who devotes 60% or more of his gainfully employed time to that of the corporation.

§ 8.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	$ 90
Designation for branch office	25
Renewal	100
Renewal of branch office	25
Reinstatement of branch office	25

§ 8.3. Application requirements.

A. All applicants shall have been incorporated in the Commonwealth of Virginia, or, if a foreign professional corporation, shall have obtained a certificate of authority to do business in Virginia from the State Corporation Commission, in accordance with § 13.1-544.2 of the Code of Virginia.

B. Each application shall include certified true copies of the articles of incorporation, bylaws and charter, and, if a foreign professional corporation, the certificate of authority issued by the State Corporation Commission.

C. Articles of incorporation and bylaws.

The following statements are required:

1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.

2. The bylaws shall state that at least 2/3 of the capital stock must be held by persons duly licensed or certified to render the services of an architect, professional engineer, land surveyor or landscape architect. The remainder of the stock may be issued only to and held by individuals who are employees of the corporation.

3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise or considered professional practice, or both.

D. Board of directors.

A corporation may elect to its board of directors not more than 1/3 of its members who are employees of the corporation and are not authorized to render professional services.

At least 2/3 of the board of directors shall be licensed or certified to render the services of architecture, professional engineering, land surveying or landscape architecture, or any combination thereof.

DEPARTMENT OF COMMERCE
BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS,
LAND SURVEYORS AND LANDSCAPE ARCHITECTS

TABLE II.

TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE
FOR CERTIFIED LANDSCAPE ARCHITECTS.

DESCRIPTION	EDUCATION CREDITS			EXPERIENCE CREDITS	
	FIRST 2 YEARS	SUCCEEDING YEARS	MAXIMUM CREDIT ALLOWED	CREDIT ALLOWED	MAXIMUM CREDIT ALLOWED
A-1. Credits toward a degree in landscape architecture from an accredited school of landscape architecture.	100%	100%	4 years		
A-2. Degree in landscape architecture or credits toward that degree from a non-accredited school of landscape architecture.	100%	100%	4 years		
A-3. Degree or credits toward that degree in an allied professional discipline, i.e. architecture, civil engineering, environmental science, approved by the board	75%	100%	3 years		
A-4. Any other bachelor degree, or credits toward that degree.	50%	75%	2 years		
A-5. Diversified experience in landscape architecture under the direct supervision of a certified landscape architect.				100%	no limit
A-6. Diversified experience directly related to landscape architecture when under the direct supervision of an architect, civil engineer or "credentialed" planner.				50%	4 years

EXPLANATION OF REQUIREMENTS

B-1 Education Credits. Education credits shall be subject to the following conditions:

B-1.1. Applicants with a degree specified in A-1 through A-4 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree progam.

.2. With a passing grade, 32 semester credit hours or 48 quarter credit hours is considered to be one year. Fractions greater than one-half year will be counted one-half year and smaller fractions will not be counted.

B-2 Experience Credits. Experience credits shall be subject to the following conditions:

B-2.1. Every applicant must earn at least two years of experience credit under category A-5.

PART VII.
QUALIFICATIONS FOR CERTIFICATION OF INTERIOR DESIGNERS.

§ 7.1. Definitions.

The following definitions shall apply in the regulations relating to the certification of interior designers:

"Diversified experience" includes the identification, research and creative solution of problems pertaining to the function and quality of the interior environment.

"Monitored experience" shall mean diversified experience in interior design under the supervision of a person eligible for certification as an interior designer, a certified or licensed interior designer, an architect or a professional engineer.

§ 7.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	$150
Renewal	$150

§ 7.3. Character.

Applicants must be of good moral character.

§ 7.4. Experience standard.

Experience in interior design shall be diversified in accordance with these regulations. Monitored experience gained under the supervision of a professional engineer shall be discounted at 50% with a maximum credit of six months. Periods of self-employment shall be verified with a list of projects, dates, scope of work and letters of verification by at least three clients.

§ 7.5. References.

Applicants shall submit three references from persons who know of the applicant's work and have known the applicant for at least one year. Persons supplying references may be persons eligible to be certified interior designers, certified or licensed interior designers, architects or professional engineers.

PART VIII.
QUALIFICATIONS FOR REGISTRATION AS A PROFESSIONAL CORPORATION.

§ 8.1. Definitions.

"Employee" of a corporation, for purposes of stock ownership, is a person regularly employed by the corporation who devotes 60% or more of his gainfully employed time to that of the corporation.

§ 8.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	$ 90
Designation for branch office	25
Renewal	100
Renewal of branch office	25
Reinstatement of branch office	25

§ 8.3. Application requirements.

A. All applicants shall have been incorporated in the Commonwealth of Virginia, or, if a foreign professional corporation, shall have obtained a certificate of authority to do business in Virginia from the State Corporation Commission, in accordance with § 13.1-544.2 of the Code of Virginia.

B. Each application shall include certified true copies of the articles of incorporation, bylaws and charter, and, if a foreign professional corporation, the certificate of authority issued by the State Corporation Commission.

C. Articles of incorporation and bylaws.

The following statements are required:

1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.

2. The bylaws shall state that at least 2/3 of the capital stock must be held by persons duly licensed or certified to render the services of an architect, professional engineer, land surveyor or landscape architect. The remainder of the stock may be issued only to and held by individuals who are employees of the corporation.

3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise or considered professional practice, or both.

D. Board of directors.

A corporation may elect to its board of directors not more than 1/3 of its members who are employees of the corporation and are not authorized to render professional services.

At least 2/3 of the board of directors shall be licensed or certified to render the services of architecture, professional engineering, land surveying or landscape architecture, or any combination thereof.

At least one director currently licensed or certified in each profession offered or practiced shall devote substantially full time to the business of the corporation to provide effective supervision and control of the final professional product.

E. Joint ownership of stock.

Any type of joint ownership of the stock of the corporation is prohibited. Ownership of stock by nonlicensed or noncertified employees shall not entitle those employees to vote in any matter affecting the practice of the professions herein regulated.

F. Branch offices.

If professional services are offered or rendered in a branch office(s), a separate branch office designation form shall be completed for each branch office located in Virginia. Persons in responsible charge shall be designated in accordance with these regulations.

§ 8.4. Certificates of authority.

Certificates of authority shall be issued in two categories, general or limited. A general certificate of authority will entitle the corporation to practice the professions of architecture, professional engineering, land surveying and landscape architecture. A limited certificate of authority will permit a corporation to practice only the professions shown on its certificate of authority, architecture, engineering, land surveying, landscape architecture or in any combination thereof.

§ 8.5. Foreign corporations.

In addition to these regulations, the bylaws shall state that the corporation's activities shall be limited to rendering the services of architecture, professional engineering, land surveying and landscape architecture, or any combination thereof.

The corporation shall provide the name and address of each stockholder of the corporation who will be providing the professional service(s) in Virginia and whether such stockholder is licensed or certified to perform the professional service(s) in Virginia.

§ 8.6. Amendments and changes.

A. Amendments to charter, articles of incorporation or bylaws.

A corporation holding a certificate of authority to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a certified true copy of any amendment to the articles of incorporation, bylaws or charter.

B. Change in directors or shareholders.

In the event there is a change in corporate directors or shareholders, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the certificate of authority shall be automatically modified to be limited to that professional practice permitted by those pertinent licenses or certificates held by the remaining directors and shareholders of the corporation. Unless otherwise provided, in the event that such change results in noncompliance with these regulations and applicable statutes, the certificate of authority shall be automatically suspended until such time as the corporation comes into compliance with these regulations. The corporation shall notify the board within 30 days of any such change.

C. Change of name, address and place of business.

Any change of name (including assumed names) address, place of business in Virginia, or person(s) in responsible charge of the profession(s) practiced or offered at each place of business shall be reported to the board within 30 days of such an occurrence.

PART IX.
QUALIFICATIONS FOR REGISTRATION AS A PROFESSIONAL LIMITED LIABILITY COMPANY.

§ 9.1. Definitions.

"Professional Limited Liability Company" for the purposes of these regulations means a limited liability company organized in accordance with Chapter 13 (§ 13.1-1070 et seq.) of Title 13.1 of the Code of Virginia for the sole and specific purpose of rendering professional services of architecture, professional engineering, land surveying and landscape architecture.

"Manager" is a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement, and who is duly licensed or otherwise legally authorized to render the professional services of architecture, professional engineering, land surveying and landscape architecture in the Commonwealth of Virginia.

"Member" means an individual or professional business entity that owns an interest in a limited liability company, and who is duly licensed or otherwise legally authorized to render the professional services of architecture, professional engineering, land surveying and landscape architecture in the Commonwealth of Virginia.

§ 9.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application $90

Renewal $100

§ 9.3. Application requirements.

A. All applicants shall have filed articles of organization in the Commonwealth of Virginia, or, if a foreign professional limited liability company, shall have obtained a certificate of registration to do business in Virginia from the State Corporation Commission, in accordance with § 13.1-1054 of the Code of Virginia.

B. Each application shall include certified true copies of the articles of organization, operating agreement, and certificate of organization and, if a foreign professional limited liability company, a certificate of registration issued by the State Corporation Commission.

C. Articles of organization and operating agreements.

1. The articles of organization or operating agreement shall state the specific purpose of the professional limited liability company.

2. The articles of organization or operating agreement shall verify that membership is composed of two or more individuals or professional business entities, and at least 2/3 of which is duly licensed to render professional services within the Commonwealth of Virginia. The remaining membership interest may be held only by employees of the company whether or not they are licensed or otherwise legally authorized to render professional services.

3. The articles of organization or operating agreement shall state that all members, managers, employees and agents who render professional services are duly licensed or otherwise legally authorized.

D. Management.

Unless the articles of organization or an operating agreement provides for management of a professional limited liability company by a manager or managers, management of a limited liability company shall be vested in its members, all of which must be duly licensed or otherwise legally authorized to render the professional services within the Commonwealth for which the company was formed.

The manager must be an individual or professional business entity duly licensed or otherwise legally authorized to render the same professional services within the Commonwealth for which the company was formed.

§ 9.4. Certificates of authority.

A certificate of authority shall only be issued in the category of limited. A limited certificate of authority will permit a professional limited liability company to practice only the professions shown on its certificate of authority, architecture, professional engineering, land surveying, landscape architecture, or in any combination thereof.

§ 9.5. Foreign Professional Limited Liability Companies.

In addition to the requirements of these regulations, articles of organization and operating agreement shall state that the professional limited liability company's activities shall be limited to rendering the professional services of architecture, professional engineering, land surveying and landscape architecture, or any combination thereof.

The professional limited liability company shall provide the name and address of each manager or member who will be providing the professional service(s) in Virginia and whether such manager or member is licensed or certified to perform the professional service(s) in Virginia.

§ 9.6. Amendments and changes.

A. Amendments to articles of organization, operating agreements or certificate of organization.

A professional limited liability company holding a certificate of authority to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a certified true copy of any amendment to the articles of organization, operating agreement or certificate of organization.

B. Change in managers or members.

In the event there is a change of professional limited liability company managers or members, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the certificate of authority shall be automatically modified to be limited to that professional practice permitted by those pertinent licenses or certificates held by the remaining managers or members of the professional limited liability company. Unless otherwise provided, in the event that such change results in noncompliance with these regulations and applicable statutes, the certificate of authority shall be automatically suspended until such time as the professional limited liability company comes into compliance with these regulations. The professional limited liability company shall notify the board within 30 days of any such change.

No member of the professional limited liability company may transfer or sell its membership interest in the company, except to the company, or unless at least 2/3 of the remaining membership interest is held by individuals or professional business entities duly licensed or otherwised authorized to render the professional services of the company.

C. Change of name, address and place of business.

Any change of name (including assumed names), address, place of business in Virginia, registered agent or person(s) in responsible charge of the profession(s)

practiced or offered shall be reported to the board within 30 days of such an occurrence.

PART ~~IX~~ *X*.
QUALIFICATIONS FOR REGISTRATION AS A BUSINESS ENTITY.

§ ~~9.1.~~ *§ 10.1.* Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	$ 75
Designation for branch office	25
Renewal	55
Renewal of branch office	25
Reinstatement of branch office	25

§ ~~9.2.~~ *§ 10.2.* Application requirements.

A. In accordance with § 54.1-411 of the Code of Virginia, applicants shall register with the board on a form approved by the board.

B. If a partnership, a copy of the partnership agreement shall be included with the application. Not less than 2/3 of the general partners shall be licensed professionals.

C. If a corporation, the application shall include certified true copies of the articles of incorporation, bylaws and charter, and if a foreign corporation, a certificate of authority issued by the State Corporation Commission.

D. If professional services are offered or rendered in a branch office(s), a separate branch office designation form shall be completed for each branch office located in Virginia. Persons in responsible charge shall be designated in accordance with these regulations.

§ ~~9.3.~~ *§ 10.3.* Registration certification.

The application shall contain an affidavit by an authorized official in the corporation, partnership, sole proprietorship, or other entity unit that the practice of architecture, professional engineering, land surveying or certified landscape architecture to be done by that entity shall be under the direct control and personal supervision of the licensed or certified full-time employees identified in the application as responsible for the practice. In addition, the licensed or certified employees responsible for the practice shall sign their names indicating that they are full-time employees and in responsible charge, and that they understand and shall comply with all statutes and regulations of the board.

§ ~~9.4.~~ *§ 10.4.* Change of status.

Any changes of status, including but not limited to change in entity, name (including assumed names), address, place of business or persons in responsible charge of the professions practiced or offered at each place of business, shall be reported to the board within 30 days of such an occurrence.

In the event there is a change in the licensed or certified employees in responsible charge, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the registration shall be automatically modified to be limited to that professional practice permitted by the remaining licensed or certified employees, or shall be automatically suspended until such time as the entity comes into compliance with these regulations.

PART ~~X~~ *XI*.
RENEWAL AND REINSTATEMENT.

§ ~~10.1.~~ *§ 11.1.* Expiration and renewal.

A. Prior to the expiration date shown on the license, certificate or registration, licenses, certificates or registrations shall be renewed for a two-year period upon completion of a renewal application and payment of a fee established by the board. An applicant must certify that he continues to comply with the Standards of Practice and Conduct as established by the board. Registrations for professional corporations *, professional limited liability companies* and business entities shall expire on December 31 of each odd-numbered year. Branch offices may not renew until the main office registration is properly renewed.

B. Failure to receive a renewal notice and application shall not relieve the regulant of the responsibility to renew. If the regulant fails to receive the renewal notice, a copy of the license, certificate or registration may be submitted with the required fee as an application for renewal, accompanied by a signed statement indicating that the applicant continues to comply with the Standards of Practice and Conduct of the board under whose authority the license, certificate or registration is issued.

C. Board discretion to deny renewal.

The board may deny renewal of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant.

§ ~~10.2.~~ *§ 11.2.* Reinstatement.

A. If the renewal fee is not received by the board within 30 days following the date noted on the license, certificate or registration, a reinstatement fee equal to the renewal fee plus $100 shall be required, unless a reinstatement fee is otherwise noted.

B. If the license, certificate or registration has expired for six months or more, but less than five years, the

regulant shall be required to submit a new application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, a fee equal to the regular renewal fee plus $100, times the number of renewal cycles the license, certificate or registration has expired shall be required, unless a reinstatement fee is otherwise noted.

C. If the license, certificate or registration has expired for five years or more, the regulant will be required to submit a new application, meet current entry requirements, and submit a fee equal to the regular renewal fee plus $100, times the number of renewal cycles the license, certificate or registration has expired. In no event shall an applicant be required to pay fees for more than four renewal cycles. In addition, the board may require the applicant to submit to an examination.

D. Board discretion to deny reinstatement.

The board may deny reinstatement of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant.

E. The date the renewal application and fee are received in the office of the board shall determine whether a license, certificate or registration shall be renewed without reinstatement or shall be subject to reinstatement application procedures.

PART ~~XI~~ *XII* .
STANDARDS OF PRACTICE AND CONDUCT.

§ ~~11.1.~~ *§ 12.1.* Responsibility to the public.

The primary obligation of the professional is to the public. If the professional judgment of the regulant is overruled under circumstances when the safety, health, property and welfare of the public are endangered, the professional shall inform the employer or client of the possible consequences and notify appropriate authorities.

§ ~~11.2.~~ *§ 12.2.* Public statements.

The professional shall be truthful in all professional matters.

A. When serving as an expert or technical witness, the professional shall express an opinion only when it is based on an adequate knowledge of the facts in the issue and on a background of technical competence in the subject matter. Except when appearing as an expert witness in court or an administrative proceeding when the parties are represented by counsel, the professional shall issue no statements, reports, criticisms, or arguments on matters relating to professional practice which are inspired or paid for by an interested party or parties, unless the regulant has prefaced the comment by disclosing the identities of the party or parties on whose behalf the professional is speaking, and by revealing any self-interest.

B. A professional shall not knowingly make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for licensure, certification, registration, renewal or reinstatement.

C. A professional shall not knowingly make a materially false statement or fail to deliberately disclose a material fact requested in connection with an application submitted to the board by any individual or business entity for licensure, certification, registration, renewal or reinstatement.

§ ~~11.3.~~ *§ 12.3.* Conflicts of interest.

The professional shall promptly and fully inform an employer or client of any business association, interest, or circumstances which may influence the professional's judgment or the quality of service.

A. The professional shall not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed in writing to all parties of current interest.

B. The professional shall neither solicit nor accept financial or other valuable consideration from suppliers for specifying their products or services.

C. The professional shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with a client or employer in connection with work for which the professional is responsible.

§ ~~11.4.~~ *§ 12.4.* Solicitation of work.

In the course of soliciting work:

1. The professional shall not bribe.

2. The professional shall not falsify or permit misrepresentation of the professional's work or an associate's academic or professional qualifications, nor shall the professional misrepresent the degree of responsibility for prior assignments. Materials used in the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures or past accomplishments of any kind.

§ ~~11.5.~~ *§ 12.5.* Competency for assignments.

A. The professional shall undertake to perform professional assignments only when qualified by education or experience and licensed or certified in the profession involved. The professional may accept an assignment requiring education or experience outside of the field of the professional's competence, but only to the extent that services are restricted to those phases of the project in which the professional is qualified. All other phases of

such project shall be the responsibility of licensed or certified associates, consultants or employees.

B. A professional shall not misrepresent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.

C. The professional shall adhere to all minimum standards and requirements pertaining to the practice of his own profession as well as other professions if incidental work is performed.

§ ~~11.6.~~ *§ 12.6.* Professional responsibility.

A. The professional shall not knowingly associate in a business venture with, or permit the use of the professional's name or firm name by any person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating statutes or any of these regulations.

B. A professional who has direct knowledge that another individual or firm may be violating any of these provisions, or the provisions of Chapters 1 through 3 of Title 54.1, or Chapter 7 of Title 13.1 of the Code of Virginia, shall immediately inform the secretary of the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

C. The professional shall, upon request or demand, produce to the board, or any of its agents, any plan, document, book, record or copy thereof in his possession concerning a transaction covered by these regulations, and shall cooperate in the investigation of a complaint filed with the board against a licensee.

D. A professional shall not knowingly use the design, plans or work of another professional without the original professional's knowledge and consent and after consent, a thorough review to the extent that full responsibility may be assumed.

§ ~~11.7.~~ *§ 12.7.* Good standing in other jurisdictions.

A professional licensed or certified to practice architecture, professional engineering, land surveying, landscape architecture or interior design in other jurisdictions shall be in good standing in every jurisdiction where licensed or certified, and shall not have had a license or certificate suspended, revoked or surrendered in connection with a disciplinary action or who has been the subject of discipline in another jurisdiction.

§ ~~11.8.~~ *§ 12.8.* Use of seal.

A. The application of a professional seal shall indicate that the professional has exercised complete direction and control over the work to which it is affixed. Therefore, no regulant shall affix a name, seal or certification to a plat, design, specification or other work constituting the practice of the professions regulated which has been prepared by an unlicensed or uncertified person or firm unless such work was performed under the direction and supervision of the regulant while under the regulant's contract or while employed by the same firm as the regulant. If a regulant is unable to seal completed professional work, such work may be sealed by another regulant only after thorough review and verification of the work has been accomplished to the same extent that would have been exercised if the work had been done under the complete direction and control of the regulant affixing the professional seal.

B. A principal or authorized licensed or certified employee shall apply a stamp or preprinted seal to final and complete cover sheets of plans, drawings, plats, technical reports and specifications and to each original sheet of plans, drawings or plats, prepared by the regulant or someone under his direct control and personal supervision.

1. All seal imprints on final documents shall bear an original signature and date.

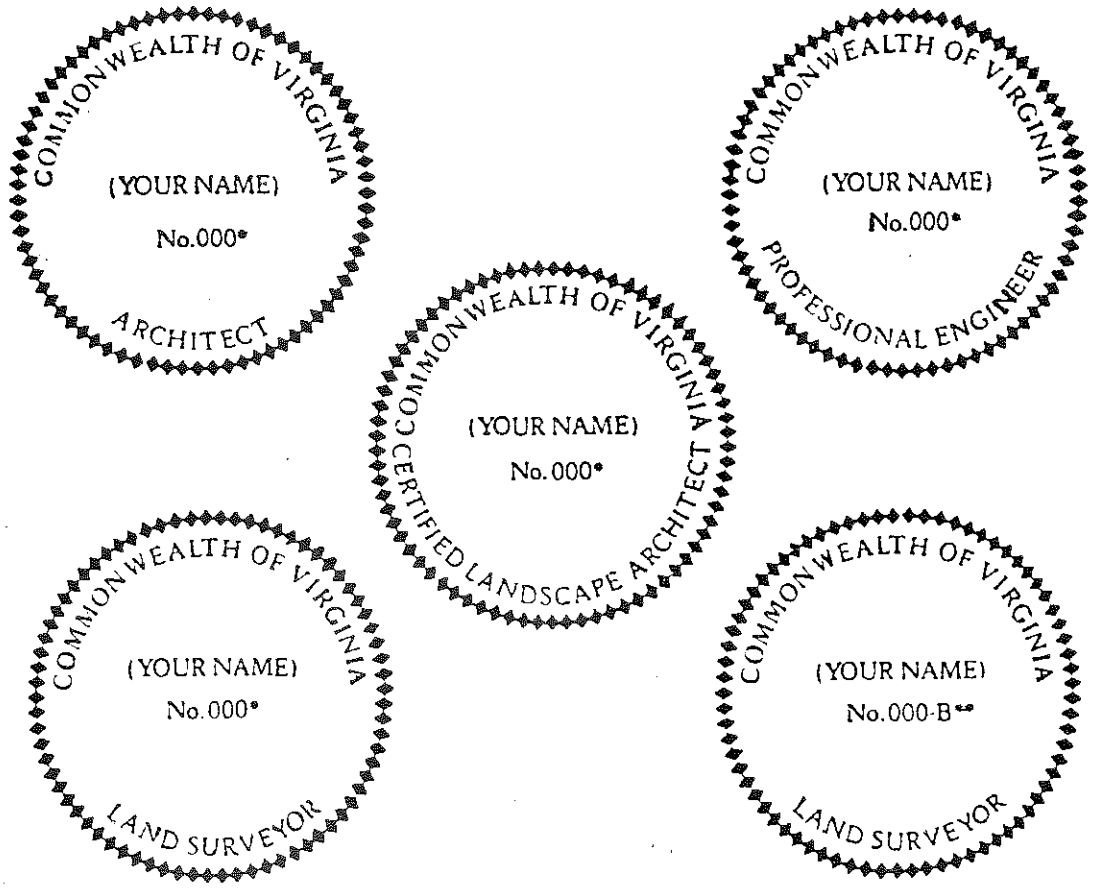
2. Incomplete plans, documents and sketches, whether advance or preliminary copies, shall be so identified and need not be sealed or signed.

3. All plans, drawings or plats prepared by the regulant shall bear the regulant's name or firm name, address and project name.

4. The seal of each regulant responsible for each profession shall be used.

5. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.

6. The seal shall conform in detail and size to the design illustrated below:


COMMONWEALTH OF VIRGINIA
(YOUR NAME)
No.000*
ARCHITECT
COMMONWEALTH OF VIRGINIA
(YOUR NAME)
No.000*
PROFESSIONAL ENGINEER
COMMONWEALTH OF VIRGINIA
(YOUR NAME)
No. 000*
CERTIFIED LANDSCAPE ARCHITECT
COMMONWEALTH OF VIRGINIA
(YOUR NAME)
No.000*
LAND SURVEYOR
COMMONWEALTH OF VIRGINIA
(YOUR NAME)
No.000-B**
LAND SURVEYOR

* The number referred to is the six digit number as shown on the license, certificate or registration. The number is permanent.

§ ~~11.9.~~ *§ 12.9.* Organization and styling of practice.

Nothing shall be contained in the name, letterhead or other styling of a professional practice implying a relationship, ability or condition which does not exist.

An assumed, fictitious or corporate name shall not be misleading as to the identity, responsibility or status of those practicing thereunder.

§ ~~11.10.~~ *§ 12.10.* Licensee required at each place of business.

A. Corporations, partnerships, firms or other legal entities maintaining a place of business in the Commonwealth of Virginia for the purpose of offering to provide architectural, engineering, land surveying or certified landscape architectural services practiced at another location shall have an authorized full-time licensed or certified architect, professional engineer, land surveyor or landscape architect in that place of business.

B. Corporations, partnerships, firms or other legal entities maintaining any place of business in the Commonwealth of Virginia for the purpose of practicing architecture, engineering, land surveying or certified landscape architecture at that location, shall have in responsible charge at each place of business a full-time resident licensed or certified architect, professional engineer, land surveyor or landscape architect exercising supervision and control of work in each profession being practiced.

§ ~~11.11.~~ *§ 12.11.* Sanctions.

A. No license, certification, registration or regulant shall be fined, suspended or revoked unless a majority of the members of the entire board and a majority of the board members of the profession involved vote for the action. The board may fine, suspend or revoke any license, certification, certificate of authority or registration, if the board finds that:

1. The license, certification or registration was obtained or renewed through fraud or misrepresentation; or

2. The regulant has been found guilty by the board, or by a court of competent jurisdiction, of any material misrepresentation in the course of professional practice, or has been convicted, pleaded guilty or found guilty regardless of adjudication or deferred adjudication of any felony or misdemeanor which, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline; or

3. The regulant is guilty of professional incompetence or negligence; or

4. The regulant has abused drugs or alcohol to the extent that professional competence is adversely affected; or

5. The regulant violates any standard of practice and conduct, as defined in these regulations; or

6. The regulant violates or induces others to violate any provision of Chapters 1 through 3 of Title 54.1, or Chapter 7 of Title 13.1 of the Code of Virginia, or any other statute applicable to the practice of the professions herein regulated or any provision of these rules and regulations.

B. If evidence is furnished to the board which creates doubt as to the competency of a regulant to perform professional assignments in a technical field, the board may require the regulant to prove competence by interview, presentation or examination. Failure to appear before the board, pass an examination, or otherwise demonstrate competency to the board shall be basis for revocation or suspension of the license, certification or registration.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **VR 460-04-8.7. Client Appeals Regulations.**

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

Effective Dates: October 5, 1992 through October 4, 1993.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Client Appeals. This Client Appeals policy will amend existing regulations to ensure proper compliance with governing Federal requirements and clarify the Director's role in the appeal process.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action concerning Client Appeals. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski
Director
Date: August 24, 1992

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources

Date: September 11, 1992

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: October 2, 1992

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: October 5, 1992

6. BACKGROUND: The regulations affected by this action are the Client Appeals regulations (VR 460-04-8.7).

The Code of Federal Regulations § 431 Subpart E contains the federal requirements for fair hearings for applicants and recipients. This subpart, in implementing the Social Security Act § 1902(a)(3), requires that the State Plan for Medical Assistance provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. Hearings are also available for individuals if Medicaid takes action to suspend, terminate, or reduce services. The State Plan conforms to this requirement on page 33.

The Virginia General Assembly amended the Administrative Process Act effective July 1, 1989, to allow judicial review of public assistance case decisions. While granting recipients the right to judicial review, the General Assembly limited the scope of that review to the application of the law to an individual case; the validity of the law itself is not subject to review. At that time, the Department revised its then current Medicaid Appeals Board with a panel of Administrative Law Judges. The Client Appeals system now provides for two levels of review of Medicaid recipients' and applicants' appeals. The first level is a Hearing Officer's decision and the second is decision by a panel of Administrative Law Judges.

Current regulations, while providing that a decision of a Hearing Officer is a final agency decision, require further appeal to the Medical Assistance Appeals Panel (the Panel) before an appeal to the Circuit Court can be taken. Current regulations further provide for benefits to continue while appealing to the Panel.

On July 8, 1992, a class action lawsuit was filed in Federal District Court (Shifflett, et al. v. Kozlowski, C.A. No. 92-0071H, Western District of Virginia, Harrisonburg Division) challenging the timeliness of administrative decisions. Federal law requires that a final agency decision be issued within 90 days. Panel review is not a process required by Federal law. The 90 day federal limit cannot be met if Panel review is included. Counsel for the plaintiff class have indicated they will press this timeliness issue in this litigation. These amendments are designed to resolve the issue by requiring an appellant to acknowledge the non-applicability of the 90 day requirement to Panel review as a condition of appeal. They also give an appellant the right to seek judicial review directly from the decision of the Hearing Officer. Panel review thus becomes optional with the appellant.

An issue has also been raised regarding federal matching dollars (FFP) in benefits paid during appeals after the 90 day period. Accordingly, the regulations have been amended to limit continuing benefits only through the Hearing Officer level.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

These appeal regulations are designed to comply with Federal regulations at 42 CFR 431.200 - 431.250.

These regulatory changes are intended to address the issues raised in the earlier referenced lawsuit. Without this emergency regulation, amendments to these regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met.

8. FISCAL/BUDGETARY IMPACT: Federal regulations allow FFP for appeals that are filed prior to the effective date of the action being appealed if the action is intended to suspend or terminate services or Medicaid coverage. This FFP is available within the frame of the 90-day federally required processing time for appeals. There may be a minimal potential cost savings due to the fact that applicants appealing to the Panel will no longer be eligible for continued Medicaid coverage. However, it is not possible to determine the exact savings at this time.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective upon its adoption and filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA.

10. Approval Sought for VR 460-04-8.7.

Prior approval of the Governor will be sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the attached regulation.

VR 460-04-8.7. Client Appeals Regulations.

PART I.
GENERAL.

Article 1.
Definitions.

§ 1.1. Definitions.

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

"Agency" means:

1. An agency which, on the department's behalf, makes determinations regarding applications for benefits provided by the department; and,

2. The department itself ~~when it makes initial determinations regarding client benefits~~ .

"Appellant" means an applicant for or recipient of medical assistance benefits from the department who seeks to challenge an adverse action regarding his benefits or his eligibility for benefits.

"Department" means the Department of Medical Assistance Services.

"Division" means the department's Division of Client Appeals.

"Final decision" means a written determination by a hearing officer which is binding on the department, unless modified on appeal or review.

"Hearing" means the evidentiary hearing described in this regulation, conducted by a Hearing Officer employed by the Department.

"Panel" means the Medical Assistance Appeals Panel.

"Representative" means an attorney or agent who has been authorized to represent an appellant pursuant to these regulations.

Article 2.
The Appeal System.

§ 1.2. Division of Client Appeals.

The division ~~shall maintain a two-step~~ *maintains an* appeals system for clients to challenge adverse actions regarding services and benefits provided by the department:

1. Hearing officer review. ~~The first level of appeal is~~ *Appellants shall be entitled to* a hearing before a hearing officer. See Part II of these regulations.

2. Medical Assistance Appeals Panel Review. An appellant who believes the hearing officer's decision is incorrect may *, at his option,* appeal to the Medical Assistance Appeals Panel for review. See Part III of these regulations.

§ 1.3. Time limitation for appeals.

Hearing officer appeals shall be scheduled and conducted to comply with the 90-day time limitation imposed by federal regulations, unless waived in writing by the appellant or the appellant's representative. *Any further review by the Panel shall not be considered subject to the 90-day limitation.*

§ 1.4. Judicial review.

An appellant who believes ~~the~~ *a Final Decision as defined herein or a* decision of the Medical Assistance Appeals Panel is incorrect may seek judicial review *of either* pursuant to § 9-6.14:1 et seq. of the Virginia Code and Part 2A, Rules of the Virginia Supreme Court. ~~An appellant must receive a final decision from the panel before seeking judicial review.~~

Article 3.
Representation.

§ 1.5. Right to representation.

An appellant shall have the full right to representation by an attorney or agent at all stages of appeal.

§ 1.6. Designation of representative.

A. Agents.

An agent must be designated in a written statement which is signed by the appellant. If the appellant is physically or mentally unable to sign a written statement, the division may allow a family member or other person acting on appellant's behalf to represent the appellant.

B. Attorneys.

If the agent is an attorney, a signed statement by an attorney that he is authorized to represent the appellant prepared on the attorney's letterhead, shall be accepted as a designation of representation.

C. Substitution.

A member of the same law firm as a designated representative shall have the same rights as the designated representative.

D. Revocation.

An appellant may revoke representation by another person at any time. The revocation is effective when the department receives written notice from the appellant.

Article 4.
Notice and Appeal Rights.

§ 1.7. Notification of adverse agency action.

The agency which makes an initial adverse determination shall inform the applicant or recipient in a written notice:

1. What action the agency intends to take;

2. The reasons for the intended action;

3. The specific regulations that support or the change in law that requires the action;

4. The right to request an evidentiary hearing, and the methods and time limits for doing so;

5. The circumstances under which benefits are continued if a hearing is requested (see § 1.10); and

6. The right to representation.

§ 1.8. Advance notice.

When the agency plans to terminate, suspend or reduce an individual's eligibility or covered services, the agency must mail the notice described in § 1.7 at least 10 days before the date of action, except as otherwise permitted by federal law.

§ 1.9. Right to appeal.

An individual has the right to file an appeal when:

1. His application for benefits administered by the department is denied. However, if an application for State Local Hospitalization coverage is denied because of a lack of funds which is confirmed by the hearing officer, and no factual dispute exists, there is no right to appeal.

2. The agency takes action or proposes to take action which will adversely affect, reduce, or terminate his receipt of benefits;

3. His request for a particular medical service is denied, in whole or in part;

4. The agency does not act with reasonable promptness on his application for benefits or request for a particular medical service; or

5. Federal regulations require that a fair hearing be granted.

§ 1.10. Maintaining services.

A. If the agency mails the 10-day notice described in § 1.8 and the appellant files his Request for Appeal before the date of action, his services shall not be terminated or reduced until ~~all appeals have been finally decided,~~ *a Final Decision is issued,* unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the appellant is promptly informed in writing that services are to be terminated or reduced pending the final decision.

B. If the agency's action is sustained on appeal, the agency may institute any available recovery procedures against the appellant to recoup the cost of any services furnished to the appellant, to the extent they were furnished solely by reason of § 1.10 A of these regulations.

Article 5.
Miscellaneous Provisions.

§ 1.11. Division records.

A. Removal of records.

No person shall take from the division's custody any original record, paper, document, or exhibit which has been certified to the division except as the Director of Client Appeals authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Confidentiality of records.

Information in the appellant's record can be released only to a properly designated representative or other person(s) named in a release of information authorization signed by an appellant, his guardian or power of attorney.

C. Fees.

The fees to be charged and collected for any copies will be in accordance with Virginia's Freedom of Information Act or other controlling law.

D. Waiver of fees.

When copies are requested from records in the division's custody, the required fee shall be waived if the copies are requested in connection with an individual's own review or appeal.

§ 1.12. Computation of time limits.

A. Acceptance of postmark date.

Documents postmarked on or before a time limit's expiration shall be accepted as timely.

B. Computation of time limit.

In computing any time period under these regulations, the day of the act or event from which the designated period of time begins to run shall be excluded and the last day included. If a time limit would expire on a Saturday, Sunday, or state or federal holiday, it shall be

extended until the next regular business day.

PART II.
HEARING OFFICER REVIEW.

Article 1.
Commencement of Appeals.

§ ~~2.2.~~ *§ 2.1.* Request for appeal.

Any written communication from an appellant or his representative which clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request. This communication should explain the basis for the appeal.

§ ~~2.3.~~ *§ 2.2.* Place of filing a Request for Appeal.

A Request for Appeal shall be delivered or mailed to the Division of Client Appeals.

§ ~~2.4.~~ *§ 2.3.* Filing date.

The date of filing shall be the date the request is postmarked, if mailed, or the date the request is received by the department, if delivered other than by mail.

§ ~~2.5.~~ *§ 2.4.* Time limit for filing.

A Request for Appeal shall be filed within 30 days of the appellant's receipt of the notice of an adverse action described in § 1.7 of these regulations. It is presumed that appellants will receive the notice three days after the agency mails the notice. A Request for Appeal on the grounds that an agency has not acted with reasonable promptness may be filed at any time until the agency has acted.

§ ~~2.6.~~ *§ 2.5.* Extension of time for filing.

An extension of the 30-day period for filing a Request for Appeal may be granted for good cause shown. Examples of good cause include, but are not limited to, the following situations:

1. Appellant was seriously ill and was prevented from contacting the division;

2. Appellant did not receive notice of the agency's decision;

3. Appellant sent the Request for Appeal to another government agency in good faith within the time limit;

4. Unusual or unavoidable circumstances prevented a timely filing.

§ ~~2.7.~~ *§ 2.6.* Provision of information.

Upon receipt of a Request for Appeal, the division shall notify the appellant and his representative of general appeals procedures and shall provide further detailed information upon request.

Article ~~5~~ *2*.
Prehearing Review.

§ ~~2.8.~~ *§ 2.7.* Review.

A hearing officer shall initially review an assigned case for compliance with prehearing requirements and may communicate with the appellant or his representative and the agency to confirm the agency action and schedule the hearing.

§ ~~2.9.~~ *§ 2.8.* Medical Assessment.

A. A hearing officer may order an independent medical assessment when:

1. The hearing involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision; and

2. The hearing officer determines it necessary to have an assessment by someone other than the person or team who made the original decision, for example, to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence.

B. A medical assessment ordered pursuant to this regulation shall be at the department's expense and shall become part of the record.

§ ~~2.10.~~ *§ 2.9.* Prehearing action.

A. Invalidation.

A Request for Appeal may be invalidated if it was not filed within the time limit imposed by § ~~2.5~~ *§ 2.4* or extended pursuant to § ~~2.6~~ *§ 2.5*.

1. If the hearing officer determines that the appellant has failed to file a timely appeal, the hearing officer shall notify the appellant and the appellant's representative of the opportunity to show good cause for the late appeal.

2. If a factual dispute exists about the timeliness of the Request for Appeal, the hearing officer shall receive evidence or testimony on those matters before taking final action.

3. If a Request for Appeal is invalidated, the hearing officer shall issue a decision pursuant to § 2.22.

B. Administrative dismissal.

A Request for Appeal may be administratively dismissed

without a hearing if the appellant has no right to appeal under § 1.9 of these regulations.

1. If the hearing officer determines that the appellant does not have the right to an appeal, the hearing officer shall notify the appellant and appellant's representative of the opportunity to contest the hearing officer's proposed administrative dismissal of the request.

2. If the appellant or the appellant's representative objects to the proposed administrative dismissal, the hearing officer shall conduct a hearing on the matter before taking final action.

3. If a Request for Appeal is administratively dismissed, the hearing officer shall issue a decision pursuant to § 2.22.

C. Judgment on the record

If the hearing officer determines from the record that the agency's determination was clearly in error and that the case should be resolved in the appellant's favor, he shall issue a decision pursuant to § 2.22.

D. Remand to agency.

If the hearing officer determines from the record that the case might be resolved in the appellant's favor if the agency obtains and develops additional information, documentation, or verification, he may remand the case to the agency for action consistent with the hearing officer's written instructions. The remand order shall be sent to the appellant and any representative.

E. Removal to the Medical Assistance Appeals Panel.

In cases where the sole issue is one of state or federal law or policy, the case may, with the appellant's approval, be removed to the Medical Assistance Appeals Panel. *The Panel shall render a decision on the merits of the appeal solely upon the facts as stipulated to by the appellant and the Hearing Officer. Otherwise, said cases shall* ~~Such cases will~~ proceed according to the provisions of Part III of these regulations.

1. Before such removal, the hearing officer will send the appellant a statement of undisputed facts and identify the legal questions involved.

2. If the appellant accepts the hearing officer's statement of facts and legal questions involved, he may agree to removal to the panel.

3. If appellant disputes any facts, wants to present additional evidence, or desires a face-to-face hearing, removal is inappropriate, and a hearing must be held.

Article ~~7~~ *3* .
Hearing.

§ 2.10. Evidentiary hearings.

A Hearing Officer shall review all Agency determinations which are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; and issue a written Final Decision sustaining, reversing, or remanding each case to the Agency for further proceedings.

§ 2.11. Scheduling.

To the extent possible, hearings will be scheduled at the appellant's convenience, with consideration of the travel distance required.

§ 2.12. Notification.

When a hearing is scheduled, the appellant and his representative shall be notified in writing of its time and place.

§ 2.13. Postponement.

A hearing may be postponed for good cause shown. No postponement will be granted beyond 30 days after the date of the Request for Appeal was filed unless the appellant or his representative waives in writing the 90-day deadline for the final decision.

§ 2.14. Location.

The hearing location shall be determined by the division. If for medical reasons the appellant is unable to travel, the hearing may be conducted at his residence.

§ 2.15. Client access to records.

Upon the request of the appellant and/or his representative, at a reasonable time before the date of the hearing, as well as during the hearing, the appellant and his representative may examine the content of appellant's case file and all documents and records the agency will rely on at the hearing.

§ 2.16. Subpoenas.

Appellants who require the attendance of witnesses or the production of records, memoranda, papers, and other documents at the hearing may request issuance of a subpoena in writing. The request must be received by the division at least five business days before the hearing is scheduled. Such request must include the witness' name, home and work address, county or city of work and residence, and identify the sheriff's office which will serve the subpoena.

§ 2.17. Role of the hearing officer.

The hearing officer shall conduct the hearing, decide on questions of evidence and procedure, question witnesses, and assure that the hearing remains relevant to the

~~issue(s)~~ *issue or issues* being appealed. The hearing officer shall control the conduct of the hearing and decide who may participate in or observe the hearing.

§ 2.18. Informality of hearings.

Hearings shall be conducted in an informal, nonadversarial manner. The appellant or his representative has the right to bring witnesses, establish all pertinent facts and circumstances; present an argument without undue interference, and question or refute the testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

§ 2.19. Evidence.

The rules of evidence shall not strictly apply. All relevant, nonrepetitive evidence may be admitted, but the probative weight of the evidence will be evaluated by the hearing officer.

§ 2.20. Record of hearing.

All hearings shall be recorded either by court reporter, tape recorders, or whatever other means the agency deems appropriate. All exhibits accepted or rejected shall become part of the hearing record.

§ 2.21. Oath or affirmation.

All witnesses shall testify under oath which shall be administered by the court reporter or the hearing officer, as delegated by the department's director.

§ 2.22. Dismissal of Request for Appeal.

Request for Appeal may be dismissed if:

1. The appellant or his representative withdraws the request in writing; or

2. The appellant or his representative fails to appear at the scheduled hearing without good cause, and does not reply within 10 days after the hearing officer mails an inquiry as to whether the appellant wishes further action on the appeal.

§ 2.23. Post-hearing supplementation of the record.

A. Medical assessment.

Following a hearing, a hearing officer may order an independent medical assessment as described in § 2.8.

B. Additional evidence.

The hearing officer may leave the hearing record opened for a specified period of time in order to receive additional evidence or argument from the appellant. If the record indicates that evidence exists which was not presented by either party, with the appellant's permission, the hearing officer may attempt to secure such evidence.

C. Appellant's right to reconvene hearing or comment.

If the hearing officer receives additional evidence from a person other than the appellant or his representative, the hearing officer shall send a copy of such evidence to the appellant and his representative and give the appellant the opportunity to comment on such evidence in writing or to reconvene the hearing to respond to such evidence.

D. Any additional evidence received will become a part of the hearing record, but the hearing officer must determine whether or not it will be used in making the decision.

§ 2.24. Final decision.

After conducting the hearing and reviewing the record, the hearing officer shall issue a written final decision which either sustains or reverses the agency action or remands the case to the agency for further action consistent with his written instructions. The hearing officer's final decision shall be considered as the agency's final administrative action pursuant to 42 CFR, 431.244(f). The final decision shall include:

1. A description of the procedural development of the case;

2. Findings of fact which identify supporting evidence;

3. Citations to supporting regulations and law;

4. Conclusions and reasoning;

5. The specific action to be taken by the agency to implement the decision; and

6. Notice of further appeal rights to the Medical Assistance Appeals Panel *or state court* . This notice shall include information about the right to representation, time limits for requesting review, the right to submit written argument ; *and* the right to present oral argument ; ~~and the right to receive benefits pending review~~ .

7. The notice shall state that a Final Decision may be appealed directly to circuit court as provided in § 9-6.14:16(B) of the Virginia Code and § 1.4 above. If an optional appeal is taken to the Panel, judicial review shall not be available until the Panel has acted under Part III below.

§ 2.25. Transmission of the hearing record.

The hearing record shall be forwarded to the appellant and his representative with the ~~hearing decision~~ *Final Decision* .

PART III.

MEDICAL ASSISTANCE APPEALS PANEL.

Article 1.
General.

§ 3.1. Composition of the Medical Assistance Appeals Panel.

The panel shall consist of a Senior Administrative Law Judge and two Administrative Law Judges who are appointed by the director of the department and shall serve at his pleasure.

§ 3.2. Function of the panel.

~~Taking into consideration the record made below,~~ The panel shall review and decide ~~all~~ appeals from hearing officers' decisions by evaluating the evidence in the record and any written and oral argument submitted, consistent with relevant federal and state law, regulations, and policy

Article 2.
Commencement of Panel Review.

§ 3.3. Commencing panel review.

An appeal is commenced when the appellant or his representative files a Request for Review, or another written statement indicating the appellant's belief that the hearing officer's decision is incorrect *which includes a written Acknowledgement that the 90-day requirement set forth in 42 C.F.R. § 431.244(f) does not apply* .

§ 3.4. Place of filing Request for Review *and Acknowledgement* .

The Request for Review *and Acknowledgement* shall be filed with the Medical Assistance Appeals Panel, Department of Medical Assistance Services, 600 E. Broad St. Richmond, VA 23219.

§ 3.5. Time limit for filing.

A Request for Review shall be filed within 12 days from the date the hearing officer's decision is mailed.

§ 3.6. Extension of time for filing.

An extension of the 12-day period for filing a Request for Review may be granted for good cause shown. A request for an extension shall be in writing and filed with the panel. The request shall include a complete explanation of the reasons that an extension is needed. Good cause includes unusual or unavoidable circumstances which prevented a timely appeal (See § 2.5).

§ 3.7. Dismissal.

A. A Request for Review shall be dismissed if ~~it~~ *and Acknowledgement is not executed or if the request* was not filed within the time limit imposed by § 3.5 or extended pursuant to § 3.6. If a factual dispute exists about the timeliness of the Request for Review *and Acknowledgement* , the panel shall receive evidence or testimony on those matters before taking final action.

B. A dismissal shall constitute the panel's final disposition of the appeal.

C. Judgment on the record.

If the panel determines from the evidence in the record that the hearing officer's decision was clearly in error and that the case should be resolved in the appellant's favor, the panel may issue a final decision without receiving written or oral argument from appellant.

Article 5.
Written Argument.

§ 3.8. Right to present written argument.

An appellant may file written argument to present reasons why the hearing officer's decision is incorrect.

§ 3.9. Time limitation.

Written argument by the appellant, if any, shall be filed with the panel within 10 days after the Request for Review is filed.

§ 3.10. Extension.

An extension of the time limit for filing written argument may be granted for good cause shown.

§ 3.11. Evidence.

No additional evidence shall be accepted with the written argument unless it is relevant, nonrepetitive and not reasonably available at the hearing level through the exercise of due diligence.

Article 6.
Oral Argument.

§ 3.12. Requesting oral argument.

An appellant or his representative may ask for a hearing to present oral argument with the Request for Review.

§ 3.13. Place of hearing.

Hearings shall be held at the Department of Medical Assistance Services' central office in Richmond, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219.

§ 3.14. Notice of hearing.

A. Scheduling the hearing.

Unless judgment on the record is issued pursuant to § 3.7 C, a hearing will be set, and, to the extent possible, scheduled at the appellant's convenience.

B. Notification.

As soon as a hearing is scheduled, the person requesting it will be notified, at least seven days in advance.

C. Postponement.

A hearing may be postponed by the appellant or his representative for good cause shown.

§ 3.15. Function of the Senior Administrative Law Judge.

The Senior Administrative Law Judge shall be the presiding member of the panel *and shall issue all decisions on behalf of the Panel* . If the Senior Administrative Law Judge is absent, *the Director shall appoint* one of the Administrative Law Judges ~~shall preside on a rotating basis~~ *to assume the duties of the Senior Administrative Law Judge* .

§ 3.16. Recorded hearing.

The hearing shall be tape recorded.

§ 3.17. Evidence.

No additional evidence will be accepted at the oral argument unless it meets the requirements of § 3.11 and is presented to the panel in advance of the hearing date.

Article 7.
Disposition.

§ 3.18. Disposition.

A. Vote.

The panel decision is made by majority vote, and the decision may be to sustain, reverse or remand the hearing officer's decision.

B. Summary affirmance.

By majority vote the panel may summarily affirm the hearing officer's decision by adopting the hearing officer's decision as its own.

C. Content of decisions.

Decisions shall ~~be accompanied by a written~~ *be in writing and shall consist of an* opinion, stating facts with supporting evidence, reasons and conclusions, citations to supporting law and regulations, and an order describing the specific action to be taken to implement the decision. Information about further appeal rights will also be provided.

D. Remand to hearing officer.

A remand order shall clearly state the panel's instructions for further development of the evidence or the legal or policy interpretation to be applied to the facts on record.

E. The panel decision shall be sent to appellant and his representative and the agency. This shall constitute the panel's final disposition of the appeal.

Article 8.
Reconsideration.

§ 3.19. When reconsideration is accorded.

A decision unfavorable to the appellant may be reconsidered by the panel on its own motion or upon motion by the appellant or his representative alleging error of fact or application of law or policy.

§ 3.20. Filing and content.

Appellant's motion for reconsideration must be filed within 12 days after entry of the panel's decision. This motion shall set forth clearly and specifically the alleged error(s) in the panel's decision.

§ 3.21. Review.

The Administrative Law Judge who wrote the majority opinion shall review the sufficiency of the allegations set forth in the motion and may request additional written argument from the appellant.

§ 3.22. Disposition.

The ruling on the motion for reconsideration shall be in writing and entered as the final order in the case. If the motion is granted, a new decision will be issued in accordance with § 3.18.

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 28, 1992

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE920067

Ex Parte, in re: Investigation into the promulgation of standards and regulations for energy allocation equipment

ORDER INITIATING INVESTIGATION

Section 56-245.3 of the Code of Virginia, adopted by the 1988 Session of the General Assembly, required the Commission to promulgate regulations and standards under which gas and electric submetering equipment might be installed in each dwelling unit, rental unit or store to fairly allocate each unit's cost of consumption, demand and customer charges. The Commission promulgated such regulations in Case No. PUE880109, investigation into the promulgation of gas submetering standards and regulations, by Final Order entered June 1, 1990. That Order states, inter alia:

> We recognize that complaints by tenants have arisen over the allocation of gas usage by timing devices. However, this Commission is not statutorily authorized under Va. Code § 56-245.3 to regulate timing devices; it is only empowered to regulate meters and gas submeters that meet the ANSI B.109 standards enumerated above. It is axiomatic that the Commission's jurisdiction is limited to that authorized by statute and Constitution.

During the 1991 session of the General Assembly, Code § 56-245.3 was amended, effective July 1, 1992, to extend the Commission's regulatory authority to energy allocation equipment, which, as defined in Code § 56-245.2, includes any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any dwelling unit or nonresidential rental unit within an apartment house, office building or shopping center.

We believe it appropriate, as we did in Case No. PUE880109, to direct the Commission Staff to conduct a general investigation into the standards and regulations for energy allocation equipment. In its investigation, the Commission Staff should contact other Commissions, known trade associations, gas and electric utilities and any other interested and affected persons to provide sufficient information to enable it to carry out its investigative duties. Gas and electric utilities subject to our regulation are expected to fully and promptly reply to any Staff data requests addressing the issues raised herein. We also encourage all interested and affected persons to provide pertinent and meaningful information to assist the Commission in its duty to promulgate standards and regulations for energy allocation equipment.

At the conclusion of its investigation, Staff should summarize its investigatory procedures, findings and recommendations in a report to be filed with the Commission on or before December 11, 1992. Staff's recommendations should contain proposed amendments to our existing submetering regulations necessitated by the 1991 amendment to Code § 56-245.3, effective July 1, 1992, extending our jurisdiction to energy allocation equipment. According to § 56-245.3, those regulations shall require:

> (i) that an apartment house, office building or shopping center owner shall not impose on the tenant any charges, over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company to the owner, including any sales, local utility, or other taxes, if any, except that an additional service charge not to exceed two dollars per dwelling unit or nonresidential rental unit per month may be collected to cover administrative costs and billing, and
>
> (ii) that the apartment house, office building or shopping center owner shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours. We anticipate that the Staff report will provide a basis for proposed rules and policies which will be the subject of public notice, comment, and opportunity for hearing to be directed by further order in this proceeding. Accordingly,

IT IS ORDERED:

(1) That this matter shall be docketed and assigned Case No. PUE920067;

(2) That the Commission Staff is directed to conduct a general investigation on energy allocation equipment and to propose energy allocation equipment rules and regulations;

(3) That upon completion of its investigation, the Commission Staff shall file its report on or before December 11, 1992, which describes the Staff's investigative procedures, findings, recommendations and any proposed rules which it believes should be considered by the Commission;

(4) That all Virginia gas and electric utilities shall respond fully and promptly to Staff requests for data regarding the issues raised herein; and

(5) That other interested and affected persons be provided an opportunity to submit data and information pertinent to the Staff's investigation.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to each gas and electric utility company subject to the jurisdiction of the Commission; Edward L. Petrini, Esquire, Office of Attorney General, Division of Consumer Counsel, 101 North 8th Street, Richmond, Virginia 23219; and to the Commission's Division of Energy Regulation.

PROPOSED

STATE CORPORATION COMMISSION

NOTICE TO INTERESTED PERSONS

The VIRGINIA STATE CORPORATION COMMISSION will consider adopting proposed changes to its SECURITIES ACT RULES. The proposed changes are summarized as follows:

Rule 504 (NASDAQ/NMS Exemption): Modify Section A (issuer eligibility) by deletion of the requirement that an issuer be current in its filings mandated by the applicable federal securities law; rewrite paragraph 8 (shareholder approval policy) of Section D to make it conform to the comparable provisions in the NASAA/NASD/NYSE/ASE Memorandum of Understanding approved by NASAA on April 28, 1990; and, make several technical corrections.

Copies of these proposals are available from the Commission's Division of Securities and Retail Franchising, P.O. Box 1197, Richmond, VA 23209, (804) 371-2687. Comments are invited. Any interested person who files objections to the proposed changes will, if so requested, be afforded an opportunity to present evidence and be heard. Comments and requests must be received by December 2, 1992. They should be sent to the State Corporation Commission, Document Control Center, P.O. Box 2118, Richmond, VA 23216, and should make reference to Case No. SEC920112. Interested persons who file objections and request to be heard will be notified of the date, time and place of the hearing.

Rule 504 NASDAQ/National Market System Exemption

In accordance with ~~Virginia~~ ~~Code~~ Section 13.1-514 A.12. *of the Act,* any security designated on the National Association of Securities Dealers Automated Quotations National Market System (NASDAQ/National Market System) is exempt from the securities registration requirements of the Act if (i) the issuer of the security meets any of the criteria set forth in Section { A } and (ii) the system has at least the following criteria set forth in Sections { B } through { F }

A. The issuer, or in the case of an American Depository Receipt, the foreign issuer of the underlying equity securities, has been subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934 for the preceding 180 days ~~and is current in its filings~~ ; or,

in the case of an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934, such company has been subject to the reporting requirements imposed by the applicable insurance regulatory authority in its domiciliary State for the preceding 180 days ~~and is current in its filings~~ ; or,

in the case of a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940, such company has been subject to the applicable reporting requirements of Section 30 of the Investment Company Act of 1940 for the preceding 180 days ~~and is current in its filings~~ .

B. The National Association of Securities Dealers (NASD) shall require that the issuer have a class of securities currently registered under Section 12 of the Securities Exchange Act of 1934; or in the case of an American Depository Receipt issued against the equity securities of a foreign issuer, such equity securities are registered pursuant to Section 12 of the Securities Exchange Act of 1934; or the issuer is an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934 or is a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940 with securities registered under the Securities Act of 1933.

C. The NASD shall require at least the following standards to be met for designation of securities of an issuer on the quotation system:

	Alt. No. 1	Alt. No. 2
Net Tangible Assets [1]	$4,000,000	$12,000,000
Public Float	500,000	1,000,000
Pre-Tax Income	750,000	.....
Net Income	400,000	.....
Shareholders [2]	800/400	800/400
Market Value of Float	3,000,000	15,000,000
Minimum Bid	$5/Share	.....
Operating History	.....	3 Years

[1] ''Net Tangible Assets'' is defined for purposes of this Rule to include the value of patents, copyrights, and trademarks but to exclude the value of good will.

[2] The minimum number of shareholders under each alternative is 800 for issuers with 500,000 to 1,000,000 shares publicly held or a minimum of 400 if the issuer has either (i) over 1 million shares publicly held or (ii) over 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for the six months preceding the transaction.

The rules of the NASD shall require at least two authorized market makers for each issuer.

D. The NASD shall require at least the following minimum corporate governance standards for its domestic issuers:

1. Distribution of Annual and Interim Reports.

a. Each issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with the NASD at the time it is distributed to shareholders.

b. Each issuer which is subject to SEC Rule 13a-13 shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with the NASD. The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature, net income, and the amount of estimated federal taxes.

c. Each issuer which is not subject to SEC Rule 13a-13 and which is required to file with the SEC or another federal or state regulatory authority interim reports relating primarily to operations and financial position shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the NASD.

2. Independent Directors. Each issuer shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

3. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

4. Shareholder Meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to the NASD.

5. Quorum. Each issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 percent of the outstanding shares of the issuer's common voting stock.

6. Solicitation of Proxies. Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to the NASD.

7. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the issuer's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.

~~8. Shareholder Approval Policy. Each issuer shall require shareholder approval of the issuance of securities in connection with the following:~~

~~a. Options plans or other special remuneration plans for directors, officers, or key employees.~~

~~b. Actions resulting in a change in control of the issuer.~~

~~c. The acquisition, direct or indirect, of a business, a company, tangible or intangible assets, or property or securities representing any such interests:~~

~~(1.) From a director, officer, or substantial security holder of the issuer (including its subsidiaries and affiliates), or from any company or party in which one of such persons has a direct or indirect interest;~~

~~(2.) Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding common shares of 25% or more.~~

8. Shareholder Approval Policy. Each issuer shall require shareholder approval of a plan or arrangement under a. below or, prior to the issuance of designated securities under b., c., or d. below, when:

a. A stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the issuer or broadly based plans or arrangements including other employees (e.g. ESOP's). In a case where the shares are issued to a person not previously employed by the issuer, as an inducement essential to the individual's entering into an employment contract with the issuer, shareholder approval will generally not be required.

The establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval.

b. The issuance will result in a change of control of the issuer.

c. In connection with the acquisition of the stock or assets of another company if:

(1.) any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(2.) in the case of the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than in a public offering for cash, where the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock, or the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities.

d. In connection with a transaction other than a public offering involving:

(1.) the sale or issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the issuer equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

(2.) the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of this stock.

e. Exceptions may be made upon application to the NASD when:

(1.) the delay in securing shareholder approval would seriously jeopardize the financial viability of the issuer and

(2.) reliance by the issuer on this exception is expressly approved by the issuer's audit committee or a comparable body.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that the issuer's audit committee of the Board or a comparable body has expressly approved the exception.

f. Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this paragraph 8. Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

g. Voting power outstanding as used in this paragraph 8 refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the issuer's security holders for a vote.

h. An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of an issuer or party shall not be considered a substantialinterest or cause the holder of such an interest to be regarded as a substantial security holder.

E. Voting Rights.

1. The NASD rules shall provide as follows: No rule, stated policy, practice, or interpretation shall permit the authorization for designation on the NASDAQ/National Market System ("authorization"), or the continuance of authorization, of any common stock or other equity security of a domestic issuer, if, on or after July 1, 1989, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934.

2. For the purposes of paragraph 1. of this Section, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock ; :

a. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

b. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

c. Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer;

d. Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

3. For the purpose of paragraph 1. of this Section, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

a. The issuance of securities pursuant to an initial registered public offering;

b. The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

c. The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

d. Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

4. Definitions. The following terms shall have the following meanings for purposes of this Section, and the rules of the NASD shall include such definitions for the purposes of the prohibition in paragraph 1. of this Section:

a. The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

b. The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934.

c. The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Securities Exchange Act of 1934.

d. The term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Securities Exchange Act of 1934, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

F. Maintenance Criteria. After authorization for designation of a security on the NASDAQ/National Market System, the security must meet the following criteria in order for such designation to continue in effect:

1. The issuer of the security has net tangible assets of at least:

a. $2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

b. $4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years;

2. There are at least 200,000 publicly held shares;

3. There are at least 400 shareholders or at least 300 shareholders of round lots;

4. The aggregate market value of publicly held shares is at least $1,000,000.

G. The Commission may rescind this order pursuant to its authority under Section 13.1-523 *of the Act* , thereby revoking this rule, if the Commission determines that the requirements of the NASDAQ/National Market System have been so changed or insufficiently applied so that the protection of investors is no longer afforded.

H. The Commission shall have the authority to deny or revoke the exemption created by this Rule as to a specific

issue or category of securities.

I. The NASD shall promptly notify the Commission when an issue of securities is removed from NASDAQ/National Market System designation.

FINAL

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 13, 1992

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC920008

Ex Parte, in re: Promulgation of rules pursuant to Va. Code § 13.1-523 (Securities Act)

ORDER ADOPTING RULES

On or about June 8, 1992, the Division of Securities and Retail Franchising of the State Corporation Commission mailed notice to interested persons of proposed rules, rules changes, and forms ("Proposals") designed to implement various provisions of the Securities Act (Va. Code § 13.1-501 et seq.) and to clarify some existing rules. The notice included a summary of the Proposals, an invitation to submit written comments, and information about obtaining copies of, as well as requesting a hearing on, the Proposals. In addition, the notice and the text of the Proposals were published in "The Virginia Register of Regulations," August 10, 1992, pp. 4233-4241. Several persons filed comments, but no one requested an opportunity to be heard.

The Commission, upon consideration of the Proposals, the comments filed by interested persons and the recommendations of the Division, is of the opinion and finds that certain Proposals should be modified, as follows:

Rule 505 (Foreign Issuer Exemption): Modify paragraph A to enlarge the exemption for equity securities to include American Depository Receipts representing such securities.

Rule 506 (CBOE Exemption): Rewrite paragraph D.8. so that it conforms to the comparable provisions in the Chicago Board Options Exchange North American Securities Administrators Association, Inc. Memorandum of Understanding approved by NASAA on April 28, 1990.

Rule 1106 (Series 65 Examination): Modify paragraph B to enlarge the scope of the waiver to expressly include unincorporated investment advisors and rewrite the text of the rule to clarify its provisions, including the limitation on its use to no more than two individuals per investment advisor.

The Commission is further of the opinion and finds that the other Proposals should be adopted as proposed; it is, therefore,

ORDERED that the Proposals, as modified, considered in this proceeding, a copy of which is attached hereto and made a part hereof, be, and they hereby are, adopted and shall become effective as of October 15, 1992.

AN ATTESTED COPY hereof, including the attachment, shall be sent to each of the following by the Clerk of the Commission: Any person who filed comments in this proceeding; the Commission's Division of Information Resources; Securities Regulation and Law Report, c/o The Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037; and, Blue Sky Law Reporter, c/o Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646.

Rule 505 Foreign Issuer

In accordance with Section 13.1-514 A.13. of the Act, any equity or debt security issued by an issuer organized under the laws of any foreign country is exempted from the securities registration requirements of the Act provided the following criteria are met:

A. With respect to an equity security, the security is included on the List of Foreign Margin Stocks ("the list") periodically published by the Board of Governors of the Federal Reserve System ("the Board") or as an American Depository Receipt ("ADR") representing such a security whether or not the ADR is included on the list; and

B. With respect to a debt security, the security meets the marginability requirements of Regulation T adopted by the Board.

Rule 506 Chicago Board Options Exchange Exemption

In accordance with Section 13.1-514 A.12. of the Act, any security listed on the Chicago Board Options Exchange, Inc. ("CBOE") is exempt from the securities registration requirements of the Act if (i) the issuer of the security meets any of the criteria set forth in section A, below and (ii) the exchange has at least the criteria set forth in sections B through F, below:

A. The issuer, or in the case of an American Depository Receipt, the foreign issuer of the underlying equity securities, has been subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934 for the preceding 180 days and is current in its filings; or,

in the case of an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934, such company has been subject to the reporting requirements imposed by the applicable insurance regulatory authority in its domiciliary State for the preceding 180 days and is current in its filings; or,

in the case of a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940, such company has been subject to the applicable reporting requirements of Section 30 of the Investment Company Act of 1940 for the preceding 180 days and is current in its filings.

B. CBOE shall require that the issuer have a class of securities currently registered under Section 12 of the Securities Exchange Act of 1934; or in the case of an American Depository Receipt issued against the equity securities of a foreign issuer, such equity securities are registered pursuant to Section 12 of the Securities Exchange Act of 1934; or the issuer is an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934 or is a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940 with securities registered under the Securities Act of 1933.

C. CBOE shall require at least the following standards to be met for listing of common stock and other securities convertible into or carrying a right to purchase or subscribe to common stock of the issuer (hereafter referred to as "equity issues") on CBOE:

	Alt. No. 1	Alt. No. 2
Net Tangible Assets[1]	$4,000,000	$12,000,000
Public Float	500,000	1,000,000
Pre-Tax Income	750,000	
Net Income	400,000	
Shareholders[2]	800/400	800/400
Market Value of Float	3,000,000	15,000,000
Minimum Bid	$5/Share	
Operating History		3 Years

[1] ''Net Tangible Assets'' is defined for purposes of this Rule to include the value of patents, copyrights, and trademarks but to exclude the value of good will.

[2] The minimum number of shareholders under each alternative is 800 for issuers with at least 500,000 but less than 1,000,000 shares publicly held or a minimum of 400 if the issuer has either (i) at least 1,000,000 shares publicly held or (ii) at least 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for the six months preceding the listing.

D. CBOE shall require at least the following minimum corporate governance standards for its domestic issuers of equity issues:

1. Distribution of Annual and Interim Reports.

a. Each issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with CBOE at the time it is distributed to shareholders.

b. Each issuer which is subject to SEC Rule 13a-13 shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with CBOE. The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature, net income, and the amount of estimated federal taxes.

c. Each issuer which is not subject to SEC Rule 13a-13 and which is required to file with the SEC or another federal or state regulatory authority interim reports relating primarily to operations and financial position shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to sharehold ers either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the CBOE.

2. Independent Directors. Each issuer shall maintain a minimum of two independent directors on its board of directors. For purposes of this section D, "independent director" shall mean a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

3. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

4. Shareholder Meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to CBOE.

5. Quorum. Each issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 percent of the outstanding shares of the issuer's common voting stock.

6. Solicitation of Proxies. Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy

solicitation to CBOE.

7. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the issuer's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.

8. Shareholder Approval Policy. Each issuer shall require shareholder approval of a plan or arrangement under a. below or, prior to the issuance of designated securities under b., c., d. below, when:

a. A stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the issuer or broadly based plans or arrangements including other employees (e.g. ESOP's). In a case where the shares are issued to a person not previously employed by the issuer, as an inducement essential to the individual's entering into an employment contract with the issuer, shareholder approval will generally not be required.

The establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval.

b. The issuance will result in a change of control of the issuer.

c. In connection with the acquisition of the stock or assets of another company if:

(1.) any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(2.) in the case of the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than in a public offering for cash, where the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock, or the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities.

d. In connection with a transaction other than a public offering involving:

(1.) the sale or issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the issuer equals 20% or more common stock or 20% or more of the voting power outstanding before the issuance; or

(2.) the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of this stock.

e. Exceptions may be made upon application to CBOE when:

(1.) the delay in securing shareholder approval would seriously jeopardize the financial viability of the issuer and

(2.) reliance by the issuer on this exception is expressly approved by the issuer's audit committee or a comparable body.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that the issuer's audit committee of the Board or a comparable body has expressly approved the exception.

f. Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this paragraph 8. Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

g. Voting power outstanding as used in this paragraph 8 refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the issuer's security holders for a vote.

h. An interest consisting of less than either 5% of the number of shares of common stock or 5% of

the voting power outstanding of an issuer or party shall not be considered a substantially interest or cause the holder of such an interest to be regarded as a substantial security holder.

E. Voting Rights.

1. The rules of CBOE shall provide as follows: No rule, stated policy, practice, or interpretation of CBOE shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer, if, on or after [the effective date of this Rule is to be inserted here], the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934.

2. For the purpose of paragraph 1. of this Section E, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

a. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number of shares held by such beneficial owner or record holder.

b. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the length of time such shares have been held by such beneficial owner or record holder.

c. Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer.

d. Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

3. For the purpose of paragraph 1. of this Section E, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

a. The issuance of securities pursuant to an initial registered public offering.

b. The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

c. The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

d. Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial owner or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

4. Definitions. The following terms shall have the following meanings for purposes of this Section E, and the rules of CBOE shall include such definitions for the purposes of the prohibition in paragraph 1. of this Section:

a. The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

b. The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934.

c. The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Securities Exchange Act of 1934.

d. The term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Securities Exchange Act of 1934, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

F. Maintenance Criteria. After listing on CBOE, equity issues must meet the following criteria to continue to be listed on CBOE:

1. The issuer of the security has net tangible assets of at least:

a. $2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

b. $4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years;

2. There are at least 200,000 publicly held shares;

3. There are at least 400 shareholders or at least 300 shareholders of round lots;

4. The aggregate market value of publicly held shares is at least $1,000,000.

G. The Commission may rescind this order pursuant to its authority under Section 13.1-523 of the Act, thereby revoking this rule, if the Commission determines that the listing requirements of CBOE have been so changed or insufficiently applied so that the protection of investors is no longer afforded.

H. The Commission shall have the authority to deny or revoke the exemption created by this Rule as to a specific issue or category of securities.

I. CBOE shall promptly notify the Commission of the delisting of an issue of securities by CBOE.

ARTICLE VIII

Forms

Rule 800 Forms

The Commission adopts for use under the Act the forms contained in the Appendix and listed below.

A. Broker-Dealer and Agent Forms

1. Form BD - Uniform Application for Registration of a Broker-Dealer

2. Supplemental Information for Commonwealth of Virginia to Be Furnished with Revised Form BD

3. Agreement for Inspection of Records

4. Broker-Dealer's Surety Bond

5. Form S.A.2. - Non-NASD Broker-Dealer Renewal Application

6. Form S.D.4. - Non-NASD Broker-Dealer or Issuer Agent Renewal Application

7. Form S.D.4.A. - Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit

8. Form S.D.4.B. - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history

9. Form S.D.4.C. - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history

10. Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer

11. Form U-4 - Uniform Application for Securities Industry Registration

12. Form U-5 - Uniform Termination Notice for Securities Industry

B. Investment Advisor and Investment Advisor Representative Forms

1. Form ADV - Uniform Application for Registration of Investment Advisors

2. Agreement for Inspection of Records

3. Surety Bond Form

4. Form U-4 - Application for Investment Advisor Representative Registration. See A.11 above.

5. Form U-5 - Application for Withdrawal of an Investment Advisor Representative. See A.12 above.

6. Form S.A.3. - Affidavit for Waiver of Series 65 Examination

C. Securities Registration Forms

1. Form U-1 - Uniform Application to Register Securities

2. Form U-2 - Uniform Consent to Service of Process

3. Form U-2a - Uniform Form of Corporate Resolution

4. Form S.A.4. - Registration by Notification - Original Issue

5. Form S.A.5. - Registration by Notification - Non-Issuer Distribution

6. Form S.A.6. - Registration by Notification - Pursuant to Rule 403 Non-Issuer Distribution "Secondary Trading"

7. Form S.A.8. - Registration by Qualification

8. Form S.A.10 - Request for Refund Affidavit (Unit Investment Trust)

9. Form S.A.12 - Escrow Agreement

10. Form S.A.13 - Impounding Agreement

Rule 1106 Examination/Qualification

A. An individual applying for registration as an investment advisor representative on or after July 1, 1989, shall be required to provide evidence of passing the Uniform Investment Adviser Law Examination, Series 65, with a minimum grade of 70 percent.

B. In lieu of meeting the examination requirement described in paragraph A. of this Rule, an applicant who meets the qualifications set forth below may file with the Commission at its Division of Securities and Retail Franchising an executed Affidavit for Waiver of Series 65 Examination (Form S.A.3).

1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.

2. The applicant is, and has been for at least five years immediately preceding the date on which the applicant for registration is filed, actively engaged in the investment advisory business.

3. The applicant has been for at least the two years immediately preceding the date on which the applicant is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.

4. The investment advisor(s) referred to in paragraph 3 has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least forty million dollars under management.

5. The applicant verifies that he/she has read and is familiar with the investment advisor and investment advisor representative provisions of the Act and the provisions of Articles X - XIV of these Rules.

6. The applicant verifies that none of the questions in Item 22 (disciplinary history) on his/her Form U-4 have been, or need be, answered in the affirmative.

S.A.3 (10/92)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

AFFIDAVIT FOR WAIVER OF SERIES 65 EXAMINATION
Pursuant to Rule 1106

State of_____

County/City of_____, to wit:

The undersigned, having been duly sworn, deposes and says:

1. My name is_____.

2. My CRD number is_____.

3. The name of the investment advisor with which I am, or will be, connected is _____.

4. The CRD number of this investment advisor is_____.

5. I am, and have been for at least the five years immediately preceding the date on which my application for registration was filed, actively engaged in the investment advisory business.

6. I have been for at least the two years immediately preceding the date on which my application for registration was filed the president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary, of an investment advisor actively engaged in the investment advisory business.

7. The investment advisor(s) referred to in paragraph 6, above, have, or had during my tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary, at least forty million dollars under management.

8. I have read and am familiar with the investment advisor and investment advisor representative provisions of the Virginia Securities Act and the provisions of Articles X - XIV of this Commission's Securities Act Rules.

9. None of the questions in Item 22 (disciplinary history) on my Form U-4 have been, or need be, answered in the affirmative.

_____
Signature of the Affiant

Subscribed and sworn to before me, a Notary Public, this _____ day of _____, 19_____.

_____ (SEAL)
Signature of the Notary Public

My commission expires:_____

INSTRUCTIONS

This form must be filed with the Division of Securities and Retail Franchising. Form U-4 (or any amendment) and any required fee must be filed with the NASAA/NASD Central Registration Depository system.

Rule 1301 Performance Based Fees

A. In accordance with Section 13.1-503 C of the Act, an investment advisor may enter into, extend, or renew any investment advisory contract to provide for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the following conditions of this Rule are satisfied.

B. Nature of the client.

1. a. The client entering into the contract subject to this Rule must be a natural person or a company, as defined in paragraphs B.2. and F.1. of this Rule, who immediately after entering into the contract has at least $500,000 under the management of the investment advisor; or

b. A person who the registered investment advisor (and any person acting on his behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company, as defined in paragraphs B.2. and F.1. of this Rule, whose net worth at the time the contract is entered into exceeds $1,000,000. (The net worth of a natural person may include assets held jointly with such person's spouse.)

2. The term "company" as used in paragraph B.1. of this Rule does not include

a. A private investment company, as defined in paragraph F.2. of this Rule;

b. An investment company registered under the Investment Company Act of 1940; or

c. A business development company, as defined in section 202 (a) (22) of the Investment Advisers Act of 1940, unless each of the equity owners (other than the investment advisor entering into a contract under the Rule) of any such company identified in this paragraph 2, is a natural person or company described in this paragraph B.

C. Compensation formula. The compensation paid to the advisor under this Rule with respect to the performance of any securities over a given period shall be based on a formula which:

1. Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of the securities over the period;

2. Includes, in the case of securities for which market quotations are not readily available,

a. The realized capital losses of the securities over the period and

b. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

3. Provides that any compensation paid to the advisor under this Rule is based on the gains less the losses (computed in accordance with paragraphs C.1. and 2. of this Rule) in the client's account for a period of not less than one year.

D. Disclosure. In addition to the disclosure requirements of Form ADV, the advisor shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract permitted by this Rule, all material information concerning the proposed advisory arrangement including the following:

1. That the fee arrangement may create an incentive for the advisor to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

2. Where relevant, that the advisor may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

3. The time period which will be used to measure investment performance throughout the term of the contract and its significance in the computation of the fee;

4. The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the advisor believes the index is appropriate; and

5. Where an advisor's compensation is based on the unrealized appreciation of securities for which market quotations are not readily available, how such securities will be valued and the extent to which the valuation will be independently determined.

E. Arms-Length Contract. The investment advisor (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph F.1. of this Rule, the person, representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in paragraph F.4. of this Rule.

F. Definitions. For the purpose of this Rule:

1. The term "company" has the same meaning as in section 202 (a) (5) of the Investment Advisers Act of 1940.

2. The term "private investment company" means a company which would be defined as an investment company under section 3 (a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3 (c) (1) of such Act.

3. The term "affiliate" has the same meaning as in section 2 (a) (3) of the Investment Company Act of 1940.

4. The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

a. The investment advisor acting in reliance upon this Rule, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor, or an interested person of the investment advisor as defined in paragraph F.5. of this Rule;

b. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment advisor, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor or an interested person of the investment advisor as defined in paragraph F.5. of this Rule; or

c. A person with any material relationship between himself (or an affiliated person of such person) and the investment advisor (or an affiliated person of the investment advisor) that exists, or has existed at any time during the previous two years.

5. The term "interested person" as used in paragraph F.4. of this Rule means:

a. Any member of the immediate family of any natural person who is an affiliated person of the investment advisor;

b. Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment advisor or by a controlling person of the investment advisor if the beneficial or legal interest of the person in any security issued by the investment advisor or by a controlling person of the investment advisor

i. exceeds one tenth of one percent of any class of outstanding securities of the investment advisor or a controlli ng person of the investment advisor; or

ii. exceeds 5% of the total assets of the person (seeking to act as the client's independent agent); or

c. Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment advisor.

6. a. The term "securities for which market quotations are readily available" in paragraph C. of this Rule has the same meaning as in Rule 2a-4 (a) (1) under the Investment Company Act of 1940 (17 CFR 270.2a-4 (a) (1).

b. The term "securities for which market quotations are not readily available" in paragraph C. of this Rule means securities not described in paragraph F.6.a. of this Rule.

ARTICLE XIV

MISCELLANEOUS

Rule 1400 Clarification of Investment Advisor Representative

For purposes of clause (iv) of the definition of "investment advisor representative" in Section 13.1-501 of the Act, an individual is deemed to have prepared reports or analyses concerning securities if that individual is identified to a client as having prepared such reports or analyses.

Rule 1401 Investment Advisor Representative Registration on Behalf of Other Investment Advisors

A. Purpose of Rule; Definitions.

1. The purpose of this Rule is to permit an individual who is registered under the Act as an investment advisor representative to assist clients in the selection of other investment advisors without being subject to investment advisor representative registration requirements with respect to the other investment advisors.

2. As used in this Rule, the term "other investment advisor" means an investment advisor other than the one on whose behalf the individual is registered as an investment advisor representative.

B. Registration Required.

An individual is subject to investment advisor representative registration requirements of the Act with respect to any other investment advisor unless the following conditions exist when the individual initially engages, with respect to such advisor, in activity which would require registration as an investment advisor representative under the Act.

1. The individual is registered under the Act as an investment advisor representative of an investment advisor so registered under the Act.

2. The other investment advisor is registered under the Act as an investment advisor.

C. Other Provisions Apply.

Except as expressly provided in this Rule, nothing contained in this Rule is intended, or should be construed, to relieve any person utilizing this Rule from complying with the applicable provisions of the Act or of any other of these Rules.

EXECUTIVE ORDER NUMBER FIFTY-SEVEN (92)

HOTLINE FOR STATE EMPLOYEES TO REPORT FRAUD, WASTE, OR ABUSE

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Chapter 5 of Title 2.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Department of the State Internal Auditor to establish, by October 1, 1992, a statewide toll-free telephone "hotline" to encourage state employees to report situations where fraud, waste, and abuse may occur in Virginia state agencies and institutions.

There exists within state government, as in every other state in the nation, an ongoing and continuing possibility of fraud, waste, and abuse in the conduct of government business. Despite the Commonwealth's longstanding record of honesty and integrity in the management of its affairs, we cannot be complacent. We must be diligent in maintaining our record as an ethical and fiscally responsible state government.

State employees will have the opportunity to anonymously report possible instances of fraud, waste or abuse by using the toll-free telephone hotline. The hotline shall be administered through the Department of the State Internal Auditor (DSIA). This arrangement will coincide with the responsibilities that executive branch agency heads have for maintaining appropriate internal controls to protect against fraud, waste, and abuse.

DSIA, through its network of internal auditing programs, shall ensure that investigation and resolution activities are undertaken in response to reports received on the hotline. DSIA shall determine the authenticity of allegations and that appropriate corrective actions are taken to rectify any fraud, waste, and abuse.

DSIA shall also ensure that its investigation and resolution activities are undertaken in the most cost effective manner. Accordingly, it should assign responsibility for investigation and resolution to other investigative staffs if currently required by law and, as appropriate, avoid duplicating or replacing existing investigation and resolution functions.

State employees shall be notified of the creation of the hotline through such measures as Personnel Communique, payroll stubs, and Virginia's statewide government telephone directory. Reminders of the purpose and availability of the hotline shall be issued from time to time.

All executive branch agencies of the Commonwealth will cooperate with and provide assistance to DSIA to the fullest extent allowed by law.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until October 1, 1994, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 28th day of September, 1992.

/s/ Lawrence Douglas Wilder
Governor

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **VR 394-01-02. Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen.**

Governor's Comment:

The intent of this regulation is to provide mimimum competency standards for persons certified in their trade areas. Pending public comment, I recommend approval of this regulation.

/s/ Lawrence Douglas Wilder
Governor
Date: October 6, 1992

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Title of Regulation: **VR 394-01-04. Virginia Amusement Device Regulations/1990.**

Governor's Comment:

The purpose of this regulation is to provide uniform standards for the construction, maintenance, operation, and inspection of amusement devices. Pending public comment, I recommend approval of this regulation.

/s/ Lawrence Douglas Wilder
Governor
Date: October 6, 1992

* * * * * * * *

Title of Regulation: **VR 394-01-06. Virginia Statewide Fire Prevention Code/1990.**

Governor's Comment:

The intent of this regulation is to provide minimum safety standards for the protection of life and property from the hazards of fire or explosion. Pending public comment, I recommend approval of this regulation.

/s/ Lawrence Douglas Wilder
Governor
Date: October 6, 1992

* * * * * * * *

Title of Regulation: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990.**

Governor's Comment:

The purpose of this regulation is to protect the health, safety, and welfare of building users, and to provide for energy and water conservation, and accessibility for the physically handicapped and aged. Pending public comment, I recommend approval of this regulation.

/s/ Lawrence Douglas Wilder
Governor
Date: October 6, 1992

* * * * * * * *

Title of Regulation: **VR 394-01-22. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1990.**

Governor's Comment:

The intent of this regulation is to provide mimimum safety standards for the protection of life and property in the use and maintenance of buildings and structures. Pending public comment, I recommend approval of this regulation.

/s/ Lawrence Douglas Wilder
Governor
Date: October 6, 1992

The Legislative RECORD

vol. II / no. 5 Published in the Commonwealth of Virginia october 1992

THIS ISSUE . . .

DIVISION OF LEGISLATIVE SERVICES

HJR 244: Joint Subcommittee on Enhancing End-use Recycling Markets

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August 19, 1992, Richmond

Delegate Watkins, patron of HJR 244, explained that he introduced the resolution in order to study the availability of markets for recyclables to the private sector. He suggested that emphasis be placed on what the Commonwealth can do to make markets available to the private sector and proposed focusing on any statutory or regulatory barriers to market development.

Staff presented portions of the information included in the initial staff study as general background for the joint subcommittee's deliberations. The amount of municipal solid waste (MSW) has increased 71% since 1975, while once popular disposal alternatives, such as landfills and incineration, have become less attractive as waste management options because of cost, groundwater pollution, methane gas production, truck traffic, air pollution, and ash disposal. To counteract these problems, recent trends have focused on reducing the amount of waste placed in landfills or incinerated. In 1960, only 6.7% of MSW was recycled; in 1988 about 13% was recycled.

State Initiatives

Recycling is the sum of three components: (i) collection of waste materials, (ii) preparation of wastes for industry markets, and (iii) the use of prepared wastes in the manufacture of a product. Manufacturers require high quality recyclables supplied regularly, in consistent volumes, at a price competitive with virgin raw materials. Early recycling efforts focused on

the collection of waste materials but virtually ignored market development. Initiatives other states have enacted in an effort to stimulate end-use markets include the requirement for purchasing goods with recycled content by the state. Because state and local expenditures account for about 12% of the gross national product, state procurement policies can have a great impact on developing markets for recyclables. Four years ago just 13 states had procurement policies; today all 50 states have policies in one form or another. Procurement programs can have many different forms: price preferences, life cycle costing, procurement goals or set-asides, demonstration programs, technical assistance, and research. Thirty-eight states have laws that direct or encourage states to purchase recycled goods; 20 authorize agencies to purchase goods at a cost of up to 10% more than for competing goods; and 23 allow agencies to spend 5 to 10% more for products with recycled content, although the price preference in half those cases applies only to paper and paper products. Minimum content standards can create demand for recyclables by the requirement that a certain percentage of a product be manufactured from recyclables. Seven states require newspapers to use some specified percentage of recycled paper in newsprint.

Initiatives encouraging manufacturers to use recyclables take many forms: tax incentives (including deductions, credits, exemptions, or reduced rates), grants or loans, venture capital programs, enterprise zones, and interstate cooperation. Most states use **tax incentives** to some degree to foster the relocation, start-up, or expansion of industry to enhance their economic climates. To encourage investment by private industry, a tax incentive may be a deduction, exemption, tax credit, or reduced tax rate on sales, property, or income taxes. The goal of tax incentives for the recycling industry is to encourage private industry to install new, or retrofit existing, machinery with components that will increase the capacity to process or manufacture recycled goods. Other tax incentives are designed to encourage the production of recycled goods or goods with a certain percentage of recycled content.

Grants or loans to private industry or localities are the most popular way by which states assist recycling industries with capital financing. Twenty-five use grants and loans as a means to promote the recycling industry.

State **venture capital programs**, either directly or indirectly, increase the amount of equity or risk capital available to private firms. Venture capital is provided to new firms in an effort to enhance the business climate. A measurable goal, such as job creation or an increased tax base, are usually linked to venture capital initiatives. Nine states have established venture capital programs to support the recycling industry.

Enterprise zones were created in the 1980s to encourage private investment in distressed communities. The zones use incentives to make specific areas more attractive to business and may include tax incentives, property tax credits, low-interest loans, and job training. Seven states use enterprise zones to promote recycling.

States have also encouraged recycling by supporting research and development efforts that implement processes that allow manufacturers and processors of waste to operate more efficiently. Fourteen states have small business incubators established to increase the number of high-tech jobs. The incubators are usually associated with a university and provide work space, administrative and professional services, and other means of assistance, all designed to aid small businesses. "High-tech centers" have been authorized or funded by 12 states, and 24 states fund recycling research.

Twenty-two states have undertaken some form of **interstate cooperation** in an effort to develop markets for recyclables. Underlying such regional efforts is the idea that states can work together to ensure a supply of recyclables from an entire region, thereby persuading a firm to locate in the area.

Market Development Studies

A brief history of previous studies that considered market development was presented. The first was completed by M.I.D.A.S. for the Department of Waste Management (DWM). The common theme in the recommendations of the M.I.D.A.S. study was "central authority." To overcome the obstacles to successful recycling identified by the study (inconsistent data from localities, lack of coordinated programs, absence of processing facilities, lack of cooperation among localities, and a lack of understanding of the economics of recycling) there were several recommendations. The two most significant were that the DWM be directed to develop a master plan for a statewide comprehensive recycling/collection program and that the department be responsible for all aspects of a state marketing center for recyclable materials.

The study by C.I.T. for the Secretaries of Natural Resources and Economic Development recommended a two-part strategy for a successful recycling market plan. First, the plan should target those recyclables that will contribute the most toward the 25% rate by 1995. Because paper and yard waste constitute 60% of the waste stream, C.I.T. focused on those materials in formulating its strategies. Second, the strategy should develop new technologies and markets for recyclables, which include cooperation between the public and private sectors. The recommendations by C.I.T. to implement that two-part strategy focused on interaction between public and private organizations, such as public/private partnerships for providing services and establishing recycling facilities and preparing an agenda for future recycling by forming a working group of representatives from both the public and private sectors.

The DWM study on promoting the procurement and use of recycled products by the agencies of the Commonwealth identified four barriers to procurement: lack of standards for recycled products, existence of federal incentives for virgin materials, lack of demand-side incentives, and lack of training for procurement agencies and staff. DWM recommended the establishment of an advisory committee to evaluate the procurement and the enactment of demand-side incentives.

Local Recycling Plans

DWM's Harry Gregori provided an update on the efforts of localities in meeting the requirement for submission of solid waste plans. Seventy-nine plans were submitted to the department, and together the plans included all 327 jurisdictions of the Commonwealth. Of the 79 plans, 43 were regional and 36 were independent. As of August 19, 1992, the department had approved 65 of the plans. Mr. Gregori reminded the members that the requirement for plans by localities was enacted to ensure that a steady supply of recyclables is diverted from landfills. Localities were allowed to design their own plans given the markets in their areas and other factors.

To illustrate the flexibility of the program, Mr. Gregori presented four case studies: Bedford County, a regional plan for southeastern Virginia, Town of Herndon and City of Roanoke. In discussing how localities meet the mandatory recycling rates, Mr. Gregori raised issues regarding recycling rate calculations. He pointed out that one locality, Bedford, has a recycling rate of 93.2% because the locality can count toward its recycling rate the residue paper generated by an envelope plant. The paper is sent to a recycler and, technically, the locality need not do anything else. He raised the question of what the intent of the law is, as well as how to continue encouragement of beneficial practices.

Nancy Williams, also of the DWM, provided the joint subcommittee with background information on the activities of local governments. She presented a summary of the information collected by annual survey of localities. In 1988, there were just 33 active recycling collection programs; by 1991, the figure had increased to 109. Those initial programs collected only aluminum and newspaper, but, by 1991, the programs collected the full range of recyclables. Georgiana Ball provided a brief overview of state agency activities regarding recycling. State agencies are required to establish recycling programs for both the use and collection of recyclable materials. The agencies submit to the department a recycling plan and an annual report. There are currently 152 recycling programs and the total collections for 1991 were 4,630 tons. In downtown Richmond state offices alone, 30 tons of office paper are collected monthly. Regarding procurement of recycled materials by state agencies, Ms. Ball stated that in fiscal year 1990-91, $5 million was spent on the purchase of recycled goods. There are 79 items with recycled content on state contract.

Market Development

G. Steven Coe, recycled markets manager for the DWM, described the department's activities in the area of market development. His duties have included cataloging the markets available to Virginia businesses and providing technical assistance to localities. The program began in 1990 by identifying just over 200 markets available for 12 types of materials. Mr. Coe stated that an identified market depends on the entity that has the recyclable and what the recyclable is. For example, for a locality that has collected newspaper for reuse, the market would be the business that bales the papers and subsequently ships the paper to a manufacturer. For a collector and processor, the market is the end use, that is, the manufacturer making the final product. Currently, on the markets database there are 109 Virginia listings and 263 out of state market listings. The listings include both processors and end-use manufacturers. Mr. Coe explained that a supply of recyclables has been mandated by the legislature in the form of recycling rates, and the second part of the equation is identifying the markets for the materials.

Mr. Coe has also been involved in an incentive program for end-use market development, the recyclable equipment tax credit. A company may avail itself of the credit between January 1, 1991, and January 1, 1995, for 10% of purchase price of recycling equipment. There are presently 103 applications for certification: 27 have been approved, 51 denied, and 25 are pending. The total tax credit authorized as of August 1992 is $347,373.74. His opinion was that the tax credit had stimulated growth, particularly for small companies deserving to enter the market. To be approved for the credit, the equipment must be "process" equipment; that is, it must prepare the material for use in a manufacturing process or process it as an end product.

Mr. Gregori concluded by raising several issues regarding market development, which the members might want to consider during the course of their study. One method of enhancing markets is to target particular waste streams for action. An increase in the tax credit or the scope of the tax could be one action. He also discussed encouraging state procurement of recycled goods. Formal market development strategies might include recycling cooperatives, recycling market development zones, centralized resource recovery complexes, and "closed loop" programs.

Role of Economic Development

The Department of Economic Development had three speakers describe its role in Virginia's recycling program. The first was Robert Smith, state coordinator of the Small

Business Development Center program, which is designed to provide management and technical business assistance to small businesses in the Commonwealth through 19 offices located around Virginia. The program is jointly sponsored and funded by the state, federal government, and local organizations. Assistance is provided through management training and individual contact.

Mr. Smith provided information on the economic impact of the program in 1991, which resulted in 1,347 jobs created and 387 saved, over $22 million in new capital investment, and $27 million in increased sales. While recycling has not been the major focus of the program, over the last year, the office has worked with 19 businesses engaged in recycling activities. The program provided assistance in locating sources of funding and markets, expanding the business, transferring technology, and locating recycling feedstock. Mr. Smith identified barriers faced by recycling firms. The first was the availability of financing, which is particularly acute for new business. In a new industry, a borrower's lack of a track record makes financing difficult to secure. Recycling firms also face problems in site location, due in part to environmental concerns of communities. Mr. Smith also mentioned the lack of market demand for recycled products as a barrier recycling firms face.

Also from the Department of Economic Development, Jim McKean described how Industry Services provides assistance to companies doing business in Virginia in an effort to enhance the business climate. Efforts include visiting manufacturers every two years and aiding them with problems they have identified. Industry Services acts as an ombudsman between the company and state agencies. Forms of assistance have included certifying equipment as recycling equipment for the tax credit and helping companies with the permitting process.

The final speaker from the department was Robert DeMauri, director of marketing. He characterized the focus of the department as creation of jobs and expansion of the Commonwealth's tax base. His program consists of two components: media advertising and regular mailings. Marketing managers continue efforts by calling on potential and active business prospects by discussing how Virginia locations can meet specific business needs. The managers, in providing site location assistance, act as the business' contact in locating information and funding sources necessary to satisfy requirements. He stated that the department is working with several recycling companies and described their particular needs. Such businesses evaluate the concentration and quantities of recyclable materials as well as accessible markets. The final decision as to whether a business locates in Virginia is market-driven; that is, how price competitive the recycled product is and the responsiveness of the state's regulatory process. In addition, for small businesses or start-up businesses, a source of funding is crucial.

State Procurement

Dave Greiner, contract manager for the Division of Purchases and Supply of the Department of General Services, described the procurement program for items on state contract. The division instituted an affirmative program in 1989, which has four basic parts. The first is a recovered materials preference. The agency reviews the contract to identify any barriers that would disqualify a recycled product and then eliminates the barrier. The department utilizes the 10% price preference for paper goods or specifies a recycled product in its contracts. In the second component of the program, the agency promotes the purchase of recovered materials by stating its interest in recycled goods. The agency also notifies the end-users, the state agencies, of the products containing recycled content that can be obtained through the central warehouse. Third, through the certification process, bidders are required to certify the percentage of recovered materials in the product, and fourth, there is an annual review and report on the types of goods purchased, the content, price comparisons, the experience agencies had with the product, and any recommendations the agencies have.

Kevin Byrnes, executive director of the Central Virginia Waste Management Authority (CVWMA), pointed out to the subcommittee that local governments have significantly increased the collection infrastructure for recyclables. Additionally, private trash collection service companies have increased the availability of residential and commercial recycling services. There has also been moderate growth of regional recyclable material processing capacity. What has not increased are new local or state end-use markets for the consumption of recyclable material.

Demand-Side Proposals

Mr. Byrnes explained that CVWMA proposed introduction of HJR 244, because Virginia's approaches have not been adequate. To date, the focus has been on supply-side programs that encourage collection of material in order to guarantee a supply of feedstock. The aim of demand-side programs, which are becoming more popular across the nation, is stimulating end-use demand by encouraging industrial expansion through various incentives. He urged that any demand-side program for Virginia reflect three factors: (i) the general composition of the waste stream, (ii) the impact of existing programs, and (iii) the relative strengths of the several recycling markets.

Mr. Byrnes also provided the subcommittee members with several ideas for demand-side legislation:

■ Examine state and optional local taxation policies that adversely impact important steps in the recycling system;

■ Encourage the reduction and recycling of packaging through flexible mandates that provide manufacturers with choices for compliance (e.g., the originally proposed Massachusetts Recycling Initiatives);

■ Repeal the sunset date on the tire tax and use the funds generated by the tax to implement a statewide program;

■ Investigate the use of recycled oil and lubricants in state vehicle fleet maintenance; and

■ Encourage the progress of the Recycled Materials in Highway Construction Advisory Committee.

He also suggested that when evaluating recycling programs established by state agencies, consideration be given two major areas: (i) the compatibility of agency programs with local and regional recycling plans and (ii) the level of cooperation between agencies and local governments to reduce storage and transportation costs and to increase procurement of recycled products. He followed with a suggestion that all political subdivisions, not just agencies and local governments, be required to develop and implement recycling programs.

Rural Concerns

The final speaker was Pat Therrien, the regional recycling markets manager for the Appalachian Regional Recycling Consortium. The consortium consists of 21 counties and 5 cities, all located in southwest Virginia. She presented the particular concerns of rural localities, which must operate their programs given constraints such as small budgets and small populations spread over large geographic areas. She urged that these localities not be given any more mandates unless funds are available to carry them out. Ms. Therrien made several suggestions to the joint subcommittee and characterized procurement as the most effective method of increasing the markets. Purchases by state and local governments of materials with a mandated percentage of post-consumer content would benefit the markets. She also encouraged the joint subcommittee to require the Virginia Department of Transportation to include percentage goals for recycled materials in its five-year plan. Ms. Therrien asked that the Virginia Solid Waste or Recycling Loan Fund be fully funded and that loans be made available only to programs that demonstrate positive impact on the use of post-consumer recycled materials. To provide an incentive for regional cooperative programs, grants should be available to counties, cities, or towns participating in cooperative programs. She also urged that technical assistance be provided to Virginia's businesses and industries and economic development programs be established for further promotion of recycling endeavors.

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The Honorable Kenneth R. Plum, *Chairman*

Legislative Services contact: Martin G. Farber

SJR 505: Joint Subcommittee to Study Land Transfers in the Shenandoah National Park

◆

October 2, 1992, Richmond

Since the subcommittee's last meeting, Congressman George Allen offered legislation that would have granted to the Commonwealth those secondary roads within Shenandoah National Park "as they now exist." This proposal, however, was not supported by Congressman Bruce Vento, chairman of the Subcommittee on Parks and Public Lands of the House Committee on Interior and Insular Affairs, and was not approved. Instead, Congressman Vento offered to sponsor an amendment that would permit establishment of an "agreement" between the Secretary of the Interior and the Commonwealth, providing for the maintenance of state secondary roads within the park. Under the "Vento Amendment," title to the roads would remain with the federal government.

After a discussion with its staff, representatives of the Virginia Department of Transportation, and representatives of Congressman Allen's office and Senator Charles Robb's office, the subcommittee unanimously declined to endorse Congressman Vento's amendment. The members agreed to renew efforts to obtain legislative relief along the lines proposed by Congressman Allen when the next Congress convenes.

In the meantime, in order to enable the subcommittee better to evaluate the desirability and feasibility of having the National Park Service assume all responsibility for roads within Shenandoah National Park, staff was directed to obtain further information regarding treatment of roads within other national parks in Virginia and within the Great Smoky Mountains National Park in North Carolina and Tennessee.

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The Honorable Frank W. Nolen, *Chairman*

Legislative Services contact: Alan B. Wambold

HJR 47: Joint Subcommittee Studying the Increased Mortality Rate and the Increased Rate of Certain Types of Cancer among Firefighters

◆

September 8, 1992, Richmond

Adopted by the 1992 Session of the General Assembly, HJR 47 directed the joint subcommittee to study work-related health risks for firefighters and to examine presumptive cancer laws in other states. While entry into burning buildings and rescue efforts directly place firefighters in jeopardy, exposure to unseen carcinogenic substances increasingly prevalent throughout society has elevated cancer to a major occupational hazard for firefighters; protective gear and clean-up protocol may not ensure their health and safety. Some localities cannot afford the expensive special suits to ward off the effects of chemical spills and toxins, and even when protective gear is available, a lack of concern or awareness of unseen chemical hazards may prompt some firefighters to neglect to wear their masks and other gear in an emergency or in the overhaul of debris after a fire.

More Data Needed

Establishing a clear link between exposure to toxic substances and disease is difficult, as cancer may not appear for many years following exposure. Although research continues to show causal relationships between exposure to specific materials and cancer and other disease, data specifically detailing firefighter exposure to carcinogens and subsequent disease or death are limited. Virginia-specific data are necessary to assess more accurately the risks encountered by firefighters in the Commonwealth.

Marion A. Long, information systems manager, Department of Fire Programs, addressed the subcommittee. The department is responsible for providing training, education, information, and technical and financial assistance for improving services delivered by fire agencies. Of the 587 local departments in the Commonwealth, 3% are salaried departments; 84% are volunteer departments; and 13% combine salaried and volunteer firefighters. There are nearly 23,000 firefighters in Virginia, 68% of whom are volunteers. Mr. Long reported that in 1991, 325 departments responded to over 154,000 emergency calls. About half (45%) of these responses were for rescue calls, while more than one-fourth (26%) were for fires or hazardous conditions. Also in 1991, 100 firefighters died in the line of duty throughout the country; none of these fatalities were Virginia firefighters. Heart attacks claimed the lives of 47 firefighters.

Workers' Compensation

The Virginia Workers' Compensation Act, which authorizes recovery for certain employees for injuries and diseases arising out of and in the course of employment, specifically contemplates coverage for firefighters. Firefighters seeking recovery under workers' compensation may pursue two avenues: by showing an injury by accident or a disease arising out of and in the course of employment. Medical evidence is critical to establish the requisite causative link between the claimed disability and the work environment. The challenge of proving causation is often difficult, however, and may be further exacerbated by the various interpretations scientists, medical doctors, and jurists may attach to the term. Recognizing this challenge, many states, including the Commonwealth, have adopted statutes providing presumptive coverage for certain classes of employees. In Virginia, salaried and volunteer firefighters suffering from heart or respiratory disease or hypertension are presumed to have contracted these conditions from the workplace for purposes of obtaining workers' compensation. This presumption may be rebutted by the employer by a preponderance of competent evidence. Special compensation statutes for firefighters have been enacted in over 20 states. This evidentiary tool has been broadened in some states to include cancer in firefighters.

Lawrence D. Tarr, chief deputy commissioner of the Virginia Workers' Compensation Commission, reported that no workers' compensation awards for cancer were entered in 1990 or 1991. He briefly described the 1918 origins of Virginia's Workers' Compensation Act, which was initially limited to coverage for accidental injuries. Subsequent amendments in 1941 and 1986 added occupational diseases and ordinary diseases of life to the scope of coverage. Presumptive coverage is available for pneumoconiosis and for uniformed service personnel suffering from hypertension or heart or lung disease. Mr. Tarr stated that there were only five claims for cancer coverage in 1991. Mesothelioma, a cancer related to asbestos exposure, is the most common cancer claim advanced. He noted that Virginia firefighters are entitled to workers' compensation for cancer if the disease "arose out of and in the course of employment" and meets a six-part test establishing a compensable occupational disease.

Firefighting Hazards

Next addressing the subcommittee was Irvin Chilcoat, a Loudoun County career firefighter and emergency medical technician, who ex-

pressed support for extending presumptive coverage for cancer in firefighters. R. Michael Mohler, legislative chairman for the Virginia Professional Fire Fighters Association, president of the Fairfax County Professional Fire Fighters and a fire lieutenant from the Fairfax County Fire and Rescue Department, then described the International Association of Firefighters (IAFF), of which the Virginia Professional Firefighters are a part. An international union affiliated with the AFL-CIO and the Canadian Labor Congress, the IAFF represents approximately 160,000 paid professional fire service employees in the United States and Canada. Citing an IAFF survey for 1972-1982 that showed firefighter line-of-duty fatalities at more than double that of police officers and also above other publicized hazardous occupations, such as mining and construction, Mr. Mohler stated that firefighting is the most hazardous occupation in the United States. He noted that heart disease and cancer constitute more than 90% of all reported firefighter deaths due to occupational disease.

Describing the strenuous physical activity inherent in firefighting, made more burdensome by protective gear weighing between 45 and 60 pounds, Mr. Mohler also noted that the increased presence of synthetic materials and chemical compounds throughout society have significantly altered the fire environment. Exposure to polyvinylchloride (PVC, found in many plastics), asbestos, and polychlorinated byphenyls (PCBs, found in transformers and capacitors) at a fire scene may cause great harm to firefighters. Benzene, released by burning PVC, has been associated with increased leukemia risk, while vinyl chloride, the raw material of PVC, has been associated with cancers of the liver, brain, lung, blood, and nervous system. Asbestos inhalation has been known to increase occurrences of lung and esophageal cancer, cancer of the large intestine, and mesothelioma (cancer of the chest and abdominal lining). Although PCB production was banned by the EPA in 1977, equipment using this material is still in use. At high temperatures, PCBs form other hazardous substances linked to liver and pancreatic cancer. In addition, PCBs can penetrate the neoprene vapor barrier commonly used in protective gear. Mr. Mohler stated that chemical analysis of the fire environment is only conducted in cases of suspected arson. He concluded by urging the subcommittee to enact presumptive cancer legislation in Virginia. David Bailey, representing six fire service organizations, also expressed support for a broader statutory presumption.

Rescue Squad Workers

Byron Andrews, a rescue squad chief, urged the inclusion of rescue squad workers in the current heart and lung legislation. Although members recognized the role of rescue workers who may be involved in firefighting, it was agreed that the resolution limited the subcommittee study to firefighters. Staff was directed to obtain additional information regarding presumptive legislation in other states, the costs associated with such legislation, and the quality of protective gear available to volunteer firefighters for the subcommittee's next meeting.

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The Honorable Robert B. Ball, Sr., *Chairman*

Legislative Services contact: Kathleen G. Harris

SJR 104: Joint Subcommittee to Study Cost-Effective Measures to Enable Virginia to Comply with the 1990 Clean Air Act

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September 16, 1992, Richmond

In opening remarks, Chairman Cross stressed that the goal of the subcommittee's deliberations would be to propose legislation to meet the requirements of the federal Clean Air Amendment of 1990 by safeguarding Virginia's air quality, and to do so in ways that are both effective and efficient. He pointed out that the group's efforts would concentrate on measures addressing air pollution associated with motor vehicles, with particular emphasis on vehicle emissions inspection and maintenance programs and proposals for a Virginia low emissions vehicle (LEV) program.

The chairman pointed out that in order for the subcommittee's work to be beneficial to the 1993 Session of the General Assembly, it would have to be completed by mid-December. He proposed a series of three meetings: the first to concentrate on issues associated with motor vehicle emissions inspection and maintenance programs, the second to focus on questions linked to an LEV program, and the third to address any remaining concerns and decide on the contents of the group's report to the Governor and General Assembly. The second and third meetings will be partly subcommittee work sessions and partly public hearings.

Options Available

Wallace N. Davis, executive director of the Virginia Department of Air Pollution Control, briefed the subcommittee on its options under the 1990 federal Clean Air Amendments, concentrating on emissions inspections and LEV programs. He stressed that of all the elements that might be included in Virginia's implementation plan, a successful emissions inspection

and maintenance program was the most critical. Such a program could be either a decentralized program, based on stations that perform both inspections and repairs, or a centralized program, based on fewer stations that perform inspections only. Because the portion of Northern Virginia's air pollution caused by motor vehicles is greater than that of other regions of Virginia, Mr. Davis urged that an LEV program for Northern Virginia be made part of the Commonwealth's implementation package. He also pointed out that the Clean Air Amendments will require a "clean fuel fleet" program for Northern Virginia, beginning in 1998.

Speaking on behalf of a technical advisory committee formed by petroleum refiners, motor vehicle manufacturers, motor vehicle dealers, and gasoline dealers, Susan Sonnenberg urged that a detailed computer model of Virginia's air pollution problems be developed prior to undertaking far-reaching, potentially costly, and possibly burdensome clean air programs. She expected such a model would be available by the time of the subcommittee's November meeting and expected that it would show that some of the programs proposed in Mr. Davis's presentation would not be necessary.

Future Meetings

Staff was requested to report to the subcommittee on the contents and status of implementation programs in Maryland and the District of Columbia. The subcommittee plans to meet at George Mason University in Fairfax on October 8 and in Richmond on November 6 and December 9.

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The Honorable Elmo G. Cross, Jr., *Chairman*

Legislative Services contact: Alan B. Wambold

Martin Luther King, Jr., Memorial Commission

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September 1, 1992, Richmond

The Martin Luther King, Jr., Memorial Commission opened its first meeting for 1992 with a review of § 9-145.45 of the *Code of Virginia*, which created the commission.

Staff Report

Staff presented an initial report, which included a brief summary of the life, philosophy, and teachings of Dr. Martin Luther King, Jr., and a proposed study plan to enable the commission to execute its statutory responsibilities. Among its duties, the commission is required to participate in the planning, development, and execution of appropriate programs and events that further the philosophy and memory of Dr. King and to make recommendations to the Governor concerning the creation of a separate and distinct state holiday for Dr. King. In furtherance of the principles and unfinished work of Dr. King, the Congress in 1985 established the third Monday in January of each year as the Martin Luther King, Jr., federal holiday to commemorate the anniversary of his birth. Today, with the exception of Arizona and New Hampshire, 46 states, the District of Columbia, and four U.S. territories have established the holiday as the third Monday in January. Two states have established the holiday as a day other than the third Monday, Virginia being one such state.

Dr. King's Legacy

Edgar A. Toppin, dean of the graduate school at Virginia State University, explained the appropriateness and necessity of perpetuating the legacy of Dr. King. He noted that one rule of the U.S. Park Service in honoring persons required that the person be a leader of universal status. Within the African-American community, Dr. Toppin maintained, there are only five leaders who fulfill this qualification — Frederick Douglas, W. E. B. Du Bois, Marcus Garvey, Malcolm X, and Dr. Martin Luther King, Jr. Although each leader made distinctive contributions during his lifetime, building upon the work of his predecessors, only Dr. King espoused a way out of the American dilemma and a means of addressing a problem that has plagued all of humanity. Dr. Toppin noted that many young persons today benefit from the sacrifices and achievements of Dr. King but lack knowledge and understanding of the significance of his life and principles and the ability to apply his teachings to issues and problems today. He commented further that given growing incidents of racial animus and reversal of social and political gains for minorities, the litmus test to determine the need for continuing Dr. King's work is: "How close are we today to children being judged by the content of their character and not by the color of their skin?"

The commission agreed that while it will develop and recommend appropriate commemorative activities of the birth of Dr. King, its primary focus will be on designing a mechanism for serious, scholarly study and policy analysis of Dr. King's philosophy to promote social change to achieve the society that he envisioned. The commission will next meet on October 22, 1992, in Richmond.

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The Honorable William P. Robinson, Jr., *Chairman*

Legislative Services contact: Brenda H. Edwards

Commission on Early Childhood and Child Day Care Programs

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August 26, 1992, Richmond

The second meeting of the commission opened with a review of SB 344 (1992), which would exempt certain programs of local parks and recreation departments from the child day care regulations.

JLARC Study

Glenn S. Tittermary, division chief, JLARC, reviewed the findings and recommendations of JLARC's study on the regulation of child day care. The three major findings were: (i) state goals for regulating child day care need to be clearly stated; (ii) the majority of children are in unregulated child care arrangements; and (iii) the scope of the regulatory system is narrow. JLARC recommended, among other things, that the state undertake initiatives to promote the availability, affordability, and quality of child day care.

Definitions

Staff presented information the commission requested at its last meeting pertaining to the different types of early childhood and child day care programs, examples of definitions of "day care," the regulation of day care in other states and their definition of day care, and issues that must be addressed relative to the various types of child day care and parks and recreation programs.

Alice Pieper, associate professor of early childhood education at Virginia Commonwealth University, presented a paper noting her objections to the use of certain terminology that infers, in her opinion, that early childhood and day care programs are separate, distinguishable programs. She also noted the futility of defining "day care," given the view of early childhood professionals and experts today that child day care is one type of early childhood program. She commented that the distinguishing features of an early childhood program are where it is offered, the purpose of the program, the time it is offered, and the quality of the training of the personnel.

Ray Goodwin, deputy commissioner of local programs, Department of Social Services, representing the Liaison Agencies, presented "A Proposal for Definition of Child Day Programs," which outlined several broad policy goals they believe need to be satisfied. The agencies agree that the term, "child day program," more accurately describes the range of programs and services that should be addressed, and that administrative and child-focused risk considerations should be the basis of any decision-making for the design of credible and consistent child day care laws.

Public Schools

Patty Macie, coordinator of extended day programs for Arlington County Public Schools, discussed the impact of HB 1035 and the proposed regulations on the Arlington school division. Arlington has one of the oldest extended day programs in the Commonwealth. School officials in Arlington maintain that public schools already meet, and in many cases exceed, the requirements of the proposed regulations. However, additional costs will be incurred to meet certain standards, such as $60,000 a year to comply with the snack requirements. Ms. Macie indicated that the Arlington school division would support legislation to exempt public schools from the child day care regulations.

Private Sector

Vernon Holloman, Jr., representing the Proprietary Child Care Association of Virginia, noted that issues of primary concern to the private sector include government competition, conflict of interest, and antitrust. Virginia requires for-profit, tax-paying child care centers to be licensed, while exempting certain nonprofit organizations and all government-sponsored child care services. The association believes that the most efficient means of providing quality child care services is through full use of and reliance on the private sector. Mr. Holloman offered five recommendations:

- Provide equal protection for children;
- Require equal taxation and regulatory compliance of all child day care programs;
- Increase the child care tax credit for parents;
- Increase the dependent care tax deduction; and
- Adopt a policy allowing all child care providers to participate in all child care related funding streams.

Local Departments

J. Robert Hicks, Jr., director of the Department of Conservation and Recreation, explained the potential regulation of certain programs offered by local parks and recreation departments. He noted that the departments have an excellent record of providing safe, high quality programs for children without state regulation. Because local parks and recreation departments are accountable to their respective local governing body, which is responsible for the welfare and protection of its residents, the programs should be regulated on a voluntary basis only.

Robert Anotozzi, director of parks and recreation for the City of Fredericksburg, explained that HB 1035 (1990), which greatly expanded the regulation of early childhood and child day care in Virginia, significantly affects local parks and recreation programs. According to Mr. Anotozzi, the costs of compliance with the proposed regulations of the Child Day-Care Council for the implementation of the new law is prohibitive for local governments, which will have to increase funding or terminate these programs. Mr. Anotozzi recommended that SB 344 be passed and that only local governments be allowed to define the scope of practice of their recreation programs.

Future Meetings

The next scheduled meetings of the commission are October 12, November 25, and December 16, 1992.

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The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Brenda H. Edwards

HJR 361: Joint Subcommittee Studying the Imposition of Business License Tax on Nonprofit Hospitals, Colleges, and Universities

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September 28, 1992, Richmond

During its first meeting of 1992, the joint subcommittee focused on nonprofit hospitals and what effect the business license tax would have on them, as well as what effect the lack of such taxing power would have on localities.

Service Fees

Following a brief review by the chairman and staff of the background of the study, several questions that arose during the subcommittee's last meeting in 1991 were addressed. Staff explained how localities could be allowed legislatively to collect a service fee in lieu of the BPOL tax. Using *Code* § 58.1-3400 (Payment in lieu of Real Property Taxes) as a model, localities would collect the service fee from certain nonprofit organizations (hospitals, colleges, and universities) located in the jurisdiction based on a portion of the organization's gross receipts.

According to Susan Ward of the Virginia Hospital Association (VHA), 16 of 61 hospitals responding to a VHA survey currently pay some kind of fee for services to localities, with payments ranged from $240 to $448,041 per year. Ms. Ward also reported that currently none of the nonprofit hospitals are owned and controlled by physicians. Finally, information was provided concerning the revenues of nonprofit hospitals and the kinds of state and local taxes they pay. Patrick Lacy also spoke on behalf of the nonprofit hospitals, encouraging the committee to examine the community benefits the hospitals provide.

BPOL Tax

Betty Long, with the Virginia Municipal League (VML), reported that not all jurisdictions that levy the BPOL tax do so at the maximum rates allowed by the *Code of Virginia*. Of 41 cities and 95 counties, only 18 cities and 6 counties levy the maximum BPOL rate on the business services category, the category that would apply to general hospital operations. In the case of unrelated business activities of hospitals, such as gift shops and cafeterias, if the BPOL tax is levied at all, it generally is in those cases in which the unrelated business is operated by a private contractor.

A city council member from South Boston, George Bagwell, and Mayor Julian Adams of Lynchburg spoke on behalf of their respective jurisdictions and for municipalities in general. Each emphasized the importance of the hospitals to their communities and the importance of the hospitals' paying their fair share in taxes for the services they use. The option to levy the BPOL tax is important to all counties, cities, and towns during times of diminishing revenues.

John Rupp, director of Virginia Health Services Cost Review Council, presented a report showing the hospitals that operated at a profit and those that suffered losses during 1991. Included in both categories were for-profit and nonprofit hospitals. The report also contained information regarding hospitals' commercial diversification activities.

Finally, Reid Cushman, of the University of Virginia Health Policy Research Center, discussed the history of the exemption from taxation of nonprofit hospitals. He also explained that many states have been examining the tax exemptions for nonprofits more carefully during the last couple of years. Some states even require nonprofit hospitals to justify their exemptions in a variety of ways, including how much charity work they do.

The joint subcommittee's next meeting is scheduled for October 26 at 10:00 a.m. in Richmond, when the nonprofit colleges and universities will be the focus.

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The Honorable Jay W. DeBoer, *Chairman*
Legislative Services contact: Joan E. Putney

HB 896: Water Loss Resulting from Deep Coal Mining

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August 31, 1992, Blacksburg

The Subcommittee of the House Committee on Mining and Mineral Resources charged with studying HB 896 held a work session at Virginia Tech, which focused on three broad topics: the relationship between underground mining and water loss, legislative solutions to mining-related water loss, and the paucity of public water supplies in the coal-mining regions of Southwest Virginia.

Mining Impacts on Water Systems

Adequate water supplies are a significant problem in the coalfield region of Virginia for two reasons: the characteristics of the groundwater that occurs naturally in the area, and the impact of coal mining. Lynne Haynes, geologist supervisor, Division of Mined Land Reclamation (DMLR), detailed the impacts of rainfall, manmade pollution, surface mining, and underground mining on the quantity and quality of water in the region. Wells drawing water from a ridge top or slope are highly sensitive to deep mines located above drainage, though their sensitivity to mines located below drainage is low or moderate.

Kathy J. Reynolds, assistant director for administration of the Department of Mines, Minerals and Energy, noted that state involvement in water loss disputes involving underground mining currently depends on the date the mining occurred. There are four time periods in which mining activities will be treated differently under federal and state law. First, water supply damage from mining that occurred prior to the enactment of the Surface Mining Control and Reclamation Act (SMCRA) in 1977 may be eligible for assistance under the federal Abandoned Mine Land (AML) program. Second, water loss due to mining after 1977 but prior to 1981, when Virginia's regulatory program became effective, is not eligible for AML funds, though it could be if the state's AML plan is revised to permit its application. The third category, loss due to mining between 1981 and 1993, covers mining permitted under the state's current regulations, and is not covered by state or federal law if it involved deep mining and did not substantially affect the region's hydrologic balance. The fourth category would cover loss due to mining after 1993, for which mining permits have not yet been issued.

The AML program may provide funding for water projects damaged due to mining that occurred prior to 1977. In order to obtain money under the AML program, which is funded by a federal tax on coal operators, Virginia must prioritize problem areas under the grant standards. Virginia has an outstanding inventory of about $110 million for projects classified as either Priority One (area of extensive danger) or Priority Two (area of adverse effect on public health, safety and welfare). Priority Three (environmental impacts), Priority Four (research and development) and Priority Five (construction or enhancement of public facilities) projects have not received money from the AML program. Prior to an amendment in October 1991, public water systems were always categorized as Priority Five and were thus not eligible for money. The amendment permits states to spend up to 30% of their annual grant on public water systems. With Virginia's total annual allocation of AML funds at about $4.4 million, the maximum amount available for public water systems is $1.3 million.

Virginia has funded five water projects under AML, with a total grant of over $4 million. The conditions for obtaining an AML grant are formidable: an applicant must prove that the water supply is a public health hazard; that the project is needed to protect the public health, safety and welfare; that the water supplies of the region have been adversely affected by abandoned mine land where mining occurred prior to 1977; that the water supply problems are directly and predominantly the results of eligible AML mining; that the construction of the system is a more cost-effective alternative than correction or abatement; and that construction of the system would minimize the existing danger to the public. AML rules require that the cost of noneligible improvements, such as utility lines and meters, hookups, easements, permits, surveys, and legal fees be paid from other funding.

Ann Bledsoe, with DMLR's Abandoned Mine Program, gave overviews of two projects funded under the AML program, the Neely Ridge Water Project in Dickinson County and the Buchanan County Water Project. The Neely Ridge project provided water to an estimated 60 households at a cost of approximately $15,000 per connection. The Buchanan County project, which is now in its second phase, will provide approximately 450 households with water at a cost of $12,000 each.

Ms. Reynolds identified two barriers that prevent the AML program from serving as the basis for a solution to the region's water problems. First, the AML process is very slow — the process from application to completion requires about four years. Second, there is not enough money available under AML to pay for all qualified projects. Congress is now considering extending the AML tax to 2010. If the 30% of the annual award that can be applied to water projects from 1991 to 2010 is applied to this purpose, at the current level of funding, water

will be made available to approximately 1,700 households. If DMLR applied all of its AML funds to public water projects, it would take 35 years to pay for them, which would leave the other $110 million in Priority One and Two projects unfunded.

Ms. Reynolds suggested that rather than focusing on a proper distribution of the money paid to Virginia, the state should work to increase the amount of AML funds it receives. As Figure 1 indicates, Virginia operators have paid approximately $106 million in AML fees. Of this sum, about $53 million is to be spent at the discretion of the Secretary of the Interior, over $42 million has been appropriated to Virginia, and over $10 million has not been appropriated, although Virginia is entitled to these funds. Ms. Reynolds suggested that the Congress be pushed to release the $10 million in unappropriated funds, and that the secretary be requested to grant more of the moneys under his discretion to Virginia.

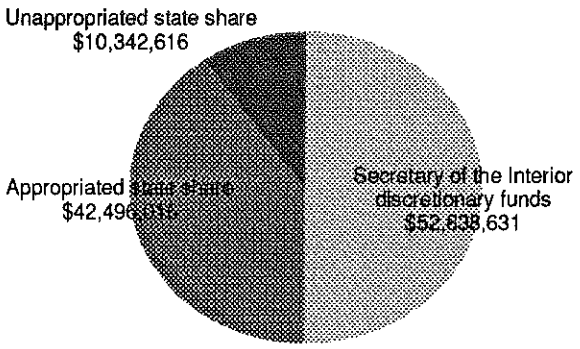

Figure 1. Abandoned mine land (AML) fees ($106 million) in comparison to Virginia's AML funding. Source: Dept. of Mines, Minerals and Energy.

Significant Impact on Hydrologic Balance: Two Case Studies

Two DMLR geologists presented case studies of deep mining that was found to have a significant impact on the hydrologic balance in the region. Jan Zentmeyer, geologist senior at DMLR, discussed the Cavalier Mine in Wise County, where over 20 complaints of water loss were received. The mine's impact on the hydrologic balance was found to be significant due to its effect on the Powell River drainage area, which included lowering the groundwater level to the depth of the mine. The mine shaft then became a conduit, transferring water from the Powell River to the Great River, and required the pumping of over 1 billion gallons of water from the mine. The division did not make specific determinations of which wells and springs were adversely affected by the mine; instead, complaints were used as data in determining the impact on the region's hydrology.

Tony Scales, geologist senior at DMLR, discussed a series of 11 water loss complaints between 1982-1987 at the Moss Mine in Buchanan County. Water loss from one stream, seven wells and six springs occurred as a consequence of secondary recovery affecting the groundwater zone in which the wells were developed either immediately or within a few months after the mining activity. As a result of the significant impact to the hydrologic balance, the company was required to monitor stream flow in the area to assess the amount of loss. Within two years following the mining, the stream was found to have recovered as a result of flooding in the mine. None of the springs has recovered, and four wells recovered when redrilled to a deeper level. As a result of a change in permitting requirements, the mining permit was revised to address all water supplies and groundwater sources overlying the underground mining area. Time spent by the staff on each of the Cavalier and Moss mine studies exceeded 500 hours.

Kathy Reynolds noted that proving that a specific mining activity had a significant impact on the local hydrologic balance is very involved, and the remedy is to require the operator to modify the activity that is causing the imbalance. The purpose of the state's program is to protect the watershed rather than to protect individual property rights. She suggested that in addressing solutions to water loss events, the subcommittee may consider several policy questions. These include whether a program would be included as part of Virginia's surface mining control program; whether a program will fairly protect the competing interests of surface owners and mine operators; the impact of requirements on the competitive prices for Virginia coal; whether replacement of water supplies is the only remedy to consider, or should compensation or relocation be permitted; the level of certainty to be required in a determination of the cause of the water loss; whether multiple operators responsible for a water loss should be required to share the costs of remedies; whether new regulations would have retroactive application; and whether bond amounts for reclamation should include water replacement costs.

Ms. Reynolds then outlined four options to approach this issue. First, the existing system of voluntary replacement or court action could be continued. Second, a program could require mandatory replacement or compensation in areas where water loss is presumed to be due to mining. Third, the existing state SMCRA program could be expanded to include losses due to underground, as well as surface mining. The fourth option would provide for a separate regulatory program, with an administrative agency to determine liability.

Water Replacement Requirements in Other States

Staff summarized the approaches of nine states to the impairment of private water supplies by underground mining. Three of the states (Ken-

tucky, Alabama, and Pennsylvania) do not require mine operators to provide replacement supplies or compensation for surface owners whose water supplies are impaired by deep mining. The Pennsylvania General Assembly, however, is considering two bills that would require replacement of water supplies damaged by underground mining.

Five states (Indiana, Maryland, Ohio, Tennessee, and West Virginia) require the replacement of water supplies. The approaches in these states vary widely. Maryland and Ohio have statutory requirements that the operators of deep mines replace water supplies that are damaged as the result of mining. West Virginia has imposed a water replacement requirement through its implementation of SMCRA, by construing the surface effects of mining to include the loss of water from deep, as well as surface, mining. This is the same approach taken by the federal government following the adoption of SMCRA but abandoned after defeats in federal court. Indiana and Tennessee have required water replacement through the promulgation of regulations rather than by statute.

The Montana legislature has taken the unique approach of codifying a civil cause of action for damage to a water supply caused by mining. This law establishes the criteria for a surface owner's prima facie case, and shifts the burden of proof of causation from the surface owner to the mine operator in certain situations.

The Effect of Special Geologic Circumstances on Water Loss Occurrence

Carl Zipper, with the Virginia Center for Coal and Energy Research, summarized the preliminary results of research of 72 water supply complaint investigations conducted by DMLR between 1981 and 1987. Of the 72 investigated complaints, 54 were found by DMLR to be affected or are suspected to be affected by mining, 10 to be not affected or suspected to be not affected by mining, and in nine cases, no determination was made. Dr. Zipper's research involved an evaluation of this data base with respect to parameters proposed by geologist Henry W. Rauch of West Virginia University, based on research performed in the northern West Virginia region.

Dr. Rauch's research indicated that (i) for room and pillar mining, water loss is confined to a zone directly above the mined area within 100 to 120 feet of proximity; (ii) for high extraction mining, water supply impacts are confined to an area of 120 to 400 feet vertically and within an angle of influence of 20 to 40 degrees; and (iii) for longwall mining, the angle of influence is 20 to 40 degrees and the vertical extent of the zone of influence could extend up to twice the width of the longwall panel. Upon comparing the data in DMLR's files to Dr. Rauch's conclusions, Dr. Zipper found that the geological circumstances in the coalfield regions of Virginia do not tend to produce the same results that Dr. Rauch found in the area of his study.

Dr. Zipper's study indicates that many of the water loss occurrences affected by mining are attributable to what Dr. Rauch calls "special geologic circumstances." These include mining that drained a coal seam serving as a aquifer, drained a valley floor fracture zone, affected a well recharge area, or occurred within a geologic syncline. Consequently, Dr. Rauch's parameters are not reliable in defining a zone of impact on water supplies in southwest Virginia.

Angle of Draw and Water Loss

The subcommittee has heard several references to the connection between water loss due to subsurface mining and the angle of draw from the extraction area. Michael Karmis, head of the Department of Mining and Minerals Engineering at Virginia Tech, explained that the term "angle of draw" is defined as the angle between (i) a vertical line from the edge of extraction area and the surface and (ii) a line from the edge of the extraction area and the furthest point of surface movement. The angle of draw is therefore related to subsidence; if there is no surface subsidence, there is no angle of draw. Dr. Karmis suggested that the subcommittee use the term "angle of hydrological influence," which is much more difficult to measure or predict.

Dr. Karmis noted that there is no such thing as a typical underground coal mine, and that individual mines, even in proximity to one another, often exhibit dramatic differences in relation to groundwater. Further, no two wells will respond identically to mining and subsidence. He suggested that if a coal operator were required to do a premining survey of water conditions, a reasonable angle from the mine workings to the surface to define the survey area would be 28 degrees.

Water Supplies in Southwest Virginia

The impairment of private water supplies caused by underground mining is compounded by the absence of alternative water supply sources in the region. Jason Gray, manager of environmental programs with Virginia Water Project, Inc., reviewed census data indicating that approximately 29,000 individuals in the coalfield regions of the state relied on a grossly substandard water source in 1990, and this figure grows to 36,000 people if dug wells are included in the definition of a substandard source of water. Supplying water and treating wastewater in this region is the most difficult and expensive in Virginia.

The number of households on public water systems in Buchanan, Dickenson, and Wise Counties ranged from 22.5% to 72.5%. In these counties, the households with substandard water supplies tend to be isolated, lack financial resources, and lack access to a public water line. Mr. Gray believes that resolution of the issue of replacement of water supplies damaged by

underground mining must be placed in the context of overall rural water supply management for the region. For example, regulations of the Virginia Department of Health do not establish standards for cisterns supplied for temporary or permanent replacement water systems.

Mr. Gray noted that the operating costs for small public water systems are increasing rapidly due to federal environmental requirements, and the lack of an economy scale makes solutions difficult. Possible solutions proposed by Mr. Gray included a reallocation of Coal Severance Tax funds to additional regional water supply development or to remedy individual water losses related to underground mining and a common fund for the provision of temporary water supplies when there is a likely water loss due to underground mining, as is in effect in Maryland.

Future Areas of Need for Water Supply Systems

Ronald Heldon of the engineering firm of Thompson & Litton, Inc., identified 28 areas having 50 or more households within the Cumberland and LENOWISCO Planning District Commissions that have a need for water system development. The 28 areas contain a total of 3,300 households, and at a cost estimate of $10,000 to $15,000 per connection, the total cost to provide them with public water would be $80 million to $120 million.

The ultimate solution, according to Mr. Heldon, will involve expanding existing or developing new surface water treatment facilities. Existing systems have very little reserve capacity for growth. One step would be developing the Carfax system to serve five of the proposed areas of need with 2,170 households, at the intersection of Wise, Dickinson, and Russell Counties, at a cost of approximately $10 million.

Coalfield Water Development Authority Proposed

Delegate Quillen proposed that a Coalfield Water Development Authority be created to make loans and grants for qualified water system owners. The authority would be funded by one-quarter of the revenue from the coal severance tax, which currently is paid to the Coal and Gas Road Improvement Fund. The authority's share of the coal severance tax would be approximately $3 million per year. Ten percent of the funds received by the authority would be set aside for an emergency pool for temporary replacement of water supplies impaired due to mining, and the balance would be evenly split between constructing regional public water projects and rebuilding existing public water systems.

Ron Flannery, director of the LENOWISCO Planning District Commission, and Simeon E. Ewing of the Center for Public Service noted that it is becoming increasingly difficult to find funding to upgrade water systems. The Coalfield Economic Development Authority recognizes that the legitimate coal haul road problems have been addressed, and it makes sense to direct a small portion of the tax to public water improvements. Access to coal severance tax funds will serve as a source of revenue that can be leveraged to obtain matching funds, such as block grants.

The subcommittee plans to hold a work session in Richmond in October and a public hearing in Southwest Virginia later in the fall to discuss both HB 896 and the proposal for the Coalfield Water Development Authority.

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The Honorable Ford C. Quillen, *Chairman*
Legislative Services contact: Franklin D. Munyan

HJR 71: A. L. Philpott Southside Economic Development Commission

◆

September 22, 1992, Martinsville

The third 1992 meeting of the commission was addressed by Ralph M. Byers, director of governmental relations and special activities, Virginia Polytechnic Institute and State University. Mr. Byers described VPI's economic development programs, such as its public service department, which certifies local economic development personnel and provides technical assistance to local governments and small businesses, its research in biotechnology, and its agriculture and forestry development. Mr. Byers also cited Tech's efforts in genetic engineering to find alternative uses for tobacco, and "genetic pig" research, exploring the reduction of blood clotting.

Virginia Tech Programs

Virginia Tech's manufacturing research is geared to be more responsive to economic needs and the current industrial base. Professor Michael P. Deisenroth reviewed the university's Manufacturing Systems Engineering Center. Robotics and manufacturing processes laboratories are used as instructional facilities and in industrial training. Other laboratories and systems engineering efforts offer industrial demonstrations and projects, facilitating technology transfer within the private sector. Research and

development projects, involving faculty and graduate students, focus on process improvement and automation, facilities design, and equipment selection.

Professor Benjamin S. Blanchard described VPI's outreach programs, offering credit and noncredit courses in engineering through the Virginia Cooperative Graduate Engineering Program. Using satellite downlinks, VPI, ODU, UVa, and VCU televise engineering courses via two-way, interactive audio and one-way video. Virginia Tech now has 900 part-time students through this initiative; tuition is based on the normal off-campus charge. The State Council of Higher Education (SCHEV) funnels legislative appropriations to the various institutions to support satellite transmission time.

Commission members inquired about the feasibility of offering undergraduate courses via satellite. Mr. Blanchard responded that undergraduate laboratory work requirements make satellite delivery less feasible. Discussion focused on offering graduate courses at Southside community colleges through satellite downlink; the commission's 1992 legislative package included HJR 93, requesting SCHEV and the Southside Virginia Business and Education Commission (SVBEC) to examine engineering program needs at the two- and four-year as well as graduate degree levels. Patrick Henry Community College (PHCC) will offer an industrial engineering associate degree next fall. It was noted that if a demand for graduate engineering degree programs were established, these courses could be offered via satellite downlink at PHCC, Longwood, or other Southside institutions. Mr. Blanchard concluded by noting pending federal legislation, HR 5231, the National Competitiveness Act of 1992, which contemplates state matching funds for federal support of manufacturing research and outreach centers.

Environmental Regulation

Seward Anderson, commission member and mayor of Danville, described challenges faced by localities seeking to comply with state and federal environmental regulations. Citing articles from *Forbes, Investors Daily,* and *Smithsonian*, Mr. Anderson stated that federal environmental regulations may cost $100 million per hypothetical life saved, while the reduction of living standards associated with a $5 million to $12 million increase in regulatory costs is likely to cause one additional death. In 1990, pollution control regulations cost $115 billion. In Virginia, the average individual tax return was $1136, compared to an estimated $1800 per person cost for pollution controls. Mayor Anderson noted that only about 15% of these funds will actually support environmental cleanup; the remaining 85% covers administrative costs.

Addressing member inquiries, Mayor Anderson agreed to supply a list of those state environmental regulations that are more stringent than federal requirements. Compliance with metals standards will cost $550 million statewide and $12 to $20 million in Danville. Restrictions on municipal landfills, requiring financial assurances, will also place additional fiscal constraints on the city. Mayor Anderson urged the implementation of a state environmental policy that is "industry friendly" while balancing environmental concerns.

Also addressing environmental regulation was Sidney Clower, director of the Henry County Public Service Authority. Of special concern were regulations for which technology is not available to the locality to effect compliance and those for which technology does not yet exist that can accurately measure pollutant content levels and compliance. While the U.S. Environmental Protection Agency (EPA) grants states the option of developing certain environmental standards, the state must bear the expenses of testing and proving these standards.

Jamie Woodhouse, general counsel, Hercules Aerospace Company, Radford Army Ammunition Plant, specifically cited inconsistent interpretations and administration of regulations as a major challenge. Differing interpretations of possible pollutant characterizations by the EPA Region III may result in significant plant upgrade expenditures that have not been required in other EPA regions. Lee Goodrich, secretary and general counsel at Dan River, Inc., echoed these concerns, citing environmental regulations that require industry to return water to the Dan River in a purer state than when it was withdrawn. He also urged the institution of a state policy ensuring that state environmental regulations be no more stringent than federal requirements.

Permit Approvals

Secretary of Natural Resources Elizabeth H. Haskell noted the need to balance jobs and economic growth with an attractive, clean environment to promote regional development. The permit approvals process, long seen as a frustrating maze of applications and delays, will be greatly enhanced by the creation of the Department of Environmental Quality (DEQ) in 1993 and through the Permit Assistance Group. Under the proposed model, a permit assistance unit in each region will facilitate "one-stop permitting" for many regulatory license applicants.

Secretary Haskell also stated that Virginia does have some leeway in designing environmental programs; she noted that when federal dioxin standards proved unmeasurable, Virginia was able to develop its own standards. Contrasting this example, she also cited PCB and kepone pollution in the Shenandoah and James Rivers, respectively, that Virginia addressed under its own authority, as federal regulations were silent regarding these pollutants. She pledged increased opportunity for public participation in the regulatory process, justification for proposed regulations stricter than federal requirements, and analysis of the

costs and benefits of particular regulations. She also cited the inconsistency in EPA Region III interpretations and noted that many industries will locate near the Virginia border, taking advantage of the Commonwealth's clean air increments.

The new DEQ will consolidate the Air Pollution Control Board, the State Water Control Board, the Department of Waste Management, and the Council on the Environment. The department will focus on an efficient, coordinated permitting process, a regional approach to regulatory issues, and long-range planning and analysis of environmental issues. A November 1 report to the General Assembly will detail planning for the DEQ.

Recommendations

Commission members next reviewed those recommendations deferred for consideration in 1992. Members agreed to endorse again these recommendations, but to focus on 5 to 10 specific recommendations for its 1993 legislative package. The commission expects to consider a number of potential recommendations, including funding for the SVBEC, the Southside Marketing Council, and the Southside Virginia Development Authority; seed money for the Philpott Manufacturing Research Center; the proposed Governor's School for Global Economics and Technology; the agricenter at Fort Pickett; and funding for Route 58. A joint meeting with the Commission on Health Care is planned for October.

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The Honorable Whittington W. Clement, *Chairman*
Legislative Services contact: Kathleen G. Harris

HJR 205: Joint Subcommittee Studying the Possibility of Having Public and Private Employees Temporarily Switch Workplaces

◆

September 2, 1992, Richmond

During its first meeting, the subcommittee received testimony from individuals in both the public and private sectors on the feasibility of establishing a program whereby state and local government employees temporarily switch workplaces with their private-sector counterparts. Such a program could benefit both sectors, while allowing professional growth and development for the employees. After surveying other states, the subcommittee discovered that the idea is not new—six states already have some form of exchange program in place (See Figure 1).

Maryland's Executive Swap Program

In June 1988, Maryland Governor William Donald Schaefer initiated an executive swap program, which requires that the Governor's top administration officials, 32 in number, including the Governor, exchange places with other officials in other state departments. The month-long swap allows the officials to spend one-half of their day in their new assignment and the rest of their day in their regular jobs. According to the Governor's office, the job-swapping is designed to give bureaucrats an understanding of what their colleagues are doing in other departments. Such exchanges lead to exposure to problem-solving methods that can be taken back and applied to the official's regular duties. Due to the success of the program, a second executive swap occurred in July 1991 and lasted approximately one month.

The concept of job-swapping is not new to Governor Schaefer. He began a job swap program for the City of Baltimore when he was mayor. Also, during his gubernatorial term he has ordered Cabinet secretaries to spend time at day-care centers and retirement and nursing homes to get an accurate picture of the social problems facing the state. One weekend in 1990, he required the Secretary of Public Safety and Correctional Services to pick up trash along Route 50 on Maryland's Eastern Shore.

New York's Loaned Executive Program

With the explanation that such a program would help create excellence in state government, Governor Mario Cuomo established the New York Loaned Executive Program as a cooperative effort of the state's Office of Management and Productivity, the business community, and other private and public organizations. The objectives of the program are to promote more effective and efficient governmental operations while providing a unique developmental experience for public and private sector managers.

According to the Office of Management and Productivity (MAP), the program recognizes that:

- Improving the economy and efficiency of state programs will stabilize the cost of government and improve the quality of services.
- The private sector's emerging technologies and approaches to management dilemmas can be adapted to state government.

Survey question:

Has your state considered or implemented an employee exchange program?

The following six states implement a form of an employee exchange program:

Maryland:	"Executive Swap" of top administration officials and Executive Fellows Program.
Montana:	Interchange governmental employees; participate in federal-state government exchange.
New York:	Loaned Executive Program.
North Dakota:	Interchange governmental employees.
Oregon:	Loans state employees to private industry.
South Carolina:	Interchange governmental employees.

The following twenty-three states have no form of an employee exchange program:

Alabama	Florida	Maine	North Carolina	Texas
Arizona	Georgia	Michigan	Ohio	Utah
Arkansas	Idaho	Minnesota	Pennsylvania	Vermont
Colorado	Indiana	Nebraska	Tennessee	Wisconsin
Delaware	Kentucky	New Jersey		

To date, the following twenty states and the District of Columbia have not responded to the survey:

Alaska	Illinois	Massachusetts	New Hampshire	South Dakota
California	Iowa	Mississippi	New Mexico	Washington
Connecticut	Kansas	Missouri	Oklahoma	West Virginia
Hawaii	Louisiana	Nevada	Rhode Island	Wyoming

Figure 1. Employee exchange programs. Source: Division of Legislative Services, 10/8/92

■ The exchange of ideas and information between similar private and public organizations avoids redundant efforts and eliminates waste.

■ The Governor's office and agency heads must continuously lead the search for ways to improve how the state does its job.

■ The program is designed to be flexible and accommodates both long- and short-term assignments. These range from one-time technical assistance meetings to lengthy research defining problems and identifying solutions.

To ensure success, MAP carefully arranges matches between the state's needs for assistance and the business or academic community's ability to help. MAP also identifies projects where loaned executives can contribute to the state's productivity efforts. The office solicits interest in participation via a project prospectus describing the assignment, its objectives, and the experience each loaned executive should possess. The assignment is assessed with regards to timing, availability of staff, and potential benefits to the state, the loaning company, and the loaned executive.

Loaned executives define management issues, prepare plans for projects and management actions, develop recommendations for state management review, and implement solutions. Occasionally, they also participate in management development and training activities. During the assignment, MAP staff familiarizes loaned executives with state operations and agencies and assures that the host agency supplies the loaned executives with the support

and information necessary to carry out assignments.

The Loaned Executive Program has several major success stories to its credit:

- With assistance from the New York Telephone Company, a new system of management controls was developed and implemented for the State's 6,200 passenger vehicle fleet. This resulted in reduced car repair and maintenance costs and is saving the state $600,000 annually.
- With the cooperation of *Reader's Digest*, the state realized efficiencies by converting to a ZIP + 4 mailing system and is saving $350,000 annually.
- Working with General Electric, the New York Department of Correctional Services increased its productivity and reduced its operational costs by streamlining management and accounting procedures.
- With assistance from Garden Way, a Troy, New York-based firm, a direct mail marketing campaign was developed to spread the word about the Loaned Executive Program to business leaders and professional groups throughout New York.
- In the program's first two years (1984-1986), 39 loaned executives, representing 25 private sector entities, assisted the state with various projects.

Other States' Approaches

South Carolina

In 1978, the South Carolina legislature enacted a law pertaining to the interchange of government employees between and among federal, state, and local governments. Under this law, any department or agency of the state or any political subdivision of the state may participate in a program of interchange of employees with departments and agencies of the federal government, the state, any of the other states, or any of the political subdivisions of South Carolina or any other state. The statute limits the period of individual assignment to two years; however, an additional two-year extension may be granted.

Employees participating in an exchange are considered to be either (i) on detail to regular work assignments or (ii) on a leave of absence from their regular position. Employees on detail remain employees of their "home" agency or department and receive the same salary and benefits they were receiving prior to the exchange. Employees with a leave of absence are considered to be on leave without pay; however, they may use any accrued leave time while on assignment and may accrue all benefits of their home agency. The South Carolina law also addresses the issue of liability by stating that any employee who participates in an exchange and suffers disability or death as a result of personal injury arising out of the exchange will be treated as an employee of his home agency.

North Dakota

In 1965, the North Dakota legislature declared that "inter-governmental cooperation is an essential factor in resolving problems affecting the state and that the interchange of personnel between and among governmental agencies at the same or different levels of government is a significant factor in achieving such cooperation and increasing the skills and efficiency of governmental personnel." The North Dakota laws governing exchanges are virtually identical to the South Carolina statutes discussed above, except that North Dakota does not include local governments in its exchange problem.

Montana

The State of Montana has regulations allowing the exchange or loan of employees between state agencies to improve efficiency and service, to enable employee personal development and training, and to make the best use of an employee's knowledge, skills, and interest. Unlike other states with exchange programs, Montana allows both permanent and temporary exchanges, as well as employee loans. The major difference between a temporary exchange and an employee loan is that the latter may not exceed nine months.

Montana also participates in an employee loan program with the federal government. The Department of Natural Resources has used the federal program twice in the past eight years, and the Department of State Lands has used it six times.

Oregon

Oregon has loaned state executives to private industry on an informal basis. For example, Oregon's Recruitment and Career Services Manager went to Nike for six months, and a child development program specialist from Portland State University went to Intel Corporation for one year. Also, there have been loans between Oregon's Economic Development Department and U.S. Bancorp.

Future Meetings

The subcommittee agreed to meet at 1:00 p.m. on October 16 in House Room C of the General Assembly Building in Richmond to consider further testimony from the private and public sectors.

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The Honorable Mitchell Van Yahres, *Chairman*
Legislative Services contact: Edie T. Conley

SB 506: Essential Services Panel

◆

September 10, 1992, Richmond

The sixth meeting of the Essential Health Services Panel opened with a review of the presentations and comments received from various provider, insurance, and consumer representatives during the August 18 meeting.

Canadian Program

As requested by the panel in August, additional information on the services available under the Canadian Health Services Program was presented. Based on available materials, most, if not all, of the Canadian provincial programs include preventive/primary care through family physicians and other general practitioners, with apparently unlimited outpatient primary care (e.g., prenatal care, comprehensive childhood immunizations, mammograms, some dental services, drugs and appliances as necessary); emergency care; inpatient hospital care; outpatient hospital care; diagnostic tests; and specialty care. Canadian physicians determine priority for specialty surgical procedures and hospital "gatekeepers" manage the hospital-based high technology diagnostic equipment. For diagnostic testing and specialty care, patients are classified as "emergent, urgent, or elective" by physicians, with "emergent" patients seen first. However, there are no definitions of the terms, "emergent, urgent, or elective," and each physician subjectively determines his patients' classifications. High technology diagnostic testing and specialty care appear to be rationed through the fee structure and limitations on dissemination; there are waiting lists.

Report Planning

The panel discussed the availability of information sufficient for health insurance comparison shopping, the viability of developing limitations on essential health services, and the merit of examining several different approaches or plans for essential health services. The panel concluded that providing the Advisory Commission on Mandated Benefits, the Joint Commission on Health Care, and the General Assembly with a list of essential health services and standard health services as well as a selection of proposed flexible plans for limiting costs would increase the potential uses of the report.

Pricing Study

A summary of the initial meeting of the pricing study group was presented. This study group consists of panel staff and representatives of Blue Cross and Blue Shield of Virginia and the Department of Medical Assistance Services. Other organizations have also been invited to participate in this process. The participating organizations have agreed to assist the panel in developing cost estimates for the essential health services program, using various assumptions regarding limitations, deductibles, co-insurance or co-payments, premium cost sharing, maximums, and the pricing of specific services. In developing these estimates, the price or cost of alternative essential health service programs will be estimated by using available data and assuming the package of designated services will cover the same populations as the respective plans. Certain assumptions will also be made regarding the level and types of managed care delivery systems that will be recommended in order to price the programs.

In discussing various uses and cost-limitation or cost-containment devices, the panel was advised of managed care provisions, caps on expenditures, stop-loss provisions, fee schedules, rating bands, risk spreading, state subsidies, and tax credits. Twenty-seven other states, it was noted, have adopted conceptually similar legislation. For example, New York and California have ambitious programs to cover large, diverse populations in health services programs, thereby utilizing the benefits of spreading the risks over large pools of individuals. In California, the state employees health benefits program provides coverage for *state* employees and approximately 400,000 *local* employees and is being converted to a cooperative, which will allow eligible small employers to participate.

The panel's consensus was that the essential health services plan(s) should focus on improving the health status of Virginians at reasonably low cost, perhaps with some incentives for patient responsibility, and that the plan(s) should avoid providing incentives for employers to "level down." The panel also opined that a tightly managed plan, which encourages physician participation, would facilitate containment of costs while enhancing primary care.

Value Scale Revision

Following a discussion of the relative value scale previously used for the Delphi survey, the panel agreed to revise this scale. The revised classifications are:

- MUST have (same)

- SHOULD have (same)
- Important (formerly, Very Important)
- Moderately Important (formerly, Valuable to Some)
- Not Particularly Important (same)

The panel reiterated that the list of essential health services will need to be reviewed on an ongoing basis as new treatments and diagnostic tools are developed.

The panel then collectively reviewed and reevaluated all of the services listed on the matrix and compiled the services to be included as essential—MUST have—in the October draft report. In addition to the initial review of the draft report, the agenda for the October 29 meeting will begin with presentations and discussion of mental health services.

◆

The Honorable J. Samuel Glasscock, *Convener/Moderator*

Legislative Services contact: Norma E. Szakal

The Legislative Record summarizes the activities of all Virginia legislative study commissions and joint subcommittees. Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.

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910 Capitol Street, 2nd Floor, Richmond, Virginia 23219 804/786-3591

The Legislative Record is also published in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.
Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

UNIVERSITY OF VIRGINIA

Institute of Law, Psychiatry & Public Policy

† Public Notice

The Sixteenth Annual Symposium on Mental Health and the Law will be held April 1-2, 1993, at the Richmond Hyatt (Thursday-Friday). The symposium is sponsored by The University of Virginia Institute of Law, Psychiatry and Public Policy; the Division of Continuing Education; the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services and the Office of the Attorney General. The symposium will be held at the Richmond Hyatt Hotel in Richmond, Virginia. Continuing education credit, including medical and legal, will be available. For further information contact: Bettie Amiss, Administrator, Institute of Law, Psychiatry and Public Policy, Box 100, Blue Ridge Hospital, Charlottesville, Virginia 22901; telephone (804) 924-5435.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
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EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

December 1, 1992 - 9:30 a.m. – Open Meeting

The Virginia Association of Homes for Adults, Inc., Suite 101, United Way Building, 224 West Broad Street, Richmond, Virginia. ♿

Business will include further discussion on the goals and objectives for the Virginia Long-Term Care Ombudsman Program.

Contact: Etta V. Hopkins, Assistant Ombudsman, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD ☎ or toll-free 1-800-552-3402.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Winegrowers Advisory Board

November 10, 1992 - 10 a.m. – Open Meeting
Virginia Polytechnic Institute and State University, Food Science and Technology Building, Blacksburg, Virginia.

The board will hear committee and project monitor reports and review old and new business.

Contact: Wendy Rizzo, Secretary, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685.

DEPARTMENT OF AIR POLLUTION CONTROL

† **November 16, 1992 - 8 p.m.** – Open Meeting
The Rockingham County Administration Center, Harrisonburg, Virginia. ♿

A meeting to receive public comment on a request by Transprint USA to operate four existing rotogravure and to construct and operate a fifth rotogravure printing press at their facility in Harrisonburg.

Contact: Donald L. Shepherd, Director, Region II, Virginia Department of Air Pollution Control, 5338 Peters Creek Rd., Roanoke, VA 24019, telephone (703) 857-7328 or (804) 371-8471/TDD ☎

ASAP POLICY BOARD - VALLEY

† **November 9, 1992 - 8:30 a.m.** – Open Meeting
Augusta County School Board Office, Fishersville, Virginia. ♿

A regular meeting of the local policy board which conducts business pertaining to (i) court referrals; (ii) financial report; (iii) Director's report; (iv) statistical reports.

Contact: Rhoda G. York, Executive Director, Holiday Court, Suite B, Staunton, VA 24401, telephone (703) 886-5616, or Waynesboro number (703) 943-4405.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **November 5, 1992 - 10:30 a.m. – Open Meeting**
Brookfield Center Office Park, 6606 West Broad Street,

Richmond, VA .

A general board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA, 23229, telephone (804) 662-7390.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 3, 1992 - 10 a.m. - Open Meeting
State Capitol, Senate Room 4, Capitol Square, Richmond, Virginia.

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by November 24, 1992.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD

CHILD DAY-CARE COUNCIL

† **November 6, 1992 - 10 a.m.** – Open Meeting
Koger Executive Center, West End, Culpeper Building, Conference Room 135, 1606 Santa Rosa Road, Richmond, Virginia.

A meeting to provide orientation to newly appointed Child Day-Care Council members.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

† **November 12, 1992 - 9 a.m.** – Open Meeting
Koger Executive Center, West End, Blair Building, Conference Rooms A & B, 8007 Discovery Drive, Richmond, Virginia.

The Child Day-Care Council will meet to discuss issues, concerns and programs that impact child care centers, camps, school age programs, and preschool/nursery schools. The public comment period is 10 a.m. Please call ahead of time for possible changes in meeting time.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT OF COMMERCE

† **December 4, 1992 - 10:30 a.m.** – Public Hearing
Roanoke City Council Chambers, Room 450, 215 Church Ave., S.W., Roanoke, Virginia

† **December 10, 1992 - 10:30 a.m.** – Public Hearing
General Assembly Building, House Room D, Richmond, Virginia.

January 4, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Commerce intends to **repeal** regulations entitled **VR 190-05-1. Asbestos Licensing Regulations** and **adopt** new regulations entitled **VR 190-05-1:1. Asbestos Licensing Regulations.** The proposed regulations include a "Standard of practice and conduct" section to establish guidelines for professionalism and grounds for disciplinary action within the regulated disciplines. To eliminate duplication, a "General entry and renewal requirements" section has been added and requirements for an asbestos worker and supervisor license have been combined. Changes also require employers, with employees exempted from licensure, to develop and maintain a safety program, as opposed to training, to enhance the quality and safety of asbestos work. The proposed regulations set training provider criteria for record keeping, certificate information, length of training, training upgrade, number and ratio of instructors to students, primary instructor approval, use of videos, and training course approval.

For Asbestos Analytical Laboratory Licensure, participation in the PAT program will be extended to each branch facility and each on-site analyst will be required to register with the AIHA Analyst Registry. After April 1, 1993, project designer applicants will need to submit an experience form (Form A) with their application.

For clarification purposes, the following definitions have been added or altered: "Asbestos," "Asbestos Project," "Asbestos Project Design," "Asbestos Management Plan," "Demolition," "Full Approval," "Occupied," Preliminary Review," "Primary Instructor," "Removal," "Site," "Substantial Change," and "Structure."

In addition, fees have been lowered for an Asbestos Contractors license, an RFS Asbestos Contractors license, an Asbestos Analytical laboratory license, and for training course evaluations.

STATEMENT

Basis: The legal authority for the Department of Commerce to promulgate the regulations is found in

Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: The proposed regulations have been reorganized to include a general entry requirement section and the combining of licensing requirements for asbestos workers and asbestos supervisors. Both will eliminate duplication. The proposed regulations will encourage professionalism and set guidelines for disciplinary action with the addition of a "Standards of practice and conduct" section. The exemption section has been revised to delete the requirement for the exempted employers to develop training; it provides guidelines for an asbestos safety program. Additional regulations have been placed on asbestos training providers to enhance the quality of instructors and reduce the number of fraudulent certificates and illegal licenses. For quality control, project monitors who conduct on-site PCM asbestos air samples analyses will be required to register with the AIHA Asbestos Registry. After April 1, 1993, applicants for project designer will be required to meet experience qualifications. Definitions have been added or altered to establish clarity. Fees for an asbestos contractor's license, an analytical laboratories license, and training course evaluations have been reduced as required by § 54.1-113, of the Code of Virginia.

Impact: The regulations apply directly to approximately 17,773 individuals licensed as asbestos workers, supervisors, project designers, project monitors, inspectors, and management planners; approximately 438 licensed asbestos contractors; 80 licensed RFS contractors; approximately 107 licensed analytical laboratories; and approximately 60 asbestos training providers.

Statutory Authority: §§ 54.1-500 through 54.1-517 of the Code of Virginia.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Commerce, 3600 West Broad St., Richmond, VA 23230, telephone (804) 367-2567.

STATE BOARD FOR COMMUNITY COLLEGES

November 18, 1992 - 2:30 p.m. – Open Meeting
Holiday Inn Fair Oaks, 11787 Lee-Jackson Highway, Fairfax, Virginia.

State board committee meetings.

November 19, 1992 - 9 a.m. – Open Meeting
Holiday Inn Fair Oaks, 11787 Lee-Jackson Highway, Fairfax, Virginia.

A regularly scheduled state board meeting.

Contact: Joy Graham, Assistant Chancellor Public Affairs, Virginia Community College System, 101 North 14th St., Richmond, VA 23219, telephone (804) 225-2126, or (804) 371-8504/TDD ☎

COMPENSATION BOARD

† **November 30, 1992 - 5 p.m.** – Open Meeting
† **December 30, 1992 - 5 p.m.** – Open Meeting
Room 913/913A, 9th Floor, Ninth Street Office Building, 202 North Ninth Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request.)

A routine meeting to conduct business of the Compensation Board.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886/TDD ☎

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

November 18, 1992 - 10 a.m. – Open Meeting
† **December 16, 1992 - 10 a.m.** – Open Meeting
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia. ♿

A regular monthly meeting of the board to consider matters as may be presented to the board.

Contact: Mrs. Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

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November 18, 1992 - 10:30 a.m. – Public Hearing
6900 Atmore Drive, Richmond, Virginia.

November 20, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to amend regulations entitled: **VR 230-30-001. Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to incorporate the Work/Study Release Program Standards as an integral part of the Standards for Jails and Lockups.

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-131 of the Code of Virginia.

Contact: Mike Howerton, Chief of Operations, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3262.

Liaison Committee

November 19, 1992 - 9:30 a.m. – Open Meeting
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia. ♿

The committee will continue to address and discuss criminal justice issues.

Contact: Mrs. Vivian T. Toler, Secretary to the board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

November 23, 1992 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Board for Cosmetology, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

BOARD OF DENTISTRY

November 21, 1992 - 9 a.m. – Open Meeting
Southern States Building, 6606 West Broad Street, Richmond, Virginia. ♿

The Regulatory-Legislative Committee will meet to discuss possible regulation changes. This meeting is open to the public. No public comment will be taken.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9906.

BOARD OF EDUCATION

November 24, 1992 - 8 a.m. – Open Meeting
James Monroe Building, Conference Rooms D and E, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request. Public comment will not be received at the meeting.

Contact: Dr. Margaret Roberts, Executive Director, Board of Education, P.O. Box 2120, Richmond, VA 23216, telephone (804) 225-2540.

STATE BOARD OF ELECTIONS

† **November 23, 1992 - 10 a.m.** – Open Meeting
House Room 1, State Capitol, Richmond, Virginia. ♿

A meeting to ascertain and certify the results of the November 3, 1992, General and Special Elections.

Contact: Margaret O. "Jane" Jones, Executive Secretary Senior, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 786-6551, or toll free 800-552-9745/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

November 5, 1992 - 5:30 p.m. – Open Meeting
December 3, 1992 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10,001 Ironbridge Road, Room 502, Chesterfield, Virginia. ♿

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236

LOCAL EMERGENCY PLANNING COMMITTEE - HANOVER COUNTY

† **December 8, 1992 - 9 a.m.** – Open Meeting
Hanover Fire Company 5, Route 1004 at Route 301 North, Hanover, Virginia. ♿

A meeting to conduct the following business:

1. LEPC update.
2. Report from Chairman.
3. Report on Superfund sites - Route 735 & Route 629.
4. Preplanning for Hazardous Material - Full Exercise for 1993.
5. Old business/new business.
6. 15-minute discussion period.

Contact: John F. Trivellin, Hazardous Materials Coordinator, P.O. Box 470, Hanover County, VA 23069, telephone (804) 798-8554 or (804) 730-6195.

BOARD OF GAME AND INLAND FISHERIES

† **November 5, 1992 - 9 a.m.** – Open Meeting
4010 West Broad Street, Richmond, Virginia.

The board will meet to review the agency's strategic plan, discuss the agency's mission statement, discuss the "vision document" and the agency's finances. In addition, general and administrative matters will be discussed, and the board will go into Executive Session to review land, legal and personnel matter.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

BOARD FOR GEOLOGY

† **December 18, 1992 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. 🖻

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, (804) 367-9753/TDD ☎

DEPARTMENT OF HEALTH (STATE BOARD OF)

November 9, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to adopt regulations entitled: **VR 355-18-014. Waterworks Operation Fee.** The purpose of this proposed regulation is to assess an annual operations fee (not to exceed $160,000) on the owners of waterworks. The amount of the fee is based on the number of persons served, number of connections, or the classification of the waterworks. The revenue generated by this regulation will supplement funding to implement the 1986 amendments to the federal Safe Drinking Water Act (SDWA) and will be deposited into the Waterworks Technical Assistance Fund established in the state treasury by § 32.1-17.1 B.

Statutory Authority: §§ 32.1-70 and 32.1-71.1 of the Code of Virginia.

Contact: Thomas B. Gray, P.E., Special Projects Manager, Division of Water Supply Engineering, 1500 E. Main St., Suite 109, Richmond, VA 23219, telephone (804) 786-5566.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

November 24, 1992 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Virginia Room, Richmond, Virginia.

A monthly meeting of the Virginia Health Services Cost Review Council followed by a public hearing to receive comments regarding HJR 237, which requires the council to study health care institutions' diversification into the commercial sector and its impact on small businesses and health care costs.

Contact: Marcia Melton, Executive Secretary, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-3671.

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November 20, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to **repeal** regulations entitled **VR 370-01-000, Public Participation Guidelines** and **adopt** regulations entitled: **VR 370-01-000:1. Public Participation Guidelines.** This action repeals existing regulations and enacts new Public Participation Guidelines for soliciting the input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14.7:1 and 9-164 (2) of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., Sixth Floor, Richmond, VA 23219, telephone (804) 786-6371.

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November 21, 1992 – Written comments may be submitted through this date.

November 24, 1992 - 1 p.m. – Public Hearing
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. The Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to clarify the definition of "charity care" as utilized in the analysis of the various filings submitted by health care institutions.

Statutory Authority: §§ 9-158 (A) and 9-164 (2) of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

November 3, 1992 - 9 a.m. – Open Meeting
December 1, 1992 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. 🖻 (Interpreter for deaf provided upon request)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

† **November 10, 1992 - 1 p.m.** – Public Hearing
The Jackson Center, 501 North Second Street, Richmond, Virginia.

The department is holding a public hearing to receive comments on the proposed Comprehensive Housing Affordability Strategy (CHAS) FY'92 Performance Report and proposed FY'93 Annual Plan, which is a statewide housing plan mandated by the National Affordable Housing Act of 1990. The proposed CHAS identifies the priorities, strategies, and resources for developing affordable housing and will serve as a guide for the expenditure of all federal and state housing assistance. Copies of the proposed CHAS Performance Report and the proposed CHAS Annual Plan will be available November 2, 1992. Copies may be obtained by calling or writing Ms. Daphne Howard, Department of Housing and Community Development, Division of Housing, The Jackson Center, 501 N. Second Street, Richmond, Virginia 23219, (804) 371-7100.

Contact: Kitty Cole, Program Manager, Department of Housing and Community Development, The Jackson Center, 501 N. Second St., Richmond, VA 23219, telephone (804) 371-7141 or (804) 371-7089/TDD

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **November 17, 1992 - 11 a.m.** – Open Meeting
601 South Belvidere Street, Richmond, Virginia.

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regulatr meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

COUNCIL ON INFORMATION MANAGEMENT

November 9, 1992 - 9 a.m. – Open Meeting
1100 Bank Street, 9th Floor Conference Room, Richmond, Virginia.

A regular business meeting.

Contact: Linda W. Hening, Administrative Staff Specialist, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

† **November 9, 1992 - 1 p.m.** – Open Meeting
The Homestead, Hot Springs, Virginia

The regular meeting of the Advisory Commission on Intergovernmental Relations will be held in conjunction with the annual conference of the Virginia Association of Counties. Persons desiring to participate in the Commission's meeting and requiring special accommodations or interpreter services should contact the Commission's offices by November 5, 1992.

Contact: Robert H. Kirby, Secretary, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **November 18, 1992 - 10 a.m.** – Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

A regular meeting of the Council to discuss and/or act on:

1. Ratio on Davis Bacon work for construction.
2. Status of Dorey Electric Co. Apprenticeship Program.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Department of Labor and Industry, 13 South 13th St., Richmond, VA 23219, telephone (804) 786-2381.

Migrant and Seasonal Farmworkers Board

† **November 18, 1992 - 10 a.m.** – Open Meeting
State Capitol Building, House Room 2, Richmond, Virginia 23219.

A biennial meeting of the Board.

Contact: Marilyn Mandel, Director, Office of Planning and

Policy Analysis, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th St., Richmond, VA 23219, telephone (804) 786-2385.

LIBRARY BOARD

NOTICE: CHANGE IN MEETING DATE AND TIME
November 12, 1992 - 9 a.m. – Open Meeting
The Virginia State Library and Archives, 3rd Floor, Supreme Court Room, 11th Street at Capitol Square, Richmond, Virginia. ♿

A meeting to discuss administrative matters of the Virginia State Library Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

COMMISSION ON LOCAL GOVERNMENT

† **November 11, 1992 - 9 a.m.** – Open Meeting
† **November 11, 1992 - 7 p.m.** – Public Hearing
† **November 12, 1992 - 10 a.m. (if needed)** – Open Meeting
Circuit Courtroom, Radford Municipal Building, 619 Second Street, Radford, Virginia.

Oral presentations regarding the City of Radford and Montgomery County's economic growth sharing agreement. Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter service should contact the Commission's office by November 2, 1992.

† **November 12, 1992 - 9:00 a.m.** – Open Meeting
In Radford area; site to be determined.

A regular meeting of the Commission on Local Government to consider such matters as may be presented. Persons desiring to participate in the Commission's meeting and requiring special accommodations or interpreter service should contact the Commission's office by November 2, 1992.

Contact: Barbara W. Bingham, Administrative Assistant, 702 8th Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

STATE LOTTERY BOARD

November 23, 1992 - 10 a.m. – Open Meeting
2201 West Broad Street, Richmond, Virginia. ♿

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

November 20, 1992 – Written comments may be submitted through 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt and amend regulations entitled: **VR 460-01-29.4, 460-01-70, 460-02-2.2100, 460-02-2.6100, 460-02-4.2230, 460-04-4.2230. Health Insurance Premium Payment Program (HIPP).** The purpose of this proposal is to implement the mandates of § 1906 of the Social Security Act to provide for (i) the identification of cases in which the enrollment of Medicaid recipients in group health plans is likely to be cost effective; (ii) the requirement that recipients in such cases enroll in the available group health plan as a condition of continued eligibility for Medicaid; (iii) the provision for payment of premiums and other cost-sharing obligations for items and services otherwise covered by Medicaid; and (iv) the treatment of the group health plan as a third party liability resource resulting, thereby, in such plans becoming primary sources of health care payments for the affected Medicaid recipients.

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

Written comments may be submitted through November 20, 1992 at 4:30 p.m. to: C. Mack Brankley, Director, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-01-74 and 460-04-4.2600. Drug Utilization Review Program Regulations.** The purpose of this proposal is to promulgate permanent regulations consistent with the mandates of OBRA 90 § 4401 and with applicable state laws. The sections of the State Plan for Medical Assistance affected by this action are section 4 to which is added new preprinted

pages 74 through 74b and new state regulations VR 460-04-4.2600.

The law, as enacted in OBRA 90, requires the states' DUR programs to focus on individuals receiving outpatient drugs who do not reside in a nursing home. Currently, the Commonwealth does not have a DUR program applicable to individuals receiving outpatient drugs.

Congressional support for DUR stems from a longstanding belief that quality health care is more cost-effective than poor quality care. Numerous studies have shown that physicians may not always have the requisite pharmaceutical knowledge and training to prescribe only appropriate medication. In some studies, federal investigators found widespread patient misuse of prescription drugs including overuse, underuse, and lack of compliance with longstanding guidelines for appropriate drug use. The capacity of pharmaceuticals to cause harm has been recognized since the beginning of medicine. Today, drug induced illnesses have become a major health problem and often, inappropriate outpatient drug usage leads to the subsequent need for remedial health care services.

OBRA 90 § 4401 placed four key DUR requirements on DMAS: (i) implementation of a retrospective DUR; (ii) provision for prospective DUR before the dispensing of prescriptions; (iii) establishment of a DUR board; and (v) development of physician and pharmacist educational interventions and programs.

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

Written comments may be submitted through December 18, 1992, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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† **January 2, 1993** – Written comments may be submitted through 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-04-8.14. Managed Care: "Medallion" Regulations.** The purpose of this proposal is to promulgate permanent regulations to supersede the current emergency regulation containing substantially the same policies.

House Bill 30, passed by the 1990 session of the General Assembly, directed the Department of Medical Assistance Services (DMAS) to develop a plan to test the feasibility of establishing a statewide managed care system for Medicaid patients. The plan was developed and submitted to the Committee of Health Care for All Virginians (SJR 118) on October 1, 1990. The committee examined the plan based on three criteria: (i) the feasibility of expanding the system, (ii) alternatives for the design and staffing of such a system, (iii) costs and benefits associated with the preferred options. DMAS subsequently was instructed to proceed with its coordinated care program, named "MEDALLION."

The Commonwealth has requested and received approval from the Health Care Financing Administration (HCFA) for a waiver under § 1915(b) of the Social Security Act. DMAS will provide coordinated care services to those selected Medicaid recipients of the Commonwealth.

The services provided by this waiver would establish and support Primary Care Providers (PCP) who would become recipient care managers responsible for coordination of "MEDALLION" recipients' overall health care. The PCP will assist the client in gaining access to the health care system and will monitor on an ongoing basis the client's condition, health care needs, and service delivery to include referrals to specialty care. This form of health care delivery is expected to foster a more productive physician/patient relationship, reduce inappropriate use of medical services, and increase client knowledge and use of preventive care.

STATEMENT

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budge's and Governor's reviews. Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

DMAS received approval from the federal funding agency, the Health Care Financing Administration, under § 1915(b) of the Social Security Act on December 27, 1991, to operate "MEDALLION" on a pilot basis. Section 1915(b) requires that a waiver be sought for any Medicaid covered service which is not offered statewide.

DMAS is the single state agency responsible for supervision of the administration of these waiver services. DMAS will contract with those providers of services which meet all licensing and certification criteria required in

these regulations and which are willing to adhere to DMAS policies and procedures.

Impact: The fiscal impact of "MEDALLION" is estimated to create a cost savings of approximately $1,356,404 ($678,203 GF) over a two-year period, beginning with the effective date of March 1, 1992. Estimated FY 92 savings are projected to be $248,583 ($124,292 GF). FY 93 savings are projected to be $678,202 ($339,101 GF) and for the first half of FY 94 savings of $429,619 ($214,810 GF). These savings were taken into account in the development of the Department's budget.

Several other states' primary care case management models in the Medicaid environments have achieved substantial reductions in inappropriate service utilization patterns. This has occurred most notably in reductions of nonemergency use of emergency rooms. It is anticipated that "MEDALLION" will achieve similar results.

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

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Drug Utilization Review Board

November 5, 1992 - 3 p.m. – Open Meeting
600 East Broad Street, Suite 1300, Richmond, Virginia.

A regular meeting of the DMAS DUR Board. Routine business will be conducted.

Contact: Carol D. Pugh, Pharm. D., Drug Utilization Review Program Consultant, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

BOARD OF MEDICINE

Informal Conference Committee

† **November 12, 1992 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Fourth Floor, Richmond, Virginia 23230-1717.

The committee will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Note: There will be two informal conferences going on at the same time in two different conference rooms.

Contact: Karen W. Perrine, Deputy Executive Director, 1601 Rolling Hill Dr., Richmond, VA 23229, telephone (804) 662-9908.

Joint Advisory Committees on Acupuncture

December 3, 1992 - 2 p.m. – Open Meeting
6606 West Broad Street, Fourth Floor, Board Room 2, Richmond, Virginia.

The committees will meet to review the final draft of proposed Regulations for Licensure of Acupuncturists and make recommendations to the Board of Medicine. The presiding chairman may entertain public comments on specific items as they relate to the proposed regulations. This is not a public hearing.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Executive Committee

† **December 11, 1992 - 9 a.m.** – Open Meeting
Board Room 1, 6606 West Broad Street, Richmond, Virginia.

The Executive Committee will meet in open and closed sessions to review cases for closing, cases or files requiring administrative action, review and approve proposed regulations for the practice of acupuncturists, and consider any other items which may come before the Committee. The Executive Committee may receive public comments on specific items at the pleasure of the Chairman.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Credentials Committee

† **December 12, 1992 - 8 a.m.** – Open Meeting
Board Room 1, 6606 West Broad Street, Richmond, Virginia.

The Credentials Committee will meet in open and closed sessions to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and discuss any other items which may come before the committee. The Credentials Committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Advisory Board on Physical Therapy

NOTE: CHANGE IN MEETING DATE

November 20, 1992 - 9 a.m – Open Meeting
Brookfield Centre, 6606 West Broad Street, Richmond, Virginia.

A meeting to (i) review the regulations, (ii) elect officers, (iii) review the licensure examinations, and (iv) receive other reports relating to the practice of physical therapy.
The Chairperson may entertain public comments at her pleasure.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

Advisory Committee on Physician's Assistants

November 6, 1992 - 10 a.m. – Open Meeting
Brookfield Centre, 6606 West Broad Street, Richmond, Virginia.

A meeting to review the regulations and adopt new regulations for prescriptive authority to prescribe certain Schedule VI controlled substances and devices. The Chairman may entertain public comments at his pleasure.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (BOARD OF)

State Human Rights Committee

November 6, 1992 - 9 a.m. – Open Meeting
Madison Building, 109 Governor Street, 13th Floor Conference Room 109 Governor Street, Richmond, Virginia. ♿

A regular meeting of the committee to discuss business relating to human rights issues. Agenda items are listed for the meeting.

Contact: Elsie D. Little, State Human Rights Director, Office of Human Rights, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

Virginia Council on Teen Pregnancy Prevention

November 5, 1992 - 10 a.m. – Open Meeting
Blair Building, Conference Room A and B, 8007 Discovery Drive, Richmond, Virginia.

A regularly scheduled business meeting.

Contact: Harriet Russell, Director, Office of Prevention, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530 or (804) 371-8977/TDD ☎ .

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

November 5, 1992- 7 p.m. – Open Meeting
502 South Main Street No. 4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before it for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 502 S. Main St., No. 4, Culpeper, VA 22701, telephone (703) 825-4562.

DEPARTMENT OF MOTOR VEHICLES

November 20, 1992 – Written comments may be sumbitted through 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to adopt regulations entitled: **VR 485-60-9202. Salvage Act Regulations.** The proposed regulation is to be used in the administration of the 1992 Salvage Act. The regulation will (i) provide additional definitions; (ii) allow exemptions from certain provisions of the Act under certain circumstances; (iii) furnish additional processing guidelines for individual entities; and (iv) further define departmental examination requirements.

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

Contact: L. Steve Stupasky, Project Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1939.

BOARD OF NURSING

† **November 16, 1992 - 9 a.m.** – Open Meeting
† **November 17, 1992 - 9 a.m.** – Open Meeting
† **November 18, 1992 - 9 a.m.** – Open Meeting
Department of Health Professions, Conference Room 1, 6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Regular meeting of the Virginia Board of Nursing to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and endorsement and other matters under the jurisdiction of the Board. Public comment will be

received during an open forum session beginning at 11 a.m. on Monday, November 16, 1992.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or (804 662-7197/TDD ☎

BOARDS OF NURSING AND MEDICINE

† **November 30, 1992 - 1 p.m.** – Open Meeting
Department of Health Professions, Conference Room 1, 6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request.

A formal hearing with licensee. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

† **November 4, 1992 - 10 a.m.** – Open Meeting
Brookfield Center Office Park, 6606 West Broad Street, Richmond, Virginia. ♿

A regular meeting of the board.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9111.

BOARD OF OPTOMETRY

† **November 9, 1992 - 9 a.m.** – Open Meeting
Department of Health Professions, Conference Room 1, 6606 West Broad Street, Richmond, Virginia 23230.

A meeting to conduct general business and regulatory review.

Contact: Carol Stamey, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9910.

VIRGINIA OUTDOORS FOUNDATION

† **November 16, 1992 - 10:30 a.m.** – Open Meeting
State Capitol, House Room 1, Richmond, Virginia. ♿

A general business meeting.

Contact: Tyson B. Van Auken, Executive Director, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-5539.

DEPARTMENT OF STATE POLICE

December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-00-01. Public Participation Policy.** This regulation sets forth the policy of the Department of State Police to seek public participation when proposing regulations or substantive changes to present regulations.

Statutory Authority: §§ 9-6.14:7.1, 46.2-1165, 52-8.4, and 54.1-4009 of the Code of Virginia.

Contact: Captain J. P. Henries, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

December 4, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Professional Soil Scientists intends to amend regulations entitled: **VR 627-02-01. Board for Professional Soil Scientists.** The purpose of the proposed amendments is to adjust fees, insert waiver language, and clarify core course requirements.

Statutory Authority: § 54.1-201 and Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone

† **December 14, 1992 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia 23230. ♿

A general meeting of the board.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎ (804) 367-8595.

REAL ESTATE APPRAISER BOARD

December 15, 1992 - 10 a.m. – Open Meeting
† **January 5, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

November 20, 1992 - 8:30 a.m. – Open Meeting
December 18, 1992 - 8:30 a.m. – Open Meeting
Tyler Building, Suite 208, Office of Coordinator, Interdepartmental Regulation, 1603 Santa Rosa Road, Richmond, Virginia.

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

DEPARTMENT OF TAXATION

December 1, 1992 - 10 a.m. – Public Hearing
State Capitol, House Room 4, Capitol Square, Richmond, Virginia.

December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-442. Consolidated and Combined Returns.** The purpose of the proposed regulation is to provide guidance to filers of consolidated and combined Virginia tax returns in computing the Virginia modification to the federal N.O.L. and other areas.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

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December 1, 1992 - 10 a.m. – Public Hearing
State Capitol, House Room 4, Capitol Square, Richmond, Virginia.

December 18, 1992 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-446. Intragroup Transactions and VR 630-3-446. Corporation Income Tax: Foreign Sales Corporations.** The purpose of this amendment is to clarify and provide guidance for the Virginia tax treatment of transactions between members of a corporate group.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Alvin H. Carpenter, III, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

COMMONWEALTH TRANSPORTATION BOARD

† **November 18, 1992 - 2 p.m.** – Open Meeting
Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Work session of the Commonwealth Transportation Board and the Department of Transportation staff.

† **November 19, 1992 - 10 a.m.** – Open Meeting
Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia 23219. (Interpreter for the deaf provided upon request).

A monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring Board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The Board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-6670.

VIRGINIA VETERANS CARE CENTER

Board of Trustees

† **November 10, 1992 - 1 p.m.** – Open Meeting
Disabled American Veterans, 2383 Roanoke Boulevard, Salem, Virginia.

Quarterly meeting of the Board of Trustees to review and adopt policies for Center operations.

Contact: John T. Plichta, Executive Director, P.O. Box 6334, Roanoke, VA 24017-0334, telephone (703) 857-6974.

BOARD OF VETERINARY MEDICINE

November 2, 1992 - 9:30 a.m. – Open Meeting
Holiday Inn - Oceanfront, 39th and Oceanfront, The Croatan Room, Virginia Beach, Virginia. ♿ (Interpreter for deaf provided upon request)

A formal hearing and informal conference.

Contact: Terri H. Behr, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9915.

GOVERNOR'S COMMISSION ON VIOLENT CRIME

† **November 10, 1992 - 9:30 a.m.** – Open Meeting
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Each subcommittee will present its interim reports and legislative packages to members for discussion.

Contact: Kris Ragan, Special Assistant, 701 E. Franklin St., 9th Floor, Richmond, VA 23219, telephone (804) 371-0530.

VIRGINIA RACING COMMISSION

NOTE: CHANGE IN MEETING DATE
† **November 12, 1992 - 9:30 a.m.** – Open Meeting
Suite 301, Main Street Station Office Building, 1500 East Main Street, Richmond, Virginia. ♿

A regular commission meeting including discussion of the Virginia Breeders Fund Regulation and Satellite Wagering. Note that the meeting originally scheduled for November 18 has been cancelled.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA RESOURCES AUTHORITY

November 10, 1992 - 9 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 707, Conference Room A, Richmond, Virginia.

The board will meet to approve minutes of the meeting of October 13, 1992, to review the authority's operations for the prior months, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Mr. Shockley D. Gardner, Jr., 909 E. Main St., Suite 707, Mutual Bldg., Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

November 11, 1992 - 8:30 a.m. – Open Meeting
November 12, 1992 - 8:30 a.m. – Open Meeting
Sheraton Inn Fredericksburg, I-95 and Rt. 3 (Exit 130B).

Wednesday, Nov. 11
8:30 a.m. Orientation meeting for on-site visits
9:30 a.m. On-site visits to vocational education and occupational-technical education sites in the area
2:30 p.m. General session
3:30 p.m. Committee meetings

Thursday, Nov. 12
8:30 a.m. Business session
Noon - Adjournment

Contact: Jerry M. Hicks, Executive Director, Virginia Council on Vocational Education, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

VIRGINIA VOLUNTARY FORMULARY BOARD

December 3, 1992 - 10 a.m. – Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

The purpose of this hearing is to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Formulary add and delete drugs and drug products to the Formulary that became effective on February 1, 1992, and the most rcent supplement to that Formulary. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on December 3, 1992, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

January 14, 1993 - 10:30 a.m. – Open Meeting
1100 Bank Street, Washington Building, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining the the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B 1-9,

Richmond, VA 23219, telephone (804) 786-4326.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

November 5, 1992 - 7 p.m. – Public Hearing
Human Resource Building, County Court House, Board Room, Lunenburg, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (SWMR), permitting of solid waste management facilities, the Department of Waste Management will hold a public hearing on the proposed draft permit for a sanitary landfill to be located on State Route 659 approximately one mile west of State Route 635. The permit was drafted by the Department of Waste Management for Lunenburg County, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments concerning the technical merits of the permit as they pertain to the landfill design, operation and closure. The public comment period will extend until November 16, 1992. Comments concerning the draft permit and copies of the draft permit may be obtained by writing to the contact person.

Contact: Aziz Farahmand, Environmental Engineer Consultant, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

November 12, 1992 - 7 p.m. – Public Hearing
Grissom Library, 366 Deshazo Drive, Newport News, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), permitting of solid waste management facilities, the Department of Waste Management will hold a public hearing on the draft permit amendment for sanitary Landfill No. 2 located on Warwick Boulevard, approximately one mile north of Denbeigh Boulevard. The permit amendment was drafted by the Department of Waste Management for the City of Newport News, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the amended issues. The public comment period will extend until November 23, 1992. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor Monroe Bldg., 101 N. 14th St., Richmond, VA 23219. Copies of the proposed draft permit may be obtained from the contact person listed below.

Contact: Paul Farrell, Environmental Engineer Sr., Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th. St., Richmond, VA 23219, telephone (804) 371-0521.

† **November 17, 1992 - 9 a.m.** – Open Meeting
Holiday Inn Express, 940 East Main Street, Abingdon, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Virginia Waste Management Board will tour the Pittson Coal Mine, McClure, Virginia, at 10 a.m., and the Clinch River Power Plant, Carbo, Virginia, at 2 p.m. This is a tour only. No decisions will be made and no business will be discussed.

Contact: Loraine Williams, Executive Secretary, 101 N. 14th St., Monroe Building, 11th Floor, Richmond, VA 23219, telephone (804) 225-2998 or (804) 371-8737/TDD#1211 ⅓

† **November 18, 1992 - 9 a.m.** – Open Meeting
Washington County Administration Building, 205 Academy Drive, Abingdon, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting. Staff will seek adoption of Amendment 12 of the Hazardous Waste Management Regulation (VR 672-10-1). Staff will seek adoption of Public Participation Guidelines Regulation (VR 672-01-1).

Contact: Loraine Williams, Executive Secretary, 101 N. 14th St., Monroe Building, 11th Floor, Richmond, VA 23219, telephone (804) 225-2998 or (804) 371-8737/TDD#1211 ⅓

November 19, 1992 - 7 p.m. – Public Hearing
War Memorial Building, Lord Fairfax Room, 101 East Cork Street, Winchester, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit amendment for an Industrial Landfill located on Abex Corporation property at approximately 3,000 feet west of interstate 81 in Winchester. The permit amendment was drafted by the department for Abex Corporation, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the draft permit. The public comment period will extend until November 30, 1992. Copies of the proposed draft permit may be obtained from Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand.

Contact: Aziz Farahmand, Environmental Engineer Consultant, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

November 23, 1992 - 7 p.m. – Public Hearing
Department of Public Utility, Operation Conference Room, 10401 Woodman Road, Glen Allen, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit for expansion of Springfield Road Sanitary Landfill located on the north western portion of Henrico County. The permit was drafted by the department for Henrico County, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the permit. The public comment period will extend until 5 p.m., December 3, 1992. Copies of the proposed draft permit may be obtained from Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand.

Contact: Aziz Farahmand, Environmental Engineer Consultant, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

November 24, 1992 - 7 p.m. – Public Hearing
General District Court Room, County Court House, Spotsylvania, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit for expansion of Sanitary Landfill located on State Route 602 east of State Route 208 approximately three miles southeast of Brokenburg. The permit was drafted by the department for Spotsylvania County, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding technical merits of the draft permit. The public comment period will extend until December 4, 1992. Copies of the proposed draft permit may be obtained from Brian McReynolds, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: Brian McReynolds, Environmental Engineer Senior, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515

December 1, 1992 - 7 p.m. – Public Hearing
City of Roanoke, Council Chambers, 215 Church Avenue, S.W., Roanoke, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the department will hold a public hearing on the draft permit for a solid waste transfer station located on Hollins Road, south of Orange Avenue and within the corporate limits of the City of Roanoke, Virginia. The permit was drafted by the department for Roanoke Valley Resources Authority, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding technical merits of the draft permit. The public comment period will extend until December 11, 1992. Copies of the proposed draft permit may be obtained from Paul Farrell, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: Paul Farrell, Environmental Engineer Senior, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515

† **December 3, 1992 - 7 p.m.** – Public Hearing
Pulaski County Administration Building, Pulaski County, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the draft permit for a sanitary landfill to be located north of Route 627 in Pulaski County. The permit was drafted by the Department of Waste Management for New River Resource Authority, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the draft permit. The public comment period will extend until December 14, 1992. Copies of the proposed draft permit may be obtained from Aziz Farahmand, Department of Waste Management. Comments concerning the draft permit must be in writing and directed to Aziz Farahmand, Department of Waste Management.

Contact: Aziz Farahmand, Environmental Engineer Consultant, 11th Floor, Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0515.

† **December 9, 1992 - 7 p.m.** – Public Hearing
Giles County Administration Building, 120 North Main Street, Pearisburg, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the proposed draft permit for an industrial landfill to be located on State Route 460 adjacent to the New River on Hoechst Celanese property in the

township of Narrows. The permit was drafted by the Department of Waste Management for Hoechst Celanese, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments concerning the technical merits of the permit as they pertain to the landfill design, operation and closure. The public comment period will extend until December 21, 1992. Comments concerning the draft permit must be in writing and addressed to Brian McReynolds. Copies of the draft permit may also be obtained by writing Brian McReynolds, Department of Waste Management.

Contact: Brian McReynolds, Environmental Engineer Senior, Virginia Department of Waste Management, 11th Floor, Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-2520.

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December 21, 1992 - 11 a.m. – Public Hearing
Department of Waste Management, 101 North 14th Street, 11th Floor, Monroe Building, Richmond, Virginia.

December 21, 1992 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials (Amendment 11).** The purpose of this proposed amendment is to incorporate by reference changes that were made by U.S. DOT Title 49, Code of Federal Regulations from July 1, 1992, to June 1, 1992.

Statutory Authority: §§ 10.1-1402 and 10.1-1450 of the Code of Virginia.

Written comments may be submitted until 5 p.m., December 21, 1992, to John E. Fly, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

Contact: C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4761.

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December 21, 1992 - 10 a.m. – Open Meeting
Virginia Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia.

An informational meeting will be held for Amendment 11 to the Virginia Regulations Governing the Transportation of Hazardous Materials. The proposed amendment will incorporate by reference changes that were made by U.S. DOT to Title 49, Code of Federal Regulations from July 1, 1991, to July 1, 1992.

Contact: C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4761 or (804) 371-8737/TDD

STATE WATER CONTROL BOARD

November 4, 1992 - 10 a.m. – Open Meeting
Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

November 6, 1992 - 9 a.m. – Open Meeting
University of Virginia, Southwest Center, Classroom 1, Highway 19 N., Abingdon, Virginia.

A meeting to receive views and comments and answer questions of the public regarding VR 680-21-00 Water Quality Standards.

Contact: Elleanore Daub, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 527-5091.

† **November 16, 1992 - 7 p.m.** – Public Hearing
King George High School, 9 West Dahlgren Road, King George, Virginia 22485.

The State Water Control Board will hold a public hearing to receive comments regarding the proposed issuance or denial of the proposed Virginia Water Protection Permit. This informal fact-finding proceeding is being held pursuant to § 9-6.14:11 of the Code of Virginia, Part III of the Virginia Water Protection Permit Regulation and the Board's Procedural Rule No. 1.

Contact: Lori Freeman Jackson, Hearings Reporter, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5163.

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December 9, 1992 - 7 p.m. – Public Hearing
University of Virginia Southwest Center, Highway 19 North, Abingdon, Virginia.

December 10, 1992 - 11 a.m. – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

December 10, 1992 - 7 p.m. – Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

December 14, 1992 - 7 p.m. – Public Hearing

Prince William County Complex, Board Room, McCourt Building, 4850 Davis Ford Road, Prince William, Virginia.

December 16, 1992 - 2 p.m. – Public Hearing
State Water Control Board, Innsbrook Corporate Center, Board Room, 4900 Cox Road, Glen Allen, Virginia.

December 17, 1992 - 1 p.m. – Public Hearing
Virginia Beach City Council Chambers, City Hall, Courthouse Drive, Virginia Beach, Virginia.

December 30, 1992 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-01-01. Fees for Permits and Certificates.** The purpose of the proposed regulation is to establish a fee assessment and collection system to recover a portion of costs associated with the processing of an application to issue, reissue, or modify any permit or certificate which the board has the authority to issue.

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

Written comments may be submitted until 4 p.m. on Monday, December 30, 1992, to Ms. Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Pat Woodson, Policy Analyst, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5166.

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

† **November 12, 1992 - 3 p.m.** – Open Meeting
† **November 13, 1992 - 7:30 p.m.** – Open Meeting
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia. ♿

A regularly scheduled meeting of the Board of Visitors of the College of William and Mary to receive reports from several committes of the Board, and to act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College. An informal release will be available four days prior to the Board meeting for those individuals and/or organizations who request it.

† **December 4, 1992 - 9 a.m.** – Open Meeting
Richard Bland College, 11301 Johnson Road, Petersburg, Virginia.

A regularly scheduled meeting of the Board of Visitors of the College of William and Mary to act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College. An informational release will be available four (4) days prior to the board meeting for those individuals and/or organizations who request it.

Contact: William N. Walker, Director, Office of University Relations, James Blair Hall, Room 101C, College of William and Mary, Williamsburg, VA 23185, telephone (804) 221-1005.

VIRGINIA DEPARTMENT OF
YOUTH & FAMILY SERVICES
Youth Begins With You.

DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

† **November 12, 1992 - 9 a.m.** – Open Meeting
Sheraton Inn, Route 29, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **December 3, 1992 - 9 a.m.** – Open Meeting
Koger Center, Nelson Building, Suite 211, 1503 Santa Rosa Road, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **December 10, 1992 - 9 a.m.** – Open Meeting
Koger Center, Culpeper Building, Suitee 135, 1606 Santa Rosa Road, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request.

A general business meeting to effect the Comprehensive Services Act for At-Risk Youth and Families. Please confirm meeting details before planning to attend.

Contact: Dian McConnell, Director, Council on Community Services for Youth & Families, 700 Centre, 4th Floor, Richmond, VA 23219, telephone (804) 371-0771.

LEGISLATIVE

JOINT SUBCOMMITTEE STUDYING ACQUIRED IMMUNODEFICIENCY SYNDROME - AIDS

† **November 6, 1992 - 10 a.m. – Open Meeting**

† **November 6, 1992 - 1:30 p.m.** – Public Hearing
Eastern Virginia Medical School of the Medical College of Hampton Roads, Norfolk, Virginia.

The subcommittee will meet for the purpose of a work session and hear comments and recommendations on AIDS. HJR 247. Persons wishing to speak should contact Barbara Hanback, Committee

Operations, 9th & Broad Streets, Richmond, VA 23219, telephone (804) 786-8681.

Contact: Norma Szakal, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

BLUE RIDGE ECONOMIC DEVELOPMENT COMMISSION

November 10, 1992 - 10 a.m. – Open Meeting
Dabney S. Lancaster Community College, Clifton Forge, Virginia.

Work session. HJR 107.

Contact: Edie T. Conley, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON CAPITAL FINANCING

† **November 6, 1992 - 1 p.m.** – Public Hearing
Longwood College, Wynne Building, Farmville, Virginia.

The commission will receive testimony relating to difficulties that small businesses encounter in obtaining capital financing in rural communties.

† **November 30, 1992 - 1 p.m.** – Open Meeting
General Assembly Building, House Room C, Richmond, Virginia.

The commission will continue to discuss difficulties encountered by small businesses who wish to obtain capital financing.

Contact: Jeffrey F. Sharp, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

† November 18, 1992 - 9:30 a.m. – Open Meeting
General Assembly Building, 6th Floor Conference Room, 910 Capitol Street, Richmond, Virginia.

The Commission will continue with its revision of Title 4.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE NEEDS OF FOREIGN-BORN RESIDENTS IN THE COMMONWEALTH

November 24, 1992 - 10 a.m. – Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

The subcommittee will meet for a work session. HJR 97

Contact: Gayle Nowell, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

HOUSE FINANCE SUBCOMMITTEE NO. 2

† **November 9, 1992 - 1 p.m.** – Open Meeting

House Finance Subcommittee No. 2 (Parker) will meet to review the following issues: taxation of retirement income, possible modification of existing air pollution permit, double taxation of certain electric cooperatives, and carry-over bills.

Contact: John Garka, Manager, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

† **November 16, 1992 - 9:30 a.m.** – Open Meeting
Roslyn Conference Center, Richmond, Virginia. ♿

A meeting to discuss requested changes in the draft "Act."

Contact: Lynn Churchill, Administrative Assistant, General Assembly Building, Room 519B, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-4949.

AD HOC STUDY OF THE COMMERCIAL USE OF SOCIAL SECURITY NUMBERS FOR TRANSACTION IDENTIFICATION

† **November 10, 1992 - 1:30 p.m.** – Open Meeting
State Capitol, House Room 2, Richmond, Virginia.

The subcommittee will meet for the purpose of a business session.

Contact: Oscar Brinson, Staff Attorney, or Mark Pratt, Research Associate, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

STATE WATER COMMISSION

† **November 13, 1992 - 10 a.m.** – Open Meeting
State Capitol, House Room 2, Richmond, Virginia

The subcommittee will meet for the purpose of a business session.

Contact: Martin Farber, Research Associate, or Franklin Munyan, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

November 2
Veterinary Medicine, Board of

November 3
Hopewell Industrial Safety Council

November 4
† Nursing Home Administrators, Board of
Water Control Board, State

November 5
† Audiology and Speech-Language Pathology, Board of
Emergency Planning Committee, Local - Chesterfield County
†Game and Inland Fisheries, Board of
Medical Assistance Services, Department of
- Drug Utilization Review (DUR) Board
Mental Health, Mental Retardation and Substance Abuse Services, Department of (State Board)
- Council on Teen Pregnancy Prevention
Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board

November 6
†Acquired Immunodefiency Syndrome-AIDS, Joint Subcommittee Studying the
† Child Day-Care Council
Medicine, Board of
- Advisory Committee on Physician's Assistant
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee
Water Control Board, State

November 9
†ASAP Policy Board - Valley
† House Finance Subcommittee No. 2
Information Management, Council on
† Intergovernmental Relations, Advisory Commission on
† Optometry, Board of

November 10
Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
Blue Ridge Economic Development Commission
†Commercial Use of Social Security Numbers for Transaction Identification, Ad Hoc Study of the
† Violent Crime, Governor's Commission on
† Veterans Care Center, Virginia
- Board of Trustees
Virginia Resources Authority

November 11
† Local Government, Commission on
Vocational Education, Virginia Council on

November 12
† Child Day-Care Council
† College of William and Mary
-Board of Visitors
† Comprehensive Services Act for At-Risk Youth and Families, State Management Team of
Library Board
† Local Government, Commission on
† Medicine, Board of
† Virginia Racing Commission
Vocational Education, Virginia Council on

November 13, 1992
† Water Commission, State
† College of William and Mary
-Board of Visitors

November 16, 1992
† Air Pollution Control, Department of
† Nursing, Board of
† Population Growth and Development, Commission on
† Virginia Outdoors Foundation

November 17, 1992
† Housing Development Authority, Virginia
† Nursing, Board of
† Waste Management Board, Virginia

November 18
† Commonwealth Transportation Board
† Community Colleges, State Board for
Corrections, Board of
† Labor and Industry, Department of
- Migrant and Seasonal Farmworkers Board
- Virginia Apprenticeship Council
† Nursing, Board of
† Waste Management Board, Virginia

November 19
† Commonwealth Transportation Board
† Community Colleges, State Board for
Corrections, Board of
- Liaison Committee

November 20
Medicine, Board of

- Advisory Board of Physical Therapy
Residential Facilities for Children, Interdepartmental Regulation of
- Coordinating Committee

November 21
Dentistry, Board of

November 23
Cosmetology, Board for
† Elections, State Board of
Lottery Board, State

November 24
Education, Board of
Foreign-born Residents in the Commonwealth, Joint Subcommittee Studying the Needs of
Health Services Cost Review Council, Virginia

November 30
† Capital Financing, Commission on
† Compensation Board
† Nursing and Medicines, Board of

December 1
Aging, Department for the
- Long-Term Care Ombudsman Program Advisory Council
Hopewell Industrial Safety Council

December 3
Chesapeake Bay Local Assistance Board
Emergency Planning Committee, Local - Chesterfield County
Medicine, Board of
- Joint Advisory Committees on Acupuncture
† Youth and Family Services, Department of
- State Management Team of the Comprehensive Services Act for At-Risk Youth and Families

December 4
† College of William and Mary in Virginia
- Board of Visitors

December 8
† Local Emergency Planning Committee, Hanover County

December 10
† Youth and Family Services, Department of
- State Management Team of the Comprehensive Services Act for At-Risk Youth and Families

December 11
† Medicine, Board of
- Executive Committee

December 12
† Medicine, Board of
- Credentials Committee

December 14
† Professional Soil Scientists, Board for

December 15
Real Estate Appraiser Board

December 16
† Corrections, Board of

December 18
† Geology, Board for
Residential Facilities for Children, Interdepartmental Regulation of
- Coordinating Committee

December 21
Waste Management, Department of

December 30
† Compensation Board

January 5, 1993
† Real Estate Appraiser Board

January 14
Voluntary Formulary Board, Virginia

PUBLIC HEARINGS

November 5
Waste Management, Department of

November 6, 1992
† Acquired Immunodefiency Syndrome - AIDS, Joint Subcommittee Studying the
† Capital Financing, Commission on

November 10
† Housing and Community Development, Department of

November 11
† Local Government, Commission on

November 12
Waste Management, Department of (Virginia Waste Management Board)

November 16
† Water Control Board, State

November 18
Corrections, Department of (State Board)

November 19
Waste Management, Department of

November 23

Waste Management, Department of

November 24
Health Services Cost Review Council, Virginia
Waste Management, Department of

December 1
Taxation, Department of
Waste Management, Department of

December 3
Voluntary Formulary Board, Virginia
† Waste Management, Department of

December 4
† Commerce, Department of

December 9
† Waste Management, Department of
Water Control Board, State

December 10
† Commerce, Department of
Water Control Board, State

December 14
Water Control Board, State

December 16
Water Control Board, State

December 17
Water Control Board, State

December 21
Waste Management, Department of