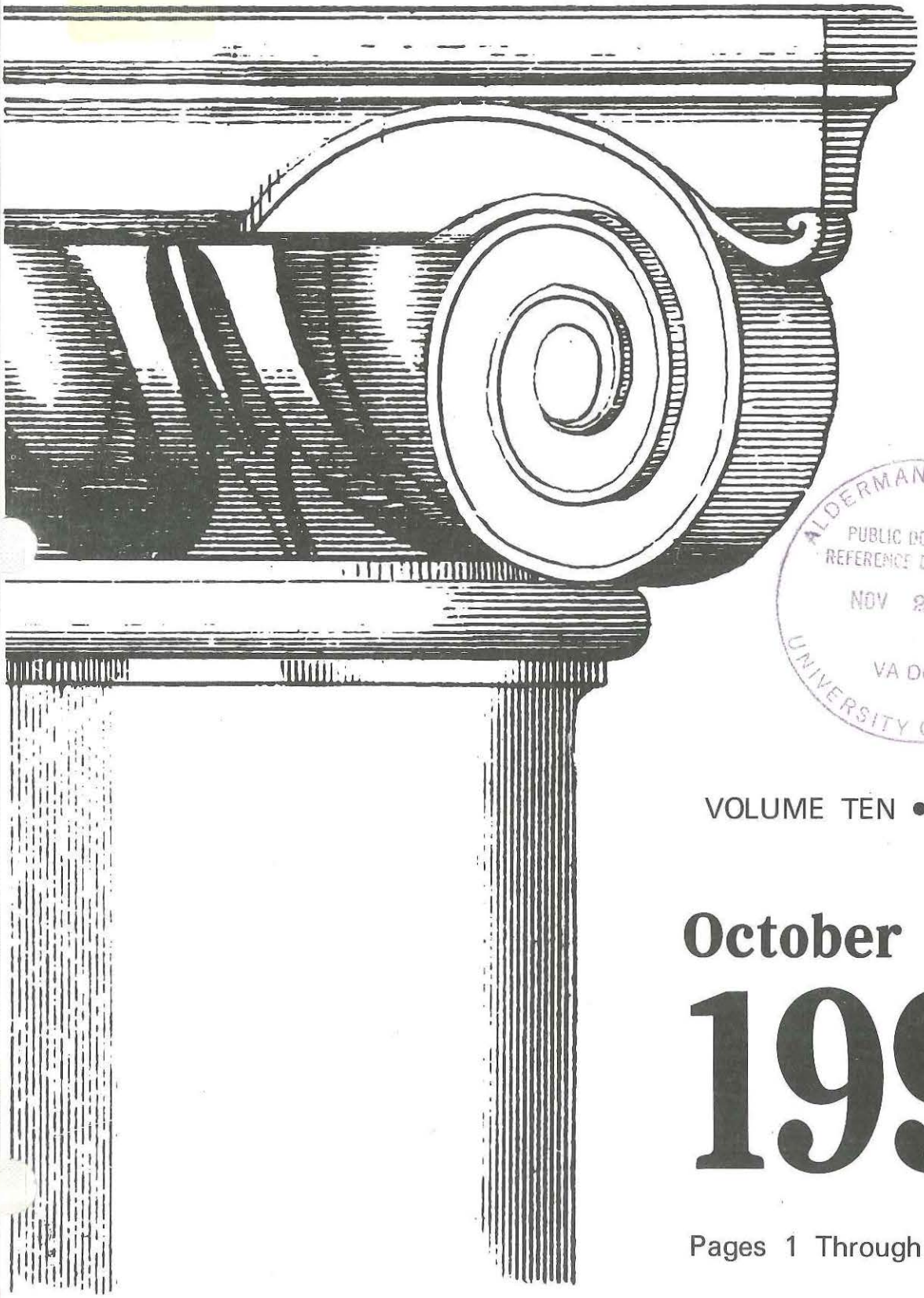
THE VIRGINIA REGISTER

OF REGULATIONS



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Pages 1 Through 214

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.

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VIRGINIA REGISTER OF REGULATIONS

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† Indicates entries since last publication of the Virginia Register

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 promulgating regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Acid Rain Operating Permits–Revision PP).** The purpose of the proposed action is to develop a regulation to meet the operating permit requirements contained in Titles IV and V of the Clean Air Act, as amended in November 1990, for sources of the pollutants that produce acid rain.

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 December 1, 1993, 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 22, 1993, and provide your name, address, telephone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you are selected to be on the group, you are encouraged to attend the public meeting 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.

Public Hearing Plans: The department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: Title IV of the Clean Air Act (the Act) as amended November 1990 requires the U.S. Environmental Protection Agency (EPA) to establish a program to reduce nationwide emissions of the primary causes of acid rain, sulfur dioxide (SO2) and nitrogen oxides (NOx). The burning of fossil fuels, particularly coal and oil, releases emissions of these chemicals into the atmosphere. Various chemical reactions may then take place, resulting in sulfate, nitrate, sulfuric acid and nitric acid emissions. These newly transformed compounds will then be deposited near the facilities which emitted them or be transported hundreds of miles. They can be deposited in either a dry form (as a gas, aerosol, or particle) or a wet form (in rain, fog or snow). This acidic deposition results in acidification of streams and lakes which then cannot support fish life, damage to trees and forest ecosystems in general at higher elevations, decrease in visibility, damage to historic buildings, statues, and sculptures, and acceleration of the decay of building materials and paints. Acidic deposition in the form of acidic aerosols may also pose a threat to human health.

The major contributions of SO2 and NOx in the atmosphere come from emissions of electric utilities. Throughout the nation as of 1985, 70% of SO2 emissions and 37% of NOx emissions came from electric utilities. Reducing the total level of SO2 and NOx emissions below present levels will reverse the effects of acidic deposition previously described, prevent the damage caused by these emissions from increasing, and reduce the costs of the damage in future years.

Title V of the Act provides a mechanism to implement the various requirements under the other titles in the Act, including the acid rain provisions of Title IV, through the issuance of operating permits. Under this title, the 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 department is completing work on the development of a separate operating permit regulation for all sources subject to Title V except those sources emitting pollutants that produce acid rain.

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.

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.

Applicable Federal Requirements: 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. Affected sources as defined under the acid rain provisions of Title IV of the Act are one of the source categories required to be covered under the provisions of any Title V program. The federal regulations carrying out Title V, 40 CFR Part 70, require that the following elements either be included in operating permit programs developed by the states or considered in the development of those programs:

1. Major sources of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter, lead, and hazardous air pollutants must be subject to the regulation. Nonmajor sources that are regulated under Section 111 of the Act, New Source Performance Standards, and Section 112 of the Act, National Emission Standards for Hazardous Air Pollutants, must be subject to the regulation but can be deferred from initial permitting. Sources subject to the requirements of the acid rain program under Title IV of the Act must be covered under the regulation.

2. The applicant must identify all federal and state requirements applicable to the source and describe emissions of all regulated pollutants from emissions units at the source. The department must verify this information and set terms and conditions in the permit concerning the applicable requirements.

3. The applicant must submit a compliance plan, schedule and certification with the application addressing requirements that have been met and those that have not been met.

4. The permitting authority may provide a permit shield for all terms and conditions specified in the permit, including any requirements that are specifically identified as not being applicable.

5. The permitting authority must provide an application shield for sources that submit timely and complete applications.

6. The permitting authority must allow the public and affected states to review the draft permit developed by the permitting authority. The permitting authority may allow public hearings to be held in addition to providing an opportunity for public comment. After review of the comments and the development of a proposed final permit, the proposed permit must be sent to EPA. The permitting authority must allow EPA 45 days to review the permit during which time it can object to the permit.

7. The permitting authority must provide in its regulation several mechanisms to modify the permit.

8. The permitting authority may provide operational flexibility for the source through several mechanisms: (i) writing alternative operating scenarios in the permit, (ii) through various emissions trading options, (iii) through changes to the permit (on-permit change) that do not exceed emissions allowed under the permit and do not violate applicable requirements, and (iv) through changes not addressed by the permit (off-permit change) that do not violate applicable requirements or any permit term or condition.

Section 408 of Title IV covers the permit and compliance plan requirements for affected sources, those stationary sources that have at least one emission unit emitting air pollutants which cause acid rain. Section 408(a) states that the requirements of Title IV are to be implemented by permits issued to affected sources in accordance with Title V, as modified by the requirements of Title IV. Any permit issued to an affected source must prohibit all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that is held for the source. An allowance is the authorization to emit one ton of sulfur dioxide during or after a specified calendar year.

2. Exceedances of applicable emissions rates.

3. The use of any allowance prior to the year for which it was allocated.

4. Contravention of any other provision of the permit.

Permits must be issued for a period of five years. No permit can be issued that is inconsistent with the applicable requirements of Titles IV and V.

Section 408(b) requires that compliance plans be submitted with each permit application. Alternative methods of compliance may be authorized by permitting authorities; however, a comprehensive description of the schedule and means by which the unit will rely on one or more of these alternative methods must be provided by the applicant. Any transfers of allowances recorded by EPA will automatically amend all applicable proposed or approved permit applications, compliance plans and permits. EPA may also require a demonstration of attainment of national ambient air quality standards for a source or, from the owner of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance.

Section 408(d) describes the requirements for Phase II permits, those to be issued by states with EPA-approved Title V programs. The owners of sources subject to Phase II of Title IV must submit their permit applications and compliance plans by January 1, 1996, to the state permitting authority. The states with approved programs must issue the permits no later than December 31, 1997. Permit applications and compliance plans that have been received by January 1, 1996, are binding and are enforceable as a permit for purposes of Titles IV and V until a permit is issued by the permitting authority.

Section 408(e) covers new sources or emissions units, those that commence commercial operation on or after November 15, 1990. New sources must submit a permit application and compliance plan to the permitting authority no later than 24 months before the later of (1) January 1, 2000, or (2) the date on which the source commences operation. The permitting authority must issue a permit to a new source if the requirements of Titles IV and V are satisfied.

Section 408(f) covers stationary sources or emissions units subject to nitrogen oxides requirements. Applications and compliance plans must be submitted to permitting authorities no later than January 1, 1998. The permitting authority must issue a permit to these sources or emissions units if the requirements of Titles IV and V are satisfied.

Section 408(g) allows the applicant to submit a revised application and compliance plan at any time after the initial submission. Section 408(h) states that it is unlawful for an owner or designated representative of the owner to fail to submit applications and compliance plans in the time period required by Title IV or to operate any affected source except in compliance with the terms and conditions of a permit and compliance plan issued by EPA or an approved permitting authority. Section 408(h)(3) prohibits shutdown of an electric utility steam generating unit for failure to have an approved permit or compliance plan. However, the unit may be subject to applicable enforcement provisions under section 113 of the Act.

Section 408(i) requires that no permit can be issued to an affected source until the designated representative has filed a certificate of representation with regard to the requirements of Title IV, including the holding and distribution of allowances. This section also describes the requirements for certification of representation when there are multiple holders of a legal or equitable title to, or leasehold interest in, an affected unit or when a utility or industrial customer purchases power from an affected unit under life-of-the-unit, firm power contractual arrangements.

The regulation carrying out the requirements of Section 408 of Title IV, 40 CFR Part 72, and EPA guidance on Part 72 stipulates specific requirements for affected sources that are different from the requirements of 40 CFR Part 70. The differences include, but are not limited to, the following:

1. Only a designated representative or alternative designated representative of the source owner is authorized to make permit applications and other submissions under the Title IV requirements and must file a certificate of representation with EPA before they can assume these responsibilities. (40 CFR 72, Subpart B.)

2. The state permitting authority must allow EPA to intervene in any appeal of an acid rain permit. (40 CFR Part 72, § 72.72(5)(iv).)

3. The period by which the acid rain portion of an operating permit can be appealed administratively is 90 days. Judicial appeal of an acid rain portion of a permit cannot occur after 90 days. (40 CFR Part 72, § 72.72(5)(ii).)

4. An application is binding and enforceable as a permit until the permit is issued. (40 CFR Part 72, § 72.72(b)(1)(i)(B).)

5. The acid rain portion of an operating permit must be covered by a permit shield. (40 CFR Part 72, § 72.51.)

6. The acid rain rules allow for four different types of permit revisions. Two of these are the same as those provided for in 40 CFR Part 70: permit modifications and administrative amendments. The other two are unique to the acid rain program: fast-track modifications and automatic amendments. (40 CFR Part 72, Subpart H.)

7. In general, permits are issued using Part 70 procedures. However, there are some exceptions. For instance, within 10 days of determining whether an acid rain application is complete, the permitting authority must notify EPA of that determination. The permitting authority must also notify EPA of any state or judicial appeal within 30 days of the filing of the

appeal. (40 CFR Part 72, §§ 72.72(b)(1)(i)(C) and 72.72(b)(5)(iii).)

Alternatives: As discussed below, there are three available alternatives that can be considered:

1. Develop a regulation to meet the operating permit requirements of Titles IV and V of the Act and the federal regulations implementing those requirements. This alternative would result in the approval by EPA of the Title V program for sources of air pollutants that cause acid rain. The department would have the authority and responsibility to review and to determine the approvability of operating permits for these sources in Virginia. The revenue from emissions fees charged to these sources would be used to fund the department's operating permit program.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. Depending on the differences between the required provisions and the alternatives chosen, this option might or might not result in the approval by EPA of the Title V program for sources of air pollutants that cause acid rain.

3. Take no action to amend the regulations. This alternative would result in the disapproval by EPA of the Title V program for sources of air pollutants that cause acid rain. Furthermore, EPA may choose to sanction the state for failing to develop this requirement of the Title V program. EPA may choose to sanction a state by withholding funds for highway projects, by requiring additional offsets be provided by new or modifying sources in nonattainment areas or both. EPA might also take over that portion of the operating permit program concerning the sources of air pollutants causing acid rain, issuing permits, charging emissions fees and retaining those fees.

Costs and Benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

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

Written comments may be submitted until December 3, 1993, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Nancy S. Saylor, Policy Analyst, Department of Environmental Quality, P. O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

VA.R. Doc. No. C94-48; Filed September 15, 1993, 9:40 a.m.

DEPARTMENT OF CORRECTIONS (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 Corrections intends to consider promulgating regulations entitled: **VR 230-30-001:1. Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to establish minimum standards for the administration of and programs in jails and lockups. A public hearing will be held on the proposed regulations after publication. The location, date, and time of the public hearing will be published at a later date.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-131 of the Code of Virginia.

Written comments may be submitted until November 5, 1993.

Contact: Lou Ann White, Certification Supervisor, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

VA.R. Doc. No. C94-23; Filed September 13, 1993, 3:39 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Corrections intends to consider amending regulations entitled: **VR 230-30-002. Community Diversion Standards.** The purpose of the proposed action is to amend minimum standards for the development, operation and evaluation of programs and services provided under the Community Diversion Incentive Act. The board is conducting its biennial review of the standards. By filing this notice, the board withdraws the Notice of Intent to amend regulations published in 7:23 VA.R. 3658 August 12, 1991. The board plans to hold a public hearing on the proposed regulations after publication. The location, date, and time of the hearing will be announced following publication of the proposed regulations.

Statutory Authority: §§ 53.1-5, 53.1-180 et seq. of the Code of Virginia.

Written comments may be submitted until November 5, 1993.

Contact: Dee Malcan, Chief of Operations, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3242.

VA.R. Doc. No. C94-57; Filed September 15, 1993, 11:24 a.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Notice of Intended Regulatory Action

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

regulations entitled: **Crime Prevention Specialist.** The purpose of the proposed action is to establish requirements and administrative procedures for individuals employed by local and state law-enforcement agencies who are given the designation Crime Prevention Specialist. The Crime Prevention Specialist designation is available only to individuals employed by a local or state law-enforcement agency in Virginia. A public hearing will be held after publication of the proposed regulations.

Statutory Authority: §§ 9-170(1) and (25), 9-173.14 and 9-173.15 of the Code of Virginia.

Written comments may be submitted until October 20, 1993.

Contact: Patrick D. Harris, Department of Criminal Justice Services, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8467.

VA.R. Doc. No. C93-2180; Filed August 19, 1993, 1:28 p.m.

DEPARTMENT OF FORESTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Forestry intends to consider repealing regulations entitled: **VR 310-01-1. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. Public comment is also requested on whether to use advisor counsel with regard to this matter. An informational meeting will be held at the Department of Forestry, Conference Room, Charlottesville, Virginia, on October 25, 1993, at 2 p.m. The agency intends to hold a public hearing on the repeal of the proposed regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

Written comments may be submitted until October 25, 1993.

Contact: Ronald Jenkins, Supervisor, Department of Forestry, P.O. Box 3758, Charlottesville, VA 2903-0758, telephone (804) 977-6555.

VA.R. Doc. No. C93-2169; Filed August 19, 1993, 2:28 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Forestry intends to consider promulgating regulations entitled: **VR 310-01-1:1. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. Public comment is also requested on whether to use advisor counsel with regard to this matter. An informational meeting will be held at the Department of Forestry, Conference Room, Charlottesville, Virginia, on October 25, 1993, at 2 p.m. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

Written comments may be submitted until October 25, 1993.

Contact: Ronald Jenkins, Supervisor, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903-0758, telephone (804) 977-6555.

VA.R. Doc. No. C93-2268; Filed August 19, 1993, 2:28 p.m.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

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 repealing regulations entitled: **VR 355-17-02. Sewerage Regulations.** The purpose of the proposed action is to replace the existing joint Board of Health and State Water Control Board regulations with a new regulation adopted by the Board of Health and implemented through the Virginia Department of Health. The agency intends to hold a public hearing on the repeal of the regulations. The repeal of these regulations will occur concurrently with the adoption of VR 355-17-100, Sewage Collection and Treatment Regulations.

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

Written comments may be submitted until October 6, 1993.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-6277.

VA.R. Doc. No. C93-2122; Filed August 18, 1993, 10:45 a.m.

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 promulgating regulations entitled: **VR 355-17-100. Sewage Collection and Treatment Regulations.** The purpose of the proposed action is to provide current standards for the design, construction and operation of sewage collection systems and sewage treatment works, including the use of sewage sludge in order that the appropriate permits may be issued by the State Health Commissioner. A public hearing will be held on the proposed regulations after publication. Existing regulations, VR 355-17-02, Sewage Regulations, will be repealed upon adoption of this regulation.

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

Written comments may be submitted until October 6, 1993.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-6277.

VA.R. Doc. No. C93-2123; Filed August 18, 1993, 10:45 a.m.

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 promulgating regulations entitled: **VR 355-32-500. Regulations Governing the Emergency Medical Services DO NOT RESUSCITATE Program.** The purpose of the proposed action is to promulgate regulations to implement the EMS DO NOT RESUSCITATE Program as created by the General Assembly in SB 360 (1992). Emergency regulations under the same title are currently in place, effective July 1, 1993 through June 30, 1994. The department intends to hold a public hearing following publication of the proposed regulations.

Statutory Authority: § 54.1-2987 of the Code of Virginia.

Written comments may be submitted until October 6, 1993.

Contact: Susan McHenry, Director, Office of Emergency Medical Services, 1538 East Parham Road, Richmond, VA 23228, telephone (804) 371-3500.

VA.R. Doc. No. C93-2125; Filed August 18, 1993, 10:45 a.m.

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 355-40-400:2. Medical Scholarship Program.** The purpose of the proposed action is to amend the regulations to reflect recent amendments to the Medical Scholarship program statute and to consider revisions to improve the program's effectiveness in increasing the number of primary care physicians in Virginia's medically underserved communities. One public hearing is planned during the public comment period following publication of the proposed revisions.

Statutory Authority: § 32.1-122.5 et seq. of the Code of Virginia.

Written comments may be submitted until October 6, 1993.

Contact: George Stone, Director, Medical Scholarship Program, 1500 East Main Street, Room 213, Richmond, VA 23219, telephone (804) 786-4891.

VA.R. Doc. No. C93-2126; Filed August 18, 1993, 10:45 a.m.

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 promulgating regulations entitled: **VR 355-40-700. Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.** The purpose of the proposed action is to carry out the legislative intent of the program, to provide an incentive to registered nurses in Virginia to attend nurse practitioner/nurse midwife programs and subsequently provide services in medically underserved areas. Emergency regulations under the same title are currently in place, effective July 1, 1993 through June 30, 1994. The department intends to hold a public hearing during the public comment period following publication of the proposed regulations.

Statutory Authority: § 32.1-122.6.02 of the Code of Virginia.

Written comments may be submitted until October 6, 1993.

Contact: Marjorie Plott, PHN Coordinator, P.O. Box 2448, Suite 227, Richmond, VA 23219, telephone (804) 371-2910.

VA.R. Doc. No. C93-2124; Filed August 18, 1993, 10:45 a.m.

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 repealing regulations entitled: **Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program (last amended July 9, 1984).** The purpose of the proposed action is to repeal the Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program. Appropriations for the program ended in FY 88. Services that were provided through the program are now being provided through Medicaid as well as the trust fund which reimburses hospitals for uncompensated care. No public hearings will be held.

Statutory Authority: § 32.1-12 of the Code of Virginia.

Written comments may be submitted until October 6, 1993.

Contact: Rosanne Kolesar, Health Programs Analyst,

Department of Health, 1500 East Main Street, Room 213, Richmond, VA 23219, telephone (804) 786-4891.

VA.R. Doc. No. C93-2129; Filed August 18, 1993, 11:26 a.m.

BOARD OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health Professions intends to consider promulgating regulations entitled: **Public Participation Guidelines of the Board of Health Professions.** The purpose of the proposed action is to develop guidelines the board will use to obtain public input in developing regulations. This regulation will replace emergency regulations currently in effect. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until October 21, 1993.

Contact: Richard D. Morrison, Deputy Director for Research, 6606 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9918.

VA.R. Doc. No. C93-2197; Filed August 25, 1993, 2:15 p.m.

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: **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 effectiveness, efficiency, necessity, clarity and cost of compliance (fee analysis) in accordance with its public participation guidelines and § 54.1-110 of the Code of Virginia. The agency intends to hold a public hearing after publication of the proposed regulations.

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

Written comments may be submitted until November 5, 1993.

Contact: Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. C94-53; Filed September 15, 1993, 11:46 a.m.

STATE LOTTERY DEPARTMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider promulgating regulations entitled: **VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The department intends to hold a public hearing on the proposed regulation after publication. This action will begin promulgation of an emergency regulation which became effective June 29, 1993.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until October 15, 1993.

Contact: Barbara L. Robertson, Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

VA.R. Doc. No. C93-2131; Filed August 18, 1993, 11:30 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider promulgating regulations entitled: **VR 447-01-2. Administration Regulations.** The purpose of the proposed action is to amend existing administration regulations relating to the administration of contracts and to make housekeeping changes. The department intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until October 15, 1993.

Contact: Barbara L. Robertson, Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

VA.R. Doc. No. C93-2130; Filed August 18, 1993, 11:30 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider promulgating regulations entitled: **VR 447-02-1. Instant Game Regulations.** The purpose of the proposed action is to amend existing instant game regulations relating to the payment of prizes, estate taxes, beneficiaries, licensing of and compensation to

lottery retailers, and to make housekeeping changes. The department intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until October 15, 1993.

Contact: Barbara L. Robertson, Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

VA.R. Doc. No. C93-2132; Filed August 18, 1993, 11:31 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider promulgating regulations entitled: **VR 447-02-2. On-Line Game Regulations.** The purpose of the proposed action is to amend existing on-line game regulations relating to the payment of prizes, estate taxes, beneficiaries, licensing of and compensation to lottery retailers, and to make housekeeping changes. The department intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until October 15, 1993.

Contact: Barbara L. Robertson, Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

VA.R. Doc. No. C93-2133; Filed August 18, 1993, 11:31 a.m.

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: **Cost Sharing and Similar Charges: Discontinue Recipient Copayments on Dialysis Services.** The purpose of the proposed action is to discontinue charging recipients for copayments when they are receiving dialysis services. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 3, 1993, to Wayne Kitsteiner, Division of Client Services, 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) 371-8850.

VA.R. Doc. No. C94-54; Filed September 15, 1993, 11:24 a.m.

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 Preadmission Screening and Continued Stay.** The purpose of the proposed action is to revise the definition of medical/nursing need and the evaluation of persons seeking community-based care to avoid future nursing facility placement. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 5, 1993, to Chris Pruett, 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) 371-8850.

VA.R. Doc. No. C93-2079; Filed August 13, 1993, 2:47 p.m.

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 for Establishing Payment Rates, Home Health Reimbursement; Methods and Standards for Establishing Payment Rates-Long Term Care; Home Health Agency Reimbursement; Nursing Facility Criminal Record Checks.** The purpose of the proposed action is to revise home health agency methodologies, to revise regulations to reimburse providers for the costs of obtaining criminal record background checks on nursing facility employees. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 5, 1993, to Vicki Simmons, 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) 371-8850.

VA.R. Doc. No. C93-2078; Filed August 13, 1993, 2:46 p.m.

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: **PASARR and Annual Resident Review/Education Component of NF Care/NF Residents' Appeal Rights.** The purpose of the proposed action is to amend regulations to comply with regulations issued by the Health Care Financing Administration regarding PASARR. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 5, 1993, to Margie Jernigan, 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) 371-8850.

VA.R. Doc. No. C93-2081; Filed August 13, 1993, 2:47 p.m.

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: **Payment of Title XVIII Part A and Part B Deductible/Coinsurance; Methods and Standards for Establishing Payment Rates - Long Term Care: Nursing Facility Payment System.** The purpose of the proposed action is to limit the payment of Medicare Part A coinsurance amount paid by Medicaid and eliminate overpayments made to providers during the first nine months of the second fiscal year. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 5, 1993, to Stan Fields, 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) 371-8850.

VA.R. Doc. No. C93-2080; Filed August 13, 1993, 2:47 p.m.

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. Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.** The purpose of the proposed regulation is to add § 4.4, Limited Licenses to Foreign Medical Graduates; add § 4.5, Temporary Licenses to Interns and Residents; amend § 3.1 C, amend § 4.1 D, Amending the Interpretation of National Test Scores of Podiatric Medicine.

CORRECTION: The agency does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 54.1-2400, 54.1-2936, 54.1-2937, and 54.1-2961 of the Code of Virginia.

Written comments may be submitted until October 10, 1993, to Hilary H. Connor, M.D., 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Russell Porter, Assistant Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

VA.R. Doc. No. C93-2128; Filed August 18, 1993, 11:27 a.m.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **VR 470-01-01. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines in conformance with § 9-6.14:7.1 of the Code of Virginia. The agency does not intend to hold a public hearing on the repeal of the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 37.1-10 of the Code of Virginia.

Written comments may be submitted until November 3, 1993.

Contact: Rubyjean Gould, Administrative Services Director, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3915.

VA.R. Doc. No. C94-11; Filed September 2, 1993, 3:07 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider promulgating regulations entitled: **VR 470-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines in conformance with § 9-6.14:7.1 of the Code of Virginia. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 37.1-10 of the Code of Virginia.

Written comments may be submitted until November 3, 1993.

Contact: Rubyjean Gould, Administrative Services Director, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3915.

VA.R. Doc. No. C94-78; Filed September 2, 1993, 3:07 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Examiners

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mines, Minerals and Energy Board of Examiners intends to consider promulgating regulations entitled: **VR 480-04-2.1. Board of Examiners Certification Regulations.** The purpose of the proposed action is to establish a permanent regulation setting forth requirements for certification of persons performing specialized tasks in mines. This regulation will replace the emergency Board of Examiners Certification Regulations, VR 480-04-2. A public hearing will be held on October 12, 1993, at 10 a.m. at the DMME, Buchanan-Smith Building, Rte. 23, Big Stone Gap, VA, to receive comments on this notice. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 45.1-12 of the Code of Virginia.

Written comments may be submitted until November 3, 1993.

Contact: Mr. Harry Childress, Chairman, Board of Examiners, P. O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8100.

VA.R. Doc. No. C93-2193; Filed August 25, 1993, 11:07 a.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Optometry intends to consider amending regulations entitled: **VR 510-01-1. Board of Optometry Regulations.** The purpose of the proposed action is to respond to the requirement for biennial regulatory review in keeping with § 3.6 of the board's public participation guidelines. A public hearing will be held after publication of the proposed amendments or revisions to the board regulations.

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

Written comments may be submitted until October 6, 1993, to Carol Stamey, Board of Optometry, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Elizabeth Carter, Ph.D., Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910.

VA.R. Doc. No. C93-2103; Filed August 18, 1993, 8:07 a.m.

BOARD OF PROFESSIONAL COUNSELORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed action is to amend the examination fees and reduce renewal fees for certified substance abuse counselors. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Written comments may be submitted until October 20, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7328.

VA.R. Doc. No. C93-2233; Filed August 31, 1993, 12:18 p.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional and Occupational Regulation intends to consider repealing regulations entitled: **VR 190-00-01. Public Participation Guidelines.** The purpose of the proposed action is to notify the board's intent to repeal current public participation guidelines. The board welcomes comment on this notice of intended regulatory

action. The board does not intend to hold a public hearing on the repeal of these regulations after publication.

Statutory Authority: § 54.1-310.5 of the Code of Virginia.

Written comments may be submitted until October 6, 1993.

Contact: Joyce K. Brown, Secretary to the Board, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8564.

VA.R. Doc. No. C93-2107; Filed August 17, 1993, 11:51 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional and Occupational Regulation intends to consider promulgating regulations entitled: **VR 190-00-01. Public Participation Guidelines.** The purpose of the proposed action is to notify the board's intent to adopt public participation guidelines. The board welcomes comment on this notice of intended regulatory action. The board does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 54.1-310.5 of the Code of Virginia.

Written comments may be submitted until October 6, 1993.

Contact: Joyce K. Brown, Secretary to the Board, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8564.

VA.R. Doc. No. C93-2171; Filed August 17, 1993, 11:51 a.m.

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: **Real Estate Board Regulations, Real Estate License Laws, Fair Housing Laws.** The purpose of the proposed action is to propose to undertake a review and seek public comments on all its regulations for promulgation, amendment and repeal as is deemed necessary in its mission to regulate Virginia real estate licensees. A public hearing will be held on the proposed action after publication.

Statutory Authority: §§ 54.1-200 and 54.1-2105 of the Code of Virginia.

Written comments may be submitted until November 1, 1993.

Contact: Joan L. White, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

VA.R. Doc. No. C93-2093; Filed August 16, 1993, 12:18 p.m.

DEPARTMENT OF SOCIAL SERVICES (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 Social Services intends to consider promulgating regulations entitled: **VR 615-39-01. Module for Residential Facilities for Children.** The purpose of the proposed action is to develop standards applicable to residential facilities for children licensed by the Department of Social Services. This module will be applied in addition to the Standards for Interdepartmental Regulation of Residential Facilities for Children. A public hearing is not planned after publication of the proposed regulation. The board will consider public comments at its regularly scheduled meeting.

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

Written comments may be submitted until November 15, 1993, to Doris Jenkins, Division of Licensing Programs, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Governmental Affairs, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C94-14; Filed September 13, 1993, 3:40 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider promulgating regulations entitled: **VR 615-53-01.2. Child Day Care Services.** The purpose of the proposed action is to assure that children receiving child day care services purchased by the Department of Social Services will receive basic health and safety protections. The agency does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 63.1-25 and 63.1-55; PL 100-485, PL 101-508; PL 100-435 of the Code of Virginia.

Written comments may be submitted until October 6, 1993, to Paula S. Mercer, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Governmental Affairs, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C93-2096; Filed August 9, 1993, 4:39 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider promulgating regulations entitled: **Auxiliary Grants Program: Levels of Care and Rate Setting.** The purpose of the proposed action is to establish two levels of care in licensed adult care residences for which payment can be made from the Auxiliary Grants Program, and to establish the method for calculating rates of payment for adult care residences. The agency does not intend to hold a public hearing on the proposed regulations after publication. The State Board of Social Services will consider public comments on the proposed regulation at its next regularly scheduled meeting.

Statutory Authority: § 63.1-25.1 the Code of Virginia.

Written comments may be submitted until October 6, 1993, to Jeanine LaBrenz, Program Manager, Medical Assistance Unit, Department of Social Services, 730 East Broad Street, 7th Floor, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Governmental Affairs, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C93-2094; Filed August 16, 1993, 12:07 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider promulgating regulations entitled: **Regulations for Case Management for Applicants and Residents of Adult Care Residences.** The purpose of the proposed action is to promulgate regulations pertaining to the assessment and reassessment of applicants and residents of licensed adult care facilities to determine appropriateness of placement including appropriateness of residential care or assistance living. The agency does not intend to hold a public hearing on the proposed regulations after publication. The State Board of Social Services will consider public comments on the proposed regulation at its next regularly scheduled meeting.

Statutory Authority: §§ 63.1-25.1 and 63.1-173.3 of the Code of Virginia.

Written comments may be submitted until October 6, 1993, to Helen B. Leonard, Adult Services Program Manager, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Governmental Affairs, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C93-2108; Filed August 17, 1993, 2:45 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider amending regulations entitled: **Standards and Regulations for Licensed Adult Care Residences.** The purpose of the proposed action is to promulgate regulations pertaining to the care and supervision of individuals residing in licensed adult care residences. The proposed regulation will provide for two levels of licensure: residential living and assisted living. The agency does not intend to hold a public hearing on the proposed regulations after publication. The State Board of Social Services will consider public comments on the proposed regulation at its next regularly scheduled meeting.

Statutory Authority: §§ 63.1-25 and 63.174 of the Code of Virginia.

Written comments may be submitted until October 6, 1993, to Cheryl W. Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Governmental Affairs, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C93-2095; Filed August 16, 1993, 12:07 p.m.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Work intends to consider amending regulations entitled: **VR 620-01-2. Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to amend the requirement that supervised experience be completed and documented 90 days prior to examination and to amend the standards of practice. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 54.1-2400.6 of the Code of Virginia.

Written comments may be submitted until October 6, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9914.

VA.R. Doc. No. C93-2092; Filed August 16, 1993, 4:35 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending entitled:

VR 672-10-1. Hazardous Waste Management Regulations - Amendment 14. The purpose is to amend those regulations that establish standards and procedures pertaining to hazardous waste management in the Commonwealth as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations.

Basis and Statutory Authority: The basis for this regulation is the Virginia Waste Management Act as set out in Chapter 14 (§ 10.1-1402(11)) of Title 10.1 of the Code of Virginia.

Need: It is necessary to continue the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. By regulating these activities the Commonwealth protects public health, natural resources and the environment. By maintaining the equivalence of its regulations with those issued by the United States Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), the Commonwealth remains eligible to carry out its own hazardous waste management program instead of the federal program.

Substance and Purpose: The purpose is to amend those regulations that establish standards and procedures pertaining to hazardous waste management in the Commonwealth in order to protect the public health and public safety, and to enhance the environment and natural resources. The proposed amendments to the regulation will reflect amendments to the EPA regulations adopted between July 1, 1991 and September 30, 1993 maintaining the equivalence of board regulations. Notably, the amendment will incorporate changes in regulation of used oil allowing use of the amended federal standards.

Estimated Impact: There are more than 3,000 generator, treatment, storage, incinerator and disposal facilities and more than 200 transporters managing hazardous waste in the state. The proposed amendments will allow used oil dealers to receive used oil for recycling without the full application of the regulations if the proposed amendment is adopted. The amendment allows more consistent program implementation between the state and EPA and avoids the application of conflicting regulations.

Alternatives: The EPA authorization for the hazardous waste program requires the periodic updating of regulations to reflect consistency with EPA regulations. Grant commitments include periodic amendments to achieve consistency between the federal and state regulations. Because of EPA changes in waste oil regulations, failure to amend would result in a more stringent regulation with fewer options. The alternative of no action would cause the regulated community to be subject to both federal and state regulations except in those areas where the state received authorization in 1984. Full authorization would not be possible. Therefore, the most appropriate alternative is the proposed amendment.

Public Comments: The Department of Environmental Quality will hold a public meeting to consider public comment on the proposed regulatory action. The Department requests that the public submit comments, at the meeting or by letter, on the correctness of the regulatory action, any ideas or advice the agency should consider in formation and drafting of the proposed amendments to the regulations, and the costs and benefits of the proposed regulation amendment. The Department intends to use an ad hoc advisory committee to assist in revising the proposed regulations. Persons interested in being on the "Interested Persons Mailing List" should provide name, address and specific areas of interest.

The department intends to hold at least one informational proceeding (informal hearing) after the proposed regulations are published. The Department does not intend to hold a public hearing (evidentiary hearing). On October 6, 1993, at 10:00 AM the Department will hold a public meeting to discuss proposed amendments and to hear public comment on the proposed amendment, VR 672-10-1, Virginia Hazardous Waste Management Regulations. The meeting will be held in the Main Board Room, at the department's Innsbrook office, 4900 Cox Road, Glen Allen, Virginia. Written comments will be received until October 15, 1993, at 5 p.m. Please submit comments to Mr. William F. Gilley, Department of Environmental Quality, Eleventh Floor, Monroe Building, 101 North Fourteenth Street, Richmond, Virginia 23219.

Accessibility to Persons with Disabilities: The meetings are being held at a public facility believed to be accessible to persons with disabilities. Any person with question on the accessibility to the facility should contact Mr. William F. Gilley at (804) 225-2966 or TDD (804) 371-8737. Persons needing interpreter services for the deaf must notify Mr. Gilley no later than September 15, 1993.

Statutory Authority: § 10.1-1402(11) of the Code of Virginia.

Written comments may be submitted until October 15, 1993.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

VA.R. Doc. No. C93-2104; Filed August 18, 1993, 8:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **VR 672-20-20. Regulations Governing Management of Coal Combustion Byproduct.** The purpose is to adopt regulations that establish standards and procedures pertaining to management, use and disposal of coal combustion byproducts or residues in the

Commonwealth.

Basis and Statutory Authority: The basis for this regulation is the Virginia Waste Management Act as set out in Chapter 14 (§§ 10.1-1402(11) and 10.1-1408.1.) of Title 10.1 of the Code of Virginia.

Need: Coal combustion byproducts are presently regulated as a solid waste under solid waste management regulations with specific requirements for storage and disposal. Coal combustion byproducts have properties that would allow use under certain circumstances for which the present regulations do not adequately address. Volume of waste residuals produced demand management to protect public health, natural resources and the environment. Use and reuse needs to become a more definitive alternative management approach for which the board is considering the adoption of such regulations.

Substance and Purpose: The purpose of these regulations is to establish standards and procedures pertaining to use, storage and disposal of coal combustion byproducts in the Commonwealth in order to protect the public health and public safety, and to enhance the environment and natural resources as well as to promote use and reuse. The proposed regulation will provide the appropriate management alternatives available which meet the requirements for protection of public health, environment and natural resources.

Estimated Impact: There are two major utility companies, other utilities and manufacturing facilities and cogeneration facilities producing large quantities coal combustion residuals demanding more alternative approaches to proper management. A number of utilities are demanding that coal companies take back combustion residues as a part of sales contract. Establishment of environmentally sound management techniques and standards are essential to proper, consistent management practices.

Alternatives: The alternatives considered have been the development of the regulation as proposed, the amendment of solid waste regulations to incorporate alternative standards, or continued regulation as a solid waste under the present regulations. Amending the present solid waste regulation would be more time consuming and complex as coal combustion byproducts would be one of numerous areas requiring amendment. This could occur when it becomes necessary to amend the solid waste management regulations to incorporate changes in the federal Subtitle D Criteria promulgated by EPA under the Resource Conservation and Recovery Act. Continued use of the solid waste regulations does not allow for appropriate alternatives and would be more staff intensive in effort for each specific case. Adopting the proposed regulation would be a direct approach to providing appropriate alternatives in a minimal time period and be less staff intensive during the implementation. Therefore, the most appropriate alternative is the proposed regulation.

Public Comments: The Department of Environmental Quality will hold a public meeting to consider public comment on the proposed regulatory action. The department requests that the public submit comments, at the meeting or by letter, on the correctness of the regulatory action, any ideas or advice the agency should consider in formation and drafting of the proposed amendments to the regulations, and the costs and benefits of the proposed regulation amendment. The department intends to use an ad hoc advisory committee to assist in revising the proposed regulations. Persons interested in being on the "Interested Persons Mailing List" should provide name, address and specific areas of interest.

The department intends to hold at least one informational proceeding (informal hearing) after the proposed regulations are published. The department does not intend to hold a public hearing (evidentiary hearing). On October 6, 1993, at 2 p.m., the department will hold a public meeting to discuss proposed regulation. The meeting will be held in the Main Board Room, at the department's Innsbrook office, 4900 Cox Road, Glen Allen, Virginia. Written comments will be received until October 15, 1993, at 5 p.m. Please submit comments to Dr. W. Gulevich, Department of Environmental Quality, Eleventh Floor, Monroe Building, 101 North Fourteenth Street, Richmond, Virginia 23219.

Accessibility to Persons with Disabilities: The meetings are being held at a public facility believed to be accessible to persons with disabilities. Any person with question on the accessibility to the facility should contact Mr. William F. Gilley at (804) 225-2966 or TDD (804) 371-8737. Persons needing interpreter services for the deaf must notify Mr. Gilley no later than September 15, 1993.

Statutory Authority: §§ 10.1-1402(11) and 10.1-1408.1 of the Code of Virginia.

Written comments may be submitted until October 15, 1993, to Dr. W. Gulevich, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, Virginia 23219.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

VA.R. Doc. No. C93-2105; Filed August 18, 1993, 8:30 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **VR 672-20-30. Regulations Governing Management of Vegetative Waste.** The purpose is to adopt regulations governing management of vegetative waste that establish standards and procedures pertaining to management, use and disposal of vegetative waste to encourage the development of facilities for the

decomposition of vegetative waste.

Basis and Statutory Authority: The basis for this regulation is the Virginia Waste Management Act as set out in Chapter 14 (§§ 10.1-1402(11) and 10.1-1408.1.L.) of Title 10.1 of the Code of Virginia.

Need: Vegetative wastes are presently regulated as a solid waste under solid waste management regulations with specific requirements. The board is required to provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. It is necessary to develop this regulation to carry out the requirements of § 10.1-1408.1.L. of the Code.

Substance and Purpose: The purpose of these regulations is to establish standards and procedures pertaining to use, storage and disposal of vegetative waste. The proposed regulation will provide the appropriate management alternatives available which meet the requirements for protection of public health, environment and natural resources. The regulations will provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. The regulations will address an expedited approval process. The purpose is to encourage the development of facilities for the decomposition of vegetative waste.

Estimated Impact: There are 135 sanitary landfills and 52 Construction/Demolition/Debris landfills presently permitted for operation in the state with new permit applications pending. They handle or propose to handle varying quantities and types of vegetative wastes. Adoption of proposed regulations would simplify the present handling of the material and affect the processing of new permits. Establishment of environmentally sound management techniques and standards are essential to proper, consistent management practices.

Alternatives: The General Assembly in amending the Code of Virginia mandated the development of procedures to encourage the development of facilities for decomposition of vegetative wastes. The alternatives considered have been the development of the regulation as proposed or the amendment of solid waste regulations to incorporate alternative standards. Amending the present solid waste regulation would be more time consuming and delay the development of appropriate standards and alternatives. Developing a specific regulation for vegetative waste focuses the regulatory effort more efficiently and simplifies public participation.

Public Comments: The Department of Environmental Quality will hold a public meeting to consider public comment on the proposed regulatory action. The department requests that the public submit comments, at the meeting or by letter, on the correctness of the regulatory action, any ideas or advice the agency should consider in formation and drafting of the proposed amendments to the regulations, and the costs and benefits of the proposed regulation amendment. The department intends to use an ad hoc advisory committee to assist in revising the proposed regulations. Persons interested in being on the "Interested Persons Mailing List" should provide name, address and specific areas of interest.

The department intends to hold at least one informational proceeding (informal hearing) after the proposed regulations are published. The department does not intend to hold a public hearing (evidentiary hearing). On October 7, 1993, at 10 a.m., the department will hold a public meeting to discuss the proposal and to hear public comment on the proposed regulation. The meeting will be held in the Conference Room C, 1st Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia. Written comments will be received until October 20, 1993, at 5 p.m. Please submit comments to Mr. William F. Gilley, Department of Environmental Quality, Eleventh Floor, Monroe Building, 101 North Fourteenth Street, Richmond, Virginia 23219.

Accessibility to Persons with Disabilities: The meetings are being held at a public facility believed to be accessible to persons with disabilities. Any person with question on the accessibility to the facility should contact Mr. William F. Gilley at (804) 225-2966 or TDD (804) 371-8737. Persons needing interpreter services for the deaf must notify Mr. Gilley no later than September 15, 1993.

Statutory Authority: § 10.1-1402(11) of the Code of Virginia.

Written comments may be submitted until October 20, 1993.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

VA.R. Doc. No. C93-2172; Filed August 18, 1993, 8:31 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials - Amendment 12.** The purpose is to amend the hazardous materials transportation regulations to incorporate U.S. DOT and U.S. NRC amendments in federal regulations for the period from June 2, 1992 through July 1, 1993. The proposed Amendment 12 to these regulations incorporates changes to U.S. Department of Transportation ("DOT") and U.S. Nuclear Regulatory Commission ("NRC") regulations on hazardous materials transportation and motor carrier safety. The new provisions promulgated by DOT and NRC from June 2, 1992, through July 1, 1993, necessitate that changes be made to the existing state regulations. The

proposed changes maintain consistency with the federal regulations.

Basis and Statutory Authority: The bases for this regulation are the Virginia Waste Management Act, § 10.1-1400 et seq. of the Code of Virginia and § 44-146.30 of the Code of Virginia addressing the Transportation of Hazardous Radioactive Materials. Changes in federal regulations promulgated from June 2, 1992, through July 1, 1993, necessitate this amendment to preclude conflicts between Virginia regulations and the federal regulations.

Need: The issuance of this Notice of Intended Regulatory Action is necessary to incorporate changes to federal regulations and to incorporate the transportation of hazardous radioactive materials into the transportation of hazardous materials regulation.

Substance and Purpose: The Virginia Waste Management Board is promulgating these amended regulations to ensure that hazardous materials transported within the Commonwealth are loaded, packed, identified, marked, and placarded in order to protect public health, safety, and the environment. The amendments will also incorporate requirements contained in § 44-146.30 that the Coordinator of the Department of Emergency Services will maintain a registry of shippers of hazardous radioactive materials and monitor the transportation of hazardous radioactive materials within the Commonwealth.

Estimated Impact: The information that the board intends to incorporate has already been through the federal rulemaking process and is already in force for the interstate and, in some cases, intrastate transportation of hazardous materials. For this reason, this amendment is not expected to have a significant impact on the regulated community.

Alternatives: This amendment is necessary to incorporate changes to federal DOT and NRC regulations. There is no alternative to the proposed amendment due to the need to maintain consistency with federal regulations.

Public Comments: The Department of Environmental Quality will hold a public meeting to consider public comment on the proposed regulatory action. The department requests that the public submit comments, at the meeting or by letter, on the correctness of the regulatory action, any ideas or advice the agency should consider in formation and drafting of the amendments to the regulation, and the costs and benefits of the proposed amendments. The department intends to use an ad hoc advisory committee to assist in amending the regulation. Persons interested in being on the "Interested Persons Mailing List" should provide name, address and specific areas of interest to the contact person listed below.

The department intends to hold at least one informational proceeding (informal hearing) after the proposed regulations are published. The department does not intend to hold a public hearing (evidentiary hearing). The department will hold a public meeting to discuss this Notice of Intended Regulatory Action at 10 a.m. on October 7, 1993, 10th Floor Conference Room, Monroe Building, 101 North Fourteenth Street, Richmond, Virginia. Written comments will be received until October 18, 1993, at 5 p.m. Please submit comments to Mr. C. Ronald Smith, Department of Environmental Quality, 11th Floor, Monroe Building, 101 North Fourteenth Street, Richmond, Virginia 23219.

Accessibility to Persons with Disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility to the facility should contact Mr. William F. Gilley at (804) 225-2966 or TDD (804) 371-8737. Persons needing interpreter services for the deaf must notify Mr. Gilley no later than September 13, 1993.

Statutory Authority: §§ 10.1-1402(11), 10.1-1450, and 44-146.30 of the Code of Virginia.

Written comments may be submitted until October 15, 1993, to C. Ronald Smith, Department of Environmental Quality, Monroe Building, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

VA.R. Doc. No. C93-2106; Filed August 18, 1993, 8:29 a.m.

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 680-13-07. Ground Water Withdrawal Regulation.** The purpose of the proposed action is to establish regulatory guidelines for agricultural ground water withdrawals as required by the Ground Water Management Act of 1992.

Basis and Statutory Authority: Section 62.1-256.1 of the Ground Water Management Act of 1992 requires that the board issue ground water withdrawal permits in accordance with adopted regulations. Section 62.1-256.8 of the Act authorizes the board to adopt regulations necessary to administer and enforce the Act. Section 62.1-260 E of the Act requires that all persons withdrawing ground water in excess of 300,000 gallons per month for agricultural or livestock watering purposes in the Eastern Virginia or Eastern Shore Ground Water Management Areas apply for and obtain a ground water withdrawal permit. Section 62.1-258 of the Act requires that any person who proposes a new withdrawal of ground water in excess of 300,000 gallons per month in any ground water management area for agricultural or livestock watering purposes obtain a ground water withdrawal permit.

Need: The Ground Water Management Act of 1992 requires that persons who withdraw more than 300,000 gallons per month for agricultural or livestock watering purposes obtain a ground water withdrawal permit. The Act further requires that the board issue ground water withdrawal permits in accordance with adopted ground water withdrawal regulations. The current Ground Water Withdrawal Regulations must be amended to incorporate application requirements and permit issuance criteria for agricultural ground water withdrawal permits.

Substance and Purpose: This proposed regulatory amendment will establish regulatory guidelines for agricultural ground water withdrawals as required by the Ground Water Management Act of 1992. Agricultural ground water withdrawals were previously exempted from regulation in the Ground Water Act of 1973.

The purpose of this proposed amendment is to establish regulatory controls on agricultural users of more than 300,000 gallons of ground water per month in order to protect the public welfare, safety and health from the negative impacts of over utilization of the ground water resource. Application requirements, permit issuance criteria, and withdrawal monitoring requirements for agricultural ground water withdrawals will be included in the existing regulation.

Estimated Impact: Amendments to the Ground Water Withdrawal Regulation will impact 23 known agricultural ground water users who have voluntarily reported their ground water withdrawals in the past. An unknown additional number of existing agricultural ground water users in the Eastern Virginia and Eastern Shore Ground Water Management Areas will also be impacted. It is anticipated that a maximum of 16 hours will be required to gather necessary information and complete an application for an existing agricultural ground water user. There may be additional costs associated with an agricultural ground water withdrawal permit for withdrawal monitoring and reporting. The range of these costs will be dependent on regulatory requirements. The costs associated with an application for a new agricultural ground water withdrawal will be determined by the information requirements to support such an application that are included in the proposed amendment to the regulation.

Alternatives: The Ground Water Management Act of 1992 requires that agricultural ground water withdrawals in excess of 300,000 gallons per day within ground water management areas be permitted. The Act further requires that the board issue all permits in accordance with adopted regulations. No alternative, other than amending the Ground Water Withdrawal Regulation, is considered appropriate.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives. In addition, the board will hold two public meetings to receive views and comments on amendments to the Ground Water Withdrawal Regulation to include agricultural withdrawals. The meetings will be held on October 25, 1993, 7:30 p.m. at the Eastern Shore Community College, Lecture Hall, 29300 Lankford Highway, Melfa, VA 23410 and October 26, 1993, 2 p.m. at the James City County Board of Supervisors Room, Building C, 101 C Mounts Bay Road, Williamsburg, VA 23185. A question and answer session on the proposed action will be held one-half hour prior to the beginning of both of these meetings.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold at least one informational proceeding (informal hearing) on this proposed amendment after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a formal evidential hearing on this proposed amendment after it is published in the Register of Regulations.

Accessibility to Persons with Disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Doneva A. Dalton at the address listed below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than October 13, 1993.

Advisory Committee/Group: An advisory group was convened during the late spring of 1993 to provide input to the agency regarding the proposed amendment to the regulation. The advisory group is composed of representatives from state and federal agencies with knowledge of agricultural water use, the academic community, agricultural interest groups, independent agricultural producers, and regional ground water protection groups. The advisory group is currently finalizing its position on topics to be included in the proposed regulatory amendment.

Statutory Authority: §§ 62.1-256.1, 62.1-256.8, 62.1-260 E and 62.1-258 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on November 5, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Terry D. Wagner, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5203.

VA.R. Doc. No. C93-2232; Filed August 31, 1993, 3:27 p.m.

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 promulgating regulations entitled: **VR 680-15-07. General Virginia Water Protection Permit Regulations for Minor Road Crossings, Associated Fills and Channel Modifications.** The purpose of the proposed action is to establish standard conditions for accomplishing the construction of minor road crossings with their associated fills and stream crossings. Provisions will be included to address the protection of state waters and endangered species.

Basis and Statutory Authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15:5 authorizes the board to issue Virginia Water Protection Permits (VWPP) for activities which require a Water Quality Certification under Section 401 of the Clean Water Act. Section 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 401 of the Clean Water Act (Act) (33 USC 1251 et seq.) requires that any applicant for a federal license or permit to conduct any activity, including but not limited to, the construction and operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the state in which the discharge originates or will originate, that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Act. No license or permit will be granted until such a certification has been obtained or has been waived by the State. In cases where the request for certification has been denied by the state, no federal permit or license will be granted.

Need: Most road crossing construction involves the discharge of fill materials for road approaches to bridges, instream support piers, footings, box and pipe culvert placement, as well as excavation, channelization and other instream modifications for proper alignment and placement of the structure to be utilized for crossing state waters, including wetlands. Any such activity is considered a discharge under the Clean Water Act and State Water Control Law, and is therefore subject to regulation through the VWPP permit program.

Substance and Purpose: The intent of this general permit regulation is to establish standard conditions for accomplishing the construction of minor road crossings with their associated fills and stream channel modifications. Minor Road Crossings are defined as impacting 100 linear feet or less of surface waters and/or one third acre or less of wetlands. Provisions will be included to address the protection of state waters and endangered species. Language will also be included which requires that the least impacting structure be utilized in all waters.

Monitoring and reporting requirements will be established based upon the water quality degradation potential of the road crossing construction, finished structure, and any mitigation necessary as part of the project for which this general permit is issued. The reporting provisions will assist in evaluating the effectiveness of the steps taken to reduce impacts to state waters, the success of any mitigation necessary, provide information to identify water quality impacts and support future permitting activities.

Estimated Impact: Adoption of this regulation will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general VWP permits would reduce the paper work and expense of obtaining a permit for the owners and operators in this category. It will also reduce the time currently required to obtain coverage under the VWPP permitting system. The staff estimates that there are approximately 500 projects within this category of discharges that may be covered by VWP permits.

The board recognizes the need for general VWP permits to ease the burden on the regulated community and to facilitate the issuance of timely permits while maintaining water quality protection of state waters. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the requirements to permit minor road crossings. One is to issue an individual VWPP permit for each of the estimated 500 minor road crossings. The other is to adopt a general VWPP permit to cover this category of discharger.

Public Comments: The board seeks oral and written comments from interested persons on the intended regulatory action, on the costs and benefits of the stated alternatives, or other alternatives.

In addition, the board will hold public meetings to receive views and comments and to answer questions of the public on the following dates: Monday, September 27, 1993, in the Norfolk City Council Chambers, City Hall Building, 11th Floor, 810 Union Street, Norfolk at 7 p.m.; Tuesday, September 28, 1993, in the Board Room at the Department of Environmental Quality, Innsbrook Corporate Center,

4900 Cox Road, Glen Allen at 7 p.m.; Wednesday, September 29, 1993, in the Board Chambers, McCourt Building, Prince William County Administration Center, 1 County Complex, 4859 Davis Ford Rd., Prince William at 2 p.m.; and, Thursday, September 30, 1993, in the Community Room, Roanoke County Administration Center, 3738 Brambleton Ave., S. W., Roanoke at 2 p.m..

Accessibility to Persons with Disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Donnie Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than 4 p.m., Friday, September 17, 1993.

Advisory Committee/Group: The board seeks comments on whether the agency should form an ad hoc advisory group, use a standing advisory committee or consult with groups or individuals to assist in the drafting and formation of the proposal. In addition the board seeks the names of individuals who would be interested in serving on an ad hoc advisory group.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulation after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Statutory Authority: § 62.1-44.2 et seq. of the Code of Virginia.

Written comments may be submitted until 4 p.m. on October 5, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Martin Ferguson, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5030.

VA.R. Doc. No. C93-2002; Filed August 3, 1993, 3:41 p.m.

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 680-16-02. Roanoke River Basin Water Quality Management Plan.** The purpose of the proposed action is to amend the Roanoke River Basin Water Quality Management Plan by deleting the references to the Smith-Dan River subarea.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which water quality management plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: The Roanoke River Basin WQMP was adopted by the board in 1976. Since that time the Smith-Dan subarea has grown in population and developed unique problems associated with population growth and development not seen in the other areas covered by the Roanoke River Basin WQMP. Furthermore, the information on the Smith-Dan River Subarea portion of that plan has not been updated to reflect current data, scientific studies; and, new or revised legislation, procedures, policy, and regulations. By preparing a separate WQMP, the board will be better able to focus on the important issues facing the Smith-Dan River Subarea.

Substance and Purpose: Water quality management plans set forth measures for the State Water Control Board to implement in order to reach and maintain water quality goals. The purpose of this proposal is to amend the existing Roanoke River Basin WQMP by deleting references for those areas to be covered by the new Smith-Dan Subarea WQMP (VR 680-16-02.2). The new Plan will update those portions of the Roanoke River Basin WQMP in the Smith-Dan River Subarea and bring the plan into compliance with federal law.

Estimated Impact: No major impacts on the regulated community are anticipated as a result of the proposed amendments to the Roanoke River Basin WQMP. There are currently 90 permitted facilities and approximately 218,000 persons residing in the Smith-Dan Subarea, who will be directly affected by the proposed plan. Changes in segment classification will be made in the plan by adding water quality limited segments for fecal coliform for the South Fork of the Mayo River, Sandy River, and several other tributaries and by adding water quality limited segments for ammonia to a number of small tributaries.

Alternatives: The Smith-Dan River Subarea has not been updated to reflect current data, scientific studies; new or revised legislation, procedures, policy, and regulations; and changes in area growth and development since the Roanoke River Basin WQMP was adopted. One alternative is to continue to use the outdated Roanoke River Basin WQMP. To do this would result in noncompliance with the amendments to the Clean Water Act for achieving current water quality goals. A second alternative is to update the existing plan. While this is possible, it would be a very long process. Furthermore, the current Roanoke River

Basin WQMP is presented in four lengthy volumes with emphasis on the upper basin area. The board is interested in focusing more attention on the special issues and needs of the Smith-Dan Subarea, updating information for the subarea and meeting new regulatory requirements and believes that a separate plan is warranted.

Public Comments: The board seeks written and oral comments from interested persons on the costs and benefits of the stated alternatives or other alternatives. In addition, the Board will hold a public meeting at 7:00 p.m. on Thursday, September 30, 1993, at the Henry County Administration Building, Board Room, Kings Mountain Road, Collinsville, Virginia, to receive comments from the public.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulation after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Accessibility to Persons with Disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230 or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than 4 p.m., Monday, September 20, 1993.

Statutory Authority: § 62.1-44.15(10) et seq. of the Code of Virginia.

Written comments may be submitted until 4 p.m. on October 5, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Martin Ferguson, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5030.

VA.R. Doc. No. C93-2000; Filed August 3, 1993, 3:41 p.m.

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 promulgating regulations entitled: **VR 680-16-02.02. Smith-Dan River Subarea Water Quality Management Plan.** The purpose of the proposed action is to adopt a new Smith-Dan River subarea water quality management plan.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which water quality management plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: The Roanoke River Basin WQMP was adopted by the board in 1976. Since that time the Smith-Dan subarea has grown in population and developed unique problems associated with population growth and development not seen in the other areas covered by the Roanoke River Basin WQMP. Furthermore, the information on the Smith-Dan River Subarea portion of that plan has not been updated to reflect current data, scientific studies; and, new or revised legislation, procedures, policy, and regulations. By preparing a separate WQMP, the board will be better able to focus on the important issues facing the Smith-Dan River Subarea.

Substance and Purpose: Water quality management plans set forth measures for the State Water Control Board to implement in order to reach and maintain water quality goals. The purpose of this proposal is to amend the existing Roanoke River Basin WQMP by deleting references for those areas to be covered by the new Smith-Dan Subarea WQMP. The new Plan will focus attention on the unique problems and issues within the Smith-Dan Subarea, update those portions of the Roanoke River Basin WQMP in the Smith-Dan River Subarea and bring the plan into compliance with federal law.

Estimated Impact: There are currently 90 permitted facilities and approximately 218,000 persons residing in the Smith-Dan Subarea, who will be directly affected by the plan. Changes in segment classification will be made in the plan by adding water quality limited segments for fecal coliform for the South Fork of the Mayo River, Sandy River, and several other tributaries and by adding water quality limited segments for ammonia to a number of small tributaries.

Alternatives: The Smith-Dan River Subarea has not been updated to reflect current data, scientific studies; new or revised legislation, procedures, policy, and regulations; and changes in area growth and development since the Roanoke River Basin WQMP was adopted. One alternative is to continue to use the outdated Roanoke River Basin WQMP. To do this would result in noncompliance with the amendments to the Clean Water Act for achieving current water quality goals. A second alternative is to update the existing plan. While this is possible, it would be a very long process. Furthermore, the current Roanoke River

Basin WQMP is presented in four lengthy volumes with emphasis on the upper basin area. The board is interested in focusing more attention on the special issues and needs of the Smith-Dan Subarea, updating information for the subarea and meeting new regulatory requirements and believes that a separate plan is warranted.

Public Comments: The board seeks written and oral comments from interested persons on the costs and benefits of the stated alternatives or other alternatives. In addition, the Board will hold a public meeting at 7 p.m. on Thursday, September 30, 1993, at the Henry County Administration Building, Board Room, Kings Mountain Road, Collinsville, Virginia, to receive comments from the public.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulation after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Accessibility to Persons with Disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230 or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than 4 p.m., Monday, September 20, 1993.

Statutory Authority: § 62.1-44.15(10) et seq. of the Code of Virginia.

Written comments may be submitted until 4 p.m. on October 5, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Wellford Estes, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5030.

VA.R. Doc. No. C93-2001; Filed August 3, 1993, 3:40 p.m.

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.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions.**

Statutory Authority: §§ 46.2-1179 and 46.2-1180 of the Code of Virginia.

Public Hearing Date: November 17, 1993 - 10:30 a.m.
Written comments may be submitted through December 3, 1993.
(See Calendar of Events section for additional information)

Basis: The legal basis for the proposed regulation is the Virginia Motor Vehicle Emissions Control Law (Title 46.2, Chapter 10 of the Code of Virginia), specifically §§ 46.2-1179 and 46.2-1180, which authorizes the State Air Pollution Control Board to promulgate regulations controlling air pollution from motor vehicles in order to protect public health and welfare.

Purpose: The purpose of the regulation is to require that motor vehicles undergo periodic emissions inspection and be maintained in compliance with emission standards in order to reduce harmful emissions of hydrocarbons, carbon monoxide and oxides of nitrogen. The regulation is being promulgated in response to state and federal laws requiring the emissions inspection program.

Substance: The major provisions of the proposal are summarized below.

1. The geographic coverage of the program consists of the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

2. Also included are vehicles which operate primarily in these areas, regardless of registration address.

3. The enhanced emissions inspection consists of several tests. Vehicles will get a combination of tests based on model year and weight class. The tests are:

IM240 exhaust test - A test of a vehicle's exhaust emissions while operating during a simulated driving cycle.

Pressure test - A test of the vehicle's fuel supply system to detect excessive vapor leakage.

Purge test - A test of the vehicle's system of recycling gasoline fumes from the charcoal canister into the fuel combustion process.

Two-speed exhaust test - A test of a vehicle's exhaust emissions while operating at idle and at 2500 rpm.

Emissions control device - A visual inspection of the emissions control equipment which the manufacturer was required to install.

4. The type of test given will be based on the following:

IM240 exhaust test - 1968 and newer cars and trucks weighing up to 8500 pounds.

Pressure & purge tests - 1971 and newer cars and trucks weighing up to 8500 pounds.

Two-speed exhaust test - 1968 and newer vehicles from 8500 pounds to 26,000 pounds.

Emissions control device - 1973 and newer vehicles.

5. The inspection fee for all vehicles will be $20 for the initial test; retests will be free if accomplished within 14 days.

6. Administrative costs will be covered by an additional fee at the time of registration of $2.00 per vehicle, per annum.

7. Inspections or waivers will be valid for two years regardless of transfers of ownership.

8. In order to be granted a waiver, a motor vehicle must have failed an initial test and a retest and at least $450 must have been spent in valid repair of emissions-related equipment. This cost is adjusted annually according to the Consumer Price Index.

9. Enforcement of this program is by denial of motor vehicle registration until inspection has been accomplished. This process is being established cooperatively with the Virginia Department of Motor Vehicles.

10. Inspection facility operations are restricted to testing of vehicle emissions and related administrative procedures. Facilities are granted permits and inspection personnel are licensed by the Director of the Department of Environmental Quality.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. Public:

a. The motor vehicle owner will pay an increased fee at the inspection station for emissions inspections under the new program. The fee will increase from $13.50 to approximately $20. An exact fee will be determined when a contract for services is awarded. This higher cost is the result of the higher technology testing equipment required by EPA. However, because the system will be utilizing high-volume inspection facilities which only perform emissions inspections, this test fee is far lower than it would be if hundreds of service stations had to purchase and operate it.

b. The reduced number of inspection stations in the new program may cause an increase in the distance the average motorist has to drive to get an inspection. The number of stations will decrease from approximately 350 down to 10 to 15. Each station, however, will have multiple lanes which operate on an assembly-line basis. Vehicles will progress through the test at a faster rate than in the current system. In fact, although there is considerable concern that long waiting lines will develop, it should take no longer to obtain an inspection in the enhanced program than it does presently.

c. Because of the test-only format, motor vehicle owners will have to take failed vehicles elsewhere to get them repaired. This may take additional time. However, because the testing station has no secondary motive for passing or failing a vehicle, the motor vehicle owner can be confident that the vehicle passed or failed the test on its own merits. In addition, the inspection stations will provide diagnostic information to the owner and to repair stations in order to facilitate effective repairs.

d. At least initially, more vehicles are likely to fail the enhanced test. Indeed, this must occur if vehicle emissions are to be reduced beyond the ability of the current program. The average cost to repair a vehicle which fails the new test will increase from approximately $75 to approximately $120. The ultimate benefit of these additional failures is reduced pollution from these vehicles.

e. There will also be an increase in the cost of obtaining a waiver. Congress set this cost at $450, adjusted annually based on the consumer price index. This is an increase from $200 under the current program. Again, this feature is designed to ensure that pollution from vehicles is reduced rather than being excused if a nominal expense is endured.

f. The enhanced emissions inspection program will be about five times as effective as the current program in reducing hydrocarbon emissions from motor vehicles. This reduction will assist the Commonwealth in achieving the air quality goals set out by Congress in the Clean Air Act.

g. For vehicles which fail the test, and are subsequently repaired so that they pass, there will be a benefit of increased fuel mileage in the range of 6.0% to 10%. This benefit will likely also be experienced by vehicle owners who have their vehicles tuned or otherwise adjusted prior to the inspection in order to help ensure they pass the inspection the first time.

2. Department:

a. The department must increase staff to satisfy the level of oversight required by the EPA regulations. The increase over the current program is 20 personnel. This compares to an increase of 52 personnel which would have been required to oversee a program had the enhanced test been performed at existing service station/repair center facilities.

b. The department must develop and implement a comprehensive public information plan to inform the motor vehicle owner about all the changes the new program will create. There will be a benefit of increased public awareness of air pollution issues in general and the role of automobile emissions in creating ozone pollution.

Localities Affected: The following localities will bear an identified disproportionate material impact due to the proposed regulation which would not be experienced by other localities: the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Impact: This regulation applies to any owner of a motor vehicle weighing less than 26,000 pounds (GVWR), except motorcycles and diesel-powered vehicles, registered or primarily operated in the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The number of vehicles currently within the affected vehicle weight and model year classes is approximately 1.3 million and increases by about 2.0% each year.

The regulation also applies to any facility, including associated inspectors, authorized to perform motor vehicle emissions inspections. This will affect an estimated 10 to 15 facilities and approximately 250 to 300 inspection station personnel.

The inspection fee charged to the motor vehicle owner at

the inspection station will increase from $13.50 to a maximum of $20. This fee will be required every other year. To the benefit of the motorist is the fact that the inspection valid period does not cease when ownership is transferred (the current regulation requires a new inspection upon transfer of title).

The cost to repair a failed vehicle may increase due to the accuracy of the test. The cost of the average repair is estimated to increase from $75 to $120 and the rate of failure may increase from approximately 14% (current program) to approximately 25% to 30%.

In order to establish and equip the network of facilities which will be needed to perform these inspections, and hire, train, and pay the personnel who administer the program, potential owners must invest an estimated $50 million to $75 million.

The extensive oversight of the program required by EPA will require 35 employees, five of which are allocated to data management and the remainder to operational duties and management. There is also a cost for startup of the state oversight program and continuing costs for support, such as for vehicles used for daily travel of oversight personnel and vehicles used for covert audits.

The overall budget for program startup, personnel costs, and operational expenses for fiscal year 1995 is approximately $2.9 million. The overall budget for the same expenses in fiscal year 1996 is approximately $2.4 million.

The source of department funds to carry out this regulation is the Vehicle Emissions Inspection Fund which is the repository for an administrative fee of $2.00 per vehicle, per annum, charged to owners of motor vehicles subject to the inspection program (as stated above, approximately 1.3 million vehicles). The amount collected through this fee in fiscal years 1995 and 1996 will be approximately $2.6 million.

Summary:

The regulation concerns the enhanced emissions inspection program and is summarized below:

1. The geographic coverage of the program consists of the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

2. Also included are vehicles which operate primarily in these areas, regardless of registration address.

3. The enhanced emissions inspection consists of several tests. Vehicles will get a combination of tests based on model year and weight class. The tests are:

a. IM240 exhaust test - A test of a vehicle's exhaust emissions while operating during a simulated driving cycle.

b. Pressure test - A test of the vehicle's fuel supply system to detect excessive vapor leakage.

c. Purge test - A test of the vehicle's system of recycling gasoline fumes from the charcoal canister into the fuel combustion process.

d. Two-speed exhaust test - A test of a vehicle's exhaust emissions while operating at idle and at 2500 rpm.

e. Emissions control device- A visual inspection of the emissions control equipment which the manufacturer was required to install.

4. The type of test given will be based on the following:

a. IM240 exhaust test - 1968 and newer cars and trucks weighing up to 8500 pounds.

b. Pressure & purge tests - 1971 and newer cars and trucks weighing up to 8500 pounds.

c. Two-speed exhaust test - 1968 and newer vehicles from 8500 pounds to 26,000 pounds.

d. Emissions control device - 1973 and newer vehicles.

5. The inspection fee for all vehicles will be $20 for the initial test; retests will be free if accomplished within 14 days.

6. Administrative costs will be covered by an additional fee at the time of registration of $2.00 per vehicle, per annum.

7. Inspections or waivers will be valid for two years regardless of transfers of ownership.

8. In order to be granted a waiver, a motor vehicle must have failed an initial test and a retest and at least $450 must have been spent in valid repair of emissions-related equipment. This cost is adjusted annually according to the Consumer Price Index.

9. Enforcement of this program is by denial of motor vehicle registration until inspection has been accomplished. This process is being established cooperatively with the Virginia Department of Motor Vehicles.

10. Inspection facility operations are restricted to testing of vehicle emissions and related administrative procedures. Facilities are granted permits and inspection personnel are licensed by the Director of the Department of Environmental Quality.

VR 120-99-03. Regulations for the Control of Motor Vehicle Emissions.

PART I.
DEFINITIONS.

§ 1.1. General.

A. For the purpose of this regulation and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in § 1.2.

B. Unless specifically defined in the Virginia Motor Vehicle Emissions Control Law or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 1.2. Terms defined.

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

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

"Affected motor vehicle" means any vehicle which:

1. Was manufactured for the 1968 model year or a more recent model year;

2. Is designed for the transportation of persons or property;

3. Is powered by an internal combustion engine; and

4. Is more than one year old measured from the date such vehicle was first titled.

The term "affected motor vehicle" does not mean any:

1. Vehicle which has a weight greater than 26,000 pounds gross vehicle weight rating (GVWR);

2. Vehicle powered by a diesel engine;

3. Motorcycle;

4. Vehicle which, at the time of its manufacture, was not designed to meet emissions standards set or approved by the federal government; or

5. Any antique motor vehicle as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia.

"Base of operations" means, for motor vehicles registered by the Virginia Department of Motor Vehicles and garaged outside of the program area, the area within which the affected motor vehicle is primarily driven. A vehicle is primarily driven in the program area if the vehicle is operated in the program area for an amount of annual mileage equal to or greater than 50% of its annual mileage or 6,000 miles, whichever is greater.

"Board" means the State Air Pollution Control Board or its designated representative.

"Calibration" means establishing or verifying the total response curve of a measurement device using several different measurements having precisely known quantities.

"Calibration gases" means gases of precisely known concentrations which are used as references for establishing or verifying the calibration curve of a measurement device.

"Canister" means a mechanical device capable of absorbing and retaining hydrocarbon vapors.

"Catalytic converter" means a post combustion device which oxidizes hydrocarbon and carbon monoxide gases or reduces oxides of nitrogen or both.

"Certificate of emissions inspection" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this regulation, which indicates that (i) an affected motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this regulation; (ii) the requirement of compliance with the emissions standards has been waived; or (iii) the affected motor vehicle has failed the emissions inspection.

"Chargeable inspection" means an initial inspection, or a reinspection that occurs 15 days or later after the initial inspection, on an affected motor vehicle, for which the station owner is entitled to collect an inspection fee. No fee shall be paid for inspections that are incomplete, or inspections that are ordered by the department for referee purposes or on-road test failures.

"Compliance document" means any document, device, or symbol which contains statistical, quality control, or quality assurance information required by the department under this regulation for the purpose of evaluating the performance of the enhanced emissions inspection program against state or federal standards or requirements.

"Composite" means the average emission rate, expressed as grams per mile (gpm) as determined by the IM240 test procedure using the averaging method described in EPA High-Tech Technical Guidance, § 85.2205(b) (see Appendix A).

"Consent agreement" means an agreement that the owner or any other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this regulation, by mutual agreement of the owner or any other person and the board. A consent agreement may include agreed upon civil charges.

"Consent order" means a consent agreement issued as an order. Such orders may be issued without a hearing.

"Constant volume sampler" means a device which collects all of a vehicle's exhaust emissions, which accurately measures gas volume corrected to standard conditions, and consists of those devices which are subject to the specifications of EPA High-Tech Technical Guidance, § 85.2226(b) (see Appendix A).

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between 300 and 1,100 revolutions per minute (rpm), or at another speed if so specified by the manufacturer.

"Data handling system" means all the computer hardware, software and peripheral equipment used by the station owner to conduct emissions inspections and manage the enhanced emissions inspection program.

"Date of resale" means the date which an affected motor vehicle is sold by a motor vehicle dealer to any person other than another motor vehicle dealer.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Driving cycle" means a predetermined schedule for acceleration and deceleration of a motor vehicle within a prescribed period of time.

"Dynamometer" means a device consisting of at least two rollers and associated equipment for absorption of force or energy from a motor vehicle.

"Emissions control equipment" means those parts, assemblies or systems and related parts in or on a vehicle originally installed by the manufacturer for the purpose of reducing emissions.

"Emissions inspection" means an inspection of a motor vehicle performed by an emissions inspector employed by an emissions inspection station, using the tests, procedures, and provisions set forth in this regulation or VR 120-99-01.

"Emissions inspection station" means a test-only facility which has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this regulation.

"Emission standard" means any provision of Part IV which prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution. For the purposes of the transient exhaust emissions (IM240) test, the standard includes a composite standard, which is a value averaged over the duration of the test driving cycle, and a Phase 2 standard, which is only the second portion of the test driving cycle.

"Emissions testing equipment" means, for the purposes of § 2.1 E, equipment which consists only of those devices which are subject to the specifications of EPA High-Tech Technical Guidance, § 85.2226(c) (see Appendix A).

"Enhanced emissions inspection program" means a motor vehicle emissions inspection system including inspection procedures, emissions standards, and equipment as provided in 40 CFR Part 51, Subpart S and consistent with applicable requirements of the federal Clean Air Act. The director shall administer the enhanced emissions inspection program. Such program shall require biennial inspections at official emissions inspection stations in accordance with this regulation.

"Error of omission" means the failure of a test procedure to identify an affected motor vehicle which is emitting air pollutants at a rate greater than allowed by an applicable emission standard.

"Facility" means something that is built, installed or established to serve a particular purpose including, but not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC 7401 et seq.

"Federal employee" means civilian or military personnel employed or stationed at a federal facility, including contractor personnel, for more than 60 days in a calendar year.

"Federal facility" means a facility or complex that is owned, leased, or operated by a U.S. government agency, including parking areas provided to federal employees at the facility.

"Fleet" means 20 or more motor vehicles which are owned, operated, leased or rented for use by a common owner or have been consigned for maintenance to a common facility.

"Fleet emissions inspection station" means any inspection facility which complies with § 46.2-1184 of the Motor Vehicle Emissions Control Law and which is operated under a permit issued to a qualified fleet owner, lessee, or consignee as determined by the director.

"Formal hearing" means board processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act and includes only (i) opportunity for private parties to submit factual proofs in

formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions.

"Gas span" means the adjustment of an exhaust gas analyzer to correspond with known concentrations of span gases.

"Gross vehicle weight rating (GVWR)" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and expressed on a permanent identification label affixed to the motor vehicle.

"Heavy duty vehicle" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a vehicle curb weight of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

"Implementation schedule" means the schedule of events, including tasks and completion dates specified by the department which bind the station owner to completion of performance requirements by specific calendar dates.

"IM240 test" means the exhaust emissions test procedure described in EPA High-Tech Technical Guidance, § 85.2221 (see Appendix A).

"Inspection fee" means the amount of money that the station owner may collect from the motor vehicle owner for each chargeable inspection.

"Inspection network" means all of the enhanced emissions inspection stations, including the equipment contained within, which are operated at specific geographic locations for the purpose of carrying out this regulation.

"Light duty truck" means any affected motor vehicle (i) which is rated at 6,000 pounds GVWR or less or is rated at 8,500 pounds GVWR or less and has a basic vehicle frontal area of 45 square feet or less; and (ii) which meets any one of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.

2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.

3. Equipped with special features enabling off-street or off-highway operation and use.

"Light duty vehicle" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"Loaded vehicle weight (LVW)" means the weight of a vehicle's standard equipment and a nominally filled fuel tank plus 300 pounds.

"Locality" means a city, town, or county created by or pursuant to state law.

"Model year" means, except as may be otherwise defined in this regulation, the motor vehicle manufacturer's annual production period (as determined by the U.S. Environmental Protection Agency) which may include the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year of manufacture. For the purpose of this definition, model year is applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

"Motor vehicle" means any vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle.

"Motor vehicle dealer" means a person who is licensed by the Department of Motor Vehicles in accordance with §§ 46.2-1500 and 46.2-1508 of the Code of Virginia.

"Motor vehicle emissions repair facility" means a facility which is engaged in the business of repairing motor vehicle emissions control equipment and related systems.

"Motor vehicle inspection report" means a report of the results of an emissions inspection, indicating whether the motor vehicle has passed, failed, has been rejected, or has obtained an emissions inspection waiver, and is used by the motor vehicle owner to document emissions-related repairs performed on the motor vehicle subsequent to failure of an emissions inspection. The report shall accurately identify the motor vehicle and shall include inspection results, recall information, warranty and repair information, and a unique identification number.

"Motor vehicle owner" means any person who owns, leases, operates, or controls a motor vehicle or fleet of motor vehicles.

"Order" means any decision or directive of the board, including special orders, emergency special orders, consent orders, and orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of this regulation. Unless specified otherwise in this regulation, orders shall only be issued after the appropriate administrative proceeding.

"Owner" means any person who owns, leases, operates, controls or supervises a source, and shall also mean motor vehicle owners and emissions inspection station owners if not specified.

"Party" means any person named in the record who

actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Phase 2" means that portion of the driving cycle described in EPA High-Tech Technical Guidance, § 85.2221(e)(1) (see Appendix A) that occurs from second 94 to second 239.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Pressure test" means a physical test of the evaporative emission control system on a motor vehicle which vents emissions of volatile organic compounds from the fuel tank and fuel system to an on-board emission control device, and prevents their release to the ambient air under normal vehicle operating conditions.

"Program area" means the territorial area encompassed by the boundaries of the following localities: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

"Public hearing" means an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Purge test" means a test which measures the instantaneous purge flow in standard liters per minute from the canister to the motor intake manifold, based upon computation of the total volume of the flow in standard liters over a prescribed driving cycle, or an equivalent procedure approved by the department.

"Quality assurance plan" means the plan, approved by the department, which the station owner shall develop and implement to ensure that: (i) materials and procedures which are incorporated into the construction and operation of the vehicle emissions inspection program conform to appropriate specifications, (ii) the inspection network is capable of being operated in accordance with this regulation, and (iii) the facilities and equipment will be properly maintained throughout the life of the program.

"Referee station" means those facilities in an emissions inspection station operated or used by the department to: (i) determine program effectiveness; (ii) resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations; and (iii) provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

"Reinspection" means a type of inspection selected when a request for an inspection is accompanied by a completed motor vehicle inspection report indicating a previous failure, and summarizing the repair work and costs associated with the attempt by the motor vehicle owner to bring the motor vehicle into compliance.

"Station owner" means any person who owns, leases, operates, controls or supervises an emissions inspection station.

"Stoichiometric" means the complete chemical oxidation of a substance; as applied to pure hydrocarbon fuels, it means complete combustion of the fuel to carbon dioxide and water, with no residual free oxygen.

"Tactical military vehicle" means any motor vehicle designed to military specifications or a commercially designed motor vehicle modified to military specifications to meet direct transportation support of combat, tactical, or military relief operations, or training of personnel for such operations.

"Tampering" means to alter, remove or otherwise disable or reduce the effectiveness of emissions control equipment on a motor vehicle.

"Test-only" means any emissions inspection station that performs only motor vehicle emissions inspections and other procedures and functions authorized by this regulation.

"Tier 1" means new gaseous and particulate tail pipe emission standards for use in certifying new light duty vehicles and light duty trucks phased in beginning with the 1994 model year as promulgated by the U.S. Environmental Protection Agency.

"Two-speed idle test" means a vehicle exhaust emissions test which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

"Variance" means the temporary exemption of a station owner or other person from specific provisions of this regulation, or a temporary change in this regulation as it applies to a station owner or other person.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Virginia Register Act" means Chapter 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2

of the Code of Virginia.

PART II.
GENERAL PROVISIONS.

§ 2.1. Applicability and authority of the department.

A. The provisions of this regulation, unless specified otherwise, apply to the following:

1. Any owner of an affected motor vehicle specified in subsection B of this section.

2. Any owner of an emissions inspection station or any person who conducts an emissions inspection.

B. The provisions of this regulation, unless specified otherwise, apply to the following affected motor vehicles:

1. Any affected motor vehicle registered by the Virginia Department of Motor Vehicles and garaged within the program area.

2. Any affected motor vehicle registered by the Virginia Department of Motor Vehicles and garaged outside of the program area but with a base of operations in the program area.

3. Any affected motor vehicle (i) owned or operated by a U.S. government agency located within the program area, (ii) operated on or commuting to a federal facility within the program area, or (iii) owned or operated by a U.S. government agency located outside the program area but with a base of operations in the program area.

4. Any affected motor vehicle (i) owned or operated by a state or local government agency located within the program area, (ii) operated on or commuting to a state or local government facility within the program area, or (iii) owned or operated by a state or local government agency located outside the program area but with a base of operations in the program area.

C. The provisions of this regulation, unless specified otherwise, apply in the program area.

D. The provisions of this regulation, unless specified otherwise, apply only to those pollutants for which emission standards are set forth in Part IV.

E. A manufacturer or distributor of emissions testing equipment is prohibited from owning or operating an emissions inspection station or having financial interest in an emissions inspection station except that a manufacturer or distributor may lease equipment to, or provide financing for emissions inspection equipment to, owners or operators of such stations.

F. By the adoption of this regulation, the board confers upon the department the administrative, enforcement and decision making authority enumerated herein.

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

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

Additional information on the specific documents incorporated and their availability may be found in Appendix A.

§ 2.2. Establishment of regulations and orders.

A. Regulations for the Control of Motor Vehicle Emissions are established to implement the provisions of the Virginia Motor Vehicle Emissions Control Law and the federal Clean Air Act.

B. Regulations for the Control of Motor Vehicle Emissions shall be adopted, amended or repealed in accordance with the provisions of the Motor Vehicle Emissions Control Law, Articles 1 and 2 of the Administrative Process Act, and the Public Participation Procedures in Appendix E of VR 120-01.

C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the board.

D. If necessary in an emergency situation, the board may adopt, amend or stay a regulation under § 9 6.14:4.1 of the Administrative Process Act, but such regulation shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section.

§ 2.3. Enforcement of regulations, permits, licenses and orders.

A. Whenever the department has reason to believe that a violation of any provision of this regulation or any permit, license or order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of this regulation, the permit, license, or order or any combination thereof involved and the facts on which the alleged violation is based. The department may act as the agent of the board to obtain compliance through one of the following enforcement proceedings:

1. Administrative proceedings. The department may negotiate to obtain compliance through administrative means. Such means may be a variance, consent agreement or any other mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance.

2. Judicial proceedings. The department may obtain compliance through legal means pursuant to § 46.2-1187 or § 46.2-1187.2 of the Virginia Motor Vehicle Emissions Control Law.

B. Nothing in this section shall prevent the department from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Case decisions regarding the enforcement of regulations, orders, licenses and permits shall be made by the director or board. Case decisions of the director and the board that are made pursuant to a formal hearing may be regarded as a final decision of the board and appealed pursuant to § 2.5. Case decisions of the director that are made pursuant to an informal proceeding may be (i) appealed to the board pursuant to § 2.5; or (ii) may be regarded as a final decision of the board and appealed pursuant to § 2.5.

§ 2.4. Hearings and proceedings.

A. The primary hearings and proceedings associated with the promulgation and enforcement of statutory provisions are as follows:

1. For the public hearing and informational proceeding required before considering regulations, authorized under § 46.2-1180 of the Virginia Motor Vehicle Emissions Control Law, the procedure for a public hearing and informational proceeding shall conform to (i) § 9-6.14:7.1 of the Administrative Process Act and (ii) the Public Participation Procedures in Appendix E of VR 120-01.

2. For the public hearing required before considering variances and amendments to and revocation of variances, the procedure for a public hearing shall conform to the provisions of § 2.6.

3. For the informal proceeding used to make case decisions, the procedure for an informal proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.

4. For the formal hearing for the enforcement or review of orders, licenses and permits and for the enforcement of regulations, the procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act.

B. The board may adopt policies and procedures to supplement the statutory procedural requirements for the various proceedings cited in subsection A of this section.

C. Records of hearings and proceedings may be kept in one of the following forms:

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

2. Oral statements or testimony at any informal proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings will be recorded by a court reporter, or electronically recorded for transcription to written form.

D. Availability of records of hearings and proceedings shall be as follows:

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the transcript of an informal proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

3. Any person desiring a copy of the transcript of a formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

§ 2.5. Appeal of case decisions.

A. Any station owner, motor vehicle owner or other party significantly affected by any action of the board taken without a formal hearing, or by inaction of the board, may request a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting such hearing is filed with the board. In cases involving actions of the board, such petition shall be filed within 30 days after notice of such action is mailed or delivered to such owner or party requesting notification of such action.

B. Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14:11 of the Administrative Process Act, unless the named party and the board consent to waive the informal proceeding and go directly to a formal hearing.

C. Any decision of the board resultant from a formal hearing shall constitute the final decision of the board.

D. Judicial review of a final decision of the board shall be afforded in accordance with § 9-6.14:16 of the Administrative Process Act.

E. Nothing in this section shall prevent disposition of any case by consent.

F. Any petition for a formal hearing or any notice or petition for an appeal by itself shall not constitute a stay of decision or action.

§ 2.6. Variances.

A. The board may in its discretion grant variances to any provision of this regulation after an investigation and public hearing. If a variance is appropriate, the board shall issue an order to this effect. Such order shall be subject to amendment or revocation at any time.

B. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the program area of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance and the hearing record shall remain open for a minimum of 10 days after the hearing for the purpose of receiving additional public comment.

§ 2.7. Right of entry.

Whenever it is necessary for the purposes of this regulation, the department may enter, at reasonable times, any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys, audits or investigations as authorized by § 46.2-1187.1 of the Virginia Motor Vehicle Emissions Control Law.

§ 2.8. Conditions on approvals.

A. The board or director may impose conditions upon permits, licenses and other approvals issued pursuant to this regulation, (i) which may be necessary to carry out the policy of the Virginia Motor Vehicle Emissions Control Law and (ii) which are consistent with this regulation. Except as specified herein, nothing in this regulation shall be understood to limit the power of the department in this regard.

B. A station owner or license or permit applicant may consider any condition imposed by the board or director as a denial of the requested permit, license, or other approvals, which shall entitle the applicant to appeal the decision of the department to the board pursuant to § 2.5.

§ 2.9. Procedural information and guidance.

A. The department may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of this regulation;

2. Specify the methods and means to determine compliance with applicable provisions of this regulation;

3. Set forth the format by which all data and information should be submitted; and

4. Set forth how the regulatory programs should be implemented.

B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to or determined by the board or department, the station owner, motor vehicle owner or any other affected person may request information and guidance concerning the proper procedures and methods and the board or the department shall furnish in writing such information on a case-by-case basis.

§ 2.10. Export and import of motor vehicles.

A. A person may remove the catalyst and fuel fill inlet restrictor from used motor vehicles scheduled for shipment to or from a foreign country provided that:

1. The export or import of the motor vehicle meets the provisions of subsection B of this section; and

2. The removal of the emissions control equipment does not take place prior to 10 days before the vehicle is turned over to the port authorities and the reinstallation of the emissions control equipment takes place within 10 days after receipt of the vehicle by the motor vehicle owner from the port authorities in the United States, if such equipment is required for the vehicle configuration.

B. To be exempted under the provisions of subsection A of this section, the motor vehicle must:

1. Be exported or imported under a U.S. Environmental Protection Agency approved catalyst control program; or

2. Be exported or imported under a Department of Defense privately owned vehicle import control program; or

3. Be entered through U.S. Customs under cash bond and formal entry procedures (19 CFR Part 12 - Special classes of merchandise), and be modified to bring it into conformity with applicable federal motor vehicle emission standards (40 CFR Part 86 - Control

of air pollution from new motor vehicle engines: Certification and test procedures).

§ 2.11. Relationship of state regulations to federal regulations.

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

B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to or determined by the board or department or specifically provides for decisions to be made by the board or department, it may be necessary to have such actions (approvals, determinations, exemptions, exclusions, or decisions) reviewed and confirmed as acceptable or approved by the U.S. Environmental Protection Agency in order to make them federally enforceable. Determination of which state actions require federal confirmation or approval and the administrative mechanism for making associated confirmation or approval decisions shall be made on a case-by-case basis in accordance with U.S. Environmental Protection Agency regulations and policy.

§ 2.12. Delegation of authority.

In accordance with the Motor Vehicle Emissions Control Law, the director, or in his absence a designee acting for him, may perform any act of the board provided under this regulation.

§ 2.13. Availability of information.

A. Emission data in the possession of the department shall be available to the public without exception.

B. Any other records, reports or information in the possession of the department shall be available to the public with the following exception:

The department shall consider such records, reports or information, or particular part thereof, confidential in accordance with the Virginia Uniform Trade Secrets Act (§ 59.1-336 et seq. of the Code of Virginia), upon a showing satisfactory to the department by any station owner that such records, reports or information, or particular part thereof, meet the criteria in subsection C of this section and the station owner provides a certification to that effect signed by a responsible person for such owner. Such records, reports or information, or particular part thereof, may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Motor Vehicle Emissions Control Law and the federal Clean Air Act.

C. In order to be exempt from disclosure to the public under subsection B of this section, the record, report or information must satisfy the following criteria:

1. Information for which the station owner has been taking and will continue to take measures to protect confidentiality;

2. Information that has not been and is not presently reasonably obtainable without the consent of the station owner or motor vehicle owner by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

3. Information which is not publicly available from sources other than the station owner; and

4. Information the disclosure of which would cause substantial harm to the station owner.

PART III.
INSPECTION PROCEDURES.

§ 3.1. General provisions.

A. Unless otherwise provided by this regulation, the owner of any affected motor vehicle shall have the motor vehicle emissions inspected biennially in accordance with this regulation.

B. Any affected motor vehicle presented for a vehicle emissions inspection and inspected in accordance with this regulation shall receive a Motor Vehicle Inspection Report, and a Certificate of Emissions Inspection (electronic record) shall be recorded for that vehicle which may be used for vehicle registration, as described in § 3.2

C. An emissions inspection shall be conducted at a test-only emissions inspection station.

D. A motor vehicle may be presented for an emissions inspection at any time during normal business hours.

E. The motor vehicle shall receive an emissions inspection based on the vehicle applicability conditions in § 3.3 and the emission test standards in Part IV.

F. The motor vehicle owner shall provide information to the department or the station owner at the time of reinspection regarding the repair which has been performed on vehicles which fail the emissions inspection.

G. The station owner shall provide to any motor vehicle owner whose vehicle fails an emissions inspection, and any motor vehicle emissions repair facility, information which has been collected as a result of emissions-related diagnostics and repairs and shall do so without prejudice for or against any repair facility.

§ 3.2. Motor vehicle registration.

A. A certificate of emissions inspection is valid for use in applying for registration of an affected motor vehicle for a period not to exceed the valid period specified in subsection A or B of this section as applicable.

B. From the date a motor vehicle passes an emissions inspection, or receives a waiver, the certificate of emissions inspection recorded for that motor vehicle shall be valid for a period not to exceed 27 months.

C. From the date a motor vehicle receives a dealer deferment of an emissions inspection, according to § 8.2, the certificate of emissions inspection recorded for that motor vehicle shall be valid for a period not to exceed 15 months.

D. For the purpose of motor vehicle registration, an affected motor vehicle subject to the enhanced motor vehicle emissions inspection program shall no longer be in compliance with this regulation and the Motor Vehicle Emissions Control Law at such time as the valid period of the certificate of emissions inspection expires.

§ 3.3. Motor vehicle inspection applicability.

A. Each affected light duty vehicle and light duty truck of model year 1968 and newer shall be inspected in accordance with the IM240 test procedures (transient exhaust emissions test).

B. Each affected light duty vehicle and light duty truck of model years 1971 and newer shall also be inspected in accordance with the following inspection procedures:

1. Pressure test (evaporative system integrity test); and

2. Purge test (evaporative system purge test).

C. Each affected heavy duty vehicle of model years 1968 and newer shall be inspected in accordance with a two-speed idle emission test, and all heavy duty vehicles of model year 1973 and newer shall also be tested according to the emissions control equipment inspection procedures (tampering check) as described in § 3.5 E.

D. For any other affected motor vehicle which receives a two-speed idle test in lieu of an IM240 test due to exception procedures developed by the department, such vehicles may also be tested according to the emissions control equipment inspection procedures (tampering check) as described in § 3.5 E.

§ 3.4. Motor vehicle eligibility for emissions inspections.

Eligibility for an emissions inspection shall be based upon the following criteria:

1. The vehicle does not discharge visible air pollutants for longer than five consecutive seconds after the engine has been brought up to operating temperature;

2. Any manufacturer's recall for emission related repairs or equipment replacement has been resolved by the motor vehicle owner and proof of such repair or replacement has been received by the emissions inspection station from the entity designated by the U.S. Environmental Protection Agency as the national clearinghouse of emissions-related recall notification data, the respective vehicle manufacturer or its representative; and

3. The vehicle passes a pretest qualification check, which includes the following requirements:

a. There is no fuel leak in or around the engine area, fuel tank, or lines, which causes wetness or pooling of fuel;

b. There is no leaking of engine oil, coolant or other fluid (except for air conditioner condensate) immediately preceding the inspection period;

c. There is no obvious exhaust leak which would prohibit valid sampling;

d. There is no missing or loose tail pipe section which would prohibit proper connection to the constant volume sampler system;

e. For any motor vehicle that receives an IM240 test, there is no drive axle tire which has tread across all major tread grooves less than a depth of at least 2/32 inch, measured at three locations; which has exposed cords, signs of tread separation, or other structural damage; or which is severely underinflated;

f. There is no evidence that the vehicle is in overheated condition; and

g. There is no other mechanical condition or circumstance which might cause injury to inspection personnel, damage to the station or inspection equipment, or will affect the validity of the inspection.

§ 3.5. Emissions inspection procedures.

A. The enhanced emissions inspection shall consist of the following three tests, or alternative procedures approved by the department:

1. IM240 test. The IM240 test shall be performed in accordance with the procedure specified in 40 CFR 51.357(a)(11) and EPA High-Tech Technical Guidance, § 85.2221 (see Appendix A). It shall consist of a 240 second measurement of mass emissions from the vehicle's exhaust pipe. It shall utilize a constant volume sampler and exhaust gas analyzer while the vehicle is driven through a computer monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle. The

driving cycle shall include acceleration, deceleration, and idle operating modes.

2. Purge test. The purge test shall be performed in accordance with the procedures specified in 40 CFR 51.357(a)(9) and EPA High-Tech Technical Guidance, § 85.2221 (see Appendix A). It shall be used to measure the total purge flow occurring in the vehicle's evaporative system during the IM240 test. The purge flow measurement system shall be connected to the purge portion of the evaporative system in a series between the canister and the engine.

3. Pressure test. The pressure test shall be performed in accordance with the procedures specified in 40 CFR 51.357(a)(10). It shall be used to determine the presence, if any, of leaks in the vehicle's fuel system. The test shall consist of pressurizing the vehicle's fuel system and monitoring for pressure decay for up to two minutes.

B. Two-speed idle emissions test.

1. The two-speed idle emissions test shall be conducted using equipment which meets the operating and performance specifications of: (i) EPA High-Tech Technical Guidance, §§ 85.2221 and 85.2226 (see Appendix A), or (ii) specifications of 40 CFR Part 51, Appendix D to Subpart S, Paragraph (I), and shall follow the procedures of 40 CFR Part 51, Appendix B to Subpart S, Paragraph (II), except as noted below:

a. The idle test standards to be used to determine that the vehicle has passed or failed the test shall be those emission standards contained in Part IV.

b. If the equipment specified in EPA High-Tech Technical Guidance, § 85.2226 (see Appendix A) is used, the sample probe shall meet the specifications of EPA High-Tech Technical Guidance, § 85.2226(b)(2) (see Appendix A), except that it shall be capable of collecting exhaust from all affected motor vehicles, including heavy duty vehicles up to 26,000 GVWR.

2. For determining compliance with the emission standards of Part IV, all concentration values will be reported on a dry gas basis. Prior to using any equipment specified in EPA High-Tech Technical Guidance, § 85.2226 (see Appendix A), the station owner must receive approval from the department for the method that will be used to calculate emissions concentrations.

C. Fast pass test.

Any affected motor vehicle which receives the IM240 test specified in subsection A of this section shall be found in compliance with subdivisions A 1, and A 2 if applicable, of this section before the end of the driving cycle if the following conditions are met:

1. That up to the time of termination of the test, the motor vehicle has been tested on a driving cycle for which the U.S. Environmental Protection Agency has determined that a fast pass test can be conducted;

2. That the test procedure conforms to one of the fast pass test procedures specified in EPA High-Tech Technical Guidance, § 85.2205 (see Appendix A), and that the emissions from the affected motor vehicle meet the emission standards of EPA High-Tech Technical Guidance, § 85.2205(a)(5) (see Appendix A); and

3. The department has determined that implementation of the fast pass test procedure will not result in a net increase in the errors of omission of the test procedure as compared with the test procedures specified in subdivisions A 1 and A 2 of this section.

D. Second chance test.

1. Two-speed idle test. If a motor vehicle fails the two-speed idle test by virtue of having emissions levels of less than 1.5 times each applicable emission standard, and if such test does not include any preconditioning phase, the vehicle shall be entitled to an immediate second chance test using the same test procedure after a conditioning procedure appropriate for the vehicle type, as determined by the department.

2. IM240 test. If a motor vehicle fails the Phase 2 standards of the IM240 test by virtue of having emission levels of less than 1.5 times each applicable emission standard and the vehicle has experienced a wait time, between arrival at the testing facility and initiation of the IM240 test of more than 30 minutes, then the motor vehicle shall be entitled to an immediate second chance test using the same test procedures.

E. Emissions control equipment inspections.

1. For 1973 and newer motor vehicles that are required to receive an enhanced emissions inspection, the motor vehicle may be required to pass an emissions control equipment inspection (tampering check) if such checks are needed to comply with state or federal laws or regulations which require vehicles to be equipped with emissions control equipment. The vehicle shall fail the tampering check, and the emissions inspection, if required equipment has been subjected to tampering. Tampering checks may include:

a. Examining the emissions control information decal under the hood or checking the reference manual or applications guide to determine if the vehicle, as certified for sale or use within the United States, (i) should be equipped with a catalytic converter, thermostatic air cleaner system, positive crankcase ventilation system, exhaust gas

recirculation system, fuel evaporative system, air pump/injection system, or (ii) requires the use of unleaded fuel.

b. Visually inspecting for the presence and operability of the catalytic converter, thermostatic air cleaner system, positive crankcase ventilation system, exhaust gas recirculation system, fuel evaporative system, air pump/injection system, and fuel fill inlet restrictor.

2. For 1973 and newer motor vehicles that receive an idle emissions test pursuant to § 3.3 C or D, the vehicle shall be required to pass an emissions control equipment inspection (tampering check) if such checks are needed to comply with state or federal laws or regulations which require certain vehicles to be equipped with certain emissions control equipment. The vehicle shall fail the tampering check, and the emissions inspection, if required equipment has been subjected to tampering. Tampering checks may include:

a. Examining the emissions control information decal under the hood or checking the reference manual or applications guide to determine if the vehicle, as certified for sale or use within the United States, should (i) be equipped with a catalytic converter, thermostatic air cleaner system, positive crankcase ventilation system, exhaust gas recirculation system, fuel evaporative system, air pump/injection system, or (ii) requires the use of unleaded fuel.

b. Visually inspecting for the presence and operability of the catalytic converter, thermostatic air cleaner system, positive crankcase ventilation system, exhaust gas recirculation system, fuel evaporative system, air pump/injection system, and fuel fill inlet restrictor.

3. Determination of the presence of emissions control equipment shall be performed by visual observation using a mirror, video camera, or other visual device.

4. If the motor vehicle fails the fuel fill inlet restrictor inspection, the catalytic converter shall also be failed pending a department test to determine whether the converter has been contaminated with lead. The fuel fill inlet restrictor as well as the catalytic converters, and, if applicable, exhaust gas oxygen (O2) sensors shall be replaced in order to pass a retest and to ensure the efficient operation of emissions control equipment. Any exception from this subsection shall be verified by a department approved performance test.

5. Any motor vehicle which fails a vehicle emissions control equipment inspection will be considered to have failed the emissions inspection; however, all other portions of the emissions inspection will be conducted irrespective of the results of the emissions control equipment inspection.

PART IV.
TEST STANDARDS.

§ 4.1. Vehicle emission test exhaust phase-in standards.

From the date of program in calendar year 1995 and until such time as the program has been operational for two years, the following exhaust emissions standards shall apply. Except where noted, all standards are based upon the IM240 test and EPA High-Tech Technical Guidance, § 85.2205 (see Appendix A).

1. 1994 model year and newer Tier 1 light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	.50 gpm
Carbon Monoxide:	15.0 gpm	12.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

2. 1991 model year and newer pre-Tier 1 light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	1.20 gpm	.75 gpm
Carbon Monoxide:	20.0 gpm	16.0 gpm
Oxides of Nitrogen:	2.5 gpm	reserved

3. 1983 to 1990 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	2.00 gpm	1.25 gpm
Carbon Monoxide:	30.00 gpm	24.0 gpm
Oxides of Nitrogen:	3.0 gpm	reserved

4. 1981 to 1982 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	2.00 gpm	1.25 gpm
Carbon Monoxide:	60.00 gpm	48.0 gpm
Oxides of Nitrogen:	3.0 gpm	reserved

5. 1980 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	2.00 gpm	1.25 gpm
Carbon Monoxide:	60.00 gpm	48.0 gpm
Oxides of Nitrogen:	6.00 gpm	reserved

6. 1977 to 1979 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	7.5 gpm	5.00 gpm
Carbon Monoxide:	90.00 gpm	72.00 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

7. 1975 to 1976 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	7.5 gpm	5.00 gpm
Carbon Monoxide:	90.00 gpm	72.00 gpm
Oxides of Nitrogen:	9.0 gpm	reserved

8. 1973 to 1974 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	10.00 gpm	6.00 gpm
Carbon Monoxide:	150.00 gpm	120.00 gpm
Oxides of Nitrogen:	9.0 gpm	reserved

9. 1968 to 1972 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	10.00 gpm	6.0 gpm
Carbon Monoxide:	150.00 gpm	120.00 gpm
Oxides of Nitrogen:	10.0 gpm	reserved

10. 1994 model year and newer Tier 1 light duty trucks 1 less than 6000 GVWR and greater than 3750 LVW.

	Composite	Phase 2
Hydrocarbons:	1.00 gpm	0.63 gpm
Carbon Monoxide:	20.0 gpm	16.0 gpm
Oxides of Nitrogen:	2.5 gpm	reserved

11. 1994 model year and newer Tier 1 light duty trucks 1 less than 6000 GVWR and less than 3750 LVW.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	15.0 gpm	12.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

12. 1991 model year and newer pre-Tier 1 light duty trucks 1 (less than 6000 GVWR).

	Composite	Phase 2
Hydrocarbons:	2.40 gpm	1.50 gpm
Carbon Monoxide:	60.0 gpm	48.0 gpm
Oxides of Nitrogen:	3.0 gpm	reserved

13. 1988 to 1990 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	3.20 gpm	2.00 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	3.5 gpm	reserved

14. 1984 to 1987 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	3.20 gpm	2.00 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

15. 1979 to 1983 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	7.50 gpm	5.00 gpm
Carbon Monoxide:	100.0 gpm	80.0 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

16. 1975 to 1978 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	8.00 gpm	5.00 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	9.0 gpm	reserved

17. 1973 to 1974 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	10.0 gpm	6.0 gpm
Carbon Monoxide:	150.0 gpm	120.0 gpm
Oxides of Nitrogen:	9.0 gpm	reserved

18. 1968 to 1972 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	10.00 gpm	6.00 gpm
Carbon Monoxide:	150.0 gpm	120.0 gpm
Oxides of Nitrogen:	10.0 gpm	reserved

19. 1994 model year and newer Tier 1 light duty trucks 2 greater than 6000 GVWR and greater than 5750 LVW.

	Composite	Phase 2
Hydrocarbons:	2.40 gpm	1.50 gpm

Carbon Monoxide:	60.0 gpm	48.0 gpm
Oxides of Nitrogen:	4.0 gpm	reserved

20. 1994 model year and newer Tier 1 light duty trucks 2 greater than 6000 GVWR and less than 5750 LVW.

	Composite	Phase 2
Hydrocarbons:	1.00 gpm	0.63 gpm
Carbon Monoxide:	20.0 gpm	16.0 gpm
Oxides of Nitrogen:	2.5 gpm	reserved

21. 1991 model year and newer pre-Tier 1 light duty trucks 2 (greater than 6000 GVWR).

	Composite	Phase 2
Hydrocarbons:	2.40 gpm	1.50 gpm
Carbon Monoxide:	60.0 gpm	48.0 gpm
Oxides of Nitrogen:	4.5 gpm	reserved

22. 1988 to 1990 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	3.20 gpm	2.00 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	5.0 gpm	reserved

23. 1984 to 1987 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	3.20 gpm	2.00 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

24. 1979 to 1983 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	7.50 gpm	5.00 gpm
Carbon Monoxide:	100.0 gpm	80.0 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

25. 1975 to 1978 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	8.00 gpm	5.00 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	9.0 gpm	reserved

26. 1973 to 1974 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	10.0 gpm	6.0 gpm
Carbon Monoxide:	150.0 gpm	120.0 gpm
Oxides of Nitrogen:	9.0 gpm	reserved

27. 1968 to 1972 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	10.00 gpm	6.00 gpm
Carbon Monoxide:	150.0 gpm	120.0 gpm
Oxides of Nitrogen:	10.0 gpm	reserved

28. 1981 model year and newer heavy duty vehicles. Idle test standards shall be:

Hydrocarbons:	550 ppm
Carbon Monoxide:	3.0 %

29. 1975 to 1980 model year heavy duty vehicles. Idle test standards shall be:

Hydrocarbons:	550 ppm
Carbon Monoxide:	5.0 %

30. 1971 to 1974 model year heavy duty vehicles. Idle test standards shall be:

Hydrocarbons:	850 ppm
Carbon Monoxide:	6.0 %

31. 1968 to 1970 model year heavy duty vehicles. Idle test standards shall be:

Hydrocarbons:	1250 ppm
Carbon Monoxide:	9.0 %

§ 4.2. Vehicle emission test exhaust final standards.

The following exhaust emissions standards shall apply beginning July 1, 1997, or after two years from the commencement of program operations, whichever is sooner. Except where noted otherwise, all standards are based upon the IM240 test and EPA High-Tech Technical Guidance, § 85.2205 (see Appendix A).

1. 1994 model year and newer Tier 1 light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	0.60 gpm	.40 gpm
Carbon Monoxide:	10.0 gpm	8.0 gpm
Oxides of Nitrogen:	1.5 gpm	reserved

2. 1983 and newer model year pre-Tier 1 light duty vehicles.

	Composite	Phase 2

Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	15.00 gpm	12.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

3. 1981 to 1982 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	30.00 gpm	24.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

4. 1980 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.55 gpm
Carbon Monoxide:	30.00 gpm	24.0 gpm
Oxides of Nitrogen:	4.00 gpm	reserved

5. 1977 to 1979 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	3.00 gpm	2.00 gpm
Carbon Monoxide:	65.00 gpm	52.00 gpm
Oxides of Nitrogen:	4.0 gpm	reserved

6. 1975 to 1976 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	3.00 gpm	2.00 gpm
Carbon Monoxide:	65.00 gpm	52.00 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

7. 1973 to 1974 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	7.00 gpm	4.50 gpm
Carbon Monoxide:	120.00 gpm	96.00 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

8. 1968 to 1972 model year light duty vehicles.

	Composite	Phase 2
Hydrocarbons:	7.00 gpm	4.50 gpm
Carbon Monoxide:	120.00 gpm	96.00 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

9. 1994 model year and newer Tier 1 light duty trucks 1 less than 6000 GVWR and greater than 3750 LVW.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	13.0 gpm	10.0 gpm
Oxides of Nitrogen:	1.8 gpm	reserved

10. 1994 model year and newer Tier 1 light duty trucks 1 less than 6000 GVWR and less than 3750 LVW.

	Composite	Phase 2
Hydrocarbons:	0.60 gpm	0.40 gpm
Carbon Monoxide:	10.0 gpm	8.0 gpm
Oxides of Nitrogen:	1.5 gpm	reserved

11. 1988 model year and newer pre-Tier 1 light duty trucks 1 (less than 6000 GVWR).

	Composite	Phase 2
Hydrocarbons:	1.60 gpm	1.00 gpm
Carbon Monoxide:	40.0 gpm	32.0 gpm
Oxides of Nitrogen:	2.5 gpm	reserved

12. 1984 to 1987 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	1.60 gpm	1.00 gpm
Carbon Monoxide:	40.0 gpm	32.0 gpm
Oxides of Nitrogen:	4.5 gpm	reserved

13. 1979 to 1983 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	3.40 gpm	2.00 gpm
Carbon Monoxide:	70.0 gpm	56.0 gpm
Oxides of Nitrogen:	4.5 gpm	reserved

14. 1975 to 1978 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	4.00 gpm	2.50 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

15. 1973 to 1974 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	7.0 gpm	4.5 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

16. 1968 to 1972 model year light duty trucks 1.

	Composite	Phase 2
Hydrocarbons:	7.00 gpm	4.50 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

17. 1994 model year and newer Tier 1 light duty trucks 2 greater than 6000 GVWR and greater than 5750 LVW.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	15.0 gpm	12.0 gpm
Oxides of Nitrogen:	2.0 gpm	reserved

18. 1994 model year and newer Tier 1 light duty trucks 2 greater than 6000 GVWR and less than 5750 LVW.

	Composite	Phase 2
Hydrocarbons:	0.80 gpm	0.50 gpm
Carbon Monoxide:	13.0 gpm	10.0 gpm
Oxides of Nitrogen:	1.8 gpm	reserved

19. 1988 and newer model year pre-Tier 1 light duty trucks 2 (greater than 6000 GVWR).

	Composite	Phase 2
Hydrocarbons:	1.60 gpm	1.00 gpm
Carbon Monoxide:	40.0 gpm	32.0 gpm
Oxides of Nitrogen:	3.5 gpm	reserved

20. 1984 to 1987 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	1.60 gpm	1.00 gpm
Carbon Monoxide:	40.0 gpm	32.0 gpm
Oxides of Nitrogen:	1.5 gpm	reserved

21. 1979 to 1983 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	3.40 gpm	2.00 gpm
Carbon Monoxide:	70.0 gpm	56.0 gpm
Oxides of Nitrogen:	4.5 gpm	reserved

22. 1975 to 1978 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	4.00 gpm	2.50 gpm
Carbon Monoxide:	80.0 gpm	64.0 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

23. 1973 to 1974 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	7.0 gpm	4.5 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	6.0 gpm	reserved

24. 1968 to 1972 model year light duty trucks 2.

	Composite	Phase 2
Hydrocarbons:	7.00 gpm	4.50 gpm
Carbon Monoxide:	120.0 gpm	96.0 gpm
Oxides of Nitrogen:	7.0 gpm	reserved

25. Heavy duty vehicles. The applicable emission standards of subsection A of this section shall apply to these vehicles.

§ 4.3. Pressure test standards.

A. In order to pass the pressure test, a motor vehicle's evaporative system shall maintain a system pressure above eight inches of water for two minutes after being pressurized to 14 +/- 0.5 inches of water.

B. If a vehicle's canister is missing or damaged, if hoses are missing or disconnected, or if the gas cap is missing, a vehicle shall not pass the pressure test.

§ 4.4. Purge test.

In order to pass the purge test, a motor vehicle's total purge system flow must measure at least one liter over the course of the IM240 test, or equivalent method approved by the department. Any measurement below the background electronic noise specification in EPA High-Tech Technical Guidance, § 85.2227(a)(2)(vi) (see Appendix A) shall not be included in the total flow calculation.

§ 4.5. Engine and fuel changes.

A. For any vehicle which has undergone a fuel conversion or has had the original engine replaced, the emissions standards and applicable emissions control equipment requirements for the year and model of the vehicle body/chassis, as per the registration or title, or for the replacement engine if it is newer, shall apply.

1. For those diesel-powered vehicles which have been converted to gasoline-powered engines, the emissions standards and applicable emissions control equipment for the equivalent year, make, and model of the

gasoline-powered vehicle, per the registration or title, or for the engine if it is newer, shall apply.

2. For those gasoline or diesel-powered vehicles which have been converted to alternative fuels for which there is no federal certified configuration or for which no emissions standards have been adopted or approved by the U.S. Environmental Protection Agency, the most stringent emissions standards and applicable emissions control equipment for the equivalent year, make, and model of the vehicle chassis, per the registration or title, shall apply.

3. For those vehicles which have the capability or are equipped to operate on gasoline and an alternative fuel, the vehicle shall be subject to the emissions inspection while operating on gasoline.

B. For those vehicles that were assembled by other than a licensed manufacturer, such as "kit-cars," the applicable emissions control equipment and emissions standards shall be based on a determination of the model year of the vehicle engine. The model year of the vehicle engine shall be presumed to be that stated by the motor vehicle owner, unless it is determined by physical inspection of the vehicle engine by the department that the model year of the engine is other than that stated by the motor vehicle owner.

PART V.
INSPECTION EQUIPMENT.

§ 5.1. Computerized inspection systems.

A. Measurements on motor vehicles subject to vehicle emissions inspection requirements shall be performed by computerized inspection systems.

B. Computerized inspection systems shall conform to all specifications for performance features and functional characteristics contained in 40 CFR 51.358.

§ 5.2. Enhanced equipment specifications.

A. All dynamometers, constant volume samplers, and analytic instruments used in performing IM240 exhaust tests shall conform to all specifications for such equipment contained in EPA High-Tech Technical Guidance, § 85.2226 (see Appendix A) or equivalent equipment approved by the U.S. Environmental Protection Agency.

B. All equipment used to perform the pressure test shall conform to all specifications and requirements contained in EPA High-Tech Technical Guidance, § 85.2227(a) (see Appendix A).

C. All equipment used to perform the purge test shall conform to all specifications and requirements contained in EPA High-Tech Technical Guidance, § 85.2227(b) (see Appendix A).

D. When practicable, the equipment used in subsections B and C of this section shall be noninvasive to the components of the motor vehicle.

E. Equipment approved as equivalent to that required in subsection A, B, or C of this section by the U.S. Environmental Protection Agency may be used if approved by the department.

§ 5.3. Two-speed idle test equipment specifications.

A. All equipment used to perform the idle test shall conform to all specifications and requirements contained in § 5.2 A or, in the alternative, 40 CFR Part 51, Appendix D to Subpart S, Paragraph (I).

B. All equipment used to perform pressure testing on vehicles which receive an idle emissions test shall conform to all specifications and requirements contained in EPA High-Tech Technical Guidance, § 85.2227(a) (see Appendix A).

C. When practicable, the equipment used in subsection B of this section shall be noninvasive to the components of the motor vehicle.

D. Equipment approved as equivalent to that required in subsections A or B of this section by the U.S. Environmental Protection Agency may be approved by the department.

PART VI.
QUALITY CONTROL.

§ 6.1. General requirements.

A. Each owner of a vehicle emissions inspection station shall ensure that all equipment used at the station is properly calibrated and maintained and that calibration and maintenance records and control charts are accurately created, recorded, and maintained according to § 12.8 A.

B. Preventative maintenance shall be performed on all inspection equipment on a periodic basis, not less than one time per month.

C. Computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances which should be monitored to assure quality control such as those circumstances which require a service technician to work on the equipment.

§ 6.2. Equipment requirements.

To assure test accuracy, all IM240, idle test, pressure and purge test equipment shall be maintained according to demonstrated good engineering practices. At a minimum, the following requirements shall be met:

1. Computer monitoring and control of quality assurance checks and quality control charts shall be used whenever possible.

2. Frequency of quality control checks shall be in accordance with the requirements set forth in 40 CFR Part 51, Appendix A to Subpart S.

§ 6.3. Document security.

A. Measures shall be taken to maintain the security of all documents by which compliance with the inspection requirement is established or evaluated including, but not limited to, certificates of emissions inspection, vehicle inspection reports, and repair receipts or documents. This section shall in no way require the use of paper documents but shall apply if they are used.

B. Compliance documents shall be counterfeit resistant. Such measures as special fonts, water marks, ultra-violet inks, encoded magnetic strips, unique bar-coded identifiers, and difficult to acquire materials may be used to accomplish this requirement.

C. All vehicle inspection reports shall be printed with a unique serial number and an official seal.

D. Measures shall be taken to assure that compliance documents cannot be stolen or removed without being damaged.

E. Each vehicle inspection report shall have a transaction identification number printed on the face of the document which is unique to both the emissions inspection record and the certificate of emissions inspection which documents the emissions inspection.

PART VII.
CONSUMER PROTECTION AND QUALITY ASSURANCE.

§ 7.1. Consumer protection.

A. The department shall ensure that appropriate consumer protection measures are implemented pursuant to subdivision A 5 of § 46.2-1180 of the Virginia Motor Vehicle Emissions Control Law and 40 CFR 51.368.

B. Emissions inspection stations shall be of sufficient number and location so as to comply with the convenience criteria in subdivision 2 of this subsection to the satisfaction of the department. At a minimum there must be at least one emissions inspection station located in each of the following localities unless the board grants an exception for a station location: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, and the City of Alexandria.

The department shall ensure that emissions inspection stations are conveniently located, and, based on the garaged address of the vehicle population, located such that:

1. At least 85% of affected motor vehicles are within a five linear miles of an emissions inspection station;

2. At least 95% of affected motor vehicles are within a 12 linear miles of an emissions inspection station; and

3. At least 99% of affected motor vehicles are within a 20 linear miles of an emissions inspection station.

C. The station owner shall ensure that the operation of the emissions inspection stations comprising its inspection network satisfies the operating reliability standards set forth in 40 CFR 51.359 and 40 CFR Part 51 Appendix A to Subpart S. In order to achieve these standards, the station owner shall be required to utilize reliable equipment and establish and implement effective ongoing programs of preventive maintenance, spare parts provisioning, and repair or replacement of defective or worn out equipment.

D. The station owner shall ensure that the number and location of inspection lanes shall be such that the daily average waiting time for vehicles in line for inspection shall not exceed 15 minutes per vehicle for more than five days in any calendar month at any emissions inspection station.

Emissions inspection stations shall be open for a minimum of 55 hours per week, including at least one evening (until 7 p.m. or later) and not less than five hours on Saturdays.

The station owner shall not, for any reason other than equipment failure, close or operate a lane with fewer than the required number of personnel when there are three or more vehicles at all other operating lanes.

E. For each vehicle which fails the emissions inspection, the vehicle inspection report shall include a message, approved by the department, which advises the motorist of any known emissions control equipment warranty by the vehicle manufacturer that may be available.

F. The provisions of this section shall not apply to fleet emissions inspection stations.

§ 7.2. Quality assurance.

A. The station owner shall develop and maintain a quality assurance plan, in accordance with 40 CFR 51.363 and approved by the department, to identify, correct, and prevent fraud, waste and abuse and to determine (i) whether procedures are being followed and are adequate, (ii) whether equipment is operating accurately, and (iii) whether other problems might exist which would adversely affect program performance.

B. The quality assurance plan shall also include provisions to ensure that:

1. The emissions inspection stations are constructed and operated in conformity with the design and equipment specifications approved by the department for such stations;

2. The testing and electronic data processing equipment and components and other items which are installed in emissions inspection stations conform to specifications approved by the department and described in 40 CFR Part 51, Subpart S and EPA High-Tech Technical Guidance (see Appendix A);

3. The inspection network, with all equipment and furnishings installed and in place, is capable of being operated in accordance with the technical requirements set forth in the documents identified in subdivision 2 of this subsection and approved by the department; and

4. At all times, emissions inspection stations and equipment are maintained in good operating condition; and repair and replacements are installed in accordance with a department approved obsolescence schedule.

§ 7.3. Audit requirements.

The department shall perform periodic record audits, equipment audits, and overt and covert performance audits of emissions inspection stations on a regular basis to determine whether station owners, inspectors, or other station personnel are correctly performing all tests and other required functions based on procedures established or approved by the department. The department may perform other audits as may be necessary to comply with state or federal regulations.

§ 7.4. Emissions inspection station operating standards.

A. It will be the obligation of the station owner to design, build, or otherwise procure, and oversee the operation of each emissions inspection station in accordance with the operating standards and other requirements set forth in this regulation, 40 CFR Part 51, Subpart S, and EPA High-Tech Technical Guidance (see Appendix A).

B. The station owner shall comply with the following standards at each emissions inspection station:

1. Equipment failures or any related repairs or replacement activities (except regularly scheduled repairs or replacements) shall not result in the entire emissions inspection station being shut down in excess of one working day for any single event or in excess of a total of two working days in any month; and

2. Equipment failures or any related repair or replacement activities (except regularly scheduled repairs or replacements) shall not result in inspection lane downtime in excess of one working day for any single event nor more than a total of 12 hours in any week.

C. The station owner shall be required to conduct an effective preventive maintenance program, which shall contain the following elements as a minimum:

1. Daily calibration checks;

2. Periodic recalibrations;

3. Periodic cleaning and maintenance of all equipment in accordance with the manufacturer's specifications by checklist;

4. Daily visual inspection of equipment by checklist; and

5. Recording of maintenance and calibration.

D. The department may order corrective actions to bring emissions inspection stations into compliance with the provisions of subsection A of this section. Such action may include, but is not limited to:

1. Changes in operating procedures, personnel practices, or hours of operation;

2. Redesign, repair, or replacement of operating equipment or software;

3. Construction, equipping, and operation of additional inspection facilities or inspection lanes;

4. The acquisition and maintenance of additional spare parts; and

5. Improvements in the station owner's quality assurance plan.

E. Any emissions inspection station shall be available at any reasonable time for an inspection by the department of the calibration and proper operation of all equipment.

F. Any documentation necessary to enable the department to perform calibration checks shall be available at all times at each emissions inspection station.

G. With reasonable notice, access shall be available during nonworking hours to perform any checks which the department does not wish to perform during normal work hours.

H. Any defective condition which would adversely affect the accuracy of inspections shall be corrected immediately.

I. If so ordered by the department, any inspection lane

affected by a defective condition shall be closed and no further testing shall be conducted in such lane until objective evidence proves that the defective condition has been corrected and the resumption of testing in each such lane has been approved by the department.

§ 7.5. Referee stations.

A. The department shall conduct referee inspections and shall ensure (i) that appropriate referee stations are established or (ii) that inspection lanes at emissions inspection stations are reserved as needed, to:

1. Determine program effectiveness;

2. Resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations; and

3. Provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

B. The referee shall have the authority to determine the compliance status of any motor vehicle whose owner has disputed the results of any previous inspection, waiver determination, or any other provision of this regulation.

§ 7.6. Sign posting.

A. All emissions inspection stations shall post a department approved sign designating the location as an official vehicle emissions control program inspection station in a conspicuous location on the permitted premises, available to the public and approved by the department.

B. All emissions inspection stations will post the applicable exhaust emissions standards prescribed in Part IV in a conspicuous location on the permitted premises, available to the public, and approved by the department.

C. All emissions inspection stations shall post in a conspicuous location in a clearly legible fashion a department approved sign indicating the fees charged for emissions inspections and other state-sanctioned activities, such as vehicle registration activities.

D. All emissions inspection stations shall post all signs that are issued or required by the department in a location approved by the department.

E. Signs shall be posted in a manner that does not violate local sign ordinances or codes.

F. The provisions of this section shall not apply to fleet emissions inspection stations.

PART VIII.
TEMPORARY EXEMPTIONS, DEFERMENTS, AND WAIVERS.

§ 8.1. Temporary exemptions.

A. The motor vehicle owner or lessee may request a temporary exemption from the department in the event that a vehicle subject to the emissions inspection requirements is not available for an inspection due to: (i) the vehicle being temporarily displaced from the program area, (ii) the vehicle being inoperative, or (iii) the motor vehicle owner's or lessee's absence or incapacity during the 90 day period prior to the vehicle's required emissions inspection date. The department will review such requests and determine, on a case-by-case basis according to the above criteria, the degree to which the vehicle is unavailable and whether it warrants an exemption.

B. Exemptions from the requirements for emissions control equipment due to non-availability of parts may be made by the department based on research by the vehicle owner and the department.

C. If the department agrees to an exemption request, it shall issue a temporary exemption, appropriate to demonstrated need, for a period not to exceed two years.

§ 8.2. Deferments.

A. Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection.

B. Upon a request by a motor vehicle dealer, provided the department confirms the validity of the dealer certification required by subsection C of this section, used vehicles of the current model year and the four immediately preceding model years, being held for resale in a motor vehicle dealer's inventory, shall receive a one year emissions inspection deferment. The deferment shall be noted on the certificate of emissions inspection, which may be applied toward vehicle registration according to § 3.2.

C. A motor vehicle dealer shall apply to the department for the deferment of emissions inspection, as provided for in this section, provided that the dealer certifies in writing that the emissions control equipment on the motor vehicle was operating in accordance with the manufacturer's or distributor's warranty at the date of resale. Such certification shall include, but not be limited to:

1. The type of the test or analysis done for the purpose of determining compliance with this subsection;

2. The name of the dealer or facility which performed the test or analysis required by subdivision 1 of this subsection;

3. A statement that the vehicle has not failed its most recent emissions inspection;

4. A statement that the vehicle has not previously received a testing deferment under this section;

5. The manufacturer, model, model year, engine size, fuel type, and vehicle identification number;

6. The remaining warranty on the emissions control equipment;

7. A statement, in prominent or bold print, that the certification in no way warrants or guarantees that the vehicle complied with the emission standards used in the Virginia enhanced emissions inspection program, or similar language approved by the department; and

8. A statement that the customer has a right to request an emissions inspection, which may be at the expense of the customer, in lieu of a dealer deferment.

D. A dealer may apply for such deferment no more than 90 days prior to the registration of the vehicle.

E. The department shall issue a deferment upon satisfactory review of the information submitted according to subsection C and shall provide notification of such deferment to the Department of Motor Vehicles.

F. The dealer shall provide to a person considering purchasing the vehicle the information required in subsection C prior to the purchase.

G. For the purposes of subsection B of this section, any used motor vehicle will be considered to be one model year old on the first day of October of the calendar year that numerically corresponds to the model year described on the vehicle title or registration, and shall increase in age by one year on each first day of October thereafter.

§ 8.3. Waivers.

A. A motor vehicle shall qualify for a two-year vehicle emissions inspection waiver in the event that such vehicle has failed the initial inspection, has subsequently failed a reinspection, and the vehicle owner provides written proof of the following to the department:

1. Since the initial inspection, at least $450 (using 1990 as the base year and annually adjusting by the Consumer Price Index) has been spent by the motor vehicle owner on the maintenance and repair of the vehicle's engine system, emissions control equipment, or other emissions-related equipment;

2. That such repairs were appropriate to the cause of the inspection failure;

3. For 1980 and newer vehicles, proof that repairs were made at an emissions repair facility;

4. For 1979 and older vehicles, proof that repairs were made at an emissions repair facility or by the motor vehicle owner;

5. For vehicle emissions control equipment that may be covered by warranty protection by the manufacturer or as described in § 207(b) of the federal Clean Air Act, such warranty coverage shall be used to obtain needed repairs before expenditures can be applied toward the cost limits in this subsection; and, when applicable, a written statement provided to the department from a manufacturer's representative in the case that § 207(b) warranty protection has been denied or is otherwise not available for the vehicle;

6. Any emissions control equipment or part thereof which has been removed, damaged, or rendered inoperable, has been replaced and restored to the manufacturer's intended operating condition; and

7. Costs incurred by the motor vehicle owner to restore the vehicle's emissions control equipment to operation pursuant to subdivision 6 of this subsection shall not be applied toward the cost limits in this subsection.

B. The department may verify the written proof above by a visual check to confirm that such repairs have been made and by determination of the validity of the written proof.

C. The department shall issue waivers upon the satisfactory review of the information submitted according to subsection A of this section.

D. Exceptions to waiver requirements in this section may be granted by the department on a case-by-case basis for financial hardship or nonavailability of replacement vehicle emissions control equipment.

PART IX.
ON-ROAD TESTING.

§ 9.1. General requirements.

The department may conduct on-road testing of motor vehicles subject to the vehicle emissions inspection requirements. On-road testing may be accomplished by roadside pullovers or remote sensing, or both, according to procedures to be developed by the department.

§ 9.2. On-road test methods: roadside pullovers; remote sensing.

A. The roadside pullover procedure may utilize a tailpipe emissions test and other visual and equipment checks as may be determined by the department.

B. Remote sensing may utilize an infrared or alternative remote sensing device to measure exhaust emissions.

§ 9.3. Failure procedures.

A. Motor vehicles which (i) are determined to be out of compliance with on-road testing, and (ii) have an emissions inspection valid period greater than six months from the date of the on-road test, shall be required to pass a follow-up inspection at an emissions inspection station within 30 days of notification of the failure. Notification may be immediate or by mail.

B. Failure to have the follow-up emissions inspection required under subsection A of this section shall constitute failure of the required emissions inspection and result in notification to the Virginia Department of Motor Vehicles of a failed certificate of emissions inspection.

PART X.
FEDERAL FACILITIES.

§ 10.1. General requirements.

A. Federal facilities located within the program area shall be subject to the enhanced emissions inspection program, and shall ensure compliance with the program, according to Title I, § 118 of the Clean Air Act.

B. The program applies to affected motor vehicles (i) operated on or commuting to the federal facility regardless of where the vehicles are registered, and (ii) affected motor vehicles owned, leased, or operated by the federal government or federal employees.

C. This requirement shall not apply to vehicles which operate on or commute to federal facilities less than 60 calendar days per year.

§ 10.2. Proof of compliance.

A. Each federal facility administrator or his designee shall provide the department with proof of compliance with this regulation by March 31 of each year, covering the preceding calendar year.

B. Such proof shall consist of a report, in a format approved by the department, which identifies, at a minimum:

1. A listing of each affected motor vehicle that has complied with all requirements of this regulation, its date of compliance, and the means of compliance as described in subsection C of this section;

2. A listing of each affected motor vehicle that has not complied with all requirements of this regulation and the reasons therefor; and

3. A plan for action necessary to ensure that vehicles in noncompliance with this part are brought into compliance.

C. The federal facility administrator shall use one of the following means to establish proof of compliance:

1. Presentation of a valid and compliant vehicle inspection report from any enhanced emissions inspection program approved by the U.S. Environmental Protection Agency;

2. Presentation of proof of vehicle registration identifying a garaged address within the program area; or

3. Any other means approved by the department.

PART XI.
FEES.

§ 11.1. Inspection fees.

A. An inspection fee of $20 for each chargeable inspection is to be paid to the owner of the emissions inspection station in cash or other tender, as may be required by the department.

B. If a vehicle is determined to be ineligible to take a vehicle emission inspection due to the eligibility requirements described in subdivision 1 of § 3.4, the inspection fee will not be collected.

C. If a vehicle fails to pass a vehicle emission inspection, there shall be no charge for the first reinspection of that vehicle, provided that the first reinspection takes place within 14 days of the initial inspection.

D. There shall be no charge for referee inspections or for follow up inspections due to failure of on-road testing.

§ 11.2. Administrative fees.

A. Beginning July 1, 1994, the owner of any motor vehicle subject to registration in Virginia and subject to the enhanced emissions inspection program by virtue of the locality in which it is registered shall pay two dollars per year to the Virginia Department of Motor Vehicles at the time of registration.

B. Owners of affected motor vehicles not registered in the program area by the Virginia Department of Motor Vehicles but subject to the enhanced emissions inspection program by virtue of their base of operations shall remit $2.00 per vehicle per year to the department according to a schedule and procedure developed by the department.

C. Fees collected through the requirements of this section shall be deposited in the Virginia Emissions Inspection Program Fund, as provided in § 46.2-1182.2 of the Code of Virginia.

D. State and local governmental units and agencies shall be exempt from the administrative fee requirement of this section.

PART XII.
EMISSIONS INSPECTION PERMITS AND OPERATION.

§ 12.1. Applicability: emissions inspection stations; fleet emissions inspection stations.

A. Except as provided in subsection B of this section, the provisions of this part apply to the operation of any emissions inspection station.

The provisions of this part apply in the program area.

B. A person to whom there are 20 or more vehicles registered or consigned for maintenance may be permitted as a fleet emissions inspection station and conduct emissions inspections of that fleet.

Unless otherwise excluded, a fleet emissions inspection station shall comply with all applicable requirements for an enhanced emissions inspection program.

§ 12.2. General.

A. The director may issue or deny permits and approve procedures and other instructions for the operation of emissions inspection stations.

B. Any decisions of the director made pursuant to this part may be appealed pursuant to § 2.5 of this regulation.

C. No owner or other person shall operate any facility for the purpose of conducting emissions inspections without first obtaining from the director a permit to operate the facility as an emissions inspection station.

D. No facility shall be represented as an emissions inspection station unless the facility holds a valid emissions inspection permit issued by the director according to the provisions of this part.

E. Vehicle Inspection Reports shall be issued and Certificates of Emissions Inspection recorded only by emissions inspection stations holding valid permits issued by the department.

F. All emissions inspection station operations shall be conducted in accordance with this regulation.

G. Permits are valid for time periods determined by the director, not to exceed two years.

H. Permits shall be issued for specific emissions inspection stations and are valid only for the emissions inspection station to which they are issued.

I. All emissions inspection station permits shall be posted in a conspicuous place on the permitted premises, approved by the department.

J. All emissions inspection stations shall cooperate with the department during the conduct of audits, investigations and complaint resolutions.

K. All emissions inspection stations, except fleet emissions inspection stations, shall conduct emissions inspections during normal business hours and shall inspect every vehicle presented for inspection within a reasonable time period.

L. All emissions inspection stations, except fleet emissions inspection stations, shall have adequate emissions inspectors on duty during normal business hours.

M. As a fleet emissions inspection station, no inspections shall be conducted for the employees or general public, but only on vehicles owned or leased by the business, or consigned for maintenance to the facility.

§ 12.3. Applications.

A. Applications for permits shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the owner; or, in the case of governmental entities, by the highest executive official of such entities. A person is a duly authorized agent only if the authorization responsible officer in the case of organizations other than corporations. Such signature shall constitute personal affirmation that the statements made in the application are true and complete to the best of the knowledge and belief of the signer.

B. An application is required to identify each facility for which application is made to become an emissions inspection station. A separate application is not required for each location.

C. The director may combine the requirements of and applications for permits required by this part, for emissions inspection stations within an inspection network, into one application.

§ 12.4. Information required.

A. Each application for a permit shall include such information as may be required by the department to determine compliance with applicable requirements of this regulation. The information required shall include, but is not limited to, the following:

1. The name of the applicant.

2. The location of the facility.

3. Demonstration that:

a. The inspection equipment in each facility for which a permit is requested complies with the inspection equipment provisions of Part V;

b. The station owner, station personnel, and inspection equipment comply with the quality control provisions of Part VI;

c. Each facility, as a part of the inspection network, complies with the consumer protection provisions of § 7.1; and

d. Each facility complies with the provisions of §§ 7.2 through 7.5.

4. Proof of business ownership, articles of incorporation, partnership agreements, and lease agreements.

5. Certification of conformity with local zoning, use, or business licensing laws, ordinances or regulations.

B. The applicant shall provide any other information that the department deems necessary to review the conformity with this regulation.

§ 12.5. Standards and conditions for granting permits.

A. No permit for an emissions inspection station may be issued unless the director determines that:

1. The construction of the inspection station or inspection network has been completed in accordance with design and specifications approved by the department;

2. The testing, electronic data processing, and other equipment and items required by this regulation have been properly installed in each emissions inspection station, and other facilities within the inspection network if applicable;

3. A plan for the hiring and training of all necessary personnel to operate each emissions inspection station and the data handling system has been completed; and

4. The station owner has complied with all other requirements of this regulation which pertain to emissions inspection stations.

B. Permits shall not be issued to facilities which have permits currently revoked or under suspension by the director until such suspension or revocation period has elapsed and the permit applicant has satisfied all permit requirements as provided in this regulation.

C. No permit shall be issued pursuant to this section unless it is shown to the satisfaction of the director that the emissions inspection station shall operate without causing a violation of the applicable provisions of this regulation.

D. For fleet emissions inspection stations, no permit shall be issued until the director determines that the applicant:

1. Maintains an established place of business for the applicant's fleet of vehicles;

2. Has obtained approved machinery, tools and equipment to adequately conduct the required emissions inspection in the manner prescribed by this regulation;

3. Employs properly trained and licensed personnel to perform the necessary labor; and

4. Agrees to provide test records and data as prescribed by this regulation.

E. Permits issued under this section shall contain, but not be limited to, the following elements:

1. The location of the facility;

2. The name of the permittee;

3. The expiration date of the permit; and

4. Other requirements as may be necessary to ensure compliance with this regulation.

§ 12.6. Action on permit application.

A. After receipt of an application or any additional information, the department shall advise the applicant of any deficiency in such application or information.

B. When supported by justification which the department deems adequate, the director may, upon request by a station owner, extend the expiration date of a permit by a period not to exceed 180 days for the purpose of allowing sufficient time for a station owner to correct such deficiencies in the application as have been identified by the department and to allow completion of the application review by the department.

C. Processing time for a permit is normally 90 days following receipt of a complete application. The department may extend this time period if additional information is required. Processing steps may include, but not be limited to:

1. Completion of a preliminary review and a preliminary decision of the director;

2. Inspection or audit of the facility, provided an inspection has not been conducted within the last six months; and

3. Completion of the final review and the final decision of the director.

D. The director normally will take action on all applications after completion of the review, unless more

information is needed. The director shall issue the permit or notify the applicant in writing of its decision, with its reasons, not to issue the permit.

E. Within five days after receipt of the permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the department upon request.

§ 12.7. Monitoring requirements.

A. Station owners shall install, calibrate, operate and maintain equipment for continuously monitoring and recording the performance of inspection equipment and station personnel, and to establish and maintain records, and make periodic emission reports as the department may prescribe. These requirements shall be conducted in a manner acceptable to the department.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Parts V, VI, and VII, as applicable, or by other means acceptable to the board.

§ 12.8. Recordkeeping and reporting requirements.

A. Station owners shall establish and maintain records, provide notifications and reports, revise reports, report emissions inspection or monitoring results in a manner and form and using procedures as the department may prescribe. Any records, notifications, reports, or tests required under this section shall be retained by the station owner for at least two years following the date of such records, notifications, reports or tests.

B. All emissions inspection stations shall have records available for inspection by the department any time during normal business hours.

C. All unused vehicle inspection reports and other documents and devices shall be kept in a secure location and only be available to emissions inspectors or authorized personnel, as approved by the department.

D. Missing or stolen vehicle inspection reports or other official documents or devices shall be reported to the department within 24 hours.

E. Emissions inspection stations shall be accountable for all documents issued to them by the department.

F. Emissions inspection stations shall maintain a file of the name, address, and identification number of all currently employed emissions inspectors and shall provide the file to the department upon request.

§ 12.9. Transfer of permits.

A. No person shall transfer a permit from one facility to another.

B. In the case of a transfer of ownership or name change of an emissions inspection station, the new station owner shall abide by any current permit issued to the previous station owner or to the same station owner under the previous emissions inspection station name. The new station owner shall notify the department of the change in ownership or emissions inspection station name or both within 10 days of the transfer.

§ 12.10. Expiration, renewal, suspension and revocation of permits.

A. In cases where an emissions inspection station is operational, a permit or any renewal thereof shall be valid for a period not to exceed two years from the date of issuance.

Upon expiration of the permit, the emissions inspection station shall no longer be authorized to perform inspections.

Not less than 180 days prior to the expiration date of the permit, the station owner shall make application for renewal of the permit if the applicant desires to continue operation of that emissions inspection station.

The department will endeavor to notify emissions inspection stations prior to the expiration of their permit. However, it is the responsibility of the emissions inspection station to have a current valid permit.

B. Renewals of permits shall be subject to the same provisions of this regulation as are original permits.

C. The director may suspend the permit of any emissions inspection station or fleet emissions inspection station upon a determination that the performance of the facility or its personnel is not in conformance with the conditions of the permit.

The director shall notify the applicant in writing of its decision, with its reasons, to suspend a permit.

Within five days of notification of suspension, emissions inspection stations shall surrender to the department all permits, forms, data media and documents issued by the department.

It is the responsibility of the emissions inspection station to notify the department of the termination of a suspension period and apply to the director for reinstatement.

D. Upon a final decision by the director that a emissions inspection station is shut down permanently, the director shall revoke the permit by written notification to the station owner and remove the emissions inspection station from the inspection network; and the emissions inspection station shall not commence operation without a permit being issued under the applicable provisions of this part.

Nothing in this regulation shall be construed to prevent the director and the station owner from making a mutual determination that an emissions inspection station is shutdown permanently prior to any final decision rendered under this subsection.

The director shall notify the applicant in writing of its decision, with its reasons, to revoke a permit.

Within five days of notification of revocation, emissions inspection stations shall surrender to the department all permits, forms, data media and documents issued by the department.

§ 12.11. Amendments to permits.

A. Amendments to permits issued under this part may be initiated by the director or the permittee.

B. A permittee shall request an amendment of a permit by applying to the director. The permittee shall include a statement of the reasons why amending the permit is necessary.

C. The director may order appropriate changes to any permit whenever it is determined that the conditions of the permit will not be sufficient to meet the requirements of this regulation.

D. Permit amendments shall be processed in the same manner and under the same requirements as permits issued under this section.

E. Permit amendments shall not be used to extend the term of the permit.

§ 12.12. Enforcement.

A. Permits obtained by false statement or misrepresentation may be revoked or suspended.

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

C. Regardless of the provisions of § 12.10, the director may revoke or suspend any permit prior to its expiration date if the permittee:

1. Willfully makes material misstatements in the permit application or any amendments thereto; or

2. Fails to comply with the terms or conditions of the permit.

D. The director may suspend, under such conditions and for such period of time as the director may prescribe, any permit for any of the grounds for revocation contained in § 12.10 or for any other violations of this regulation.

E. Violation of this regulation 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 § 46.2-1187 of the Virginia Motor Vehicle Emissions Control Law.

F. The director shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit.

PART XIII.
EMISSIONS INSPECTOR TRAINING AND LICENSING.

§ 13.1. Applicability.

A. This part shall apply to any person employed by an emissions inspection station or fleet emissions inspection station as an emissions inspector.

B. The provisions of this part apply to both initial licenses and any renewals of licenses.

§ 13.2. General.

A. The director is authorized to issue or deny licenses to persons to conduct emissions inspections at an emissions inspection station.

B. Licenses are valid only for the person to whom they are issued and valid only at the emissions inspection stations identified on the application.

C. No person shall be represented as an emissions inspector without holding a valid license issued by the director.

D. Certificates of emissions inspection and vehicle inspection reports shall be issued only by emissions inspectors employed by emissions inspection stations and fleet emissions inspection stations.

E. Requalification for an emissions inspector license may be required according to § 13.9 G.

F. All emissions inspectors shall cooperate with the department during the conduct of audits, investigations and complaint resolution.

G. Licenses shall be available to department personnel upon request.

§ 13.3. Applications.

Applications for emissions inspector licenses shall be made to the department by each applicant and the issuance of the licenses shall be administered by the department.

§ 13.4. Information required.

The applicant shall provide proof of having passed the written test procedures administered by an emissions inspection station in the program area and the practical test administered by the department.

§ 13.5. Standards and conditions for granting licenses.

A. The director shall issue a license to any person, based upon applications submitted by the applicant, so qualified or requalified under requirements of this part.

B. The emissions inspector shall pass both the written test as required in §§ 13.4 and 13.6 and the practical test administered by the department.

C. Both types of tests shall be administered in such a manner as to allow the trainee to demonstrate the ability to conduct a proper inspection, to properly use equipment, and to follow other procedures.

D. A score of 80% is required to pass the written test.

E. Inability to conduct any test procedure in the practical test shall constitute a failure of the test.

§ 13.6. Testing of applicants.

A. The written test shall be administered by a station owner.

The instructional materials for the inspector training program may not be used until approved by the department, along with a description of the written test. Changes to the instructional materials and written tests shall be approved by the department prior to use.

An applicant shall demonstrate knowledge, skill, and competence concerning the conduct of emissions inspections. Such knowledge, skill and competence shall be demonstrated by completing training courses conducted by the station owner and approved by the department and by passing a qualification test including, but not limited to, knowledge of the following:

1. Impact of automobile emissions on air quality;

2. Purpose, function, and goal of inspection program;

3. Vehicle emissions and standards;

4. Inspection regulations and procedures;

5. Technical details of the test procedures and rationale for their design;

6. Public relations;

7. Complaint handling.

8. Emission control system purpose and function, configuration, and inspection;

9. Test equipment operation, calibration, and maintenance;

10. Quality control procedures and their purpose;

11. Safety and health issues related to the inspection process; and

12. Various types of motor vehicle emissions control tampering.

B. The practical test shall be administered by the department and shall determine the applicants ability to physically perform all functions of the required emissions inspection procedures. The practical test shall include, but not be limited to:

1. Vehicle data entry;

2. Customer contact procedures including any special procedures required for handicapped or disabled customers;

3. Preparation and positioning of the vehicle and the testing equipment for the inspection;

4. Operation of vehicles, including four-wheel-drive vehicles, for the complete driving cycle on the transient dynamometer;

5. Performance of exhaust emissions, purge, and pressure tests;

6. Performance of the emissions control equipment inspection (tampering check);

7. Detachment of emissions inspection equipment from the vehicle;

8. Operation of computerized inspection monitoring and recording equipment;

9. Provision of inspection results and diagnostic and repair information to the motorist; and

10. Calibration of all applicable equipment.

The department shall provide information on the requirements of the practical test to any applicant.

§ 13.7. Records and reporting requirements.

Emissions inspectors shall keep their current mailing address and stations of employment on file with the station owner and the department.

§ 13.8. Transfer of licenses.

A. Emissions inspectors may be licensed to perform emissions inspections at more than one permitted emissions inspection station after notification to the

department.

B. Emissions inspectors changing employment location must have their license amended by the department within two weeks to include the new inspection stations, or exclude stations no longer applicable, prior to performing emission inspections.

§ 13.9. Expiration and renewal of licenses.

A. Licenses are valid for two years.

B. Upon expiration of the license, the emissions inspector shall no longer be authorized to perform emissions inspections.

C. The department will endeavor to notify inspectors prior to the expiration of their license. However, it is the responsibility of the emissions inspector to have a current valid license.

D. Upon notification of revocation or suspension, the inspector shall surrender to the department all licenses issued to him by the director.

E. Inspectors shall be required to pass refresher courses every two years, or more frequently if required by the department, in order to maintain their license.

F. Upon the determination by the department of the necessity of technically updating the qualifications for emissions inspectors, and upon development or approval of retraining courses and retesting requirements for emissions inspectors to demonstrate said qualifications, holders of emissions inspectors licenses shall be required to requalify.

G. Emissions inspectors shall be required to requalify within 90 days from the date of written notification by the department and notice shall be mailed to the address of record as maintained by the department.

The notice shall inform the person of the necessity of requalification and the nature of such skills, systems, and procedures requiring the retraining for the continued performance of the emissions inspection.

The notice shall give the name and location of training sources approved or accredited for purposes of retraining, shall state the necessity of requalification by a certain date, the nature and evidence of documentation to be filed with the department evidencing such requalification, and state that failure to requalify within said period of time shall result in suspension or revocation of the emissions inspector license.

§ 13.10. Enforcement.

A. Licenses obtained by false statement or misrepresentation may be revoked.

B. Licenses which have not been relinquished to the department at the termination of employment as an emissions inspector by the station owner may be revoked.

C. Licenses may be revoked if the licensee fails to requalify at the request of the department or according the schedule approved by the department.

D. Violation of these regulations shall be grounds for revocation of or suspension of licenses issued under this part.

E. The department shall notify the applicant in writing of a decision, with reasons, to change, suspend or revoke a license.

APPENDIX A.
DOCUMENTS INCORPORATED BY REFERENCE.

I. General.

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

1. Code of Federal Regulations.

2. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in Section II.

B. Any reference in this regulation to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (1993) in effect July 1, 1993. In making reference to the Code of Federal Regulations, 40 CFR Part 51 means Part 51 of Title 40 of the Code of Federal Regulations; 40 CFR 51.351 means Section 51.351 in Part 51 of Title 40 of the Code of Federal Regulations.

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

D. Copies of materials incorporated by reference in this appendix may be examined by the public at the office of the Air Programs Section, Department of Environmental Quality, 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. The following document from the U.S. Environmental Protection Agency is incorporated herein by reference: Revised technical guidance document "High-Tech I/M Test

Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications," EPA-AA-EPSD-IM-93-1, July 1993 (EPA High-Tech Guidance).

B. Copies may be obtained from: U.S. Environmental Protection Agency, Air and Radiation Branch, 401 M Street, S.W., Washington, D.C. 20460.

VA.R. Doc. No. R94-12; Filed September 15, 1993, 11:07 a.m.

STATE EDUCATION ASSISTANCE AUTHORITY

Title of Regulation: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs under Title IV, Part B of the Higher Education Act of 1965 as amended.**

NOTICE: The State Education Assistance Authority is **WITHDRAWING** the proposed regulation entitled "Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs Under Title IV, Part B of the Higher Education Act of 1965 as amended" (VR 275-01-1) published in 9:20 VA.R. 3541-3549 June 28, 1993.

VA.R. Doc. No. R94-17; Filed July 2, 1993, 3:02 p.m.

BOARD OF HEALTH PROFESSIONS

Title of Regulation: **VR 365-01-2. Regulations Governing Practitioner Self-Referral.**

Statutory Authority: § 54.1-2510 of the Code of Virginia.

Public Hearing Dates:
October 14, 1993 – 1 p.m.
October 14, 1993 – 3 p.m.
October 15, 1993 – 1 p.m.
October 15, 1993 – 3 p.m.
October 18, 1993 – 9 a.m.
Written comments may be submitted until December 4, 1993.
(See Calendar of Events section for additional information)

Basis: Chapter 24.1 (§ 54.1-2410 et seq.) of Title 54.1 of the Code of Virginia (Practitioner Self-Referral Act) sets forth the definitions, prohibited referrals, and conditions for exceptions. Further, Chapter 24.1 establishes the powers and duties of the Board of Health Professions in the administration of the Act.

Section 54.1-2510 establishes the general powers and duties of the Board of Health Professions, which include the determination of violations and exceptions to Chapter 24.1 and appropriate disciplinary action against entities.

Purpose: The purpose of these regulations is to establish the structure and process for the administration and enforcement of the Practitioner Self-Referral Act.

Substance:

A. Part I. General Provisions.

§ 1.1 establishes the definitions to be used in the context of these regulations in addition to those in § 54.1-2410 of the Code of Virginia.

§ 1.2 refers to VR 365-01-1 which establishes the Public Participation Guidelines for the board.

B. Part II. Advisory Committee.

§ 2.1 establishes an Advisory Committee on Practitioner Self-Referral and specifies that the composition of that committee shall be appointed in accordance with the bylaws of the board.

§ 2.2 describes the responsibilities of the committee to include the issuance of advisory opinions on the applicability of the Act and recommendations on the granting of exceptions to the prohibitions of the Act.

§ 2.3 establishes the meeting schedule for the committee.

C. Part III. Advisory Opinions and Exceptions.

§ 3.1 establishes the requirements and procedures for applying to the board for an advisory opinion on the applicability of the Act. This section further establishes the information required on an application for an opinion, the process of review for completeness, the timetable for the issuance of the opinion, and requirements for notice and public comment.

§ 3.2 establishes the requirements and procedures for applying to the board for an exception to the prohibitions of the Act. This section also establishes the information required on an application for an exception, the review for completeness, and the timetable and process for a case decision on the acceptance or denial of the exception by the board.

This section further requires certification by the applicant to compliance with the terms and conditions for an exception as specified by the Code of Virginia and establishes a requirement for renewal of the exception after a period of five years.

§ 3.3 sets forth the fees required for an application for an opinion on applicability or exception and for the renewal of an exception.

D. Part IV. Discipline.

§ 4.1 establishes the requirements for the determination of violation and the discipline of an entity by the board in accordance with provisions of

the Practitioner Self-Referral Act and the Administrative Process Act.

§ 4.2 establishes the requirements for determination of violation by the board and the discipline of a practitioner by the appropriate board of the department in accordance with the provisions of the Act.

§ 4.3 specifies that proceedings on questions of violation will be governed by the Administrative Process Act.

Issues:

A. Whether the regulations should establish criteria and standards for compliance with the Act and for the granting of exceptions to the prohibitions of the Act.

After a review of similar statutes and regulations on practitioner self-referral in other states, the board decided that proposed regulations should address the process for the determination of applicability or exception. The Act explicitly sets forth definitions, prohibitions, criteria for exceptions and permitted investments, and penalties for violations. Therefore, the regulations do not need to address those criteria and standards.

However, oral and written questions and comments directed to the board and to staff which request opinions or determination on applicability have made it apparent that regulations need to address the process by which a practitioner or entity could seek an opinion or a decision on an exception.

The board decided not to predetermine criteria for compliance through regulation. While the Act is explicit on prohibitions, the regulations create a mechanism by which case decisions will build criteria and standards for compliance.

B. Whether board decisions on advisory opinions or on the granting of exceptions constitute case decision, thereby making them subject to the requirements of the Administrative Process Act.

The board has been advised by counsel that board decisions on applications do constitute case decisions. Therefore, due process is addressed in proposed regulations with timetables for decision-making, provisions for public comment, and an opportunity for a hearing before the board in the case of a negative decision.

C. Whether an exception to the prohibitions of the Act may be limited to a period of validity after which the practitioner or entity must seek a renewal from the board.

The Director of the Department of Health Professions has requested an official opinion from the Attorney General on the question of expiration and renewal of the granting of exceptions.

It was determined by the board that an exception to the prohibitions of the Act should not be granted for an indefinite period. While a practitioner or entity is entitled to an exception that extends for a reasonable number of years, the conditions of the community, the types of referral, or the nature of the investment may change over time. Therefore, the board proposed that an exception be valid for five years, after which time it may be renewed provided that the conditions continue to warrant the exception.

D. Whether it is the Board of Health Professions or the appropriate board of the department that makes the determination of violation of the Act in the case of a practitioner.

The Act clearly provides that the board is empowered to determine violations in the case of an entity involved in a questionable referral. The board has decided that it should also determine violations in cases involving practitioners. The director of the department and board counsel advised that such determination may not be consistent with statutory authority and the intent of the General Assembly. Therefore, the director has also requested an official opinion from the Attorney General on that question.

Since the issue of which board makes the determination of violation for a practitioner remained unsettled, the board determined that an alternative to that section on discipline should be published for comment. Following the receipt of an Attorney General opinion and comments on regulations, the board will make a final determination on the issue.

Estimated Impact:

A. Regulated Entities:

There is no estimation of how many practitioners or entities will be affected by proposed regulations. Within the Department of Health Professions, there are 208,000 licensed or certified practitioners who are potentially or theoretically covered by the Practitioner Self-Referral Act.

B. Projected Costs to Regulated Entities:

Costs for compliance with proposed regulations are primarily those of § 3.3, the section which establishes fees. As proposed, an application for an opinion on applicability would be $500. An application fee for an exception to the prohibitions of the Act would be $1000. The renewal fee for board approval of an exception would be $250. Costs estimations are based on current costs to other boards for processing applications, verification of documentation, investigation of complaints, meetings of the advisory committee, informal conferences, and hearings.

The Code of Virginia requires that all boards of the department derive their funding from regulated entities. At the end of the first year of implementation and administration of these regulations, the board will review

all revenues and expenditures. Revisions in the fee structure will be considered at that time based on that analysis. Thereafter, fees will be reviewed each biennium as a part of the review of all regulations of the board.

Costs for violations of the Act by an entity are determined by § 54.1-2412 C which prescribes that monetary penalties of no more than $20,000 per referral, bill, or claim may be imposed by the board. The Act requires that monetary penalties accrue to the Literary Fund of the Commonwealth.

Costs for violations of the Act by a practitioner may include but are limited to the monetary penalties authorized in § 54.1-2401.

C. Projected Cost for Implementation:

Costs to the agency are also difficult to estimate since there is no precedence for these regulatory requirements. It is not known how many practitioners will apply for an opinion on applicability or an exception. Likewise, it is unknown how many practitioners may be investigated for possible violation and how many disciplinary hearings will result.

The department has included projected costs of $96,000 in its proposed budget for the '94-'96 biennium. Included in that amount are $24,000 in projected costs for administration of the regulations, meetings of the advisory committee, and processing of applications, and $72,000 for investigations and handling of complaints.

Summary:

The Virginia Practitioner Self-Referral Act of 1993 establishes the statutory framework for determining the legality of investment, referral, and other activities of licensed, certified, and unregulated health care practitioners and entities in the Commonwealth. In administering and enforcing the Act, it is the intent of the Virginia Board of Health Professions to discover and discipline health care professionals and entities that violate the public trust. At the same time, the board will strive for policies and procedures that inhibit to the least possible extent the development and provision of accessible, cost-effective, quality health care services for all Virginians.

These regulations establish the structure and process for administering and enforcing the Act. Because each case decision related to permitting or prohibiting investment or referral activities will build upon prior decisions, the board has attempted to ensure maximum public involvement and due process in the continued evolution of the regulatory program.

VR 365-01-2. Regulations Governing Practitioner Self-Referral.

PART I.

GENERAL PROVISIONS.

§ 1.1. Definitions.

Statutory definitions of words and terms related to the Practitioner Self-Referral Act are established in § 54.1-2410 of the Code of Virginia.

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

"Act" means the Practitioner Self-Referral Act, Chapter 24.1 (§ 54.1-2410 et seq.) of Title 54.1 of the Code of Virginia.

"Applicant" means a practitioner or entity who has applied to the board for an advisory opinion on the applicability of the Act, or for an exception to the prohibitions of the Act.

"Appropriate regulatory board" means the regulatory board within the Department of Health Professions which licenses or certifies the practitioner.

"Board" means the Board of Health Professions.

"Committee" means the Advisory Committee on Practitioner Self-Referral of the Board of Health Professions.

"Department" means the Department of Health Professions.

§ 1.2. Public Participation Guidelines.

VR 365-01-1 establishes the guidelines for participation by the public in rulemaking activities of the board.

PART II.
ADVISORY COMMITTEE ON PRACTITIONER SELF-REFERRAL.

§ 2.1. Composition.

A. The board shall appoint an Advisory Committee on Practitioner Self-Referral comprised of no fewer than five members of the board. At least two members of the committee shall be citizen members of the board.

B. The methods and terms of appointment shall be in accordance with the bylaws of the board.

§ 2.2. Responsibilities.

A. The committee shall receive and review requests and make recommendations to the board for the issuance of advisory opinions regarding the applicability of the Act.

B. The committee shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review applications

for exceptions to the prohibitions of the Act and make recommendations to the board for the issuance of exceptions to the Act.

§ 2.3. Meetings.

The committee shall meet at least once each quarter of the calendar year.

PART III.
ADVISORY OPINIONS AND EXCEPTIONS.

§ 3.1. Application for advisory opinions.

A. Any practitioner or entity may request an advisory opinion on the applicability of the Act upon completion of an application and payment of a fee.

B. Requests shall be made on an application form requested by the board. The request shall contain the following information:

1. The name of the practitioner or entity;

2. Identification of the entity and description of the health care services being provided or proposed;

3. The type and amount of existing or proposed investment interest in the entity;

4. A description of the nature of the investment interest and copies of any existing or proposed documents between the practitioner and the entity including but not limited to leases, contracts, organizational documents, etc.; and

5. Certification and notarized signature of the practitioner or principal of the entity requesting the opinion that the information and supporting documentation contained therein is true and correct.

C. The committee shall review the application for completeness and may request such other additional information or documentation it deems necessary from the practitioner or entity.

D. When the committee determines that a request for an opinion is complete and that it has sufficient information, it shall notify the practitioner or entity that it will consider its request at the next scheduled meeting. The practitioner or entity may request an informal fact finding conference with the committee within 30 days of the scheduled meeting.

E. At the conclusion of the meeting or conference, the committee shall issue a recommended advisory opinion to the board and to the practitioner or entity.

F. The practitioner or entity shall, within 30 days following the issuance of the recommended advisory opinion, notify the board in writing of its acceptance of the recommended advisory opinion.

G. The board shall consider the committee's recommendation at the next scheduled meeting, at least 14 days following the issuance of the committee's recommended advisory opinion. The board may afford an opportunity for public comment prior to a vote on the committee's recommendation. The board shall issue a written final decision.

H. Upon the notification that the practitioner or entity rejects the committee's recommended advisory opinion, the committee shall withdraw it and notify the practitioner or entity that it may request a hearing pursuant to § 9-6.14:12 of the Code of Virginia, within 30 days of such notice, to consider the issuance of an advisory opinion.

§ 3.2. Application for exception.

A. A practitioner or entity may request an exception to the prohibitions of the Act upon completion of an application and payment of a fee.

B. Requests shall be made on an application form prescribed by the board. The application shall contain the following information:

1. The name and identifying information of the practitioner or entity;

2. The information and documentation regarding community need and alternative financing as required by § 54.1-2411 B of the Code of Virginia.

3. Certification and notarized signature of the practitioner or principal of the entity requesting the exception that the information contained in the application and supporting documentation is true and correct.

C. The committee shall review the application for completeness and may request additional information and documentation from the applicant.

D. When the committee determines that an application is complete and that it has sufficient information, it shall notify the applicant that it will consider the request at its next scheduled meeting. The applicant may request an informal fact finding conference with the committee within 30 days of the scheduled meeting.

E. At the conclusion of the meeting or conference, the committee shall issue a recommended decision regarding the request for an exception to the board and to the applicant.

F. The applicant shall, within 30 days following the issuance of the recommended decision, notify the board in writing of its acceptance of the recommended decision.

G. The board shall consider the committee's recommendation at its next scheduled meeting, at least 14 days following receipt of the recommendation. The board may afford an opportunity for public comment prior to a vote on the committee's recommendation. The board shall thereafter inform the applicant of its decision in writing.

H. The board shall act on an application within 90 days of determination of its completeness.

I. When an exception is granted, the practitioner or entity shall certify to the board compliance with the terms and conditions of subsections B and C of § 54.1-2411 of the Code of Virginia.

Violation of these terms and conditions shall constitute grounds for revocation of the exception and may constitute grounds for disciplinary action as provided in Part IV of these regulations.

J. Upon notification that the practitioner or entity rejects the committee's recommendation of an exception, the committee will withdraw it and notify the practitioner or entity that it may, within 30 days of such notice, request a hearing before the board pursuant to § 9-6.14:12 of the Code of Virginia to consider its application for exception.

K. Exceptions to the Act shall be valid for a period of five years.

L. Subject to verification by the board, an exception shall be renewed upon payment of a renewal fee and the receipt of certification from the practitioner or entity that the conditions under which the original exception was granted continue to warrant the exception.

§ 3.3. Fees.

A. An application fee for an opinion on applicability of the Act shall be $500.

B. An application fee for an exception to the Act shall be $1,000.

C. The renewal fee for board approval of exceptions to the Act shall be $250.

PART IV.
DISCIPLINE.

§ 4.1. Disciplinary action against entities.

A. The board shall determine violations of prohibitions of the Act on the part of an entity other than a practitioner as defined in § 54.1-2410 of the Code of Virginia in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. Upon determination of a violation by an entity, the board may impose a monetary penalty as provided in § 54.1-2412 C of the Code of Virginia.

§ 4.2. Disciplinary action against practitioners.

A. Upon receipt of an investigative report of an alleged violation of the Act by a practitioner as defined in § 54.1-2410 of the Code of Virginia, the board shall provide a copy of the report to the appropriate regulatory board within the department as required by subdivision 13 of § 54.1-2510 of the Code of Virginia.

B. Pursuant to subdivision 14 of § 54.1-2510 of the Code of Virginia, the board shall determine whether a violation of the Act on the part of a practitioner has occurred in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

C. Upon determination of a violation of the Act by a practitioner, the board shall report this determination to the appropriate regulatory board within the department.

D. Violations of the Act by a practitioner, as determined by the board, shall be subject to disciplinary action by the appropriate regulatory board within the department in accordance with § 54.1-2412 D of the Code of Virginia.

(Upon advice of counsel, the board offers the following alternative to § 4.2 for comment.)

§ 4.2. Disciplinary action against practitioners.

A. Upon receipt of an investigative report of an alleged violation of the Act by a practitioner as defined in § 54.1-2410 of the Code of Virginia, the board shall provide a copy of the report to the appropriate regulatory board within the department as required by subdivision 13 of § 54.1-2510 of the Code of Virginia.

B. Violations of the Act by a practitioner shall be determined by the appropriate regulatory board within the department and shall be subject to disciplinary action by that board in accordance with § 54.1-2412 D of the Code of Virginia.

C. Upon closure of a case involving an alleged violation of the Act by a practitioner, the appropriate regulatory board shall provide a copy of the final order or of the letter of dismissal of the case to the board.

D. The board shall review periodically the disposition of cases involving allegations of violation of the Act by practitioners to ensure the protection of the public and the fair and equitable treatment of health professionals, as authorized by subdivision 11 of § 54.1-2510 of the Code of Virginia.

§ 4.3. Hearings.

The provisions of the Administrative Process Act (§

9-6.14:1 et seq. of the Code of Virginia) shall govern proceedings on questions of violations of the Act.

VA.R. Doc. No. R94-4; Filed September 14, 1993, 11:51 a.m.

BOARD OF HISTORIC RESOURCES

Title of Regulation: **VR 390-01-03. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.**

Statutory Authority: § 10.1-2205 of the Code of Virginia.

Public Hearing Dates:
November 10, 1993 - 7:30 p.m.
November 16, 1993 - 7:30 p.m.
November 17, 1993 - 7:30 p.m.
Written comments may be submitted until December 6, 1993.
(See Calendar of Events section for additional information)

Basis: Section 10.1-2205 of the Code of Virginia requires that the board promulgate regulations that set out, at a minimum, the evaluation criteria and the procedures used by the board to designate property for inclusion in the Virginia Landmarks Register. Section 10.1-2206.1 of the Code of Virginia sets out requirements for written notification to property owners and local governments, along with a requirement for public hearings in certain cases, prior to designation by the board. Section 10.1-2206.2 of the Code of Virginia sets out the procedure by which affected property owners can object to a proposed designation and prevent the board from making the designation.

Purpose: The purpose of the proposed action is to establish formal criteria, consistent with the relevant federal criteria, by which the board will evaluate the significance, the integrity, and the boundaries of properties proposed for inclusion in the Virginia Landmarks Register. The further purpose of the proposed action is to set out the procedures consistent with state law for written notification to property owners, adjacent property owners, and local governments, along with the procedures for public hearings in certain cases prior to any designation by the board. The final purpose is to set forth the procedure consistent with state law by which affected property owners can object to a proposed designation by the board and prevent the board from making the designation.

Substance: The evaluation criteria in the proposed regulation are fully consistent with the parallel criteria set out in federal regulations and in the board's current emergency regulation. The procedures for public notification and for property owner objections to designation are fully consistent with the very prescriptive requirements of state law. Consequently, promulgation of this regulation makes no changes to the current status of the law.

Issues: The advantages of this regulation for the public are that it formalizes and publishes specific evaluation criteria the board must use in considering property's fitness for the Virginia Landmarks Register, that it implements state statutory requirements for broad public notification prior to designations by the board, and that it implements state statutory requirements that allow property owners to prevent designations by the board. There are no disadvantages created by this proposed regulation.

Impact: The regulation imposes substantive and procedural requirements on the board, not on the public. However, the board does consider for designation properties presented to it by members of the public. An applicant for designation is expected by this regulation to present a nomination that clearly demonstrates that the property under consideration satisfies the evaluation criteria set out in this regulation. The board considers 30 to 50 applications from the public each year. If an applicant chooses to retain professional assistance in preparing nominations, the applicant may incur costs. However, this regulation imposes no requirement for the retention of professional services. Further, submission of an application to the board is completely voluntary; no use of property is dependent upon designation by the board. Finally, state law specifies that designations by the board pursuant to this regulation have no regulatory effect on property owners or local governments.

With regard to costs to the Commonwealth for implementation, the proposed regulation closely follows the prescriptive requirements of state law, and so establishes no implementation costs not already in effect by virtue of that law.

The proposed regulation has no impact on small businesses or other organizations.

No locality is particularly affected by this proposed regulation.

Summary:

The proposed regulation establishes the evaluation criteria by which the board shall determine whether property should be designated for inclusion in the Virginia Landmarks Register. Pursuant to the requirements of § 10.1-2205 of the Code of Virginia, the criteria are consistent with the criteria set forth in 36 CFR, Part 60, the federal regulations that implement the National Historic Preservation Act, as amended (P. L. 89-665). In addition the proposed regulation sets out procedures for written notification to property owners and local governments, along with a requirement for public hearings in certain cases, prior to a designation by the board. Finally, the proposed regulation sets out the procedure by which affected property owners can object to a proposed designation and prevent the board from making the designation. The proposed procedures are consistent with the requirements of §§ 10.1-2206.1 and

10.1-2206.2 of the Code of Virginia.

VR 390-01-03. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.

PART I.
DEFINITIONS; APPLICABILITY.

§ 1.1. Definitions.

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

"Board" means the Virginia Board of Historic Resources.

"Building" means a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. "Building" may also refer to a historically related complex such as a courthouse and jail or a house and barn.

"Chief elected local official" means the mayor of the city or town or the chairman of the board of supervisors of the county in which the property is located.

"Department" means the Department of Historic Resources.

"Designation" means an act of official recognition by the Board of Historic Resources designed to educate the public to the significance of the designated resource and to encourage local governments and property owners to take the designated property's historic, architectural, archaeological and cultural significance into account in their planning, the local government comprehensive plan, and their decision making. Designation, itself, shall not regulate the action of local governments or property owners with regard to the designated property.

"Director" means the Director of the Department of Historic Resources.

"District" means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. A district includes local tax parcels that have separate owners. For purposes of this regulation, a historic district does not mean a locally established historic zoning district pursuant to § 15.1-503.2 of the Code of Virginia.

"Nomination form" means the form prescribed by the board for use by any person in presenting a property to the board for designation by the board.

"Object" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. Examples of objects include boats, monuments, and fixed pieces of sculpture.

"Owner" or "owners" means those individuals, partnerships, corporations or public agencies holding fee simple title to property. "Owner" or "owners" does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

"Structure" means a man-made work composed of interdependent and interrelated parts in a definite pattern of organization. In addition to buildings, structures include bridges, dams, canals, docks, walls, and other engineering works.

"Virginia Landmarks Register" means the official list of properties designated by the board pursuant to § 10.1-2204(1) of the Code of Virginia, or by the board's predecessor boards, as constituting the principal historical, architectural, and archaeological resources that are of local, statewide, or national significance.

§ 1.2. Applicability.

This regulation pertains specifically to the designation of property by the board for inclusion in the Virginia Landmarks Register. Parallel evaluation criteria and administrative procedures applicable to nominations of properties to the National Park Service by the department director are set out in a separate regulation.

PART II.
GENERAL PROVISIONS.

§ 2.1. General provisions.

The board is solely responsible for designating eligible properties for inclusion in the Virginia Landmarks Register.

Any person or organization may submit a completed nomination form to the director for consideration by the board. The form shall include the descriptive and analytical information necessary for the board to determine whether the property meets the evaluation criteria for designation. Any person or organization may also request the board's consideration of any previously prepared nomination form on record with the department.

In determining whether to include a property in the Virginia Landmarks Register, the board shall evaluate the property according to the Virginia Landmarks Register

Criteria for Evaluation, as set out in Part III of this regulation.

Prior to the formal designation of property by the board, the director shall follow the procedures set out in § 4.1 of this regulation concerning notification to property owners and chief local elected officials. Prior to the formal designation by the board of a historic district, the director shall also follow the procedures set out in § 4.2 of this regulation for conducting a public hearing.

PART III.
VIRGINIA LANDMARKS REGISTER CRITERIA FOR EVALUATION.

§ 3.1. Historic significance.

A. In determining whether to designate a district, site, building, structure or object to the Virginia Landmarks Register, the board must determine whether the district, site, building, structure, or object has historic significance. A resource shall be deemed to have historic significance if it meets one or more of the following four criteria:

1. The resource is associated with events that have made a significant contribution to the broad patterns of our history; or

2. The resource is associated with the lives of persons significant in our past; or

3. The resource embodies the distinctive characteristics of a type, period, or method of construction or design, or represents the work of a master (for example, an individual of generally recognized greatness in a field such as architecture, engineering, art, or planning or a craftsman whose work is distinctive in skill or style), or possesses high artistic values, or is a district that taken as a whole embodies one or more of the preceding characteristics, even though its components may lack individual distinction; or

4. The resource has yielded or is likely to yield, normally through archaeological investigation, information important in understanding the broad patterns or major events of prehistory or history.

B. A Virginia Landmarks Register resource can be of national historic significance, of statewide historic significance, or of local historic significance. The board shall use the following criteria in determining the level of significance appropriate to the resource:

1. A property of national significance offers an understanding of the history of the nation by illustrating the nationwide impact of events or persons associated with the property, its architectural type or style, or information potential.

2. A property of statewide historic significance represents an aspect of the history of Virginia as a whole.

3. A property of local historic significance represents an important aspect of the history of a county, city, town, cultural area, or region or any portions thereof.

§ 3.2. Integrity.

In addition to determining a property's significance, the board shall also determine the property's integrity. A property has integrity if it retains the identity for which it is significant. In order to designate a property, the board must determine both that the property is significant and that it retains integrity. To determine whether a property retains integrity, the board shall consider the seven aspects set out here. Based on the reasons for a property's significance the board shall evaluate the property against those aspects that are the most critical measures of the property's integrity. The seven aspects are:

1. Location – the place where the historic property was constructed or the place where the historic event occurred. In cases such as sites of historic events, the location itself, complemented by the setting, is what people can use to visualize or recall the event.

2. Design – the combination of elements that create the form, plan, space, structure, and style of the property. Design results from the conscious decisions in the conception and planning of a property and may apply to areas as diverse as community planning, engineering, architecture, and landscape architecture. Principal aspects of design include organization of space, proportion, scale, technology, and ornament.

3. Setting – the physical environment of the historic property, as distinct from the specific place where the property was built or the event occurred. The physical features that constitute setting may be natural or man-made, and may include topographic features, vegetation, simple man-made features such as paths or fences, and relationships of a building to other features or to open space.

4. Materials – the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The integrity of materials determines whether or not an authentic historic resource still exists.

5. Workmanship – the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. Workmanship may be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It may be based on common traditions or innovative period techniques.

Examples of workmanship include tooling, carving, painting, graining, turning, or joinery.

6. Feeling – the property's expression of the aesthetic or historic sense of a particular period of time. Although it is itself intangible, feeling depends upon the presence of physical characteristics to convey the historic qualities that evoke feeling. Because it is dependent upon the perception of each individual, integrity of feeling alone will never be sufficient to support designation for inclusion in the Virginia Landmarks Register.

7. Association – the direct link between an important historic event or person and a historic property. If a property has integrity of association, then the property is the place where the event or activity occurred and is sufficiently intact that it can convey that relationship.

§ 3.3. Boundaries for historic properties.

Boundaries for a historic district, property, building, structure, object or site are selected to encompass, but not to exceed, the full extent of the significant resources or land area making up the resources. The area should be large enough to include all historic features of the property, but should not include "buffer zones" or acreage not directly contributing to the significance of the property. The following features are to be used to mark the boundaries, as they reflect the resources: (i) legally recorded boundary lines; or (ii) natural topographic features such as ridges, valleys, rivers, and forests; or (iii) man-made features such as stone walls, hedgerows, the curblines of highways, streets, and roads; or (iv) areas of new construction.

§ 3.4. Additional criteria considerations.

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that are less than 50 years old shall not be considered eligible for the Virginia Landmarks Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within one or more of the following categories:

1. A religious property deriving primary significance from architectural or artistic distinction or historical importance: a religious property shall be judged solely on these secular terms to avoid any appearance of judgment by government about the merit of any religion or belief; or

2. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

3. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or

4. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

5. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

6. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

7. A property less than 50 years old if it is of exceptional importance.

§ 3.5. Revisions to properties listed in the Virginia Landmarks Register.

Four justifications exist for altering a boundary of a property previously listed in the Virginia Landmarks Register:

1. Professional error in the initial nomination;

2. Loss of historic integrity;

3. Recognition of additional significance;

4. Additional research documenting that a larger or smaller area should be listed.

The board shall approve no enlargement of a boundary unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. The board shall approve no diminution of a boundary unless the properties being removed do not meet the Virginia Landmarks Register criteria for evaluation.

§ 3.6. Removing properties from the Virginia Landmarks Register.

Grounds for removing properties from the Virginia Landmarks Register are as follows:

1. The property has ceased to meet the criteria for listing in the Virginia Landmarks Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;

2. Additional information shows that the property does not meet the Virginia Landmarks Register criteria for evaluation;

3. Error in professional judgment as to whether the property meets the criteria for evaluation; or

4. Prejudicial procedural error in the designation process.

PART IV.
PUBLIC NOTICE AND PUBLIC HEARINGS.

§ 4.1. Written notice of proposed nominations.

In any county, city, or town where the board proposes to designate property for inclusion in the Virginia Landmarks Register, the department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent of property proposed to be designated as a historic landmark building, structure, object, or site, or to be included in a historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide.

§ 4.2. Public hearing for historic district; notice of hearing.

Prior to the designation by the board of a historic district, the department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the board. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days or more than 21 days after the second publication of the notice in such newspaper. In addition to publishing the notice, the department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide. Notice required to be given to owners by this section may be given concurrently with the notice required to be given to the owners by § 4.1 of this regulation. A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant. The department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

§ 4.3. Mailings and affidavits; concurrent state and federal notice.

The department shall send the required notices by first class mail to the last known address of each person entitled to notice, as shown on the current real estate tax assessment books. A representative of the department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the National Register of Historic Places pursuant to nomination by the director, the department may provide concurrent notice of and hold a single public hearing on the proposed state designation and the proposed nomination to the National Register.

§ 4.4. Public comment period.

The local governing body and property owners shall have at least 30 days from the date of the notice required by § 4.1, or, in the case of a historic district, 30 days from the date of the public hearing required by § 4.2 to provide comments and recommendations, if any, to the director. The director shall bring all comments received to the attention of the board.

PART V.
REVIEW AND ACTION BY THE DIRECTOR AND THE BOARD ON VIRGINIA LANDMARKS REGISTER PROPOSALS.

§ 5.1. Requests for designations.

In addition to directing the preparation of Virginia Landmarks Register nominations by the department, the director shall act according to this section to ensure on behalf of the board that the Virginia Landmarks Register nomination process is open to any person or organization.

The director shall respond in writing within 60 days to any person or organization submitting a completed Virginia Landmarks Register nomination form or requesting board consideration for any previously prepared nomination form on record with the department. The response shall indicate whether or not the information on the nomination form is complete, whether or not the nomination form adequately evaluates the property according to the criteria set out in Part III of this regulation, and whether or not the property appears to meet the Virginia Landmarks Register criteria for evaluation set out in Part III. If the director determines that the nomination form is deficient or incomplete, the director shall provide the applicant with an explanation of the reasons for that determination, so that the applicant may provide the necessary additional documentation.

If the nomination form appears to be sufficient and complete, and if the property appears to meet the Virginia Landmarks Register criteria for evaluation, the director shall comply with the notification requirements in Part IV of this regulation and schedule the property for presentation to the board. The director may require the applicant to provide a complete, accurate, and up-to-date list and annotated tax parcel map indicating all property owners entitled to written notification pursuant to Part IV of this regulation. Within 60 days of receipt of a sufficient and complete nomination and of all information necessary to comply with Part IV of this regulation, the director shall notify the applicant of the proposed schedule for consideration of the nomination form by the board.

If the nomination form is sufficient and complete, but the director determines that the property does not appear to meet Virginia Landmarks Register criteria for evaluation, the director shall notify the applicant, the owner, and the board of his determination within 60 days of receipt of the nomination form. The director need not process the nomination further, unless directed to do so by the board.

§ 5.2. Consideration by the board.

The director shall submit completed nomination forms and comments concerning the significance of a property and its eligibility for the Virginia Landmarks Register to the board. Any person or organization supporting or opposing the designation of a property by the board may petition the board in writing or orally either to accept or reject a proposed designation. The board shall review the nomination form and any comments received concerning the property's significance and eligibility for the Virginia Landmarks Register. The board shall determine whether or not the property meets the Virginia Landmarks Register criteria for evaluation set out in Part III of this regulation. Upon determining that the property meets the criteria, the board may proceed to designate the property, unless the owner or majority of owners object to the designation pursuant to § 5.3 of this regulation and § 10.1-2206.2 of the Code of Virginia.

§ 5.3. Owner objections.

Upon receiving the notification required by § 4.1 of this regulation, any owner or owners of property proposed for designation by the board shall have the opportunity to concur in or object to that designation. Property owners who wish to object to designation shall submit to the director a notarized statement certifying that the party is the sole or partial owner of the property, as appropriate, and objects to the designation. If an owner whose name did not appear on the current real estate tax assessment list used by the director pursuant to § 4.3 certifies in a written notarized statement that the party is the sole or partial owner of a nominated property, such owner shall be counted by the director in determining whether a majority of owners has objected. The board shall take no formal action to designate the property or district for inclusion in the Virginia Landmarks Register if the owner of a property, or the majority of owners of a single property with multiple owners, or a majority of the owners in a district, have objected to the designation. These objections must be received prior to the meeting of the board at which the property is considered for designation. Where formal designation has been prevented by owner objection, the board may reconsider the property for designation upon presentation of notarized statements sufficient to indicate that the owner or majority of owners no longer object to the designation. In the case of a reconsideration, the notification procedures set out in Part IV shall apply.

Each owner of property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

§ 5.4. Boundary changes.

The director or the board may initiate the process for changing the boundaries of a previously listed Virginia Landmarks Register property upon concluding that one or more of the conditions set out in § 3.4 of this regulation has been met. In addition, any person or organization may petition in writing to have a boundary changed.

A boundary alteration shall be considered as a new property nomination. In the case of boundary enlargements the notification procedures set out in Part IV of this regulation shall apply. However, only the additional area proposed for inclusion in the Virginia Landmarks Register shall be used to determine the property owners and the adjacent property owners to receive notification pursuant to §§ 4.1 and 4.2 of this regulation. Only the owners of the property in the additional area shall be counted in determining whether a majority of owners object to listing in the Virginia Landmarks Register. In the case of a proposed diminution of a boundary, the director shall notify the property owners and the chief elected local official and give them at least 30 days to comment prior to formal action by the board.

§ 5.5. Removal of property from the Virginia Landmarks Register.

The director or the board may initiate the process for removing property from the Virginia Landmarks Register upon concluding that one or more of the conditions set out in § 3.6 of this regulation have been met. Where the director or the board initiates the process, the director shall notify the property owner or owners and the chief elected local official and give them at least 30 days to comment prior to formal action by the board. In addition, any person or organization may petition in writing for removal of a property from the Virginia Landmarks Register by setting forth the reasons the property should be removed on the grounds established in § 3.6 of this regulation.

Upon receipt of a petition for removal of property from the Virginia Landmarks Register, the director shall notify the petitioner within 45 days as to whether the petition demonstrates that one or more of the conditions set out in § 3.6 have been met. Upon finding that one or more of those conditions have been met, the director shall notify the property owners and the chief elected local official and give them at least 30 days to comment prior to formal action by the board. Upon a finding by the director that none of those conditions have been met, the petitioner may appeal to the board as set out in § 6.1 of this regulation.

PART VI.
APPEALS.

§ 6.1. Appeals.

Any person or local government may appeal to the board the failure or refusal of the director to present a property to the board, upon decision of the director not to present the property for any reason when a completed nomination form or a petition for removal of property from the Virginia Landmarks Register had been submitted to the director pursuant to § 5.1 or § 5.5 of this regulation. The failure of the director to respond to an applicant within the schedule set out in § 5.1 of this regulation for completed nominations or the schedule set out in § 5.5 for removal petitions may be deemed a failure or refusal to present the property to the board. Upon the request of the board, the director shall complete the applicable notification and hearing requirements of this regulation and shall present the nomination form or the petition for removal to the board for its consideration.

Subject to the provisions of the Code of Virginia and of this regulation, the board has all final decision-making authority for adding properties to the Virginia Landmarks Register, for revising previous designations, and for removing properties from the Virginia Landmarks Register.

VA.R. Doc. No. R94-9; Filed September 15, 1993, 10:29 a.m.

NPS Form 10-900
(Oct. 1990)

OMB No. 10024-0018

United States Department of the Interior
National Park Service

REGISTRAR OF REGULATIONS
93 SEP 17 AM 11:07

National Register of Historic Places Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name _____

other names/site number _____

2. Location

street & number _____ ☐ not for publication

city or town _____ ☐ vicinity

state _____ code ____ county _____ code ____ zip code _____

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this ☐ nomination ☐ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ☐ meets ☐ does not meet the National Register criteria. I recommend that this property be considered significant ☐ nationally ☐ statewide ☐ locally. (☐ See continuation sheet for additional comments.)

_____
Signature of certifying official/Title Date

_____
State or Federal agency and bureau

In my opinion, the property ☐ meets ☐ does not meet the National Register criteria. (☐ See continuation sheet for additional comments.)

_____
Signature of certifying official/Title Date

_____
State or Federal agency and bureau

4. National Park Service Certification

I hereby certify that the property is Signature of the Keeper Date of Action

☐ entered in the National Register.
☐ See continuation sheet. _____

☐ determined eligible for the National Register
☐ See continuation sheet. _____

☐ determined not eligible for the National Register _____

☐ removed from the National Register _____

☐ other, (explain:) _____

_____ _____

Name of Property County and State

5. Classification

Ownership of Property (Check as many boxes as apply)
☐ private
☐ public-local
☐ public-State
☐ public-Federal

Category of Property (Check only one box)
☐ building(s)
☐ district
☐ site
☒ structure
☐ object

Number of Resources within Property (Do not include previously listed resources in the count.)

Contributing	Noncontributing	
		buildings
		sites
		structures
		objects
		Total

Name of related multiple property listing (Enter "N/A" if property is not part of a multiple property listing.)

_____

Number of contributing resources previously listed in the National Register

_____

6. Function or Use

Historic Functions (Enter categories from instructions)

Current Functions (Enter categories from instructions)

7. Description

Architectural Classification (Enter categories from instructions)

Materials (Enter categories from instructions)
foundation _____
walls _____
roof _____
other _____

Narrative Description (Describe the historic and current condition of the property on one or more continuation sheets.)

Name of Property | County and State

8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing.)

- ☐ A Property is associated with events that have made a significant contribution to the broad patterns of our history.
- ☐ B Property is associated with the lives of persons significant in our past.
- ☐ C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- ☐ D Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

Property is:

- ☐ A owned by a religious institution or used for religious purposes.
- ☐ B removed from its original location.
- ☐ C a birthplace or grave.
- ☐ D a cemetery.
- ☐ E a reconstructed building, object, or structure.
- ☐ F a commemorative property.
- ☐ G less than 50 years of age or achieved significance within the past 50 years.

Areas of Significance
(Enter categories from instructions)

Period of Significance

Significant Dates

Significant Person
(Complete if Criterion B is marked above)

Cultural Affiliation

Architect/Builder

Narrative Statement of Significance
(Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

Bibliography
(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):

- ☐ preliminary determination of individual listing (36 CFR 67) has been requested
- ☐ previously listed in the National Register
- ☐ previously determined eligible by the National Register
- ☐ designated a National Historic Landmark
- ☐ recorded by Historic American Buildings Survey # _____
- ☐ recorded by Historic American Engineering Record #

Primary location of additional data:

- ☐ State Historic Preservation Office
- ☐ Other State agency
- ☐ Federal agency
- ☐ Local government
- ☐ University
- ☐ Other

Name of repository: _____

Name of Property | County and State

10. Geographical Data

Acreage of Property _____

UTM References
(Place additional UTM references on a continuation sheet.)

	Zone	Easting	Northing
1			
2			
3			
4			

☐ See continuation sheet

Verbal Boundary Description
(Describe the boundaries of the property on a continuation sheet.)

Boundary Justification
(Explain why the boundaries were selected on a continuation sheet.)

11. Form Prepared By

name/title _____

organization _____ date _____

street & number _____ telephone _____

city or town _____ state _____ zip code _____

Additional Documentation

Submit the following items with the completed form:

Continuation Sheets

Maps

A **USGS map** (7.5 or 15 minute series) indicating the property's location.

A **Sketch map** for historic districts and properties having large acreage or numerous resources.

Photographs

Representative **black and white photographs** of the property.

Additional items
(Check with the SHPO or FPO for any additional items)

Property Owner

(Complete this item at the request of SHPO or FPO.)

name _____

street & number _____ telephone _____

city or town _____ state _____ zip code _____

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box [illegible], Washington, [illegible]

United States Department of the Interior
National Park Service

REGISTRAR OF REGULATIONS
93 SEP 17 AM 11:07

National Register of Historic Places
Continuation Sheet

Section number _____ Page _____

DEPARTMENT OF HISTORIC RESOURCES

Title of Regulation: **VR 392-01-02. Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark.**

Statutory Authority: § 10.1-2202 of the Code of Virginia.

Public Hearing Dates:
November 10, 1993 – 7:30 p.m.
November 16, 1993 – 7:30 p.m.
November 17, 1993 – 7:30 p.m.
Written comments may be submitted until December 6, 1993.
(See Calendar of Events section for additional information)

Basis: Section 10.1-2202 of the Code of Virginia authorizes the director to promulgate regulations that set out, at a minimum, the evaluation criteria and the procedures used by the director to nominate property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. Section 10.1-2206.1 of the Code of Virginia sets out requirements for written notification to property owners and local governments, along with a requirement for public hearings in certain cases, prior to nomination of property by the director to the National Park Service. Section 10.1-2206.2 of the Code of Virginia sets out the procedure by which affected property owners can object to the proposed inclusion of their property in the National Register or to the proposed designation of their property as a National Historic Landmark.

Purpose: The purpose of the proposed action is to establish formal criteria, consistent with the relevant federal criteria, by which the director will evaluate the significance, the integrity, and the boundaries of properties proposed for nomination to the National Park Service. The further purpose of the proposed action is to set out the procedures consistent with state law for written notification to property owners, adjacent property owners, and local governments, along with the procedures for public hearings in certain cases prior to any nomination by the director to the National Park Service. The final purpose is to set forth the procedure consistent with state law by which affected property owners can object to the inclusion of their property in any proposed National Register or National Historic Landmark nomination.

Substance: The evaluation criteria in the proposed regulation are fully consistent with the parallel criteria set out in federal regulations and in the department's current emergency regulation. The procedures for public notification and for property owner objections to designation are fully consistent with the very prescriptive requirements of state law. Consequently, promulgation of this regulation makes no changes to the current status of the law.

Issues: The advantages of this regulation for the public are that it publicizes the specific evaluation criteria the director is already obligated to use in considering property's fitness for nomination to the National Park Service, that it implements state statutory requirements for broad public notification prior to submitting nominations to the National Park Service, and that it affirms state and federal statutory requirements that allow property owners to object to the inclusion of their property in National Register and National Historic Landmark designations made by the federal government. There are no disadvantages created by this proposed regulation.

Impact: The regulation imposes substantive and procedural requirements on the director, not on the public. However, the director does consider nominations voluntarily presented by members of the public. An applicant is expected by this regulation to present a nomination that clearly demonstrates that the property under consideration satisfies the evaluation criteria set out in this regulation. The director considers 30 to 50 nominations from the public each year. If an applicant chooses to retain professional assistance in preparing nominations, the applicant may incur costs. However, this regulation imposes no requirement for the retention of professional services. Further, submission of an application to the director is completely voluntary; no use of property is dependent upon its nomination by the director to the National Park Service.

With regard to costs to the Commonwealth for implementation, the proposed regulation closely follows the prescriptive requirements of state law and federal regulation, and so establishes no implementation costs not already in effect.

The proposed regulation has no impact on small businesses or other organizations.

No locality is particularly affected by this proposed regulation.

Summary:

The proposed regulation establishes the evaluation criteria by which the director shall determine whether property should be nominated to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. Pursuant to the requirements of § 10.1-2202 of the Code of Virginia, the criteria are consistent with the criteria set forth in 36 CFR, Part 60, the federal regulations that implement the National Historic Preservation Act, as amended (P. L. 89-665). In addition the proposed regulation sets out procedures for written notification to property owners and local governments, along with a requirement for public hearings in certain cases, prior to the nomination of property by the director to the National Park Service. Finally, the proposed regulation sets out the procedure by which affected

property owners can object to the proposed inclusion of their property in the National Register or to the proposed designation of their property as a National Historic Landmark. The proposed procedures are consistent with the requirements of §§ 10.1-2206.1 and 10.1-2206.2 of the Code of Virginia.

VR 392-01-02. Evaluation Criteria and Procedures for Nomination of Property to the National Register or for Designation as a National Historic Landmark.

PART I.
DEFINITIONS; APPLICABILITY.

§ 1.1. Definitions.

"Building" means a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. "Building" may also refer to a historically related complex such as a courthouse and jail or a house and barn.

"Chief elected local official" means the mayor of the city or town or the chairman of the board of supervisors of the county in which the property is located.

"Department" means the Department of Historic Resources.

"Determination of eligibility" means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed on the National Register.

"Director" means the Director of the Department of Historic Resources. The Director of the Department is the State Historic Preservation Officer (SHPO) for Virginia.

"District" means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. A district includes local tax parcels that have separate owners. For purposes of this regulation, a historic district does not mean a locally established historic zoning district pursuant to § 15.1-503.2 of the Code of Virginia.

"Keeper of the National Register of Historic Places" or "keeper" means the individual who has been delegated the authority by the National Park Service to list properties and determine their eligibility for the National Register.

"National Register of Historic Places" or "National Register" means the list established by the National Historic Preservation Act of 1966 for the purpose of identifying properties of value for their significance in history, architecture, archaeology, engineering, or culture.

"National Historic Landmark" is a resource designated by the Secretary of the Interior as having national significance.

"Nominate" means to propose that a district, site, building, structure, or object be listed in or determined eligible for listing in the National Register of Historic Places by preparing and submitting to the keeper a nomination form, with accompanying maps and photographs which adequately document the property and are technically and professionally correct and sufficient. The nomination form shall be the National Register nomination form prescribed by the keeper.

"Object" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. Examples of objects include boats, monuments, and fixed pieces of sculpture.

"Owner" or "owners" means those individuals, partnerships, corporations or public agencies holding fee simple title to property. "Owner" or "owners" does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

"State Review Board" means that body, appointed by the State Historic Preservation Officer pursuant to the National Historic Preservation Act (P.L. 89-665), as amended, whose members represent the professional fields of American history, architectural history, historic architecture, prehistoric and historic archaeology, and other professional disciplines, and may include citizen members. The State Review Board reviews and approves National Register nominations concerning whether or not they meet the criteria for evaluation prior to their submittal to the National Park Service.

"Structure" means a man-made work composed of interdependent and interrelated parts in a definite pattern of organization. In addition to buildings, structures include bridges, dams, canals, docks, walls, and other engineering works.

§ 1.2. Applicability.

This regulation pertains specifically to the director's nomination of property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. Parallel evaluation criteria and administrative procedures applicable to the designation of properties by the Virginia

Board of Historic Resources are set out in a separate regulation.

PART II.
GENERAL PROVISIONS.

§ 2.1. General provisions.

The director, as State Historic Preservation Officer, is responsible for identifying and nominating eligible properties to the National Register of Historic Places. The State Historic Preservation Officer supervises the preparation of nomination forms for submission to the National Park Service.

Any person or organization may submit a completed National Register nomination form to the director; any person or organization may also request the director's consideration of any previously prepared nomination form on record with the department.

In determining whether to nominate a property to the National Register, the director shall evaluate the property according to the National Park Service's National Register Criteria for Evaluation, as set out in Article 1 of Part III of this regulation. In determining whether to nominate a property for designation as a National Historic Landmark, the director shall evaluate the property according to the National Park Service's National Historic Landmark Criteria, as set out in Article 2 of Part III of this regulation.

Prior to submitting a nomination of property to the National Park Service, the director shall follow the procedures set out in § 4.1 of this regulation concerning notification to property owners and chief local elected officials. Prior to submitting a nomination for a historic district, the director shall also follow the procedures set out in § 4.2 of this regulation for conducting a public hearing.

The director shall also conduct the nomination process pursuant to all applicable federal regulations as set out in 36 Code of Federal Regulations, Part 60 and in accordance with additional guidance issued by the National Park Service. Where this regulation establishes a more rigorous standard for public notification than does the corresponding federal regulation, this regulation shall apply. However, pursuant to § 10.1-2202 of the Code of Virginia, no provision of this regulation shall be construed to require the director to conduct the National Register nomination process or the National Historic Landmark nomination process in a manner that is inconsistent with the requirements of federal law or regulation.

PART III.
RESOURCE EVALUATION CRITERIA.

Article 1.
National Register Criteria for Evaluation.

§ 3.1. Historic significance.

A. In determining whether to nominate a district, site, building, structure or object to the National Register, the director must determine whether the district, site, building, structure or object has historic significance. A resource shall be deemed to have historic significance if it meets one or more of the following four criteria:

1. The resource is associated with events that have made a significant contribution to the broad patterns of our history; or

2. The resource is associated with the lives of persons significant in our past; or

3. The resource embodies the distinctive characteristics of a type, period, design, or method of construction, or represents the work of a master (for example, an individual of generally recognized greatness in a field such as architecture, engineering, art, or planning, or a craftsman whose work is distinctive in skill or style), or possesses high artistic values, or is a district that taken as a whole embodies one or more of the preceding characteristics, even though its components may lack individual distinction; or

4. The resource has yielded or is likely to yield, normally through archaeological investigation, information important in understanding the broad patterns or major events of prehistory or history.

B. A National Register resource can be of national historic significance, of statewide historic significance, or of local historic significance. The director shall use the following criteria in determining the level of significance appropriate to the resource:

1. A property of national significance offers an understanding of history of the nation by illustrating the nationwide impact of events or persons associated with the property, its architectural type or style, or information potential.

2. A property of statewide historic significance represents an aspect of the history of Virginia as a whole.

3. A property of local historic significance represents an important aspect of the history of a county, city, town, cultural area, or region or any portions thereof.

§ 3.2. Integrity.

In addition to determining a property's significance, the director shall also determine the property's integrity. A property has integrity if it retains the identity for which it is significant. In order to nominate a property to the National Register, the director must determine both that the property is significant and that it retains integrity. To

determine whether a property retains integrity, the director shall consider the seven aspects set out here. Based on the reasons for a property's significance the director shall evaluate the property against those aspects that are the most critical measures of the property's integrity. The seven aspects are:

1. Location – the place where the historic property was constructed or the place where the historic event occurred. In cases such as sites of historic events, the location itself, complemented by the setting, is what people can use to visualize or recall the event.

2. Design – the combination of elements that create the form, plan, space, structure, and style of the property. Design results from the conscious decisions in the conception and planning of a property and may apply to areas as diverse as community planning, engineering, architecture, and landscape architecture. Principal aspects of design include organization of space, proportion, scale, technology, and ornament.

3. Setting – the physical environment of the historic property, as distinct from the specific place where the property was built or the event occurred. The physical features that constitute setting may be natural or man-made, and may include topographic features, vegetation, simple man-made features such as paths or fences, and relationships of a building to other features or to open space.

4. Materials – the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The integrity of materials determines whether or not an authentic historic resource still exists.

5. Workmanship – the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. Workmanship may be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It may be based on common traditions or innovative period techniques. Examples of workmanship include tooling, carving, painting, graining, turning, or joinery.

6. Feeling – the property's expression of the aesthetic or historic sense of a particular period of time. Although it is itself intangible, feeling depends upon the presence of physical characteristics to convey the historic qualities that evoke feeling. Because it is dependent upon the perception of each individual, integrity of feeling alone will never be sufficient to support nomination to the National Register.

7. Association – the direct link between an important historic event or person and a historic property. If a property has integrity of association, then the property is the place where the event or activity occurred and is sufficiently intact that it can convey that relationship.

§ 3.3. Boundaries for historic properties.

Boundaries for a historic district, property, building, structure, object or site are selected to encompass, but not to exceed, the full extent of the significant resources or land area making up the resource. The area should be large enough to include all historic features of the property, but should not include "buffer zones" or acreage not directly contributing to the significance of the property. The following features are to be used to mark the boundaries, as they reflect the resources: (i) legally recorded boundary lines; or (ii) natural topographic features such as ridges, valleys, rivers, and forests; or (iii) man-made features such as stone walls, hedgerows, the curblines of highways, streets, and roads; or (iv) areas of new construction.

§ 3.4. Additional criteria considerations.

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that are less than 50 years old shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within one or more of the following categories:

1. A religious property deriving primary significance from architectural or artistic distinction or historical importance: a religious property shall be judged solely on these secular terms to avoid any appearance of judgment by government about the merit of any religion or belief; or

2. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

3. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or

4. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

5. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same

association has survived; or

6. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

7. A property less than 50 years old if it is of exceptional importance.

§ 3.5. Revisions to properties listed in the National Register.

Four justifications exist for altering a boundary of a property previously listed in the National Register:

1. Professional error in the initial nomination;

2. Loss of historic integrity;

3. Recognition of additional significance;

4. Additional research documenting that a larger or smaller area should be listed.

The director shall recommend no enlargement of a boundary unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. The director shall recommend no diminution of a boundary unless the properties recommended for removal do not meet the National Register criteria for evaluation.

§ 3.6. Removing properties from the National Register.

Grounds for removing properties from the National Register are as follows:

1. The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;

2. Additional information shows that the property does not meet the National Register criteria for evaluation;

3. Error in professional judgment as to whether the property meets the criteria for evaluation; or

4. Prejudicial procedural error in the nomination or listing process.

Article 2.
National Historic Landmark Criteria for Evaluation.

§ 3.7. Historic significance.

In determining whether to nominate a resource for designation as a National Historic Landmark, the director must determine whether the resource has national significance. The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture. A resource shall be deemed to have national significance for the purpose of this section if it meets one or more of the following six criteria:

1. The resource is associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

2. The resource is associated importantly with the lives of persons nationally significant in the history of the United States; or

3. The resource represents some great idea or ideal of the American people; or

4. The resource embodies the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

5. The resource is composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

6. The resource has yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

§ 3.8. Integrity.

In addition to determining the property's significance, the director shall determine its integrity. As set out in § 3.2 of this regulation, a property's integrity is assessed by examining its location, design, setting, materials, workmanship, feeling, and association. A property nominated for designation as a National Historic Landmark must retain a high degree of integrity.

§ 3.9. Additional National Historic Landmark criteria considerations.

Ordinarily, cemeteries, birthplaces, graves of historical

figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties less than 50 years old are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

1. A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

2. A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

3. A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

4. A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

5. A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

6. A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

7. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

8. A property less than 50 years old, if it is of extraordinary national importance.

PART IV.
PUBLIC NOTICE AND PUBLIC HEARINGS.

§ 4.1. Written notice of proposed nominations.

In any county, city, or town where the director proposes to nominate property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark, the department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent of property proposed to be nominated as a historic landmark building, structure, object, or site, or to be included in a historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide. The department shall send this written notice at least 30 but not more than 75 days before the State Review Board meeting at which the nomination will be considered.

§ 4.2. Public hearing for historic district; notice of hearing.

Prior to the nomination of a historic district, the department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the director. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days or more than 21 days after the second publication of the notice in such newspaper. In addition to publishing the notice, the department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide. Notice required to be given to owners by this section may be given concurrently with the notice required to be given to the owners by § 4.1 of this regulation. A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant. The department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

§ 4.3. Mailings and affidavits; concurrent state and federal notice.

The department shall send the required notices by first class mail to the last known address of each person entitled to notice, as shown on the current real estate tax assessment books. A representative of the department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the Virginia Landmarks Register pursuant to designation by the Virginia Board of Historic Resources, the department may provide concurrent notice of the proposed state designation and the proposed nomination to the National Register.

§ 4.4. Public comment period.

The local governing body and property owners shall have at least 30 days from the date of the notice required by § 4.1, or, in the case of a historic district, 30 days from the date of the public hearing required by § 4.2 to provide comments and recommendations, if any, to the director.

PART V.
REVIEW AND SUBMISSION OF NOMINATIONS TO THE NATIONAL REGISTER.

§ 5.1. Requests for nominations.

In addition to directing the preparation of National Register nominations by the department, the director shall act according to this section to ensure that, in accordance with federal regulations, the National Register nomination process is open to any person or organization.

The director shall respond in writing within 60 days to any person or organization submitting a completed National Register nomination form or requesting consideration of any previously prepared nomination form on record with the department. The response shall indicate whether or not the information on the nomination form is complete, whether or not the nomination form adequately evaluates the property according to the criteria set out in Part III of this regulation, and whether or not the property appears to meet the National Register criteria for evaluation set out in Part III. If the director determines that the nomination form is deficient or incomplete, the director shall provide the applicant with an explanation of the reasons for that determination, so that the applicant may provide the necessary additional documentation.

If the nomination form appears to be sufficient and complete, and if the property appears to meet the National Register criteria for evaluation, the director shall comply with the notification requirements in Part IV of this regulation and schedule the property for presentation to the State Review Board. The director may require the applicant to provide a complete, accurate, and up-to-date list and annotated tax parcel map indicating all property owners entitled to written notification pursuant to Part IV of this regulation. Within 60 days of receipt of a sufficient and complete nomination form and of all information necessary to comply with Part IV of this regulation, the director shall notify the applicant of the proposed schedule for consideration of the nomination form by the State Review Board.

If the director determines that the nomination form is sufficient and complete, but that the property does not appear to meet National Register criteria for evaluation, the director need not process the nomination, unless requested to do so by the Keeper of the National Register pursuant to the appeals process set out in § 6.1 of this regulation.

Upon action on a nomination by the State Review Board, the director shall, within 90 days, submit the nomination to the National Park Service, or, if the director does not consider the property eligible for the National Register, so advise the applicant within 45 days.

§ 5.2. Consideration by the State Review Board.

The director shall submit completed nomination forms or the documentation proposed for submission on the nomination forms and comments concerning the significance of a property and its eligibility for the National Register to the State Review Board. The State Review Board shall review the nomination forms or documentation proposed for submission on the nomination forms and any comments received concerning the property's significance and eligibility for the National Register. The State Review Board shall determine whether or not the property meets the National Register criteria for evaluation and make a recommendation to the director to approve or disapprove the nomination.

§ 5.3. Submission of nominations to the National Park Service.

The director shall review nominations approved by the State Review Board, along with all comments received. If the director finds the nominations to be adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with National Register criteria for evaluation, the director may submit them to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. The director shall include all written comments received and all notarized statements of objection with the nomination when it is submitted to the keeper.

If the director and the State Review Board disagree on whether a property meets the National Register criteria for evaluation, the director may submit the nomination with his opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board to the Keeper of the National Register for a final decision on the listing of the property. The director shall submit such disputed nominations if so requested within 45 days of the State Review Board meeting by the State Review Board or the chief elected local official of the county, city, or town in which the property is located but need not otherwise do so.

Any person or organization which supports or opposes the nomination of a property by a State Historic Preservation Officer may petition the keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the keeper substantively review the nomination.

§ 5.4. Owner Objections.

Upon receiving the notification required by § 4.1 of this regulation, the owners of property proposed for nomination shall have the opportunity to concur in or object to the nomination. Any owner or owners of a private property who wish to object shall submit to the director a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing. If an owner whose name did not appear on the current real estate tax assessment list used by the director pursuant to § 4.3 certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property, such owner shall be counted by the director in determining whether a majority of owners has objected. If the owner of a private property, or the majority of the owners of a single private property with multiple owners, or the majority of the owners in a district, have objected to the nomination prior to the submittal of a nomination, the director shall submit the nomination to the keeper only for a determination of eligibility for the National Register. In accordance with the National Historic Preservation Act, the keeper shall determine whether the property meets the National Register criteria for evaluation, but shall not add the property to the National Register.

Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

§ 5.5. Boundary changes.

The director may initiate the process for changing the boundaries of a previously listed National Register property upon concluding that one or more of the conditions set out in § 3.4 of this regulation has been met. In addition, any person or organization may petition in writing to have a boundary changed.

A boundary alteration shall be considered as a new property nomination. In the case of boundary enlargements the notification procedures set out in Part IV of this regulation shall apply. However, only the additional area proposed for nomination to the National Register shall be used to determine the property owners and the adjacent property owners to receive notification pursuant to §§ 4.1 and 4.2 of this regulation. Only the owners of the property in the additional area shall be counted in determining whether a majority of private owners object to listing in the National Register. In the case of a proposed diminution of a boundary, the director shall notify the property owners and the chief elected local official and give them an opportunity to comment prior to submitting any proposal to the Keeper of the National Register.

§ 5.6. Removal of property from the National Register.

The director may initiate the process for removing property from the National Register upon concluding that one or more of the conditions set out in § 3.6 of this regulation have been met. In addition, any person or organization may petition in writing for removal of a property from the National Register by setting forth the reasons the property should be removed on the grounds established in § 3.6 of this regulation. With respect to nominations determined eligible for the National Register because the owners of private property object to listing, anyone may petition for reconsideration of whether or not the property meets the criteria for evaluation using these procedures.

The director shall notify the affected owner or owners and chief elected local official and give them an opportunity to comment prior to submitting a petition for removal.

The director shall respond in writing within 45 days of receipt to petitions for removal of property from the National Register. The response shall advise the petitioner of the director's views on the petition. A petitioner desiring to pursue his removal request must notify the director in writing within 45 days of receipt of the written views on the petition.

Within 15 days after receipt of the petitioner's notification of intent to pursue his removal request, the director shall notify the petitioner in writing either that the State Review Board will consider the petition on a specified date or that the petition will be forwarded to the keeper after notification requirements have been completed. The director shall forward the petitions to the keeper for review within 15 days after notification requirements or State Review Board consideration, if applicable, have been completed. The director shall also forward all comments received.

PART VI.
NOMINATION APPEALS.

§ 6.1. Appeals.

Any person or local government may appeal to the keeper the failure or refusal of the director to nominate a property, upon decision of the director not to nominate a property for any reason when a National Register nomination form had been submitted to the director pursuant to § 5.1 of this regulation, or upon failure of the director to submit a nomination recommended by the State Review Board.

VA.R. Doc. No. R94-8; Filed September 15, 1993, 10:28 a.m.

NPS Form 10-900
(Oct. 1990)

OMB No. 10024-0018

United States Department of the Interior
National Park Service

REGISTRAR OF REGULATIONS
93 SEP 17 AM 11:07

National Register of Historic Places Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name _____

other names/site number _____

2. Location

street & number _____ ☐ not for publication

city or town _____ ☐ vicinity

state _____ code _____ county _____ code _____ zip code _____

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this ☐ nomination ☐ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ☐ meets ☐ does not meet the National Register criteria. I recommend that this property be considered significant ☐ nationally ☐ statewide ☐ locally. (☐ See continuation sheet for additional comments.)

_____
Signature of certifying official/Title Date

_____
State or Federal agency and bureau

In my opinion, the property ☐ meets ☐ does not meet the National Register criteria. (☐ See continuation sheet for additional comments.)

_____
Signature of certifying official/Title Date

_____
State or Federal agency and bureau

4. National Park Service Certification

I hereby certify that the property is Signature of the Keeper Date of Action

☐ entered in the National Register
☐ See continuation sheet.
☐ determined eligible for the National Register
☐ See continuation sheet
☐ determined not eligible for the National Register
☐ removed from the National Register
☐ other, (explain:) _____

_____ _____

Name of Property County and State

5. Classification

Ownership of Property (Check as many boxes as apply)
☐ private
☐ public-local
☐ public-State
☐ public-Federal

Category of Property (Check only one box)
☐ building(s)
☐ district
☐ site
☐ structure
☐ object

Number of Resources within Property (Do not include previously listed resources in the count.)

Contributing	Noncontributing	
		buildings
		sites
		structures
		objects
		Total

Name of related multiple property listing (Enter "N/A" if property is not part of a multiple property listing.)

_____

Number of contributing resources previously listed in the National Register

_____

6. Function or Use

Historic Functions (Enter categories from instructions)

_____
_____
_____
_____
_____
_____
_____

Current Functions (Enter categories from instructions)

_____
_____
_____
_____
_____
_____
_____

7. Description

Architectural Classification (Enter categories from instructions)

_____
_____
_____

Materials (Enter categories from instructions)

foundation _____
walls _____
_____
roof _____
other _____
_____

Narrative Description
(Describe the historic and current condition of the property on one or more continuation sheets.)

Name of Property | County and State

8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing.)

- A Property is associated with events that have made a significant contribution to the broad patterns of our history.
- B Property is associated with the lives of persons significant in our past.
- C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- D Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

Property is:

- A owned by a religious institution or used for religious purposes.
- B removed from its original location.
- C a birthplace or grave.
- D a cemetery.
- E a reconstructed building, object, or structure.
- F a commemorative property.
- G less than 50 years of age or achieved significance within the past 50 years.

Areas of Significance
(Enter categories from instructions)

Period of Significance

Significant Dates

Significant Person
(Complete if Criterion B is marked above)

Cultural Affiliation

Architect/Builder

Narrative Statement of Significance
(Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

Bibliography
(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):

- preliminary determination of individual listing (36 CFR 67) has been requested
- previously listed in the National Register
- previously determined eligible by the National Register
- designated a National Historic Landmark
- recorded by Historic American Buildings Survey
  #
- recorded by Historic American Engineering

Primary location of additional data:

- State Historic Preservation Office
- Other State agency
- Federal agency
- Local government
- University
- Other

Name of repository:

Name of Property | County and State

10. Geographical Data

Acreage of Property

UTM References
(Place additional UTM references on a continuation sheet.)

	Zone	Easting	Northing
1			
2			
3			
4			

See continuation sheet

Verbal Boundary Description
(Describe the boundaries of the property on a continuation sheet.)

Boundary Justification
(Explain why the boundaries were selected on a continuation sheet.)

11. Form Prepared By

name/title

organization | date

street & number | telephone

city or town | state | zip code

Additional Documentation
Submit the following items with the completed form:

Continuation Sheets

Maps

A **USGS map** (7.5 or 15 minute series) indicating the property's location.

A **Sketch map** for historic districts and properties having large acreage or numerous resources.

Photographs

Representative **black and white photographs** of the property.

Additional Items
(Check with the SHPO or FPO for any additional items)

Property Owner
(Complete this item at the request of SHPO or FPO.)

name

street & number | telephone

city or town | state | zip code

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, [illegible]

NPS Form 10-900-a
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior
National Park Service

National Register of Historic Places
Continuation Sheet

REGISTRAR OF REGULATIONS
93 SEP 17 AM11:07

Section number _____ Page _____

DEPARTMENT OF STATE POLICE

Title of Regulation: **VR 545-01-11. Regulations Governing Purchases of Handguns in Excess of One Within a 30-Day Period.**

Statutory Authority: § 18.2-302.2:2 of the Code of Virginia.

Public Hearing Date: November 4, 1993 - 2 p.m.
Written comments may be submitted through December 3, 1993.
(See Calendar of Events section for additional information)

Basis: Chapter 486 of the 1993 Acts of Assembly (HB 1592), which amended § 18.2-308.2:2 of the Code of Virginia, provides the statutory basis for the promulgation of these regulations by the Department of State Police.

Purpose: The proposed regulations are designed to ensure the protection of the public by making it unlawful for any person not a licensed firearms dealer to purchase more than one handgun within any 30-day period. Criteria for the reporting of these purchases by firearms dealers are provided within the regulations, along with an application procedure, a certification process for the purchase of multiple handguns, and a proviso to allow local law-enforcement agencies to act as agents in this procedure. Criteria are also included for replacement of lost or stolen handguns.

Substance: Proposed regulations are as follows:

§ 1.1 A. Provides that gun dealers shall notify the Department of State Police as soon as possible that a sale or transfer of firearms took place.

§ 1.1 B. Provides that a gun dealer shall notify the State Police that an intended sale or transfer of a firearm did not take place.

§ 2.1. Provides that a person wishing to purchase more than one firearm in a 30-day period shall obtain a Certificate of Purchase.

§ 2.2. Establishes that proper identification is needed at the time of application.

§ 2.3. Requires other information if the firearm is to be transferred to someone other than the applicant.

§ 2.4. Provides that the purchase is not illegal, and not prohibited under any federal, state, or local law.

§ 3.1 A. Establishes that the application is to be forwarded to the State Police Administrative Headquarters where a check will be made of all available criminal history record information.

§ 3.1 B. Provides that the record check will be done without delay and completed as soon as possible.

§ 3.1 C. Allows the State Police to determine if the application is valid and that the information on the application is true and accurate.

§ 4.1. Upon meeting the imposed requirements, a certificate shall be issued that is valid for seven days from the day of issue.

§ 4.2. Upon delivery of the certificate, the transferor may proceed with the transfer of the number and type of handguns specified in the certificate.

§ 5.1. Allows for the appeal of the denial of an application.

§ 6.1 A. Allows for applications for agency from the Department of State Police.

§ 6.1 B. Provides for the authority if receiving applications and issuing certificates.

§ 7.1. Establishes requirements for the replacement of lost or stolen handguns without having to obtain the certificate as outlined in these regulations.

Estimated Impact: The cost to the agency for the proposed regulations cannot be precisely determined at this time. However, the agency has not imposed any fees for this process, and thus any moneys expended will be borne by the agency. The legislation did not provide for any additional moneys to be collected as a result of this change.

Summary:

Chapter 486 of the 1993 Acts of Assembly (HB 1592) amended § 18.2-308.2:2 of the Code of Virginia by adding a subsection N, making it unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. Purchases in excess of the limit may be made upon completion of an enhanced background check by special application to the Department of State Police. The Superintendent of State Police is required to promulgate regulations for the implementation of the application process. The regulations establish the requirements and procedures for obtaining a certificate authorizing the purchase of more than one handgun within a 30-day period, including a dealer transaction reporting requirement, an appeal process and a procedure for training and authorizing local law-enforcement agencies to issue the certificate.

VR 545-01-11. Regulations Governing Purchases of Handguns in Excess of One Within a 30-Day Period.

PART I.
REPORTS BY DEALERS.

§ 1.1. Notification of sale or transfer.

A. Any dealer in firearms who completes a sale or transfer of a handgun without having been advised by the Department of State Police if its records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, because the dealer was not so advised by the end of the dealer's next business day, or was told by the State Police that a response would not be available by the end of the dealer's next business day, shall notify the Department of State Police of the sale or transfer by telephone as soon as possible, but in no event later than the end of the dealer's next business day.

B. Any dealer in firearms who requests and receives criminal history record information in connection with an intended sale or transfer of a handgun which indicates the prospective purchaser or transferee is not prohibited from possessing or transporting a firearm by state or federal law shall notify the Department of State Police by telephone as soon as possible, but in no event later than the end of the dealer's next business day, whenever the dealer determines that the sale or transfer will not be completed.

PART II.
APPLICATIONS.

§ 2.1. Application for multiple handgun purchase.

Any person desiring to purchase in excess of one handgun within any 30-day period shall make application under oath, on Form SP-207, Multiple Handgun Purchase Application. The applicant shall deliver such application in person to State Police Administrative Headquarters, 7700 Midlothian Turnpike, Richmond, Virginia, a division headquarters or area office of the Department of State Police, or to any local law-enforcement agency certified by the Department of State Police as its agent to receive such applications.

§ 2.2. Identification requirements.

At the time of delivery of the application form required by § 2.1 of these regulations, the applicant shall present two forms of identification, at least one of which is a photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense, which was issued at least 60 days prior to presentation. In addition, the applicant shall produce documentation of residence, which must show an address identical to that shown on the photo-identification form. Documentation of residence may be in any of the forms allowed under subsection B of § 18.2-308.2:2 of the Code of Virginia.

§ 2.3. Transfer to someone other than applicant.

If the application indicates that the purchase is for the purpose of further transfer of a handgun or handguns to someone other than the applicant, the applicant shall also provide the name, social security number, sex, height, weight, race, all residence addresses within the past five years, date of birth, place of birth, and citizenship of the person or persons to whom the further transfer is to be made.

§ 2.4. Evaluation of application.

The application must demonstrate to the satisfaction of the Department of State Police that the purpose of the purchase of more than one handgun within any 30-day period is bona fide and lawful, and is not prohibited or illegal under any federal, state or local law. In evaluating such application, the Department of State Police may consider the number, type and model of handguns to be purchased pursuant to this application or any other application made by the applicant within the past 12 months, the type and model of handgun purchased during the same month under the provisions of § 18.2-308.2:2 of the Code of Virginia, the intended use for such handguns applied to be purchased and the relationship between the intended use and the number and type of handguns applied for in this application and any other application made by the applicant within the past 12 months.

PART III.
ENHANCED BACKGROUND CHECK.

§ 3.1. Enhanced background check.

A. Upon receipt of a completed application form, a division headquarters or area office of the Department of State Police or a local law-enforcement agency certified by the Department of State Police as its agent to receive such applications shall transmit the application, in accordance with policies and procedures prescribed by the Department of State Police, to State Police Administrative Headquarters. Upon receipt at Administrative Headquarters, the Department of State Police will conduct an enhanced background check of the applicant and any person to whom any handgun to be purchased is to be transferred. This check will include a search of all available criminal history record information, including national, state, and local indices. The Department of State Police will make inquiry of the local law-enforcement agency or agencies having jurisdiction in the applicant's and any transferees' place or places of residence within the past five years as to any factors which would make the proposed purchase illegal under federal, state, or local law prior to approval of any transaction.

B. The enhanced background check shall be conducted without delay, and shall be completed as soon as possible after receipt of the application at Administrative Headquarters. However, in case of electronic failure or other circumstances beyond the control of the State Police, the State Police shall complete the enhanced background check as soon as possible after the circumstances causing the delay have been corrected or overcome.

C. Before granting a multiple purchase certificate, the

Department of State Police or its agents may make such inquiry of the applicant and others as the Department of State Police may deem necessary to determine that the application is bona fide and that the information contained in the application is true and accurate. The Department of State Police shall not issue a multiple purchase certificate until satisfied that the requirements of § 18.2-308.2:2 of the Code of Virginia and these regulations have been met.

PART IV.
CERTIFICATE.

§ 4.1. Issuance of certificate.

Upon being satisfied that the proposed purchase meets the requirements of § 18.2-308.2:2 of the Code of Virginia and these regulations, the Department of State Police shall forthwith issue or authorize its agent to issue to the applicant a nontransferable certificate which shall be valid for seven days from the date of issue, authorizing the purchase of a specified number and type of handguns. The State Police or its agent shall make one attempt to contact the applicant to notify him of the issuance or denial of the certificate at a telephone number provided by the applicant at the time of delivery of the application.

§ 4.2. Retention of certificate.

Upon delivery of the certificate issued pursuant to § 4.1 of these regulations, a prospective transferor may proceed to transfer the number and type of handguns specified in the certificate provided the transferor has complied with the provisions of § 18.2-308.2:2 B of the Code of Virginia. If the transferor is a dealer in firearms as defined in § 54.1-4200 of the Code of Virginia, the certificate shall be surrendered to the transferor by the applicant prior to the consummation of such sale, and shall be kept on file at the transferor's place of business for a period of not less than two years. If the transferor is not a dealer in firearms, the transferor shall attest in writing on the reverse of the certificate, indicating the date the transfer was completed, and the transferee shall return the certificate to the office which issued the certificate. The returned certificate shall then be forwarded to State Police Administrative Headquarters.

PART V.
APPEALS.

§ 5.1. Appealing the denial of a certificate.

Any person denied a certificate for the purchase of more than one handgun within any 30-day period may appeal such denial to the Superintendent of State Police. Such appeal shall be in writing, setting forth any grounds which the applicant wishes to be considered. The Superintendent of State Police shall consider each such appeal, and notify the applicant in writing of his decision within five business days after the day on which the appeal is received.

PART VI.
AGENTS.

§ 6.1. Agents certified to receive applications and issue certificates.

A. Any local law-enforcement agency may request that it be certified as an agent for the Department of State Police to receive applications and issue certificates pursuant to these regulations. Any such request shall be in writing, directed to the Superintendent of State Police, and shall designate a particular individual or individuals within the local agency who will perform these duties. Only such designated individuals shall accept applications or issue certificates. Prior to certification of a local law-enforcement agency as an agent, each of its designated individuals must successfully complete a four-hour training course provided by the Department of State Police. Upon receipt of a request from a local law-enforcement agency and the successful completion of the prescribed training course by its designated individuals, the Superintendent of State Police shall certify such agency as an agent for the Department of State Police to receive applications and issue certificates pursuant to these regulations.

B. Any agent certified as provided in subsection A of this section shall have the authority to receive applications and issue certificates pursuant to these regulations in accordance with policies and procedures prescribed by the Department of State Police.

PART VII.
REPLACEMENT OF LOST OR STOLEN HANDGUN.

§ 7.1. Replacement of handgun.

A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately may purchase a single handgun without obtaining the certificate required by these regulations, even if the person has previously purchased a handgun within a 30-day period, provided the person provides the transferor with a summary of the official police report from the law-enforcement agency that took the report of the lost or stolen handgun on Form SP-194, Lost/Stolen Handgun Report. If the official police report from the law-enforcement agency that took the report of the lost or stolen handgun contains all the information required by Form SP-194, then the law-enforcement agency may attach a copy of the official police report to Form SP-194 in lieu of completing the summary on the form.

VA.R. Doc. No. R94-13; Filed September 10, 1993, 3:04 p.m.

SP-207, 7-1-93

NO. MP- 004731

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
MULTIPLE HANDGUN PURCHASE APPLICATION

SECTION A. MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER). (See instructions on back).

1. Transferee's (Buyer's) Name (Last, First, Middle)	2. Driver's License No./ DMV I. D. Card No.	3. ☐ Male ☐ Female	4. Height	5. Weight	6. Race

7. Current Address (No., Street, City, State, Zip Code)	8. Date of Birth Month / Day / Year	9. Place of Birth (City, State or City, Foreign Country)	10. Are you a citizen of the United States?
Telephone No. ( )			☐ Yes ☐ No
Previous Address (No., Street, City, State, Zip Code)			If No, enter Immigration No.

11. Number and Type of Handgun(s) to be Purchased:

Pistol(s) _____ Revolver(s) _____

THIS BLOCK TO BE COMPLETED BY ISSUING AGENCY ONLY
Date Certificate Issued: _____
Date Certificate Expires: _____

CERTIFICATION OF TRANSFEREE (BUYER). AN UNTRUTHFUL ANSWER MAY SUBJECT YOU TO CRIMINAL PROSECUTION.

12. Provide Brief Statement of the Circumstances Requiring Additional Handgun (s) Purchase:

_____

_____

_____

_____

_____

_____

13. I hereby swear or affirm that the information above is true and correct. I understand that the making of a false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this application is a crime punishable as a felony.

TRANSFEREE'S (BUYER'S) SIGNATURE: _____ Date: _____

Sworn to and Subscribed before me this _____ day of _____, 19_____

Signature of Official Administering Oath: _____

Title: Commission Expiration Date:

SECTION B. MUST BE COMPLETED BY ISSUING AGENCY. (See instructions on back).

14. Additional Handgun Purchase Shall Be Used For: (Check Appropriate Box).

A. ☐ Lawful Business Use
B. ☐ Lawful Personal Use
C. ☐ Collector Series, For Collectors
D. ☐ Bulk Purchase From Estate Sales

15. Multiple Handgun Purchase Certificate

☐ Approved Approval No. _____

☐ Not Approved

If Not Approved, Explain: _____

_____

_____ Signature of Issuing Official

Issuing Agency and Address: _____

_____

_____

Date: / /

NOTICE

The Multiple Handgun Purchase Application, Section A, shall be completed in full by the transferee (buyer) and approved by the issuing agency prior to the issuance of a Mutiple Handgun Certificate pursuant to 18.2-308.2:2 (N) 1, Code of Virginia.

INSTRUCTIONS TO TRANSFEREE (BUYER)

NOTICE - SEPARATE EACH COPY PRIOR TO COMPLETING REVERSE SIDE

The transferee (buyer) applying to purchase multiple handguns will in every instance personally complete Section A of this form. However, if the buyer is unable to read and/ or write, the answers may be written by other persons **excluding** the transferor (seller). Two persons (other than the seller) will sign as witnesses to the buyer's answers and signature. The transferee (buyer) must certify under oath that the information provided on the form is true and correct.

If the handgun (s) being purchased is a gift, the name, race, sex, and date of birth of the recipient (s) shall be included in the statement on line 12 of the form.

Additional space provided for previous addresses (last five years)

Address: _____

_____

_____

Address: _____

_____

_____

Address: _____

_____

_____

Address: _____

_____

_____

Address: _____

_____

_____

INSTRUCTIONS TO ISSUING AGENCY

Upon receiving the application form, the issuing official will ensure that the transferee (buyer) applying for a Multiple Handgun Purchase Certificate provides appropriate identification as provided for in 18.2-308.2:2 (B) 1.

SP-208, 7-1-93

NO. MP- 004781

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
MULTIPLE HANDGUN PURCHASE CERTIFICATE

Transferee's (Buyer's) Name (Last, First, Middle)	Driver's License No./ DMV I. D. Card No.	☐ Male ☐ Female	Height	Weight	Race
Current Address (No., Street, City, State, Zip Code)	Date of Birth Month / Day / Year	Place of Birth (City, State or City, Foreign Country)	Are you a citizen of the United States? ☐ Yes ☐ No		
Telephone No. ( )			If No, enter immigration No.		
Previous Address (No., Street, City, State, Zip Code)					
Number and Type of Handgun(s) to be Purchased: Pistol(s) _____ Revolver(s) _____	Date Certificate Issued: _____ Date Certificate Expires:				

_____
Approval Signature

Certificate Valid for Seven Days from Date of Issuance

INSTRUCTIONS TO TRANSFEROR (SELLER)

The Multiple Handgun Purchase Certificate shall be surrendered by the transferee (buyer) prior to the consummation of such sale and shall be attached to the Virginia Firearms Transaction Form (SP-65), and shall be kept on file at the transferor's place of business for inspection as provided for in 54.1-4201 (C), Code of Virginia, for a period of not less than two years.

The Multiple Handgun Purchase Certificate shall be valid for seven days from date of issuance.

I hereby certify that the Firearm(s) approved for purchase was/were transferred on _____.
(Date of Transfer)

Transferor's Signature: _____

Date: _____

* * * * * * * *

Title of Regulation: **VR 545-01-12. Regulations Governing the Creation of a Criminal Firearms Clearinghouse.**

Statutory Authority: § 52-25.1 of the Code of Virginia.

Public Hearing Date: November 4, 1993 – 2 p.m.
Written comments may be submitted through December 3, 1993.
(See Calendar of Events section for additional information)

Basis: Chapter 834 of the 1993 Acts of Assembly (HB 1885) which enacted § 52-25.1 of the Code of Virginia provides the statutory basis for the promulgation of these regulations by the Department of State Police.

Purpose: To establish and maintain, within the Department of State Police, a Criminal Firearms Clearinghouse as a central repository of information on all firearms seized, forfeited, found, or otherwise coming into the possession of any state or local law-enforcement agency which are believed to have been used in the commission of a crime.

Substance: Proposed regulations are as follows:

§ 2.1. Provides for the creation of the Clearinghouse.

§ 2.2. Clearinghouse is known as Virginia Firearms Clearinghouse.

§ 3.1. Specifies the information needed by the State Police.

§ 3.2. Provides for the submittal of the information.

§ 3.3. Specifies when a completed form shall be submitted.

§ 3.4. Provides that this is the only form allowable.

§ 3.5. Specifies what the State Police's duties are to other law-enforcement agencies.

Estimated Impact: The cost to the agency for the proposed regulations cannot precisely be determined at this time. The statutory enactment did not provide for a fee, nor did it provide money for the establishment of the clearinghouse. All costs are absorbed by the Department of State Police.

Summary:

Chapter 834 of the 1993 Acts of Assembly (HB 1885) enacted § 52-25.1 of the Code of Virginia by adding a section concerning the reporting of seized, forfeited, found, or confiscated firearms. The Superintendent of State Police is to establish and maintain within the Department of State Police a Criminal Firearms Clearinghouse as a central repository of information on all firearms seized, forfeited, found, or otherwise coming into the possession of any state or local law-enforcement agency which are believed to have been used in the commission of a crime. The Superintendent is to adopt and promulgate regulations prescribing the form for reporting this information and the time and manner of the submission of this information. The proposed regulations establish the requirements and procedures for reporting this information.

VR 545-01-12. Regulations Governing the Creation of a Criminal Firearms Clearinghouse.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"VCIN" means Virginia Criminal Information Network.

"Virginia Firearms Clearinghouse" means the central repository for information gathered pursuant to § 52-25.1 of the Code of Virginia.

PART II.
VIRGINIA FIREARMS CLEARINGHOUSE.

§ 2.1. Creation of clearinghouse.

The Department of State Police will create a clearinghouse as a central repository for information of any firearm that is seized, forfeited, found, or otherwise coming into the possession of any state or local law-enforcement agency which is believed to have been used in the commission of a crime.

§ 2.2. Reference to clearinghouse.

The clearinghouse will be known as the "Virginia Firearms Clearinghouse" and shall be referred to as such.

PART III.
METHOD OF REPORTING.

§ 3.1. Reporting form.

A state or local law-enforcement agency that has seized, forfeited, found, or otherwise recovers a firearm in accordance with § 52-25.1 of the Code of Virginia shall notify the Department of State Police by a form provided by the State Police (SP-187). The form will contain the following information: (i) serial number or other identifying information on the firearm, (ii) a brief description of the circumstances under which the firearm came into the possession of the law-enforcement agency, including the crime which was or may have been committed with the

firearm, (iii) the name or other identifying information on the person from whom the firearm was taken, (iv) the original place of sale and the chain of possession of the firearm, (v) the disposition of the firearm and any other information the Superintendent may require.

§ 3.2. Submission of form.

A. The information required on the form should be submitted to the clearinghouse via VCIN (if available), as soon as possible after coming into the possession of the agency, and should include all available information at the time of submission.

B. A completed form (SP-187) will be sent to the Department of State Police within seven business days once all of the requested information has been obtained. For the purposes of this regulation, the State Police address will be: Department of State Police, Virginia Firearms Clearinghouse, P.O. Box 85141, Richmond, Virginia 23285-5141.

§ 3.3. Forms accepted.

The form provided by the State Police will be the only form accepted by the State Police. Locally produced forms will be unacceptable.

§ 3.4. Copies of forms.

The State Police will provide copies of the Virginia Firearms Clearinghouse form (SP-187) to all state and local law-enforcement agencies by July 1, 1993.

VA.R. Doc. No. R94-14; Filed September 10, 1993, 3:04 p.m.

SP-187 7-1-93

VIRGINIA DEPARTMENT OF STATE POLICE
CRIMINAL FIREARMS CLEARINGHOUSE

(All entries on this form must be typewritten or in ink)

GENERAL INFORMATION			
1. Date of Report	2. Date Administrative Message Sent	3. Administrative Message Number	
4. Agency Reporting	5. ORI Number	6. Case Number	
7. Investigating Officer Last Name	8. First Name		9. MI
DESCRIPTION OF FIREARM			
10. Manufacturer	11. Type	12. Model	
13. Caliber or Gauge	14. Magazine or Cylinder Capacity	15. Barrel Length	
16. Finish	17. Serial Number	18. Country of Origin	
19. Other Identifying Marks			
LAW ENFORCEMENT POSSESSION INFORMATION			
20. L/E Possession Date ☐ Seized ☐ Found ☐ Forfeited ☐ Other (Explain)		21. Disposition of Firearm	
22. Crime Committed with the Firearm	23. Brief Description Under which the firearm came into possession of the law enforcement agency		
PERSON FROM WHOM FIREARM WAS TAKEN			
24. Last Name	25. First Name		26. MI
27. Address	28. City	29. State	30. Zip Code
31. Date of Birth	32. ☐ Adult ☐ Juvenile	33. Social Security Number	34. Race	35. Sex
ORIGINAL FIREARM PURCHASE INFORMATION			
36. Transaction Date	37. Dealer Name	38. FFL Number	
39. Address	40. City	41. State	42. Zip Code
43. Original Purchaser Last Name	44. First Name		45. MI
46. Address	47. City	48. State	49. Zip Code
CHAIN OF POSSESSION OF FIREARM AFTER INITIAL PURCHASE (Most Recent First)			
50. Acquisition Date	51. Last Name	52. First Name	53. MI
54. Address	55. City	56. State	57. Zip Code
58. Acquisition Date	59. Last Name	60. First Name	61. MI
62. Address	63. City	64. State	65. Zip Code
66. Acquisition Date	67. Last Name	68. First Name	69. MI
70. Address	71. City	72. State	73. Zip Code
74. Signature (Agency Head or Designee)		Date	

Forward original form to the [illegible] after [illegible] is completed

INSTRUCTIONS FOR COMPLETING CRIMINAL FIREARMS CLEARINGHOUSE FORM

GENERAL INFORMATION (1 through 9) - Self Explanatory

DESCRIPTION OF FIREARM (10 through 19)

10. Manufacturer: Enter the entire name shown on firearm.

11. Type: Enter the NCIC Weapon Type Code (Refer to NCIC Code Manual, Part 3, Section 3)

12. Model: The model designation can be a letter or numerical designation, brand name, or a combination thereof.

13. Caliber or Gauge (Refer to NCIC Code Manual, Section 1, Part 3)

14. Magazine or Cylinder Capacity: For revolvers, show the number of cartridges which the cylinder will hold. For pistols, show the magazine capacity, if possible. For derringers, show the number of barrels.

15. Barrel Length: Always measure revolvers from the muzzle to the face of the cylinder; pistols from the muzzle to the face of the bolt with the slide in the forward position. Derringers are measured from the muzzle to the face of the bolt with the frame and barrel components locked. Measure to the nearest one-half inch and record in decimal point format, i.e., 4.5 inches.

16. Finish: Enter the NCIC Weapon Color and Finish Code (Refer to NCIC Code Manual, Part 3, Section 4)

17. Serial Number: Include letter prefix, suffix, code numbers, or letters over or under the serial number.

18. Country of Origin: Enter the NCIC Country Code (Refer to NCIC Code Manual, Part 6, Section 2). The Country may appear under the grips or other hidden locations.

19. Other Identifying Marks: Any markings, including importers name, grip medallion markings, proof-marks, grip composition, and type. For semiautomatic pistol, indicate if exposed-hammer or hammerless type. For revolver, indicate if side-swing cylinder, top-break, or solid frame, with or without loading gate. Also indicate if with or without side-ejector housing. State if revolver has a spur trigger or trigger guard.

LAW ENFORCEMENT POSSESSION INFORMATION (20 through 23)

20. L/E Possession Date: Enter the date the firearm came into the possession of the Law Enforcement Agency and check whether the firearm was seized, found, forfeited, or other. If other is checked, enter a short description.

21. Disposition of Firearm: Explain the disposition of the firearm, i.e., Destroyed, Forfeited, etc.

22. Crime Committed with the Firearm: Use appropriate Virginia Code Section, i.e., 18.2-30.

23. Brief Description Under which the firearm came into possession of the law enforcement agency: Self explanatory

PERSON FROM WHOM FIREARM WAS TAKEN (24 through 35) - Self Explanatory

ORIGINAL FIREARM PURCHASE INFORMATION (36 through 49) - Self Explanatory

CHAIN OF POSSESSION OF FIREARM AFTER INITIAL PURCHASE (50 through 73)

Show the chain of possession after original sale, listing names, addresses and acquisition dates of all owners of the firearm. List the most recent first.

To trace the original sale of this firearm, contact the ATF National Tracing Center, [illegible] Avenue, Landover, MD 20785. Telephone Number is (301) 436-8159.

MAIL TO: Department of State Police
Virginia Firearms Clearinghouse
P.O. Box 85141
Richmond, VA 23285-5141

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 ENVIRONMENTAL QUALITY

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Environmental Quality will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: ~~VR 305-02-01~~ *VR 304-02-01* . **Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia.**

Statutory Authority: § 62.1-195.1 of the Code of Virginia.

Effective Date: November 3, 1993.

Summary:

The technical amendments to this regulation adopted by the Department of Environmental Quality are necessary to conform the guidelines to amendments to the Code of Virginia which became effective on April 1, 1993. The amendments delete references to the Council on the Environment, council member agencies and administrator; add references to the Department of Environmental Quality and Director of the Department of Environmental Quality; and revise references to the Department of Mines, Minerals and Energy.

PART I.
APPLICABILITY AND GENERAL REQUIREMENTS.

§ 1.1. Definitions.

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

"Access road" means a paved or unpaved route or path from a public highway or public road to a well site or associated facility.

~~*"Administrator"* means the Administrator of the Virginia Council on the Environment.~~

"Associated facilities" means any facility used for gas or oil operations in the Commonwealth, other than a well or well site.

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with "VR 173-02-01: Chesapeake Bay Preservation Area Designation and Management Regulations" and § 10.1-2109 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area consists of Resource Protection Areas and Resource Management Areas.

~~*"Council"* means the Virginia Council on the Environment as described in Chapter 12 (§ 10.1-1200 et seq.) of Title 10.1 of the Code of Virginia.~~

~~*"Council member agencies"* means those agencies designated as members of the council in § 10.1-1202 of the Code of Virginia.~~

"Cuttings" means fragments of rock produced in a well bore by a drill bit and brought to the surface by drilling fluids or air pressure.

"Department of Environmental Quality" means the Department of Environmental Quality as described in § 10.1-1182 et seq. of the Code of Virginia.

~~"Department"~~ *"Department of Mines, Minerals and Energy"* means the Department of Mines, Minerals and Energy as described in § 45.1-1.1 et seq. of the Code of Virginia.

"Director of the Department of Environmental Quality" means the Director of the Department of Environmental Quality or his authorized agent.

~~"Director"~~ *"Director of the Department of Mines, Minerals and Energy"* means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Drilling fluid" means any fluid or drilling mud circulated in the well bore during drilling operations.

"Economic characteristics" means activities associated with the production, distribution and consumption of goods and services.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water or other fluid into the productive strata, (ii) application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons, or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, wells or pool.

"Environment" means the natural, scenic and historic attributes of Virginia.

"Environmental impact assessment" or *"assessment"* means that documentation which is required by § 62.1-195.1 of the Code of Virginia to be a part of any application for a permit to drill an oil or gas well in Tidewater Virginia.

"Exploratory well" means any well drilled (i) to find and produce gas or oil in an unproven area, (ii) to find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) to extend the limits of a known gas or oil reservoir.

"Facilities and equipment" means all infrastructure supporting the development, drilling, construction, completion or operation of any gas or oil operation including but not limited to well drilling equipment, well heads, separators, compressors, pumps, manifolds, vehicles, fluid circulation systems, waste handling facilities, storage tanks, valves, pipelines, etc., used to explore for, produce or transport oil or gas.

"Fiscal characteristics" means the structure of taxation, public revenue, public expenditure, and public debt.

"Gas" or *"natural gas"* means all natural gas whether hydrocarbon or nonhydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casing head gas and all other fluids not defined as oil.

"Gas or oil operation" or *"operation"* means any activity relating to drilling, redrilling, deepening, stimulating, production, enhanced recovery, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another, plugging or replugging any well, land disturbing activity relating to the development, construction, operation and abandonment of a gathering pipeline, the development, operation, maintenance and restoration of any site involved with gas or oil operations, or any work undertaken at a facility used for gas or oil operations. The term embraces all of the land or property that is used for or which contributes directly or indirectly to a gas or oil operation, including all roads.

"Gas well" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Gathering pipeline" means (i) a pipeline which is used or intended for use in the transportation of gas or oil from the well to a transmission pipeline or other pipeline regulated by the Federal Energy Regulatory Commission or the State Corporation Commission or (ii) a pipeline which is used or intended for use in the transportation of gas or oil from the well to an off-site storage, marketing, or other facility where the gas or oil is sold.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula RKLS/T, as defined by the Food Security Act (F.S.A.) Manual of August, 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July 1983 in the "Field Service Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service.

"Historic properties" means any prehistoric or historic district, site, building, structure or object included in or eligible for inclusion in the National Register of Historic Places or the Virginia Historical Landmarks Register including any artifacts, records and remains that are related to and located within such properties.

"Historic properties survey" means a survey undertaken to establish the presence or absence of historic properties, and any related and necessary management plans developed to conserve such resources.

"Land-disturbing activity" means any change in or reconfiguration of the land surface or vegetation on the land surface through vegetation clearing or earth moving activities including but not limited to clearing, grading, excavating, drilling, transporting or filling.

"Mcf" means, when used with reference to natural gas, one thousand cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and at a temperature base of 60°F.

"Natural area preserve" means a natural area that has been dedicated pursuant to § 10.1-213 of the Code of Virginia.

"Natural heritage resources" means the habitat of rare, threatened or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Natural heritage survey" means a survey undertaken to establish the presence or absence of natural heritage resources, and any related and necessary management plans developed to conserve such resources.

"Nontidal wetlands" means those wetlands other than

tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the Federal Water Pollution Control Act, in 33 C.F.R. 328.3b, dated November 13, 1986.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

"Oil well" means any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Open space" means any land, water, or submerged land which is provided for, preserved for, or used for (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) cultural, historic or scenic purposes, (iv) assisting in the shaping of the character, direction, and timing of community development, or (v) nontidal or tidal wetlands.

"Operations area" means the location of the well, well site, associated facilities, production facilities, access roads, pipeline systems, and other related facilities and equipment necessary to the conduct of a gas or oil operation.

"Person" means any individual or group, any partnership, corporation, association, organization or other legal entity, including any public body.

"Pipeline systems" means all parts of those physical facilities through which gas or oil moves in transportation, including but not limited to pipes, valves, and other appurtenances attached to pipes such as compressor units, metering stations, regulator stations, delivery stations, holders, or other related facilities.

"Pipeline corridor" means those areas which pipeline systems pass through or will be constructed to pass through, including associated easements, leases, or rights-of-way.

"Production well" means a well, related production facilities and equipment and activities related to the drilling of a well for the purpose of developing and producing, or converting an exploratory well to develop or produce, oil or gas from geological strata for the purpose of sale, exchange, transfer or use by the owner or for the purpose of exchange, transfer, sale or use by any other person.

"Rare, threatened or endangered species" means any insect, fish, wildlife or plant species which is listed as, is a candidate for listing as, or is recommended for listing as a rare, threatened or endangered species by the U.S. Fish and Wildlife Service, the Department of Agriculture and Consumer Services, the Department of Game and Inland Fisheries, or the Department of Conservation and Recreation.

"Recreational resources" means the broad range of outdoor and indoor public and private areas and facilities, many of which are identified in the "Virginia Outdoors Plan," used in meeting Virginia's recreational needs including but not limited to public parks, public forests, natural areas, wildlife management areas, lakes and reservoirs, historic resources, trails, rivers, beaches, water access areas, Virginia byways, tidal and nontidal wetlands, and greenways.

"Scenic resources" means features which characterize an area by giving it a special visual identity or which present unique vistas or landscapes, including but not limited to such features as designated or candidate state or federal scenic rivers, federal or state scenic highways or parkways, Virginia byways, and scenic values as recognized by local, state or federal governments.

"Tidal wetlands" means *"vegetated wetlands"* and *"nonvegetated wetlands"* as defined in § 62.1-13.2 of the Code of Virginia.

"Tidewater Virginia" means that area of Virginia as defined in § 10.1-2101 of the Code of Virginia and the localities of Manassas and Manassas Park.

"Virginia Outdoors Plan" means the State Comprehensive Outdoor Recreation Plan developed and administered by the Department of Conservation and Recreation.

"Waste from gas, oil, or geophysical operations" means any substance other than gas or oil which is (i) produced or generated during or results from the development, drilling and completion of wells and associated facilities or the development and construction of gathering pipelines or (ii) produced or generated during or results from well, pipeline and associated facilities' operations including, but not limited to, brines and produced fluids other than gas or oil. In addition, this term shall include all rubbish and debris, including all material generated during or resulting from well plugging, site restoration, or the removal and abandonment of gathering pipelines and associated facilities.

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or replacement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjuntion with such extraction, injection or placement. The term shall not include any shaft or hole, sunk, drilled, bored, or dug into the earth for the sole purpose of pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use and shall not include water boreholes, methane

drainage boreholes where the methane is vented or flared rather than produced and saved, subsurface boreholes drilled from the mine face or an underground coal mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or nonfuel mineral core hole or borehole for the purpose of exploration.

§ 1.2. Authority.

This regulation implements § 62.1-195.1 of the Code of Virginia which requires the ~~Council on the Environment~~ *Department of Environmental Quality* to develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments for gas or oil well drilling operations in Tidewater Virginia.

§ 1.3. Purpose.

The purpose of this regulation is to set out criteria and procedures to be followed by gas or oil well drilling permit applicants when preparing environmental impact assessments and by the ~~administrator, the council and its member agencies~~ *Department of Environmental Quality* , other state agencies, local government officials, and the public when reviewing environmental impact assessments. It is intended to foster the development of useful information which is presented in a manner that assists the ~~administrator, the council and its member agencies~~ *Department of Environmental Quality* , appropriate state agencies, planning district commissions, potentially affected local governments, and the public in understanding, analyzing and making decisions about the potential environmental, fiscal or economic impacts associated with drilling an oil or gas well in Tidewater Virginia and related production and transportation activities.

§ 1.4. Applicability.

The environmental impact assessment requirements and criteria apply to all oil or gas well drilling operations, whether an exploratory well or a production well, proposed to occur in Tidewater Virginia. Any person proposing to drill an exploratory well or production well in Tidewater Virginia shall submit to the Department *of Mines, Minerals and Energy* , as part of his application for a permit to drill such a well, an environmental impact assessment.

§ 1.5. General information requirements.

A. The environmental impact assessment is to contain information on and a discussion of the elements outlined in the following sections of this regulation. Discussions should be no longer than necessary to fully explain the issues and potential impacts in a given topical area. Data and analyses should be commensurate with the degree of impact.

B. An environmental impact assessment shall contain a title page; an executive summary; a table of contents; a list of figures; a list of tables; a list of maps and plats; the main body of the report as outlined in this regulation; a list of preparers; a topical index; an annex containing a list of local, state, or federal permits that are applicable to the proposed operations; and other annexes as needed. The executive summary shall summarize the assessment focusing on the major conclusions; the potential environmental, fiscal and economic impacts; and avoidance, minimization or mitigative measures proposed to address environmental, fiscal and economic impacts.

PART II.
INFORMATION REQUIREMENTS.

§ 2.1. Description of the gas or oil operation.

A. The applicant shall describe the gas or oil operation to be performed. The description of the operation should include information on the location, size (length, height, width and area), and number of such facilities and related land requirements (including easements or rights-of-way). The information should also include a timetable for establishing, completing and removing drilling operations and constructing, operating and removing production facilities.

B. The discussion of the operation shall be accompanied by:

1. A general location map depicting the operations area and surrounding areas at a map scale which is as detailed or more detailed than a map at a scale of 1:24000; and

2. Detailed site plat(s) of the proposed operations area at a scale no greater than 1:600 depicting the location of:

a. Proposed land-disturbing activities,

b. Facilities and equipment, pipeline corridors, and natural resource features discussed in § 2.2 that can be graphically presented and that will be or could be affected by the proposed operation.

c. Any existing manmade features within the proposed operations area, including but not limited to buildings, water wells, roads, drainage ditches, ponds, etc.

C. The description of the operation shall include a discussion of the following:

1. The type of drilling operation;

2. Power systems, energy or fuel sources necessary for drilling and associated facilities equipment operation;

3. Fluid circulation systems including a discussion of and a list of the proposed drilling fluids, fluid

components, toxicity classification, and information on the projected amount and rate of drilling fluid production;

4. Well control and blowout prevention devices including a description of the proposed methods of containment of potential oil, gas or waste fluid releases;

5. Any proposed utility connections for water supply or sewage disposal purposes;

6. Projected types, quantities, and chemical characteristics of waste from gas, oil or geophysical operations, including any planned surface water or groundwater emissions referencing where possible information available from previous gas or oil operations conducted in Tidewater Virginia;

7. Projected types, quantities, and chemical characteristics of solid wastes produced by the operation referencing where possible information from previous gas or oil operations conducted in Tidewater Virginia;

8. Proposed on-site and off-site solid and liquid waste management procedures including waste transfer areas and procedures, disposal areas or facilities, handling facilities and equipment, storage areas and related facilities and equipment, and proposed methods of disposal whether by land application, burying, injection or by other means;

9. Any planned enhanced recovery activities related to the production of gas or oil from the proposed well;

10. Projected air emissions by source, quantity, chemical characteristics, and duration resulting from the proposed operation on an average daily basis referencing where possible information available from previous gas or oil operations conducted in Tidewater Virginia;

11. Methods which will be used to acquire necessary water supplies to conduct the proposed operation including the amount of daily withdrawals, daily or weekly fluctuations in withdrawal rates, duration of withdrawals, and any effects on stream flow, how much water will be needed to support the operation, and how such water supplies will be used in the proposed operation;

12. Descriptions, presented in narrative and graphic format as appropriate, of proposed erosion and sediment control practices and stormwater management practices which will be installed to manage surface water quality;

13. Descriptions, presented in narrative and graphic format as appropriate, of proposed site reclamation and revegetation plans for all operations areas; and

14. Descriptions of proposed gas or oil production and transportation facilities and equipment.

D. A description of land-disturbing activities which will result from the proposed operation should include a discussion of the size, extent and location of activities including the following activities:

1. The clearing of vegetation, including a description of the types of vegetation to be cleared;

2. Land grading and filling activities;

3. Constructing new or expanded access roads;

4. Constructing fluid reserve pits, sumps, dikes, tanks or similar devices;

5. Constructing associated facilities whether inside or outside of the operations area;

6. Constructing and installing pipeline systems including proposed trenching, earth-moving, or vegetation clearing activities; and

7. Constructing and installing gas or oil production facilities and equipment.

§ 2.2. Description of the environment and natural resource features potentially affected by the gas or oil operation.

A. The discussion under this part shall include a description of the existing environment and natural resource features which will be or may be affected by the gas or oil operation and how they will be or may be affected. The analysis of the environment and natural resource features shall encompass, at the minimum, any area located within 1320 feet of a proposed well and within 100 feet of proposed pipeline systems or associated facilities unless the applicant for the permit to drill can demonstrate that a smaller impact analysis area is appropriate given the nature and location of the proposed gas or oil operation and the potential impact of such an operation on the environment and natural resources. The 1320-foot distance is half of the statewide well spacing requirement set out for gas wells in § 45.1-361.17 and will ensure that the impact analysis for wells established in Tidewater Virginia at the statewide spacing will be tangential. The 100-foot distance from pipelines and associated facilities will ensure that Chesapeake Bay Preservation Areas or other environmentally sensitive resources that may be affected by the oil or gas operation will be detected. The potential for impacts by the proposed oil or gas operation on natural resource features and the environment which are located outside of the 1320-foot impact analysis area for wells and the 100-foot impact analysis area for pipeline systems and associated facilities shall also be considered and discussed. The discussion shall be supported with graphic information in the form of a plat or plats at a scale between 1:1000 and 1:4000 showing the location of natural resources that will

be or may be affected by the proposed operation. The discussion shall include, but not be limited to:

1. Physical site conditions such as:

a. Topographical features including relief, slope, project area elevation, and landscape features such as beaches, sand dunes, shorelines, etc.;

b. Surface water hydrology and drainage patterns including locations of embayments, rivers or streams and related subaqueous beds, tidal or nontidal wetlands, and the 100-year floodplain in the watershed potentially affected by the proposed operation;

c. Existing surface water quality characteristics and how water quality may be affected by emissions from the proposed operation;

d. Existing air quality and how air quality may be affected by emissions from the proposed operation;

e. Geological conditions such as groundwater hydrogeology, including the depths to the top and bottom of groundwater aquifers; general characteristics of the geologic strata to be penetrated by drilling activities; and a discussion of the possibility for land subsidence and any potential impacts associated with land subsidence which may result from the operation;

f. A description of the existing water quality of groundwater aquifers which will be or may be affected by drilling activities or liquid waste disposal activities focusing particularly on the potability of water in potentially affected aquifers and the extent to which identified aquifers are currently used as domestic or community water supplies;

g. A discussion of the soil types on which an operation will be located including an identification of prime agricultural lands, highly permeable soils, highly erodible soils, and soil profile descriptions of each representative soil series on the well site to a depth of 72 inches;

h. The identification and location of any public water supply intakes within the watershed where an operation will occur and located within 10 miles downstream of the proposed well site; or any public or private water supply wells located within a one-mile radius of the proposed oil or gas well drilling operation; and

i. Chesapeake Bay Preservation Areas, both Resource Protection Areas (RPAs) and Resource Management Areas (RMAs), located within 1320 feet of the proposed operations area.

2. Biological conditions and resources including but not limited to:

a. A description of the terrestrial and aquatic habitat types and associated flora and fauna, including any natural heritage resources which are documented by performing a natural heritage survey in conformance with methodologies established by the Department of Conservation and Recreation, and any rare, threatened or endangered species present;

b. A description of the use patterns of terrestrial habitat by wildlife including areas such as nesting, roosting, breeding and calving areas or other unique natural habitat;

c. A description of the use patterns of freshwater, estuarine and marine habitat by terrestrial and aquatic species, including but not limited to submerged aquatic vegetation, fish spawning areas, shellfish beds, habitat of anadromous fish and other finfish, and benthic organisms; and

d. State Wildlife Management Areas, State Natural Area Preserves, National Wildlife Refugees, or elements of Virginia's National Estuarine Research Reserve System or other unique or important natural communities.

3. Culturally important areas such as historical, open space, and recreational resources, including those resources listed in the Virginia Outdoors Plan, including but not limited to:

a. Historic properties which are documented by performing a historic properties survey in conformance with guidelines established by the Department of Historic Resources;

b. Public beaches;

c. Scenic resources;

d. Public water access sites;

e. Local, state, or national parks, recreational areas , open space, or forests;

f. State-owned or state managed lands;

g. Federally-owned or federally managed lands;

h. Easements held for agricultural, forestal, open space, horticultural or other conservation purposes; and

i. Prime agricultural lands as identified by the U.S. Soil Conservation Service and important farm lands as identified by the Virginia Department of Agriculture and Consumer Services.

B. Describe the typical noise levels currently existing at

the proposed operations areas. Describe any operation activities that will produce noise over 65 decibels measured at the boundary of the operations area, the source and daily duration of those activities producing the noise, and the estimated external noise level at the nearest noise receptor such as a residence, school, hospital, business, public meeting place, feature identified in the Virginia Outdoors Plan, or wildlife habitat. The applicant should describe what measures, if any, will be taken to reduce projected exterior noise levels below 65 decibels at the nearest receptor.

C. Describe any activities associated with the operation that will produce light or glare within the operations area after sundown and before dawn. Describe the hours that artificial lighting sources will exist, including flaring of wells, gas processing facilities, or production facilities, the intensity of any light sources, and the time such light sources would be in operation. Describe the potential aesthetic, nuisance, safety, or environmental hazards that light or glare may produce outside of the operations area. Describe what steps, if any, that will be taken to minimize light or glare.

D. Describe the actions and measures that will be taken to avoid, minimize, and mitigate impacts on natural, scenic, recreational, and historic resources identified in the assessment. The assessment shall also discuss irrevocable or irreversible losses of the natural resources identified in the assessment.

§ 2.3. Procedures for estimating the probability of a discharge.

The assessment shall provide an analysis of the probabilities of accidental discharges of oil, condensate, natural gas, and waste from gas, oil or geophysical operations or liquids being released into the environment during drilling, production, and transportation due to well blowout, equipment failure, transportation accidents and other reasons. Such an analysis shall include calculations based upon generally accepted engineering failure analysis procedures. An applicant shall calculate a spill probability analysis for three sizes of discharge events – minor, moderate, or major. The applicant shall define the categories of minor, moderate or major discharge and describe the sources of information used to formulate the analyses and the assumptions used to construct the analyses. Discharge probability analyses for minor discharges should include calculations for a discharge that would not be expected to escape the operations area.

§ 2.4. Procedures for determining the consequences of a discharge.

The environmental impact assessment shall include a description of potential environmental and natural resource effects associated with discharges including the consequences of a discharge on finfish, shellfish and other marine or freshwater organisms; birds and other wildlife; air and water quality; land and water resources; and including the specific environmental and natural resource features listed in § 2.2. The analysis should be specific to the proposed operation, the proposed location of the operation, and the natural resources in the vicinity of the proposed operation. The spill analysis shall be completed for oil, condensate, waste from gas, oil or geophysical operations or fluids, and natural gas discharges resulting from minor, moderate or major discharges as defined and described pursuant to the requirements of § 2.3.

§ 2.5. Spill release and contingency planning.

A. The environmental impact assessment shall describe procedures which will be developed and implemented to prepare for, equipment which will be installed to detect and respond to, and facilities and equipment which will be installed or available to contain minor, moderate and major discharges of oil, condensate, natural gas, waste from gas, oil, or geophysical operations or fluids as defined pursuant to the requirements of § 2.3 as well as fires or other hazards to the environment. A discharge contingency plan prepared in conformance with the requirements of the State Water Control Board's regulation entitled "VR 680-14-07: Oil Discharge Contingency Plans and Administrative Fees for Approval" will fulfill the information requirement of this section.

§ 2.6. Hydrogen sulfide release contingency planning.

A. A discussion of the potential for encountering hydrogen sulfide shall be included in the assessment. The assessment shall discuss steps that will be taken, if any, to respond if indicators of such gas are encountered, if there exists a potential for a release of hydrogen sulfide gas, or in the event of a hydrogen sulfide release.

B. A hydrogen sulfide release contingency plan should address the following:

1. Methods and devices that will be used to detect hydrogen sulfide gas to prevent the gas from becoming an environmental concern. Include a description of detection equipment to be used and equipment testing and calibration procedures.

2. Operating procedures to be employed if the operations area atmospheric concentration of hydrogen sulfide gas reaches limits established by the Department of Labor and Industry in "VR 425-02-36 Air Contaminants (1910.1000)" and including a discussion of:

a. Appropriate emergency notification procedures for local residents, emergency service and medical personnel;

b. Notification procedures for responsible regulatory agencies; and

c. Appropriate visual and audible warning systems for atmospheric hydrogen sulfide gas within the

operations area.

3. The potential for continuous low-level hydrogen sulfide emissions (one hour average) to result in concentrations in areas of public access above levels deemed harmful to human health in accordance with the State Air Pollution Control Board's "Emission Standards for Toxic Pollutants (Rule 4-3)" and "Standards of Performance for Toxic Pollutants (Rule 5-3)."

§ 2.7. Economic impacts.

A. Describe the potential impacts of the proposed operation on the economic characteristics of the affected locality and, as necessary, surrounding localities. The information should address how these economic characteristics will be affected during (i) the drilling and construction phases of the operation, and (ii) the production phases of the operation. In all projections constructed by the applicant, the methodology for constructing projections and the assumptions, calculations and computations used to formulate projections should also be presented and described.

B. The description should include information on the following conditions:

1. An analysis of the potential positive or negative effects of the proposed operation on the current population with regard to potential changes in the demographic structure of the locality according to age, income and employment characteristics;

2. An analysis of the projected employment levels including estimates of the variation in employment levels over time for (i) the drilling and construction phases of the operation, including the construction of pipeline systems, associated facilities and production facilities, and (ii) the production phases of the proposed operation. Indicate whether any new positions created by the proposed construction and operations activities may be or will be filled from the labor pool available in the affected locality or in neighboring localities;

3. The types of services that can be provided from businesses located in the affected locality or in surrounding localities. Include a general estimate of the amount of contract awards that will be or could be made available to service providers in the affected locality and neighboring localities and the projected duration of service contracts;

4. The existing land uses, including residential, forestal, agricultural, commercial, industrial, urban, suburban, open space, recreational or other land use characteristics within the locality that will be affected, changed or which may be subject to change as a result of the proposed operation. The discussion shall be supported with graphic information in the form of a plat or plats of existing land uses within 1320 feet of the well and within 100 feet of associated facilities and pipeline systems at a scale between 1:1000 and 1:4000; and

5. The locality's affected industrial and commercial bases and economic conditions with emphasis on dominant economic sectors (i.e., agriculture, forestry, fishing and aquaculture, service industries, and industrial activities.) Special attention should be given to the tourism and recreation industries and how they may be affected by the operation. Describe how the proposed location of the operation may adversely affect or displace other natural resource-based commercial activities and enterprises in the affected locality or in neighboring localities such as agriculture, fishing, tourism, forestry, etc.

C. Describe the actions and measures that will be taken to avoid impacts, minimize impacts, and mitigate unavoidable impacts on economic characteristics identified in the assessment. The assessment should also discuss irreversible impacts on or commitments of local economic resources based upon impacts identified in the assessment.

§ 2.8. Fiscal impacts.

A. The assessment should present an analysis of the existing fiscal characteristics, revenue structure, and physical infrastructure in the county, city, or town where the proposed operation is to be located to the extent they may be affected by the proposed operation. The applicant should identify measures that may need to be undertaken in order to maintain or expand the services, revenue sources, expenditure levels and capital facilities of the affected local government due to the proposed operation. As appropriate, the applicant should describe any new, upgraded or expanded infrastructure and capital facilities that will be necessary to support the proposed operation, estimates how much improvements may cost and the person or persons who will be responsible for providing necessary infrastructure or capital facility improvements. In all projections of potential effects on infrastructure and related fiscal impacts, methodologies for constructing projections, related assumptions, calculations and computations used to formulate projections should also be presented and described.

B. The assessment should address the following fiscal and infrastructure elements:

1. The transportation systems including roads, railroads or existing oil or gas pipelines that are available to support the operation and how they will be affected by the proposed operation. The discussion should include an estimate of the number of vehicle trips that will be generated on the transportation system, the size of any operational support vehicles, and the design capacity of affected roads relative to the projected size, weight and volume of vehicle traffic. Identify any new transportation system needs,

including pipeline systems and roads, necessary to meet the demands of the proposed operation and how the applicant will develop or assist in developing and upgrading necessary transportation systems;

2. Infrastructure and capital facility support systems available including utility services, water services, sewer services, solid waste disposal services and facilities, etc. and the projected demands the proposed operation will place on such systems and their existing capacity to respond to that demand. Identify any needed upgrades or expansion of related infrastructure, equipment or services, estimate the cost of providing upgrades, and describe how the applicant will assist in providing resources to met such needs;

3. The availability of public safety and health services such as hospitals, emergency rescue services, police and fire services and related infrastructure and the capacity to respond to accidents or incidents that may result from the gas or oil operation. Identify any needed upgrades or expansion of related infrastructure, equipment or services, estimate the cost of providing upgrades, and describe how the applicant will assist in providing resources to meet such needs;

4. The distribution of existing temporary and permanent housing units within the locality and whether these will be adequate to accommodate the projected influx of the operation workers. Discuss how any need for temporary housing may affect existing land uses. Also, discuss how any projected housing needs will be met by the applicant if available units are insufficient to meet the projected housing demand; and

5. The public service needs, including but not limited to educational services, recreational needs, and social services, that will be generated by the immigration of laborers into the affected locality in support of the operation. Discuss the capacity of these services and whether the existing capacity is sufficient to handle the projected population increase. If the existing capacity is projected to be insufficient to meet anticipated needs, the applicant should explain what measures will be necessary to address increased service needs.

C. Describe the actions and measures that will be taken to avoid, minimize, and mitigate impacts on fiscal characteristics identified in the assessment associated with the expansion or development of infrastructure to support the proposed operation.

PART III.
INFORMATION REQUIREMENTS FOR EVALUATING SECONDARY ENVIRONMENTAL IMPACTS.

§ 3.1. Examination of secondary environmental impacts due to induced economic development.

Based on the analysis of potential economic impacts identified in § 2.7, and fiscal impacts identified in § 2.8, examine and discuss the potential secondary environmental affects of induced economic development due to the proposed operation. Such analysis should include impacts associated with any new infrastructure development provided to support the gas or oil operation including but not limited to the construction of new roads, pipeline systems, sewers, schools, water supplies, public services, waste handling facilities, housing units, etc., on natural, scenic, open space, recreational, and historic resources.

PART IV.
~~COUNCIL~~ ~~MEMBER~~ ~~AGENCY~~ *DEPARTMENT OF ENVIRONMENTAL QUALITY* AND GENERAL PUBLIC REVIEW AND COMMENT PROCEDURES.

§ 4.1. ~~Council~~ *Department of Environmental Quality* notification by the Department *of Mines, Minerals and Energy* .

Upon receiving a permit application to drill an oil or gas well in Tidewater Virginia, the Director *of the Department of Mines, Minerals and Energy* shall notify the ~~administrator~~ *Director of the Department of Environmental Quality* that a coordinated review of an environmental impact assessment must be initiated. The applicant shall provide the Department *of Mines, Minerals and Energy* with 17 copies of the environmental impact assessment and the Department *of Mines, Minerals and Energy* will deliver the copies to the ~~administrator~~ *Director of the Department of Environmental Quality* . The 90-day review process will begin upon receipt of the appropriate number of copies of the environmental impact assessment by the ~~administrator~~ *Director of the Department of Environmental Quality* .

§ 4.2. Initiation of assessment review by state and local agencies and by the general public.

A. The ~~administrator~~ *Department of Environmental Quality* shall prepare and submit a general notice for publication in the Virginia Register within three days of the receipt of an environmental impact assessment. The availability of an assessment shall be given public notice, paid for by the applicant, by publication in a newspaper having a general circulation in the locality where drilling is proposed. The ~~administrator~~ *Department of Environmental Quality* shall also develop a mailing list containing the names of persons who indicate they want to be notified about the availability of oil or gas environmental impact assessment documents and will forward a copy of the general notice submitted for publication in the Virginia Register to those persons on the mailing list.

B. The general notice will contain the following information:

1. The proposed location of the operation including the name of the locality and other general descriptive

information regarding the location of the proposed operation,

2. A general description of the proposed operation,

3. The deadline for the general public to submit written comments, which shall not be less than 30 calendar days after publication of the notice,

4. A designated location where the environmental impact assessment can be reviewed,

5. A contact person from whom additional information can be obtained on the environmental impact assessment, and

6. An address for mailing comments on an assessment to the ~~administrator~~ *Department of Environmental Quality* .

C. The ~~administrator~~ *Department of Environmental Quality* shall submit copies of the environmental impact assessment ~~to all council member agencies,~~ to the chief executive officer of the affected local government, to the executive director of the affected Planning District Commission, and to other state or local agencies requesting a copy of the assessment. ~~Council member agencies shall provide their cooperation in reviewing environmental impact assessments submitted by applicants.~~ State agency comments shall be returned to the ~~administrator~~ *Department of Environmental Quality* as soon as possible but no later than 50 calendar days after receiving a copy of an assessment from the ~~administrator~~ *Department of Environmental Quality* .

D. The ~~administrator~~ *Department of Environmental Quality* may hold a public information hearing on an impact assessment. Such a public hearing, if any, shall be held during the public comment period in the locality in which the operation is proposed. Notice of such a hearing, including the date, time, and location of the meeting, will be announced in a general notice published in the Virginia Register and in a notice mailed to persons on the mailing list.

§ 4.3. Review of comments.

The ~~administrator~~ *Director of the Department of Environmental Quality* shall review all written state agency, local government, planning district commission, and public comments and any written or oral comments received during any public hearing. Based on the ~~administrator's~~ review *by the Director of the Department of Environmental Quality* of written comments, oral and written comments received at public hearings, and the environmental impact assessment, the ~~administrator~~ *Director of the Department of Environmental Quality* will prepare and submit a written report of its findings and recommendations to the Director *of the Department of Mines, Minerals and Energy* . The ~~administrator's~~ findings and recommendations *of the Director of the Department of Environmental Quality* on an assessment will be available for public inspection at the offices of the ~~council~~ *Department of Environmental Quality* .

VA.R. Doc. No. R94-6; Filed September 14, 1993, 3:16 p.m.

BOARD OF PHARMACY

Title of Regulation: **VR 530-01-1. Virginia Board of Pharmacy Regulations.**

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

Effective Date: November 4, 1993.

Summary:

The purpose of these regulations is to set forth the requirements for the licensure and the responsibilities of pharmacists in assuring the safety of the public and the security of prescription drugs in the Commonwealth. The Board of Pharmacy has adopted final amendments to its regulations as a result of its biennial regulatory review during which all regulations were examined for their continued effectiveness, efficiency, necessity, clarity and cost of compliance. The amendments adopted are in response to public comments received, in response to the changing needs and technology in the practice of pharmacy, and in an effort to clarify and simplify the regulations.

The board has also finalized a one-time fee reduction for renewal of licenses and permits for calendar year 1994. This amendment responds to the statutory requirement that boards adjust fees when differences in biennial revenues and expenses are greater than 10%. The regulation will meet that requirement without creating a deficit for the board in subsequent years.

Comments on proposed regulations were received by the board at a public hearing held on May 11, 1993, and in writing during a 60-day comment period which closed on July 2, 1993. When the board met on August 11 to adopt final regulations, it made several changes in proposed regulations in response to those comments. Changes were made for the purpose of clarification and consistency with federal rules. Those changes are summarized below:

Section 3.8 sets forth the requirements for a security system. A word was changed from "in" to "for" to make it clear that it was not required that the activation mechanism for the alarm system be inside the prescription department.

Section 5.1 describes the manner of maintaining records and inventories. The requirement that records maintained in an off-site database must be retrievable

and made available within 48 hours of a request from an authorized agent is consistent with DEA rules. The proposed regulation requiring that records be made available within 72 hours would not comply with federal law.

Section 6.1 sets forth acts restricted to pharmacists or pharmacy externes and internes. The board decided to eliminate the phrase in § 6.1 A 3 "and the integration of any information maintained in a patient medication profile" in the requirement of a prospective drug review prior to the dispensing or refilling of any prescription. Since regulation allows data entry in a patient profile to be done by another employee of the pharmacy, there was some confusion by having that phrase included in this section.

On the advice of the Assistant Attorney General, the act of counseling as required in § 6.1 A 4 was in conflict with the language of § 54.1-3319 of the Code of Virginia which requires that counseling be performed by the "pharmacist himself." Since § 6.1 refers to acts that may also be performed by an interne or externe, the board eliminated that part of the regulation that conflicted with the statute.

Section 9.1 establishes the requirements for a unit dose system. The wording in § 9.1 A 1 was changed to clarify that equipment outside the pharmacy used to administer the unit dose system should be locked when not in use.

Also in § 9.1 B and C 1, the phrase "of a drug in a solid, oral dosage form" was added to allow a unit dose system to supply more than the maximum amount allowed of other dosage forms not easily "unit-dosed," such as eye drops, liquid medications, creams and ointments.

Section 10.6 establishes a requirement for a separate pharmacist-in-charge to be designated for each satellite pharmacy in a hospital setting. Because questions were raised which had not been addressed in the regulation, the board made the determination to withdraw the amendment. The subject will be included in a new Notice of Intent with a request for additional comment.

Section 11.2 sets forth the pharmacy's responsibilities to long-term care facilities. In response to comment, the board amended subdivision 7 b of that section to allow more options in the choice of persons to witness drug destruction at the facility.

The board has made only those amendments in the proposed regulations which it determined would clarify proposed regulations without substantive change, would be consistent with federal rules, or would be less restrictive for the licensee.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Scotti W. Milley, Department of Health Professions, 6606 West Broad Street, Suite 400, Richmond, Virginia 23230-1717, telephone (804) 662-9911. There may be a charge for copies.

VR 530-01-1. Virginia Board of Pharmacy Regulations.

PART I.
GENERAL PROVISIONS.

§ 1.1. Public participation guidelines.

A. Mailing list.

The executive director of the board will maintain a list of persons and organizations who will be mailed the following documents:

1. "Notice of intent" to promulgate regulations.

2. "Notice of public hearing" or "informational proceeding," the subject of which is proposed or existing regulation.

3. Final regulation adopted.

B. Being placed on list: deletion.

Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board may, in its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in subsection A of this section. Those on the list may be periodically requested to indicate their desires to continue to receive documents or to be deleted from the list. After 30 days, the names of the persons who do not respond will be deleted from the list.

C. Notice of intent.

At least 30 days prior to the publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Code of Virginia, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

D. Informational proceedings or public hearings for existing rules.

At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulation. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations. Such proceeding may be held separately or in conjunction with other informational proceedings.

E. Petition for rulemaking.

Any person may petition the board to adopt, amend, or delete any regulation. Any petition received in a timely manner shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.

F. Notice of formulation and adoption.

At any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register of Regulations.

G. Advisory committees.

The board may appoint advisory committees as it may deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.

§ 1.2. Definitions.

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

"ACPE" means the American Council on Pharmaceutical Education.

"Board" means the Virginia State Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hermetic container" means a container that is impervious to air or any other gas under the ordinary or customary conditions of handling, shipment, storage, and distribution.

"Hospital" or *"nursing home"* means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Light resistant container" means a container that protects the contents from the effects of light by virtue of the specific properties of the material of which it is composed, including any coating applied to it. Alternatively, a clear and colorless or a translucent container may be made light-resistant by means of an opaque covering, in which case the label of the container bears a statement that the opaque covering is needed until the contents have been used. Where a monograph directs protection from light, storage in a light-resistant container is intended.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act(s) being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Prescription department" means any contiguous or

noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"Radiopharmaceutical" means any article that exhibits spontaneous decay or disintegration of any unstable atomic nucleus, usually accompanied by the emission of ionizing radiation and any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such article.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Safety closure container" means a container which meets the requirements of the Federal Poison Prevention Packaging Act, i.e, in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. *"Cold"* means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. *"Room temperature"* means the temperature prevailing in a working area.

3. *"Controlled room temperature"* is a temperature maintained thermostatically between 15° and 30°C (59° and 86°F).

4. *"Warm"* means any temperature between 30° and 40°C (86° and 104°F).

5. *"Excessive heat"* means any temperature above 40°C (104°F).

6. *"Protection from freezing"* means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Tight container" means a container that protects the contents from contamination by extraneous liquids, solids, or vapors, from loss of the drug, and from efflorescence, deliquescence, or evaporation under the ordinary or customary conditions of handling, shipment, storage, and distribution, and is capable of tight reclosure. Where a tight container is specified, it may be replaced by a hermetic container for a single dose of a drug and physical tests to determine whether standards are met shall be as currently specified in United States Pharmacopoeia-National Formulary.

"Unit-dose container" means a container that is a single-unit container, as defined in United States Pharmacopoeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a ~~pharmacy coordinated method of drug dispensing and control in which drugs are distributed in properly labeled unit-dose containers or single-unit containers in ready to administer form as far as possible, in a supply for not more than seven days.~~ *system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a physician's order or medication administration record.*

"U.S.P.-N.F." means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

§ 1.3. Fees.

Except as provided in § 1.4, fees shall be as listed below, and unless otherwise ~~stated~~ *provided* , ~~all~~ *such* fees ~~listed in this section are~~ *shall* not *be* refundable.

A. Fee for initial pharmacist licensure.

1. The application and initial examination fee for a pharmacist license shall be $300. If an applicant withdraws the application prior to taking the examination, all but $25 of the fee will be refunded. If the applicant wishes to take portions of the examination on separate dates, the fees shall be as follows:

a. The National Association of Boards of Pharmacy Examination *(NABPLEX)* shall be $200.

b. The Federal Drug Law Examination *(FDLE)* shall be $75.

c. The State Drug Law Examination *(SDLE)* shall be $75.

2. The application and State Drug Law Examination fee for licensure by endorsement shall be $150. The fee for retaking the examination shall be $75.

3. The application and State Drug Law Examination fee for licensure by score transfer of NABPLEX or FDLE scores or both shall be $150. The fee for taking NABPLEX, if needed, shall be $200. The fee for taking FDLE, if needed, shall be $75. The fee for retaking the SDLE shall be $75.

~~3.~~ *4.* The application fee for a person whose license has been revoked or suspended indefinitely shall be $300.

B. Renewal of pharmacist license.

1. The annual fee for renewal of a pharmacist license shall be $50.

2. The annual fee for renewal of an inactive pharmacist license shall be $35.

3. If a pharmacist fails to renew his license within the Commonwealth by the renewal date, he must pay the back renewal fee and a $25 late fee within 60 days of expiration.

4. Failure to renew a pharmacist license within 60 days following expiration shall cause the license to lapse and shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of $50.

C. Other licenses or permits.

1. The annual permit fee to conduct a *resident or nonresident* pharmacy shall be $200.

2. The annual license fee for a permitted physician to dispense drugs shall be $200.

3. An application for a change of the pharmacist-in-charge shall be accompanied by a fee of $25.

4. An application for a change of location or a remodeling which requires an inspection shall be accompanied by a fee of $100.

5. A nonrestricted manufacturing permit shall be $200 annually.

6. A restricted manufacturing permit shall be $150 annually.

7. A wholesale distributor license shall be $200 annually.

8. A warehouser permit shall be $200 annually.

9. A permit for a medical equipment supplier shall be $150 annually.

10. A permit for a licensed humane society shall be $10 annually.

~~10.~~ *11.* If a licensee fails to renew a required license or permit prior to the expiration date, a $25 late fee shall be assessed.

~~11.~~ *12.* If a required license or permit is not renewed within 60 days after its expiration, the license or permit shall lapse, and continued practice or operation of business with a lapsed license or permit shall be illegal. Thereafter, reinstatement shall be at the discretion of the board upon submission of an application accompanied by all unpaid renewal fees and a delinquent fee of $50.

D. Controlled substances registration.

1. The annual fee for a controlled substances registration as required by § 54.1-3422 of the Code of Virginia shall be $20.

2. If a registration is not renewed within 60 days of the expiration date, the back renewal fee and a $10 late fee shall be paid prior to renewal.

3. If a controlled substance registration has been allowed to lapse for more than 60 days, all back renewal fees and a $25 delinquent fee must be paid before a current registration will be issued. Engaging in activities requiring a controlled substance registration without holding a current registration is illegal ~~.~~ ; and *may subject the registrant to disciplinary action by the board.* Reinstatement of a lapsed registration is at the discretion of the board *and may be granted by the executive director of the board upon completion of an application and payment of all fees.*

E. Other fees.

1. A request for a duplicate wall certificate shall be accompanied by a fee of $25.

2. A request for certification of grades to another board shall be accompanied by a fee of $25.

F. Board approval of continuing education programs and providers.

1. The application fee for approval of an individual CE program is $100.

2. The application fee for approval of provider status is $300.

3. Renewal of approved provider status is $300 paid biennially.

§ 1.4. Fee reductions.

Between January 1, 1994, and January 1, 1995, the following fees shall be in effect as listed below:

1. Renewal of pharmacist license.

a. The annual fee for renewal of a pharmacist license shall be $25.

b. The annual fee for renewal of an inactive pharmacist license shall be $25.

2. Other licenses or permits.

a. The annual permit fee to conduct a resident or nonresident pharmacy shall be $100.

b. The annual license fee for a permitted physician to dispense drugs shall be $100.

c. A nonrestricted manufactured permit shall be $100 annually.

d. A restricted manufacturing permit shall be $75 annually.

e. A wholesale distributor permit shall be $100 annually.

f. A permit for a medical equipment supplier shall be $75 annually.

PART II.
~~ENTRY AND~~ LICENSURE REQUIREMENTS FOR PHARMACISTS.

§ 2.1. *Requirements for* practical experience ~~required~~ .

A. Each applicant for licensure by examination shall have gained practical experience in prescription compounding and dispensing within a pharmacy for a period of not less than six months.

B. During the six months of practical experience required, the applicant shall accumulate a minimum of 1,000 hours. For purposes of this regulation, credit will not be given for more than ~~40~~ *50* hours in any one week.

C. All practical experience credit required shall only be gained after completion of the first professional year in an approved school of pharmacy.

D. Practical experience gained in a college of pharmacy which has a program designed to provide the applicant with practical experience in all phases of pharmacy practice and which program is approved by the American Council on Pharmaceutical Education will be accepted by the board for the time period during which the student is actually enrolled. The applicant will be required to gain any additional experience needed toward fulfilling the six months *and 1,000 hours* of experience required.

E. An applicant shall not be admitted to the examination unless all of the practical experience has been gained.

§ 2.2. Procedure for gaining practical experience *outside of an accredited college clerkship program* .

A. Each pharmacy student ~~, except those enrolled in an approved college clerkship program,~~ who desires to gain practical experience in a pharmacy within the Commonwealth shall register with the board on a form provided by the board prior to becoming so engaged. This requirement shall also apply to students gaining practical experience within the Commonwealth for licensure in another state. The student shall be called a "student externe."

B. Graduates ~~in pharmacy~~ of an approved school of pharmacy who wish to gain practical experience within the Commonwealth shall register with the board prior to being so engaged. Such graduates shall be called "pharmacy interne." ~~Experience gained in another state must be certified by the board in the state in which the experience was gained.~~

C. The applicant shall be supervised by a pharmacist who holds an unrestricted license and assumes full responsibility for the training, supervision and conduct of the externe or the interne. The supervising pharmacist shall not supervise more than one interne or externe during the same time period ~~for experience during or after the last professional year~~ .

D. The practical experience of the student externe shall be gained *at times* nonconcurrent with the school year ~~excepting that gained in any program of a pharmacy school which meets the requirements of § 54.1-3312 of the Code of Virginia~~ *with the exception of school vacations* .

E. The registration of a student externe shall be valid

only while the student is enrolled in a school of pharmacy. The registration card issued by the board shall be returned to the board upon failure to be enrolled.

~~E.~~ *F.* ~~Any~~ Practical experience gained within any state ~~by a student externe or a pharmacy interne who has not~~ *must be* registered with *and certified by* the board ~~in the~~ *of that* state ~~in which the experience is being gained will not~~ *in order to* be accepted *or certified* by this board ~~nor certified to another state by the board~~ .

~~F.~~ *G.* All practical experience of the student externe *or pharmacy interne* shall be evidenced by an affidavit which shall be filed *prior to or* with the application for examination for licensure.

~~G.~~ *H.* An applicant for examination shall file *affidavits or* ~~the certificate~~ *certificates* of experience *on a form prescribed by the board* no less than 30 days prior to the date of the examination ~~, and such certificates required in G and H of this section shall be on a form prescribed by the board~~ .

~~H. The registration of a student externe shall be valid only while the student is enrolled in a school of pharmacy. The registration card issued by the board shall be returned to the board upon failure to be enrolled.~~

§ 2.3. Curriculum and approved colleges of pharmacy.

A. Length of curriculum.

The following *minimum* educational requirements for licensure for the specified periods shall be recognized by the board for the purpose of licensure.

1. On and after June 1, 1928, but before June 1, 1936, the applicant for licensure shall have been graduated from a three-year course of study with a pharmacy graduate or pharmacy college degree in pharmacy awarded.

2. On and after June 1, 1936, but before June 1, 1964, the applicant for licensure shall have been graduated from a four-year course of study with a Bachelor of Science degree in pharmacy awarded.

3. On and after June 1, 1964, the applicant for licensure shall have been graduated from *at least* a five-year course of study with a Bachelor of Science degree in pharmacy *or a Doctorate of Pharmacy degree* awarded.

B. First professional degree required.

In order to be licensed as a pharmacist within this Commonwealth, the applicant shall have been granted the first professional degree from a program of a college of pharmacy which meets the requirements of § 54.1-3312 of the Code of Virginia.

§ 2.4. Content of the examination and grades required.

A. The examination for licensure as a pharmacist shall consist of an integrated examination of pharmacy practice, pharmacology, pharmacy mathematics, and such other subjects as are necessary to assure that the candidate possesses the necessary knowledge and skills to practice pharmacy. ~~Additional examination of~~ *The board will additionally examine* the candidates' knowledge of federal and state laws related to pharmacy practice ~~shall be provided by the board~~ .

B. Passing requirements.

The passing grade on the integrated pharmacy examination shall be not less than 75. The passing grade on ~~the~~ *any* law examination shall be not less than 75.

C. Limitation on admittance to examination.

When an applicant for licensure by examination fails to meet the passing requirements of paragraph B of this section on three occasions, he shall not be readmitted to the examinations until he has completed an additional six months of practical experience as a pharmacy interne as set forth in § 2.2.

§ 2.5. Renewal of license.

A. Pharmacist licenses expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and statement of compliance with continuing education requirements.

B. A pharmacist newly licensed on or after October 1 shall not be required to renew that license until December 31 of the following year.

C. A pharmacist who fails to renew his license by the expiration date has 60 days in which to renew by submission of the renewal and late fee, renewal form, and statement of compliance with continuing education requirements.

D. ~~If a pharmacist fails~~ *Failure* to renew within the 60 days of expiration ~~,~~ *shall cause* his license ~~will~~ *to* lapse ~~, and he must submit~~ . *Reinstatement may be granted by the executive director of the board upon completion of* an application for reinstatement of license ~~along with~~ , *the* payment of all back renewal fees ~~,~~ *and* a delinquent fee, *and submission of a* statement of compliance with continuing education requirements. Practice of pharmacy with a lapsed license shall be illegal ~~, and reinstatement shall be at the discretion of~~ *and may subject the licensee to disciplinary action by* the board.

E. A pharmacist who has been registered as inactive for more than one year must apply for reinstatement, comply with CE requirements, and pay the current year renewal fee in order to resume active licensure.

F. It shall be the duty and responsibility of each licensee to inform the board of his current address. A licensee shall immediately notify the board in writing of any change of an address of record. All notices required by law or by these rules and regulations are deemed to be legally given when mailed to the address given and shall not relieve the licensee of the obligation to comply.

§ 2.6. Requirements for continuing education.

A. On and after December 31, 1993, a licensee shall be required to have completed a minimum of 1.5 CEU's or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEU's or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing pharmacy education program is:

1. One that is approved by the American Council on ~~Pharmacy~~ *Pharmaceutical* Education and carries the provider logo and number of the ACPE; or

2. One that is approved by the board.

C. A licensee is exempt from completing CE requirements and considered in compliance on the first renewal date following his initial licensure.

D. The board may grant an extension of up to one year for the completion of CE requirements upon a written request from the licensee prior to the renewal date. Any subsequent extension shall be granted only for good cause shown. Such an extension shall not relieve the licensee of the requirement for CEU's or hours.

E. The board may grant an exemption for all or part of the CE requirements due to circumstances beyond the control of the pharmacist, such as temporary disability, mandatory military service, or officially declared disasters.

F. ~~A licensee is~~ *Licensees are* required to ~~provide information on~~ *attest to* compliance with CE requirements ~~in~~ *on* their annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their CE requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity, the CEU's or contact hours, and certification from an approved provider. Documentation shall be maintained for a period of two years following renewal in a file available to inspectors at the pharmacist's prinicipal place of practice or, if there is no principal place of practice, at the pharmacist's address of record.

H. A pharmacist who holds an inactive license, who has allowed his license to lapse or who has had his license suspended or revoked must submit evidence of completion of CEU's or hours equal to the requirements for the number of years in which his license has not been active.

I. Pharmacists who are licensed by other states and who have obtained a minimum of 1.5 CEU's or 15 contact hours of approved CE programs of such other states need not obtain additional hours.

§ 2.7. Approval of continuing education programs and providers.

A. The board will approve without application or further review any program offered by a ACPE-approved provider and will accept for credit certificates bearing the official ACPE logo and program number.

B. The board may approve an individual CE program or may grant approved provider status under the following provisions:

1. Approval of an individual CE program.

a. An approved individual program is a course, activity, or lecture which includes subject matter related to the competency of the practice of pharmacy and which has been approved for CE credit by the board.

b. In order to receive approval for an individual program, the sponsor or provider must make application prior to the program offering on a form provided by the board. The information which must be provided shall include but not be limited to: name of provider, location, date and time of program, charges to participants, description of program content and objectives, credentials of speaker or author, method of delivery, evaluation procedure, evidence of a pre and post test, credits requested, mechanism for record-keeping, and any such information as the board deems necessary to assure quality and compliance.

c. The sponsor making application for board approval of an individual program must pay a fee as required in § 1.3 F of this regulation.

d. The board shall notify the provider or sponsor within 60 days following the receipt of a completed application of approval or disapproval of a program and the number of credits which may be awarded.

2. Approval of CE provider status.

a. An approved provider is any person, corporation, school, association, or other entity who has demonstrated an ability to provide qualified CE programs and has met the requirements of the board for approved provider status.

b. An applicant for approved provider status must have sponsored at least three individually board approved programs for a minimum period of two years immediately preceding the submission of application for approved status.

c. The application for approved provider status shall include but not be limited to: information on the entity making application, a listing of approved CE programs offered during the last two years, accreditation, methods of promotion and delivery of programs, assessment process, maintenance of records, policy on grievances and tuition, standards for selection of speakers, program goals and objectives, and a description of facilities adequate to meet those objectives.

d. The application for approved provider status shall be accompanied by a fee as required in § 1.3 F.

e. An applicant who has been granted approved provider status is permitted to offer CE programs by submitting to the board information on that offering at least 10 days prior to the program. The approved provider is not required to submit application for approval of each individual program nor to pay the fee for such approval.

f. An approved provider must have that status renewed every two years, must pay the renewal fee, and must provide information on program offerings to the board for review.

g. The board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the necessary standards and requirements.

3. Certificate of completion. The provider of an approved program shall provide to each participant who completes the required hours and passes the post test a certification with the name of the provider, name of the participant, description of course and method of delivery, number of hours credited, date of completion, and program identification number.

4. Maintenance of records. The provider of an approved program shall maintain all records on that program, its participants, and hours awarded for a period of three years and shall make those records available to the board upon request.

5. Monitoring of programs. The board shall periodically review and monitor programs. The provider of a CE program shall waive registration fees for a representative of the board for that purpose.

6. Changes in programs or providers. Any changes in the information previously provided about an approved program or provider must be submitted or the board may withdraw its approval.

PART III.
PHARMACIES.

§ 3.1. Pharmacy permits generally.

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than one pharmacy.

B. The pharmacist-in-charge or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the pharmacist-in-charge or other pharmacist on duty by nonpharmacist personnel shall be deemed the practice of pharmacy.

C. When the pharmacist-in-charge ceases practice at a pharmacy ~~; an application for a new pharmacy permit shall be filed within 10 days~~ *or no longer wishes to be designated as pharmacist-in-charge, he shall take a complete and accurate inventory of all Schedule II through V controlled substances on hand and shall immediately return the pharmacy permit to the board .*

D. An application for a permit designating the new pharmacist-in-charge shall be filed with the required fee within 14 days on a form provided by the board. Pursuant to §§ 54.1-111 1 and 54.1-3434 of the Code of Virginia, it shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline.

§ 3.2. Special or limited-use pharmacy permits.

For good cause shown, the board may issue a special or limited-use pharmacy permit, when the scope, degree or type of pharmacy practice or service to be provided is of a special, limited or unusual nature as compared to a regular pharmacy service. The permit to be issued shall be based on special conditions of use requested by the applicant and imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:

1. The application shall list the regulatory requirements for which a waiver is requested and a brief explanation as to why each requirement should not apply to that practice.

~~1.~~ *2.* A policy and procedure manual detailing the type and method of operation, hours of operation, and method of documentation of continuing pharmacist control must accompany the application.

~~2.~~ *3.* The issuance and continuation of such permits shall be subject to continuing compliance with the conditions set forth by the board.

§ 3.3. Pharmacies going out of business.

A. At least 30 days prior to the closing date, the board shall be notified by the pharmacist-in-charge or owner.

The disposition of all Schedule II through VI drugs shall be reported to the board. If the pharmacy drug stock is to be transferred to another licensee, the pharmacist-in-charge or owner shall inform the board of the name and address of the licensee to whom the drugs are being transferred and the date of transfer.

B. Exceptions to the 30-day public notice as required in § 54.1-3434.01 of the Code of Virginia and the notice required in § 3.3 A of these regulations shall be sudden closing due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances as approved by the board.

C. In the event of an exception to the 30-day notice as required in § 54.1-3434.01 of the Code of Virginia and in § 3.3 A of these regulations, the pharmacist-in-charge shall provide notice as far in advance of closing as allowed by the circumstances.

§ 3.4. New pharmacies *and changes to existing pharmacies* .

A. ~~Inspection and notice required for new pharmacies~~ *Any person wishing to open a new pharmacy, change the location of an existing pharmacy, or move the location or make structural changes to an existing prescription department shall file an application with the board .*

B. The proposed location or structural changes shall be inspected by an authorized agent of the board prior to issuance of a permit.

~~1. The proposed location of a pharmacy practice area shall be inspected by an agent of the board prior to the issuance of a permit.~~

~~2.~~ *1.* Pharmacy permit applications which indicate a requested inspection date, or requests which are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

~~3.~~ *2.* Requested inspection dates which do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

~~B.~~ *3.* At the time of the inspection, the dispensing area shall comply with §§ 3.5, 3.6, 3.7, 3.8, and ~~3.10~~ *3.9* of these regulations.

C. *Upon completion of the inspection, the executive director of the board shall review the findings of the inspection.* Drugs shall not be stocked within the proposed pharmacy *or moved to a new location* until ~~adequate safeguards against diversion have been provided and approved by~~ *approval is granted or the permit is issued by the executive director of* the board or ~~its authorized agent~~ *his designee* .

§ 3.5. Physical standards for all pharmacies.

A. Space requirements.

The ~~area which is to be used for the storage, compounding, and preparation of prescriptions for Schedule II through VI drugs~~ *prescription department* shall not be less than 240 square feet. The patient waiting area or the area used for devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to ~~dispensing area~~ *prescription department* .

Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the ~~dispensing area or drug storage area~~ *prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing fuctions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public.* This subsection shall not apply to ~~dispensing areas which are established~~ *prescription departments in existence* prior to the effective date of this regulation.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet U.S.P.-N.F. specifications for drug storage.

E. The *prescription department* counter work space shall be used only for the compounding and dispensing of drugs and necessary record keeping.

F. A sink with hot and cold running water shall be within the ~~immediate compounding and dispensing area~~ *prescription department* .

G. Adequate refrigeration facilities *equipped with a monitoring thermometer* for the storage of drugs requiring cold storage temperature shall be maintained within the ~~compounding and dispensing area~~ *prescription department, if the pharmacy stocks such drugs* .

§ 3.6. Sanitary conditions.

A. The entire area of any place bearing the name of a pharmacy shall be maintained in a clean and sanitary manner and in good repair and order.

B. The ~~dispensing area~~ *prescription department* and work counter space and equipment in the dispensing area shall be maintained in a clean and orderly manner.

C. Adequate trash disposal facilities and receptacles shall be available.

§ 3.7. Required minimum equipment.

The pharmacist-in-charge shall be responsible for maintaining the following equipment:

1. A current copy of the United States Pharmacopeia Dispensing Information Reference Book.

2. A set of Prescription Balances, sensitive to 15 milligrams, and weights.

~~3. A refrigerator with a monitoring thermometer.~~

~~4.~~ *3.* A copy of the current Virginia Drug Control Act and board regulations.

~~5.~~ *4.* A current copy of the Virginia Voluntary Formulary.

~~6.~~ *5.* A laminar flow hood for pharmacies engaging in the compounding of sterile product(s).

6. Other equipment, supplies, and references consistent with the pharmacy's scope of practice and with the public safety.

§ 3.8. ~~Safeguards against diversion of drugs~~ *Security system* .

A device for the detection of breaking shall be installed in each ~~dispensing and drug storage area~~ *prescription department* of each pharmacy. The installation and the device shall be based on accepted burglar alarm industry standards, and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The device shall be maintained in operating order *and shall have an auxiliary source of power* .

3. The device shall fully protect the ~~immediate drug compounding, dispensing and storage areas~~ *prescription department* and shall be capable of detecting breaking by any means ~~whatsoever in the area when the pharmacy or other business in which the pharmacy is located is closed~~ *when activated* .

~~4. The alarm system must have an auxiliary source of power.~~

4. Access to the alarm system [~~*in*~~ *for*] *the prescription department area of the pharmacy shall be restricted to the pharmacists working at the pharmacy, and the system shall be activated whenever those areas are closed for business.*

5. This regulation shall not apply to pharmacies which have been granted a permit prior to the effective date of this regulation provided *that* a previously approved security alarm system is in place *, that no structural changes are made in the prescription department, that no changes are made in the security system, that the prescription department is not closed while the rest of the business remains open,* and provided further that a breaking and loss of drugs does not occur.

6. If the prescription department was located in a business with extended hours prior to the effective date of these regulations and had met the special security requirements by having a floor to ceiling enclosure, a separately activated alarm system shall not be required.

7. This section shall not apply to pharmacies which are open and staffed by pharmacists 24 hours a day. If the pharmacy changes its hours or if it must be closed for any reason, the pharmacist-in-charge must immediately notify the board and have installed within 72 hours a security system which meets the requirements of subdivisions 1 through 4 of this section .

~~§ 3.9. Special security requirements.~~

~~A. If the compounding and dispensing area is to be closed while the remainder of the pharmacy or business in which the dispensing area is located is open for the conduct of business, an alarm system shall be installed in the dispensing area and be subject to the following requirements:~~

~~1. The alarm system is activated and operated separately from any other alarm system in the pharmacy or the business in which the dispensing area is located.~~

~~2. The alarm system will detect breaking in the dispensing area when it is closed.~~

~~3. The alarm system is controlled only by the pharmacist.~~

~~B. An emergency key or access code to the system shall be maintained as set forth in § 3.10 of these regulations.~~

~~C. If the dispensing and drug storage area is enclosed from floor to ceiling, the separately activated alarm system referred to in this regulation shall not be required.~~

~~§ 3.10.~~ *§ 3.9.* ~~Dispensing area~~ *Prescription department* enclosures.

A. The ~~drug dispensing and drug storage areas~~ *prescription departments* of each pharmacy shall be provided with enclosures subject to the following conditions:

1. The enclosure shall be constructed in such a manner that it protects the controlled drug stock from unauthorized entry and from pilferage at all times whether or not a pharmacist is on duty.

2. The enclosure shall be of sufficient height as to prevent anyone from reaching over to gain access to the drugs.

3. Entrances to the enclosed area must have a door which extends from the floor and which is at least as high as the adjacent counters or adjoining partitions.

4. Doors to the area must have locking devices which will prevent entry in the absence of the pharmacist.

B. The door keys *and alarm access code* to the dispensing areas shall be subject to the following requirements:

1. Only pharmacists practicing at the pharmacy and authorized by the pharmacist-in-charge shall be in possession of any keys to the locking device on the door to such enclosure.

2. The pharmacist may place a key *or the access code* in ~~an~~ *a sealed* envelope or other container ~~which contains a seal and a signature placed by the pharmacist on the envelope or container~~ *with the pharmacist's signature across the seal* in a safe or vault within *the pharmacy or other secured place. This key or code shall only be used to allow entrance to the prescription department by other pharmacists.*

~~3. The key may be used to allow emergency entrance to the dispensing area by other pharmacists.~~

C. Restricted access to the ~~dispensing area~~ *prescription department* .

The prescription ~~drug compounding and dispensing area~~ *department* is restricted to pharmacists, externes, and internes who are practicing at the pharmacy. Clerical assistants and other persons designated by the pharmacist may be allowed access by the pharmacist but only during the hours the pharmacist is on duty.

~~§ 3.11.~~ *§ 3.10.* ~~Drugs outside of dispensing area~~ *Storage of drugs, devices, and controlled paraphernalia* .

~~Any Schedule II through VI drug not stored within the prescription compounding and dispensing area and kept for stock replenishing shall be secured and access to it shall be restricted to the pharmacist and persons authorized by the pharmacist.~~

~~§ 3.12.~~ *A.* Prescriptions awaiting delivery.

Prescriptions prepared for delivery to the patient may be placed in a secure place outside of the ~~compounding and dispensing area~~ *prescription department* and access to the prescriptions restricted by the pharmacist to designated clerical assistants. *With the permission of the pharmacist,* the prepared prescriptions may be transferred to the patient ~~whether or not a~~ *at a time when the* pharmacist is *not* on duty.

~~§ 3.13.~~ *B.* Dispersion of Schedule II drugs.

Schedule II drugs ~~may~~ *shall either* be dispersed with other schedules of drugs or shall be maintained within a locked cabinet, drawer, or safe.

~~§ 3.14.~~ *C.* Safeguards for controlled paraphernalia.

Controlled paraphernalia shall not be placed on open display or in an area completely removed from the ~~drug compounding and dispensing area~~ *prescription department* whereby patrons will have free access to such items or where the pharmacist cannot exercise reasonable supervision and control.

~~§ 3.15.~~ *D.* Expired drugs; security.

Any drug which has exceeded the expiration date *shall not be dispensed or sold; it* shall be separated from the stock used for dispensing ~~and may be~~ . *Expired prescription drugs shall be* maintained in a designated area ~~with the unexpired stock prior to the disposal of the expired drug~~ *within the prescription department until proper disposal* .

~~§ 3.16.~~ *§ 3.11.* ~~Destruction~~ *Disposal* of Schedule II through V drugs ~~in~~ *by* pharmacies.

If a pharmacist-in-charge wishes to ~~destroy~~ *dispose of* unwanted Schedule II through V drugs ~~kept for dispensing, in lieu of returning the drugs to the Drug Enforcement Administration (DEA)~~ , he shall use *one of* the following procedures ~~for the drug destruction~~ :

1. Return the drugs to the Drug Enforcement Administration (DEA) by delivery to the nearest DEA office; or

2. Transfer the drugs to another person or entity authorized to possess Schedule II through V drugs; or

3. Destroy the drugs according to the following procedures:

~~1.~~ *a.* At least 14 days prior to the destruction date, the pharmacist-in-charge shall provide a written notice to the board office; the notice shall state the following:

~~a.~~ *(1)* Date, time, ~~and~~ manner ~~or~~ , *and* place of destruction.

~~b.~~ *(2)* The names of the pharmacists who will witness the destruction process.

~~2.~~ *b.* If the destruction date is to be changed or the destruction does not occur, a new notice ~~must~~ *shall* be provided to the board office as set forth above in this subsection.

~~3.~~ *c.* ~~The DEA Drug Destruction Form No. 41 must be used to make a record of all drugs to be destroyed.~~ *The actual destruction shall be witnessed by the pharmacist-in-charge and another pharmacist not employed by the pharmacy.*

~~4.~~ *d.* The drugs ~~must~~ *shall* be destroyed *in accordance with all applicable local, state and federal laws and regulations* by burning in an incinerator ; ~~an alternate method of flushing may be used if incineration is not possible and if permitted by the municipality~~ *or by other methods approved in advance by the board* .

~~5.~~ *e.* ~~The actual destruction shall be witnessed by the pharmacist-in-charge and another pharmacist not employed by the pharmacy.~~ *The DEA drug destruction form shall be used to make a record of all drugs to be destroyed.*

~~6.~~ *f.* Each form shall show the following information:

~~a.~~ *(1)* Legible signatures *and license numbers* of the pharmacist-in-charge and the witnessing pharmacist;

~~b.~~ *(2)* ~~The license numbers of the pharmacists destroying the drugs; and~~ *The method of destruction; and*

~~c.~~ *(3)* The date of the destruction.

~~7.~~ *g.* At the conclusion of the destruction of the drug stock:

~~a.~~ *(1)* ~~Two~~ *Three* copies of the completed destruction form shall be sent to Drug Enforcement Administration, Washington Field Division, Room 2558, 400 - 6th Street S.W., Washington, D.C. 20024, Attn: Diversion Control Group.

~~b.~~ *(2)* A copy of the completed destruction form shall be sent to the office of the board.

~~c.~~ *(3)* A copy of the completed destruction form shall be retained with the pharmacy inventory records.

PART IV.
NUCLEAR PHARMACIES.

§ 4.1. General requirements for pharmacies providing radiopharmaceutical services.

A. A permit to operate a pharmacy providing radiopharmaceutical services shall be issued only to a qualified nuclear pharmacist. In emergency situations, in the pharmacist's absence, he may designate one or more other qualified pharmacists to have access to the licensed area. These individuals may obtain single doses of radiopharmaceuticals for the immediate emergency and shall document such withdrawals in the control system.

B. Pharmacies providing ordinary pharmacy services in addition to radiopharmaceutical services shall comply with all regulations applicable to pharmacies in general. Pharmacies providing only radiopharmaceutical services shall comply with all regulations related to physical standards, sanitary conditions and security.

C. The nuclear pharmacy area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area, occupying at least 25 square feet of space, separate from and exclusive of the hot laboratory, compounding, dispensing, quality assurance and office area.

D. A prescription order for a radiopharmaceutical shall be dispensed in a unit-dose package. A pharmacy may furnish the radiopharmaceuticals for office use only to practitioners for an individual patient except for the occasional transfer to a pharmacist.

E. In addition to any labeling requirements of the board for nonradioactive drugs, the immediate outside container of a radioactive drug to be dispensed shall also be labeled with: (i) the standard radiation symbol; (ii) the words "Caution–Radioactive Material"; (iii) the name of the radionuclide; (iv) the chemical form; (v) the amount of radioactive material contained, in millicuries or microcuries; (vi) if a liquid, the volume in milliliters; (vii) the requested calibration time for the amount of radioactivity contained; and (viii) the practitioner's name and the assigned lot number.

F. The immediate inner container shall be labeled with: (i) the standard radiation symbol; (ii) the words "Caution–Radioactive Material"; and (iii) the prescription number.

G. The amount of radioactivity shall be determined by radiometric methods for each individual dose immediately prior to dispensing.

H. Nuclear pharmacies may redistribute approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.

§ 4.2. Qualification as a nuclear pharmacist.

In order to practice as a nuclear pharmacist, a pharmacist shall possess the following qualifications:

1. Meet Nuclear Regulatory Commission standards of training for medically used or radioactive by-product

material.

2. Have received a minimum of ~~90~~ *200* contact hours of didactic instruction in nuclear pharmacy.

3. Attain a minimum of ~~160~~ *500* hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an approved college of pharmacy.

4. Submit an affidavit of experience and training to the board.

PART V.
DRUG INVENTORY AND RECORDS.

§ 5.1. Manner of maintaining records, prescriptions, inventory records.

A. Each pharmacy shall maintain the inventories and records of drugs as follows:

1. Inventories and records of all drugs listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

2. Inventories and records of drugs listed in Schedules III, IV, and V may be maintained separately or with records of Schedule VI drugs but shall not be maintained with other records of the pharmacy.

3. ~~Location of records.~~ All records of Schedule II through V drugs shall be maintained at the same location as the stock of drugs to which the records pertain [~~or retrieved and made available for inspection or audit by authorized agents within 72 hours~~ *except that records maintained in an off-site database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent*].

4. ~~Inventory after drug theft.~~ In the event that an inventory is taken as the result of a theft of drugs pursuant to § 54.1-3404 of the Drug Control Act, the inventory shall be used as the opening inventory within the current biennial period. Such an inventory does not preclude the taking of the required inventory on the required biennial inventory date.

5. All records required by this section shall be filed chronologically.

B. Prescriptions.

1. A hard copy prescription shall be placed on file for every initial prescription dispensed and be maintained for two years from the date of last refill. All prescriptions shall be filed chronologically by date of initial dispensing.

~~1.~~ *2.* Schedule II drugs. Prescriptions for Schedule II drugs shall be maintained in a separate prescription file.

~~2.~~ *3.* Schedule III through V drugs. Prescriptions for Schedule III through V drugs shall be maintained either in a separate prescription file for drugs listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescriptions of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one inch high and filed in the prescription file for drugs listed in the usual consecutively numbered prescription file for Schedule VI drugs.

§ 5.2. Automated data processing records of prescriptions.

A. An automated data processing system may be used for the storage and retrieval of original and refill dispensing information for prescriptions instead of manual record keeping requirements, subject to the following conditions:

1. A hard copy prescription shall be placed on file as set forth in § 5.1 B.

~~1.~~ *2.* Any computerized system shall provide retrieval (via ~~CRT~~ *computer monitor* display or printout) of original prescription information for those prescriptions which are currently authorized for dispensing.

~~2.~~ *3.* Any computerized system shall also provide retrieval via ~~CRT~~ *computer monitor* display or printout of the dispensing history for prescriptions dispensed during the past two years.

~~3.~~ *4.* Documentation of the fact that the ~~refill~~ information entered into the computer each time a pharmacist ~~refills an original~~ *fills a* prescription for a drug is correct shall be provided by the individual pharmacist who makes use of such system. If the system provides a printout of each day's prescription dispensing data, the printout shall be verified, dated and signed by the individual pharmacist who dispensed the prescription. The individual pharmacist shall verify that the data indicated is correct and then sign the document in the same manner as ~~he would sign a check or legal document~~ *his name appears on his pharmacist license* (e.g., J.H. Smith or John H. Smith).

In place of such printout, the pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in dispensing shall sign a statement each day, in the manner previously described, attesting to the fact that the dispensing information entered into the computer that day has been reviewed by him and is correct as shown.

B. Printout of dispensing data requirements.

Any computerized system shall have the capability of producing a printout of any dispensing data which the user pharmacy is responsible for maintaining under the Drug Control Act.

§ 5.3. Pharmacy repackaging of drug; records required.

A. Records required.

Pharmacies in which bulk reconstitution of injectables, bulk compounding or the prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the drug(s) used, strength, if any, quantity prepared, initials of the pharmacist supervising the process, *the assigned control number, or the* manufacturer's or distributor's name *, and* control number ~~or the assigned number~~ , and an expiration date.

B. ~~Expiration date.~~ *Labeling requirements.*

The drug name, strength, if any, the *assigned control number, or the* manufacturer's or distributor's name and control number ~~or assigned control number~~ , and an appropriate expiration date shall appear on any subsequently repackaged or reconstituted units *as follows* :

1. If U.S.P.-N.F. Class B or better packaging material is used for oral unit dose packages, an expiration date not to exceed six months or the expiration date shown on the original manufacturing bulk container, whichever is less, shall appear on the repackaged or reconstituted units.

2. If it can be documented that the repackaged unit has a stability greater than six months, an appropriate expiration date may be assigned.

3. If U.S.P.-N.F. Class C or less packaging material is used for oral, solid medication, an expiration date not to exceed 30 days shall appear on the repackaged or reconstituted units.

PART VI.
PRESCRIPTION ORDER AND DISPENSING STANDARDS.

~~§ 6.1. Distribution of a prescription device.~~

~~Any person, except those persons who are registered under the provisions of § 54.1-3434 of the Drug Control Act, who sells or distributes a Schedule VI device which under the applicable federal or state law may be sold, dispensed, or distributed only by or on the order of prescription of a practitioner, shall maintain every such prescription or order on file for two years.~~

§ 6.1. Dispensing of prescriptions; acts restricted to pharmacists.

A. The following acts shall be performed by a pharmacist, or by a student externe or pharmacy interne, provided a method for direct monitoring by the pharmacist of such acts of the externe or interne is provided:

1. The accepting of an oral prescription from a practitioner or his authorized agent and the reducing of such oral prescription to writing.

2. The personal supervision of the compounding of extemporaneous preparations.

3. The conducting of a prospective drug review as required by § 54.1-3319 of the Code of Virginia prior to the dispensing or refilling of any prescription [~~*and the integration of any information maintained in a patient medication profile*~~] .

4. The [~~*counseling of any person presenting a new prescription as required by § 54.1-3319 of the Code of Virginia, any counseling related to refilling a prescription, and the*~~] *providing of drug information to the public or to a practitioner.*

5. The communication with the practitioner regarding any changes in a prescription, substitution of the drug prescribed, refill authorizations, drug therapy, or patient information.

6. The direct supervision of those persons assisting the pharmacist in the prescription department under the following conditions:

a. Only one person who is not a pharmacist may be present in the prescription department at any given time with each pharmacist for the purpose of assisting the pharmacist in preparing and packaging of prescriptions.

b. In addition to the person authorized in subdivison 6 a of this subsection, personnel authorized by the pharmacist may be present in the prescription department for the purpose of performing clerical functions, to include data entry of prescription and patient information into a computer system or a manual patient profile system.

B. Certification of completed prescription.

After the prescription has been prepared and prior to the delivery of the order, the pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accurancy of, and the responsibility for, the entire transaction.

C. If a pharmacist declines to fill a prescription for any reason other than the unavailability of the drug

prescribed, he shall record on the back of the prescription the word "declined"; the name, address, and telephone number of the pharmacy; the date filling of the prescription was declined; and the signature of the pharmacist.

§ 6.2. Transmission of a prescription order by facsimile machine.

Prescription orders for Schedule VI drugs may be transmitted to pharmacies by facsimile device (FAX) upon the following conditions:

1. The transmission shall occur only with permission of the patient.

2. A valid faxed prescription must contain all required information for a written prescription, including the prescriber's signature.

3. A faxed prescription shall be valid only if faxed from the prescriber's practice location and only if the following additional information is recorded on the prescription prior to faxing:

a. Documentation that the prescription has been faxed;

b. The date that the prescription was faxed;

c. The printed name, address, phone number, and fax number of the authorized prescriber and the pharmacy to which the prescription was faxed; and

d. The institution, if applicable, from which the prescription was faxed, including address, phone number and fax number.

4. If the faxed prescription is of such quality that the print will fade and not remain legible for the required retention period, the receiving pharmacist shall photocopy the faxed prescription on paper of permanent quality.

§ 6.3. Dispensing of Schedule II drugs.

A. A prescripton for a Schedule II drug shall be dispensed in good faith but in no case shall it be dispensed more than six months after the date on which the prescription was issued.

B. A prescription for a Schedule II drug shall not be refilled except as authorized under the conditions for partial dispensing as set forth in § 6.5.

§ ~~6.2.~~ *§ 6.4.* Emergency prescriptions for Schedule II drugs.

In case of an emergency situation, a pharmacist may dispense a drug listed in Schedule II upon receiving oral authorization of a prescribing practitioner, provided that:

1. The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period;

2. The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required in § 54.1-3410 of the Drug Control Act, except for the signature of the prescribing practitioner;

3. If the pharmacist does not know the practitioner, he shall make a reasonable effort to determine that the oral authorization came from a practitioner using his phone number as listed in the telephone directory or other good-faith efforts to ensure his identity; and

4. Within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 54.1-3410 of the Drug Control Act, the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the nearest office of the Drug Enforcment Administration and the board if the prescribing practitioner fails to deliver a written prescription to him. Failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing practitioner.

§ ~~6.3.~~ *§ 6.5.* Partial dispensing of Schedule II prescriptions.

A. The partial filling of a prescription for a drug listed in Schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription, and he makes a notation of the quantity supplied on the face of the written prescription. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing; however, if the remaining portion is not or cannot be dispensed within the 72-hour period, the pharmacist shall so notify the prescribing practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

B. Prescriptions for Schedule II drugs written for patients in ~~nursing homes~~ *long-term care facilities* may be dispensed in partial quantities, to include individual dosage units. For each partial dispensing, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained and readily retrievable) the date of the partial dispensing, quantity dispensed, remaining quantity authorized to be

dispensed, and the identification of the dispensing pharmacist. The total quantity of Schedule II drugs in all partial dispensing shall not exceed the total quantity prescribed. Schedule II prescriptions shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

C. Information pertaining to current Schedule II prescriptions for patients in a nursing home may be maintained in a computerized system if this system has the capability to permit:

1. Output (display or printout) of the original prescription number, date of issue, identification of prescribing practitioner, identification of patient, identification of the nursing home, identification of drug authorized (to include dosage form, strength, and quantity), listing of partial dispensing under each prescription and the information required in subsection B of this section.

2. Immediate (real time) updating of the prescription record each time a partial dispensing of the prescription is conducted.

D. Partial filling of Schedule II prescriptions for terminally ill patients.

A prescription for a Schedule II drug may be filled in partial quantities to include individual dosage units for a patient with a medical diagnosis documenting a terminal illness under the following conditions:

1. The practitioner shall classify the patient as terminally ill, and the pharmacist shall verify and record such notation on the prescription.

2. On each partial filling, the pharmacist shall record the date, quantity dispensed, remaining quantity authorized to be dispensed, and the identity of the dispensing pharmacist.

3. Prior to the subsquent partial filling, the pharmacist shall determine that it is necessary. The total quantity of Schedule II drugs dispensed in all partial fillings shall not exceed the total quantity prescribed.

4. Schedule II prescriptions for terminally ill patients may be partially filled for a period not to exceed 60 days from the issue date unless terminated sooner.

5. Information pertaining to partial filling may be maintained in a computerized system under the conditions set forth in § 6.5 C.

~~§ 6.4. Dispensing of prescriptions; acts restricted to pharmacists.~~

~~A. The following acts shall be performed by a pharmacist, or by a student externe or pharmacy interne, provided a method for monitoring such acts of the externe or interne is provided:~~

~~1. The accepting of an oral prescription from a practitioner and the reducing of such oral prescription to writing.~~

~~2. The personal supervision of the compounding of extemporaneous preparations.~~

~~3. The providing of drug information, including notice of changes or substitution of medication, to practitioners and to the patients.~~

~~4. The interpretation of the information contained in medication profile records.~~

~~B. Persons assisting pharmacist.~~

~~The following shall apply to persons present in the compounding and dispensing area:~~

~~1. Only one person who is not a pharmacist may be present in the immediate compounding and dispensing area at any given time with each pharmacist for the purpose of assisting the pharmacist in preparing and packaging of prescriptions.~~

~~2. In addition to the person authorized in subdivision 1 of this subsection personnel authorized by the pharmacist may be present in the immediate compounding and dispensing area for the purpose of performing clerical functions.~~

~~C. Certification of completed prescription.~~

~~After the prescription has been prepared and prior to the delivery of the order, the pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accuracy of, and the responsibility for, the entire transaction.~~

~~§ 6.5.~~ *§ 6.6.* Refilling of *Schedule III through VI* prescriptions.

~~A. Schedule II drugs.~~

~~A prescription for a Schedule II drug shall not be refilled.~~

~~B. Schedule III through V drugs.~~

A. Refilling of Schedule III, IV, and V drugs.

A prescription for a drug listed in Schedule III, IV, or V shall not be dispensed or refilled more than six months after the date on which such prescription was issued, and no such prescription authorized to be filled may be refilled more than five times.

1. Each refilling of a prescription shall be entered on

the back of the prescription, initialed and dated by the pharmacist as of the date of dispensing. If the pharmacist merely initials and dates the prescription, it shall be presumed that the entire quantity ordered was dispensed.

2. ~~Partial dispensing of prescriptions.~~ The partial dispensing of a prescription for a drug listed in Schedule III, IV, or V is permissible, provided that:

a. Each partial dispensing is recorded in the same manner as a refilling;

b. The total quantity of drug dispensed in all partial dispensing does not exceed the total quantity prescribed; and

c. No dispensing occurs after six months after the date on which the prescription order was issued.

~~C.~~ *B. Refilling of* Schedule VI drugs.

1. A prescription for a drug listed in Schedule IV shall be refilled only as expressly authorized by the practitioner. If no such authorization is given, the prescription shall not be refilled.

2. A prescription for a Schedule VI drug or device shall not be *dispensed or* refilled ~~if the prescription is~~ more than two years ~~old~~ *after the date on which it was issued* . ~~In instances where the drug or device is to be continued, authorization shall be obtained from the prescriber and a new prescription shall be filed.~~

~~D.~~ *C.* As an alternative to all manual record-keeping requirements provided for in subsections A *, and* B ~~and C~~ of this section, an automated data processing system as provided in § 5.2 may be used for the storage and retrieval of dispensing information for prescription for drugs dispensed.

D. Authorized refills of all prescription drugs may only be dispensed in reasonable conformity with the directions for use as indicated by the practitioner; if directions have not been provided, then any authorized refills may only be dispensed in reasonable conformity with the recommended dosage and with the exercise of sound professional judgment.

PART VII.
LABELING AND PACKAGING STANDARDS FOR PRESCRIPTIONS.

§ 7.1. Labeling of prescription as to content and quantity.

Unless otherwise directed by the prescribing practitioner, any drug dispensed pursuant to a prescription shall bear on the label of the container, in addition to other requirements, the following information:

1. The drug name and strength, when applicable ~~;~~ *:*

a. If a trade name drug is dispensed, the trade name of the drug or the generic name of the drug.

b. If a generic drug is dispensed in place of a trade name drug, in addition to the requirements of § 32.1-87 A of the Code of Virginia, one of the following methods shall be used:

(1) The generic name, ~~or~~

(2) A name for the product dispensed which appears on the generic manufacturer's label ~~:~~ *, or*

(3) The generic name followed by the words "generic for" followed by the trade name of the drug for which the generic drug is substituted.

2. The number of dosage units, or if liquid, the number of milliliters dispensed.

§ 7.2. Packaging standards for dispensed prescriptions.

A. A drug shall be dispensed only in packaging approved by the current U.S.P.-N.F. for that drug. In the absence of such packaging standard for that drug, it shall be dispensed in a well-closed container.

B. Drugs may be dispensed in compliance packaging for self-administration when requested by the patient or for use in hospitals or long-term care facilities provided tha such packaging meets all current U.S.P.-N.F. standards foi packaging, labeling and record keeping.

§ 7.3. Special packaging.

A. Each drug dispensed to a person in a household shall be dispensed in special packaging except when otherwise directed in a prescription by a practitioner, when otherwise requested by the purchaser, or when such drug is exempted from such requirements promulgated pursuant to the Poison Prevention Packaging Act of 1970.

B. Each pharmacy may have a sign posted near the ~~compounding and dispensing area~~ *prescription department* advising the patients that nonspecial packaging may be requested.

C. If nonspecial packaging is requested, documentation of such request shall be maintained for two years from the date of dispensing.

PART VIII.
STANDARDS FOR PRESCRIPTION TRANSACTIONS.

§ 8.1. Issuing a copy of a prescription that can be refilled.

A. A copy of a prescription for a drug which pursuant to § 54.1-3411 of the Code of Virginia, can be refilled at the time the copy is issued shall be given upon request to another pharmacist.

B. The transfer of original prescription information for a drug listed in Schedules III through VI for the purpose of refill dispensing is permissible between pharmacies if the transfer is communicated directly between two pharmacists, and the transferring pharmacist records the following information:

1. Records the word "VOID" on the face of the invalidated prescription;

2. Records on the reverse of the invalidated prescription the name, address, and the Drug Enforcement Administration (DEA), registry number of the pharmacy to which it was transferred, except for a prescription for a Schedule VI drug, and the name of the pharmacist receiving the prescription information; and

3. Records the date of the transfer and the name of the pharmacist transferring the information.

C. The pharmacist receiving the transferred prescription information shall reduce to writing the following:

1. Write the word "TRANSFER" on the face of the transferred prescription.

2. Provide all information required to be on a prescription and include:

a. Date of issuance of original prescription;

b. Original number of refills authorized on the original prescription;

c. Date of original dispensing;

d. Number of valid refills remaining and date of last refill;

e. Pharmacy name, address, DEA registry number except for Schedule VI prescriptions, and original prescription number from which the prescription information was transferred; and

f. Name of transferring pharmacist.

3. Both the original and transferred prescription shall be maintained for a period of two years from the date of last refill.

D. Nothing in this regulation shall prevent the giving of a prescription marked "For Information Only" to a patient.

E. Pharmacists may use computer systems in lieu of recording on the hard copy prescription provided that the system used clearly meets all requirements of § 8.1 B and C while retaining all previous dispensing information.

§ 8.2. Issuing a copy of a prescription that cannot be refilled.

A. A copy of a prescription for a drug which, pursuant to § 54.1-3411 of the Drug Control Act, cannot be refilled at the time the copy is issued, shall be given on request of a patient but such copy shall be marked with the statement "FOR INFORMATION ONLY," the patient's name and address, the date of the original prescription, and the date the copy was given.

B. A copy marked in this manner is not a prescription, as defined in § 54.1-3400 of the Drug Control Act, and shall not be refilled.

C. The original prescription shall indicate that a copy has been issued, to whom it was issued, and the issuing date.

§ 8.3. Confidentiality of patient information.

A pharmacist shall not exhibit, dispense, or reveal any prescription or discuss the therapeutic effects thereof, or the nature or extent of, or the degree of illness suffered by or treatment rendered to, any patient served by the pharmacist with any person other than the patient or his authorized representative, the prescriber, or other licensed practitioner caring for this patient, or a person duly authorized by law to receive such information.

§ 8.4. Kickbacks, fee-splitting, interference with supplier.

A. A pharmacist shall not solicit or foster prescription practice ~~by secret agreement~~ with a prescriber of drugs or any other person providing for rebates, "kickbacks," fee-splitting, or special charges in exchange for prescription orders *unless fully disclosed in writing to the patient and any third party payor* .

B. A pharmacist shall not interfere with the patient's right to choose his supplier of medication or cooperate with any person or persons in denying a patient the opportunity to select his supplier of prescribed medications.

§ 8.5. Returning of drugs and devices.

Drugs or devices shall not be accepted for return or exchange by any pharmacist or pharmacy for resale after such drugs and devices have been taken from the premises where sold, distributed, or dispensed unless such drug or devices are in the manufacturer's original sealed containers or in unit-dose container which meets the U.S.P.-N.F. Class A or Class B container requirement.

§ 8.6. *Permitted* physician licensed by the board.

Permitted physicians licensed by the board to dispense drugs shall be subject to the following sections of these regulations:

§ 3.8. ~~Safeguards against diversion of drugs.~~ *Security system.*

~~§ 5.1. Manner of maintaining records, prescriptions, inventory records.~~

~~§ 6.4. Filling of prescriptions.~~

~~§ 6.5. Refilling of prescriptions.~~

~~§ 7.1. Labeling of prescriptions.~~

~~§ 7.2. Packaging standards for dispensed prescriptions.~~

~~§ 7.3. Special packaging.~~

~~§ 8.5. Returning of drugs and devices.~~

All of Part V. DRUG INVENTORY AND RECORDS.

All of Part VI. PRESCRIPTION ORDER AND DISPENSING STANDARDS.

All of Part VII. LABELING AND PACKAGING STANDARDS FOR PRESCRIPTIONS.

All of Part VIII. STANDARDS FOR PRESCRIPTION TRANSACTIONS.

PART IX.
UNIT DOSE DISPENSING SYSTEMS.

§ 9.1. Unit dose dispensing system.

A. A unit dose drug dispensing system may be utilized for the dispensing of drugs to patients in a hospital or ~~nursing home~~ *long-term care facility* . The following requirements shall apply *regardless of whether licensed or unlicensed persons administer medications* :

~~A. If a unit dose system is utilized by a pharmacy, no more than a seven-day supply of drugs shall be dispensed at any one given time.~~

1. Any equipment [*outside the pharmacy*] *used to house drugs to be* [~~*dispensed*~~ *administered*] *in a unit dose system shall be fitted with a locking mechanism* [*and be locked at all times when unattended*] .

~~B.~~ *2.* A signed order by the prescribing practitioner shall accompany the requests for a Schedule II drug, except that a verbal order for a hospital patient for a Schedule II controlled substance may be transmitted to a licensed nurse or pharmacist employed by the hospital who will promptly reduce the order to writing in the patient's chart. Such an order shall be signed by the prescriber within 72 hours.

~~C.~~ *3.* Properly trained personnel may transcribe the physician's drug orders to a patient profile card, fill the medication carts, and perform other such duties related to a unit dose distribution system provided these are done under the personal supervision of a pharmacist.

~~D.~~ *4.* All dosages and drugs shall be labeled with the drug name, strength, lot number and expiration date when indicated.

~~E.~~ *5.* The patient's individual drug drawer or tray shall be labeled with the patient's name and location.

~~F.~~ *6.* All unit dose drugs intended for internal use shall be maintained in the patient's individual drawer or tray unless special storage conditions are necessary.

~~G.~~ *7.* A back-up dose of a drug of not more than one ~~dosage~~ *dose* unit may be maintained in the patient's drawer, tray, or special storage area provided that the dose is maintained in the patient's drawer, tray, or special storage area with the other drugs for that patient.

~~H.~~ *8.* A record shall be made and maintained within the pharmacy for a period of one year showing:

~~1.~~ *a.* The date of filling of the drug cart;

~~2.~~ *b.* The location of the drug cart;

~~3.~~ *c.* The initials of person who filled the drug cart; and

~~4.~~ *d.* The initials of the pharmacist checking *and certifying the contents of* the drug cart *i accordance with the provisions in § 6.1 B .*

~~I.~~ *9.* A patient profile record or medication card will be accepted as the dispensing record of the pharmacy for unit dose dispensing systems only, subject to the following conditions:

~~1.~~ *a.* The record of dispensing must be entered on the patient profile record or medication card at the time the drug drawer or tray is filled.

~~2.~~ *b.* In the case of Schedule II through V drugs, after the patient profile record or medication card has been completed, the card must be maintained for two years.

~~3.~~ *c.* In the case of the computer-based distribution system, a uniformly maintained "fill list" or other document *containing substantially the same information* may be accepted as the dispensing record for Schedule II through VI drugs. Records of disposition/administration for floor stock drugs as provided in § [~~10.5.B~~ *10.4 B*] will be accepted for drugs distributed as floor stock. ~~A separate record for Schedule VI is not required if disposition records of Schedule II through V are maintained.~~

B. In providing unit dose systems to hospitals or long-term care facilities where only those persons licensed to administer are administering drugs, the pharmacy shal dispense not more than a seven-day supply [*of a drug i*

a solid, oral dosage form] at any one given time.

C. In addition to the requirements listed in § 9.1 A, the following requirements apply to those long-term care facilities in which unlicensed persons administer drugs:

1. The pharmacy providing medications to such facility shall dispense no more than a 72-hour supply of [~~the~~] drugs [in a solid, oral dosage form] at any one given time.

2. The pharmacy shall provide to persons administering medications training specific to the particular unit dose system being used.

3. The pharmacy shall provide a medication administration record to the facility listing each drug to be administered with full dosage directions to include no abbreviations.

4. The drugs in a unit dose system shall be placed in slots within a drawer labeled or coded to indicate time of administration.

PART X.
~~HOSPITAL PHARMACIES.~~ *PHARMACY SERVICES TO HOSPITALS.*

§ ~~10.1. Hospital pharmacies: chart order not a prescription.~~

~~A chart order is an order for a medication to be dispensed for an inpatient in a hospital. It is not a prescription order as defined in the Drug Control Act.~~

§ ~~10.2. Standards for hospital pharmacies.~~

~~A. Hospitals not having a full-time pharmacist, but in which drugs are prepackaged or relabeled or drugs transferred from one container to another, shall obtain a pharmacy permit with a part-time pharmacist designed to perform such functions or to provide personal supervision of such functions.~~

~~B. If there is no formally organized pharmacy department, the pharmacy service shall be obtained from another hospital having such a service or from a community pharmacy. Properly labeled and prepackaged drugs may then be distributed from the storage area under the supervision and direction of the pharmacist-in-charge of the service provider.~~

§ ~~10.3. Labeling of drugs; preparation and storage of drugs.~~

~~A. Labeling.~~

~~All medications issued as floor stock shall be labeled with the name of the drug, strength, assigned lot number and expiration date when applicable. In the case of a drug order sent to a nursing unit in a multiple dose container for subsequent administration to a particular patient, the drug shall be labeled with the name and the strength of the drug and the name and the location of the patient.~~

~~B. Equipment.~~

~~There shall be adequate equipment, properly maintained, and supplies provided to ensure proper professional and administrative services as may be required for patient safety through proper storage, compounding, dispensing, distribution and administration of drugs. When sterile products are prepared in the pharmacy, the product shall be prepared by qualified personnel in the environment of a laminar flow hood.~~

~~C. Storage.~~

~~All drugs within the pharmacy and throughout the hospital shall be under the supervision of the pharmacist-in-charge. The drugs shall be stored under proper conditions of temperature, light, sanitation and security.~~

§ 10.1. Chart order.

A chart order for a drug to be dispensed for administration to an inpatient in a hospital shall be exempt from the requirement of including all elements of a prescription as set forth in §§ 54.1-3408 and 54.1-3410 of the Code of Virginia. A hospital pharmacy policy and procedures manual shall set forth the minimum requirements for chart orders consistent with federal and state law.

§ 10.2. Responsibilities of the pharmacist-in-charge.

A. The pharmacist-in-charge in a pharmacy located within a hospital or the pharmacist-in-charge of any outside pharmacy providing pharmacy services to a hospital shall be responsible for the proper storage and security of all drugs used throughout the hospital.

B. The pharmacist-in-charge of a pharmacy serving a hospital shall be responsible for a monthly review of drug therapy for each patient within the hospital for a length of stay of one month or greater. A record of such review shall be signed and dated by the pharmacist and shall include but not limited to any irregularities in drug therapy, drug interactions, drug administration, or transcription errors. All significant irregularities shall be brought to the attention of the attending practitioner or other person having authority to correct the potential problem.

§ ~~10.4.~~ *§ 10.3.* After-hours access to the pharmacy.

When authorized by the pharmacist-in-charge, a supervisory nurse may have access to the pharmacy in the absence of the pharmacist in order to obtain emergency medication, provided that such drug is available in the manufacturer's original package or in units which have been prepared and labeled by a pharmacist and provided further that a separate record shall be made and left

within the pharmacy on a form prescribed by the pharmacist-in-charge and such records are maintained within the pharmacy for a period of one year showing:

1. The date of withdrawal;

2. The patient's name;

3. The name of the drug, strength, dosage form and dose prescribed;

4. Number of doses removed; and

5. The signature of the authorized nurse.

§ ~~10.5.~~ *§ 10.4.* Floor stock drugs.

A. Proof of delivery.

A delivery receipt shall be obtained for Schedule II through V drugs supplied as floor stock. *This record shall include the date, drug name and strength, quantity, hospital unit receiving drug and the signatures of the dispensing pharmacist and the receiving nurse.* Receipts shall be maintained in the pharmacy for a period of two years.

B. Distribution records.

A record of disposition/administration shall be used to document administration of Schedule II through V drugs when a floor stock system is used for such drugs. The record shall be returned to the pharmacy within three months of its issue. The pharmacist-in-charge or his designee shall:

1. Match returned records with delivery receipts to verify that all records are returned;

2. Periodically audit returned administration records for completeness as to patient's names, dose, date and time of administration, signature or initials of person administering the drug, and date the record is returned;

3. Verify that all additions to inventory are recorded, that all additions to and deductions from inventory are correctly calculated, that sums carried from one record to the next are correctly recorded, and periodically verify that doses documented on administration records are reflected in the medical record; *and*

4. Initial or sign the returned record , *file chronologically by date of issue,* and retain for two years from the date of return ; ~~and~~ .

~~5. Establish a system of documentation of administration of drugs in all areas where drugs are stored or administered.~~

~~C. Repackaging.~~

~~Drugs repackaged for floor stock shall comply with § 5.3.~~

~~§ 10.6. Securing the pharmacy.~~

~~The pharmacy shall be locked in the absence of a pharmacist prior to, and after, routine hours of operation and shall be secured from access to other personnel except as provided in § 10.4 of these regulations.~~

§ ~~10.7.~~ *§ 10.5.* Emergency room.

All drugs in the emergency department shall be under the control and supervision of the pharmacist-in-charge and shall be subject to the following additional requirements:

~~A.~~ *1.* All drugs kept in the emergency room shall be in a secure place from which unauthorized personnel and the general public are excluded.

~~B.~~ *2.* Oral orders for medications shall be reduced to writing and shall be signed by the practitioner.

~~C.~~ *3.* ~~In the emergency room,~~ A medical practitioner may dispense drugs ~~for the immediate need of his patient~~ *to his patients if in a bona fide medical emergency or when pharmaceutical services are not readily available and* if permitted to do so by the hospital; the drug container and the labeling shall comply with the requirements of these regulations and the Drug Control Act.

~~D.~~ *4.* A record shall be maintained of all drugs administered in the emergency room.

~~E.~~ *5.* A separate record shall be maintained on all drugs, including drug samples, dispensed in the emergency room. The records shall be maintained for a period of two years showing:

~~1.~~ *a.* Date *and time* dispensed;

~~2.~~ *b.* Patient's name;

~~3.~~ *c.* Physician's name;

~~4.~~ *d.* Name of drug dispensed, strength, dosage form, quantity dispensed, and dose.

§ ~~10.8.~~ *§ 10.6.* ~~Outpatient pharmacy permit.~~ *Pharmacy services.*

~~A. An outpatient pharmacy of a hospital shall be operated under a separate pharmacy permit issued to a specific pharmacy-in-charge of each such operation; if the pharmacy dispensed drugs to walk-in customers who are not patients of the hospital, the outpatient pharmacies shall be governed by laws and regulations as they apply to~~

~~pharmacies in general and shall be operated in a space separated from the hospital pharmacy.~~

~~B.~~ *A.* ~~An outpatient pharmacy of a hospital may be operated under the permit of the hospital pharmacy, if the drugs are dispensed only:~~ *In addition to service to inpatients, a hospital pharmacy may dispense drugs to the following:*

1. ~~To~~ Patients who receive treatments or consultations on the premises;

2. ~~To inpatients,~~ Outpatients ; or emergency patients upon discharge for their personal use away from the hospital; and

3. ~~To~~ The hospital employees, medical staff members, or students for personal use or for the use of their dependents.

Nothing in this regulation shall prohibit a hospital pharmacy not operated under a separate outpatient pharmacy permit from providing such services or drugs, or both, as are not readily available in the community to patients who may not otherwise be served by the hospital pharmacy.

[~~*B. If a hospital pharmacy operates satellite pharmacies, from which drugs are dispensed to patients listed in § 10.6 A, each satellite shall designate a separate pharmacist in charge.*~~]

[~~*C.*~~ *B.*] *If a pharmacy located within a hospital dispenses drugs to patients other than those listed in § 10.6 A, the pharmacy shall obtain a separate pharmacy permit and shall operate in a space separated from the hospital pharmacy.*

§ ~~10.9.~~ *§ 10.7.* Mechanical devices for dispensing drugs.

A hospital may utilize mechanical devices for the dispensing of drugs pursuant to § 54.1-3301 of the Drug Control Act, provided the utilization of such mechanical devices is under the personal supervision of the pharmacist. Such supervision shall include:

~~A.~~ *1.* The packaging and labeling of drugs to be placed in the mechanical dispensing devices. Such packaging and labeling shall conform to all requirements pertaining to containers and label contents.

~~B.~~ *2.* The placing of previously packaged and labeled drug units into the mechanical dispensing device.

~~C.~~ *3.* The removal of the drug from the mechanical device and the final labeling of such drugs after removal from the dispensing device.

~~D.~~ *4.* In the absence of a pharmacist, a person legally qualified to administer drugs may remove drugs from such mechanical device.

§ ~~10.10.~~ *§ 10.8.* Certified emergency medical technician program.

The pharmacy may prepare a drug kit for a Certified Emergency Medical Technician Program provided:

1. The pharmacist-in-charge of the hospital shall be responsible for all controlled drugs contained in this drug kit.

2. The drug kit is sealed in such a manner that it will preclude any possibility of loss of drugs.

3. Drugs may be administered by a technician upon an oral order of an authorized medical practitioner. The oral order shall be reduced to writing by the technician and shall be signed by the physician.

4. When the drug kit has been opened, the kit shall be returned to the pharmacy and exchanged for an unopened kit. A record signed by the physician for the drugs administered shall accompany the opened kit when exchanged. An accurate record shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year.

5. The record of the drugs administered shall be maintained as a part of the pharmacy records pursuant to state and federal regulations.

§ ~~10.11.~~ *§ 10.9.* Identification for ~~interne~~ *medical intern* or resident prescription form in hospitals.

The prescription form for the prescribing of drugs for use by medical interns or residents who prescribe only in a hospital shall bear the prescriber's signature, the legibly printed name, address, and telephone number of the prescriber and an identification number assigned by the hospital. The identification number shall be the Drug Enforcement Administration number assigned to the hospital pharmacy plus a suffix assigned by the institution. The assigned number shall be valid only within the course of duties within the hospital.

PART XI.
PHARMACY SERVICES TO ~~NURSING HOMES~~ *LONG-TERM CARE FACILITIES* .

§ 11.1. Drugs in ~~nursing homes~~ *long-term care facilities* .

Drugs, as defined in the Drug Control Act, shall not be floor stocked by a ~~nursing home~~ *long-term care facility* , except those in the stat drug box or emergency drug box *or as* provided for *in § 11.5* within these regulations.

§ 11.2. ~~Pharmacist's~~ *Pharmacy's* responsibilities to ~~nursing homes~~ *long-term care facilities* .

The ~~pharmacist~~ *pharmacy* serving ~~a nursing home~~ *a*

long-term care facility shall ~~ascertain~~ :

~~A.~~ *1.* ~~That~~ *Receive* a valid order ~~exists~~ prior to the dispensing of any drug.

2. Ensure that personnel administering the drugs are trained in using the dispensing system provided by the pharmacy.

~~B.~~ *3. Ensure* that the drugs for each patient are kept and stored in the originally received containers and that the medication of one patient shall not be transferred to another patient.

~~C.~~ *4. Ensure* that each cabinet , *cart or other area* utilized for the storage of ~~the~~ drugs ~~for individual patients~~ is locked and accessible only to authorized personnel.

~~D.~~ *5. Ensure* that the storage area for patients drugs is well lighted, of sufficient size to permit storage without crowding, and is ~~of the~~ *maintained at* appropriate temperature.

~~E.~~ *6. Ensure* that poison and drugs for "external use only" are kept in a cabinet and separate from other medications.

~~F.~~ *7. Provide for the disposition of* ~~That~~ discontinued drugs ~~are destroyed~~ under the following conditions:

~~1.~~ *a.* ~~The~~ *Discontinued* drugs ~~are destroyed on the premises of the facility~~ *may be returned to the pharmacy for resale if authorized by § 8.5 or destroyed by appropriate means in compliance with any applicable local, state, and federal laws and regulations.*

~~2.~~ *b.* ~~The drugs are destroyed in the presence of the pharmacist supplying pharmacy service to the facility and the director of nurses of the facility.~~ *Drug destruction at the pharmacy shall be witnessed by the pharmacist-in-charge and by another pharmacy employee. Drug destruction at the facility shall be witnessed by [the director of nursing or, if there is no director, then by] the facility administrator and by [a pharmacist providing pharmacy services to the facility or by] another employee authorized to administer medication.*

~~3.~~ *c.* A complete and accurate record of the drugs *returned or* destroyed *or both* shall be ~~maintained and~~ *made. The original of the record of destruction shall be* signed [*and dated*] by ~~the pharmacist and director of nurses.~~ *the persons witnessing the destruction and maintained at the long-term care facility for a period of two years. A copy of the destruction record shall be maintained at the provider pharmacy for a period of two years.*

~~4.~~ *d.* All destruction of the drugs ~~is~~ *shall be* done without 30 days of the time the drug was discontinued.

~~5. The records of destruction shall be made a part of the records on all Schedule II through V drugs administered in the nursing home.~~

~~6. This procedure does not apply to discontinued drugs in unit-dose containers which meet U.S.P.-N.F. Class A or Class B container requirements or the manufacturer's sealed containers. Such drugs may be returned to the issuing pharmacist for reuse.~~

~~G.~~ *8. Ensure* that *appropriate* drug reference materials are available ~~on~~ *in* the ~~nursing~~ *facility* units.

~~H.~~ *9. Ensure* that a monthly review of a drug therapy by a pharmacist is conducted for each patient. Such review shall be used to determine any irregularities , *which may include but not be limited to drug therapy, drug interactions, drug administration or transcription errors* . The pharmacist shall sign and date the notation of the review. ~~An irregularity shall include such therapy which is not right and proper, and may include drug interactions or drug administration or transcription errors.~~ All significant irregularities shall be brought to the attention of the attending practitioner or other party having authority to correct the potential problem.

§ 11.3. Emergency drug kit.

The pharmacist *providing services* may prepare an emergency kit for a facility ~~served by the pharmacy provided~~ *in which only those persons licensed to administer are administering drugs under the following conditions* :

~~A.~~ *1.* The contents of the emergency kit shall be of such a nature that the absence of the drugs would threaten the survival of the patients.

~~B.~~ *2.* The contents of the kit shall be determined by the ~~Pharmacy and Therapeutics Committee~~ *provider pharmacist in consultation with the medical and nursing staff* of the institutions and shall be limited to drugs for administration by injection or inhalation only, except that Nitroglycerin SL may be included.

~~C.~~ *3.* The kit is sealed in such a manner that it will preclude any possible loss of the drug.

~~D.~~ *4.* The opened kit is maintained under secure conditions and returned to the pharmacy within 72 hours for replenishing.

~~E.~~ *5.* Any drug used from the kit shall be covered by a prescription, signed by the physician, when legally required, within 72 hours.

§ 11.4. Stat-drug box.

An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy . *A stat-drug box shall be provided to those facilities in which only those persons licensed to administer are administering drugs* and shall be subject to the following conditions:

~~A.~~ *1.* The box is sealed in such a manner that will preclude the loss of drugs.

~~B.~~ *2.* When the stat-drug box has been opened, it is returned to the pharmacy.

~~C.~~ *3.* Any drug used from the box shall be covered by a drug order signed by the practitioner, when legally required, within 72 hours.

~~D. There shall not be more than one box per 200 patients in a facility.~~

~~E.~~ *4.* There shall be a listing of the contents of the box maintained in the pharmacy and also attached to the box in the facility. This same listing shall become a part of the policy and procedure manual of the facility served by the pharmacy.

~~F.~~ *5.* The drug listing on the box shall bear an expiration date for the box. The expiration date shall be the day on which the first drug in the box will expire.

~~G.~~ *6.* ~~Contents of the stat-drug box.~~ The contents of the box shall be limited to *those drugs in which a delay in initiating therapy may result in harm to the patient.* ~~the following classes of drugs, the drug strengths to be selected by the drug committee of the facility in consultation with the providing pharmacist:~~

a. The listing of drugs contained in the stat-drug box shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the long-term care facility.

b. The stat-drug box shall contain no Schedule II drugs.

c. The stat-drug box shall contain no more than one Schedule III through V drug in each therapeutic class and no more than five doses of each.

~~1. Antibiotics (injectable) - Not more than five doses of each of four different antibiotics.~~

~~2. Antibiotics (oral) - Not more than five doses each of five different antibiotics including two strengths of each antibiotic.~~

~~3. Antiemetics - Not more than five doses each of three different antiemetics.~~

~~4. Antihistamines - Not more than five doses each of two different antihistamines.~~

~~5. Antihypertensives - Not more than five doses each of two different antihypertensives.~~

~~6. Antipyretics - Not more than five doses each of two antipyretics.~~

~~7. Antipsychotic - Not more than five doses each of five antipsychotics.~~

~~8. Diuretics - Not more than five doses each of two diuretics.~~

~~9. Antidiarrheals - Not more than five doses of two oral antidiarrheal products.~~

~~10. Anticonvulsants - Not more than five doses of two oral anticonvulsants.~~

~~11. Analgesics - Not more than five doses of one oral narcotic drug in Schedule III or IV and five doses of one nonnarcotic drug in Schedule III or IV.~~

§ 11.5. Floor stock.

In addition to an emergency box or stat-drug box, a long-term care facility in which only those persons licensed to administer are administering drugs may maintain a stock of intravenous fluids, irrigation fluids, heparin flush kits, medicinal gases, sterile water and saline, and prescription devices. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the medical and nursing staff of the institution.

PART XII.
OTHER INSTITUTIONS AND FACILITIES.

§ 12.1. Drugs in ~~industrial~~ infirmaries/first aid rooms.

A. Controlled drugs purchased by an institution, agency, or business within the Commonwealth, having been purchased in the name of a practitioner licensed by the Commonwealth of Virginia and who is employed by an institution, agency, or business which does not hold a pharmacy permit, shall be used only for administering to those persons at that institution, agency, or business.

B. All controlled drugs ~~will~~ *shall* be maintained and secured in a suitable locked ~~facility~~ *storage area* , the key to which will be in the possession of the practitioner or nurse who is under the direction and supervision of the practitioner.

C. Such institution, agency, or business shall adopt a specific protocol for the administration of prescription drugs, listing the inventory of such drugs maintained, and authorizing the administering of such drugs in the absence of a physician in an emergency situation when the timely

prior verbal or written order of a physician is not possible. Administering of such drugs shall be followed by written orders.

1. For the purpose of this regulation, emergency shall be defined as a circumstance requiring administration of controlled drugs necessary to preserve life or to prevent significant or permanent injury or disability.

2. The protocol shall be maintained for inspection and documentation purposes.

D. A nurse may, in the absence of a practitioner, administer nonprescription drugs and provide same in unit dose containers in quantities which in the professional judgment of the nurse and the existing circumstances will maintain the person at an optimal comfort level until the employee's personal practitioner can be consulted. The administering and providing of such medication must be in accordance with explicit instructions of a specific protocol promulgated by the practitioner in charge of the institution, agency, or business.

§ 12.2. ~~Licensed~~ Humane societies and animal shelters ; ~~use of pentobarbital~~ .

A humane society or animal shelter, after having obtained the proper permits pursuant to state and federal laws, may purchase, possess and administer ~~Sodium Pentobarbital~~ *any drug approved by the State Veterinarian* to euthanize injured, sick, homeless and unwanted domestic pets and animals provided that *these procedures are followed* :

1. ~~The facility shall be under the general supervision of a veterinarian.~~ *A veterinarian shall provide general supervision for the facility and appropriate training to the person(s) responsible for administration of the drugs.*

2. ~~The person(s) responsible for administering the drug shall have been trained by a veterinarian in the manner of administration.~~ *The person in charge of the facility shall obtain the required permit and controlled substance registration from the board and shall be responsible for maintaining proper security and required records of all controlled substances obtained.*

a. If that person ceases employment with the facility or relinquishes his position, he shall immediately return the permit to the board and shall take a complete and accurate inventory of all drugs in stock.

b. An application for a new permit shall be filed with the required fee within 14 days on a form provided by the board. At that time, the new person in charge of the facility shall take a complete and accurate inventory of all drugs in stock.

3. Drugs shall be stored in a secure place and only the person(s) responsible for administering may have access to the drugs.

4. ~~The~~ *Any* drug *used* shall be obtained and administered in the injectable form only.

5. All invoices and order forms shall be maintained for a period of two years.

6. Complete and accurate records shall be maintained *for two years* on the administration of the drug; the record shall show the date of administration, the species of the animal, the weight of animal, the amount of drug administered and signature of the person administering the drug.

§ 12.3. Drugs in correctional institutions.

All prescription drugs at any correctional unit shall be obtained only on an individual prescription basis from a pharmacy and subject to the following conditions:

~~1. The prescription orders shall be initiated by the physician or his agent.~~

~~2. The number of doses on each prescription order shall be specified.~~

~~3.~~ *1.* All prepared drugs shall be maintained in a suitable locked ~~facilty~~ *storage area* with only the person responsible for administering the drugs having access.

~~4. All drugs shall be taken in the presence of the person administering the drug.~~

~~5.~~ *2.* ~~Drug administration record.~~ Complete and accurate records shall be maintained ~~on~~ *of* all drugs received, administered and discontinued. ~~This record shall consist of a two-part drug administration record.~~ The administration record shall show the:

a. Prescription number;

b. Drug name and strength;

c. Number of dosage units received;

d. Physician's name; and

e. Date, time and signature of person administering the individual dose of drug.

~~6.~~ *3.* ~~Disposal of unused drugs.~~ All unused or discontinued drugs shall be sealed and the amount in the container at the time of the sealing shall be recorded on the drug administration record. Such drugs shall be returned to the provider pharmacy along with ~~Part 2 of~~ the drug administration record within seven days. ~~The drug shall be returned by the same means as it was originally sent.~~

a. The provider pharmacy shall ~~compare the number of drug dosage units dispensed against Part 2 of the drug administration record, the number of dosage units administered and the number of dosage units returned to the issuing pharmacy~~ *review the returned drug administration for accountability of all dosage units dispensed .*

b. The drug administration records shall be filed in chronological order by the provider pharmacy and maintained for a period of one year or, at the option of the facility, the records may be returned by the provider pharmacy to the facility.

~~c. The returned drugs shall be destroyed at least every 30 days. This destruction shall be carried out by the provider pharmacy and a responsible witness. The Board of Pharmacy shall be notified two weeks prior to the destruction in order that the board may witness any such destruction. An agent of the board shall, from time to time, witness a destruction of such drugs and, prior to the destruction, randomly reconcile the contents of selected containers against the drug administration record.~~

~~d. Drugs in the manufacturer's original sealed container may be returned to the stocks of the provider pharmacy.~~

c. Drugs may be returned to the provider pharmacy stock in compliance with the provisons of § 8.5.

d. Other drugs shall be disposed of or destroyed by the provider pharmacy in accordance with local, state, and federal regulations.

~~7.~~ *4.* Emergency and stat-drug box. An emergency box and a stat-drug box may be prepared for the facility served by the pharmacy pursuant to §§ 11.3 and 11.4 of the regulations provided : *that the facility employs one or more full-time physicians, registered nurses, licensed practical nurses, or correctional health assistants.*

~~a. The facility employs one or more full-time physicians, registered nurse, licensed practical nurse or correctional health assistant;~~

~~b. No drugs are to be administered from the emergency box or stat-drug box unless authorized by the physician either in writing or orally, the order must be signed by the physician within 72 hours.~~

~~c. Only the physician, nurse, licensed practical nurse or correctional health assistant may administer a drug from the emergency box or stat-drug box.~~

~~d. The emergency drug box or stat-drug box must be sealed in such a manner that it will preclude any possibility of loss of drugs. Any drug box which has been opened must be returned to the pharmacy within 72 hours.~~

PART XIII.
EXEMPTED STIMULANT OR DEPRESSANT DRUGS AND CHEMICAL PREPARATIONS.

§ 13.1. Excluded substances.

The list of excluded substances, which may be lawfully sold over the counter without a prescription under the Federal Food, Drug and Cosmetic Control Act (21.U.S.C. 301), as set forth in the Code of Federal Regulations, Title 21, Part 1308.22, is adopted pursuant to the authority set forth in §§ 54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act.

§ 13.2. Exempted chemical preparations.

The list of exempt chemical preparations set forth in the Code of Federal Regulations, Title 21, Part 1308.24 is adopted pursuant to the authority set forth in §§ 54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act.

§ 13.3. Excepted compounds.

The list of excepted compounds set forth in the Code of Federal Regulations, Title 21, Part 1308.32 is adopted pursuant to the authority set forth in §§ 54.1-3443, 54.1-3450 and 54.1-3452; the excepted compounds are drugs which are subject to the provisions of § 54.1-3455 of the Drug Control Act.

PART XIV.
MANUFACTURERS, WHOLESALE DISTRIBUTORS, WAREHOUSERS, AND MEDICAL EQUIPMENT SUPPLIERS.

§ 14.1. Licenses and permits generally.

A license or permit shall not be issued to any manufacturer, wholesale distributor, warehouser, or medical equipment supplier to operate from a private dwelling, unless a separate business entrance is provided, and the place of business is open for inspection at all times during normal business hours. The applicant shall comply with all other federal, state and local laws and ordinances before any license or permit is issued.

§ 14.2. Safeguards against diversion of drugs.

The following requirements shall apply to manufacturers, wholesale distributors, or warehousers of prescription drugs:

1. The holder of the permit shall restrict all areas in which prescription drugs are manufactured, stored, or kept for sale, to only designated and necessary persons.

2. The holder of the permit shall provide reasonable

security measures for all drugs in the restricted area.

3. The holder of the permit shall not deliver any drug to a licensed business at which there is no one in attendance at the time of the delivery nor to any person who may not legally possess such drugs.

4. The holder of the permit shall comply with the security requirements set forth in § 3.8.

5. This regulation shall not apply to the holder of a permit to manufacture or distribute only medical gases.

§ 14.3. Manufacturing of cosmetics.

The building in which cosmetics are manufactured, processed, packaged and labeled, or held shall be maintained in a clean and orderly manner and shall be of suitable size, construction and location in relation to surroundings to facilitate maintenance and operation for their intended purpose. The building shall:

1. Provide adequate space for the orderly placement of equipment and materials used.

2. Provide adequate lighting and ventilation.

3. Provide adequate washing, cleaning, and toilet facilities.

§ 14.4. Good manufacturing practices.

A. The Good Manufacturing Practices regulations set forth in the Code of Federal Regulations, Title 21, Part 211 and effective April 1, 1986, are adopted by reference.

B. Each manufacturer of drugs shall comply with the requirements set forth in the federal regulations referred to in subsection A of this section.

§ 14.5. Prescription drug marketing act.

A. The requirements for wholesale distribution of prescription drugs set forth in the federal Prescription Drug Marketing Act of 1987 and Title 21, Part 205 of the Code of Federal Regulations are adopted by reference.

B. Each wholesale distributor of prescription drugs shall comply with minimum requirements for qualifications, personnel, storage, handling, and records as set forth in the federal regulations referred to in subsection A of this section.

§ 14.6. Medical equipment suppliers.

A. A medical equipment supplier may dispense to the ultimate consumer the following: prescription devices, medicinal oxygen, Schedule VI drugs which have no medicinal properties and are used in the operation and cleaning of medical devices, and hypodermic needles and syringes as authorized by § 54.1-3435.3 of the Drug Control Act.

B. A medical equipment supplier shall receive a valid order from a practitioner prior to dispensing and shall maintain this order on file for a period of two years from date of last dispensing.

C. Medical equipment suppliers shall make a record at the time of dispensing. This record shall be maintained for two years from date of dispensing and shall include:

1. Name and address of patient;

2. Name and address of physician ordering;

3. Item dispensed and quantity, if applicable; and

4. Date of dispensing.

VA.R. Doc. No. R94-7; Filed September 14, 1993, 2:18 p.m.

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Title of Regulation: **VR 530-01-2. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.**

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

Effective Date: November 3, 1993.

Summary:

These regulations establish requirements for licensure and the responsibilities of physicians engaged in the sale of drugs to assure the public safety and the security of controlled substances in the Commonwealth. The Board of Pharmacy adopted amendments as a result of its biennial regulatory review. All existing regulations were examined for continued effectiveness, efficiency, necessity, clarity and cost of compliance. The amendments are in response to public comment, to the changing needs and technology in the physician's practice, or to security concerns of inspectors and the board. An effort has been made to clarify and simplify the regulation wherever questions of form or content arose.

The board also adopted a one-time fee reduction for renewal of licenses for calendar year 1994. The amendment responds to the statutory requirement that boards adjust fees when differences in biennial revenues and expenses are greater than 10%. The regulation will meet that requirement without creating a deficit for the board in subsequent years. The board also adopted new fees for late renewals, lapsed licenses, and an inactive license.

Comments on proposed regulations were received by the board at a public hearing held on May 11, 1993, and in writing during a 60-day comment period which closed on July 2, 1993. When the board met on August 11 to adopt final regulations, it made the following change in the proposed regulations in response to comment and in order to be in compliance with federal rules:

Section 4.2 A 3 was amended to require that computer records maintained at an off-site location be retrievable and made available within 48 hours to an authorized agent. The proposed regulation had required the records to be made available within 72 hours, but DEA has a 48-hour requirement.

The board determined that other requested changes were unnecessary, inconsistent with the statutes, or not in the best interest of public safety.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Scotti W. Milley, Department of Health Professions, 6606 West Broad Street, Suite 400, Richmond, VA 23230, telephone (804) 662-9911. There may be a charge for copies.

VR 530-01-2. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Licensee" as used in these regulations shall mean a practitioner who is licensed by the Board of Pharmacy to sell controlled substances.

"Personal supervision" means the licensee must be physically present and render direct, personal control over the entire service being rendered or act(s) being performed. Neither prior nor future instructions shall be sufficient nor shall supervision be rendered by telephone, written instructions, or by any mechanical or electronic methods.

"Practitioner" as used in these regulations shall mean a doctor of medicine, osteopathy or podiatry who possesses a current unrestricted license issued by the Board of Medicine.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the controlled substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"U.S.P.-N.F." means the United States Pharmacopeia-National Formulary.

PART II.
LICENSURE REQUIREMENTS.

§ 2.1. Application for licensure.

A. In order to ~~sell~~ *engage in the sale of* controlled substances *as defined in § 54.1-3401 of the Code of Virginia and* as provided for in § 54.1-2914 B of the Code of Virginia, a practitioner who possesses a current unrestricted license issued by the Board of Medicine shall make application to the Board of Pharmacy on a form provided by the board. A fee of ~~$275~~ *$200* shall be remitted with the application for licensure.

B. For good cause shown, the board may issue a limited-use license, when the scope, degree or type of services provided to the patient is of a limited nature. The license to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:

1. A policy and procedure manual detailing the type and volume of controlled substances to be sold, and safeguards against diversion must accompany the application. The application shall list the regulatory requirements for which a waiver is requested and a brief explanation as to why each requirement should not apply to that practice.

2. The issuance and continuation of such license shall be subject to continuing compliance with the conditions set forth by the board.

3. Application for a limited-use license is contingent on the practitioner selling only controlled substances which have been received prepackaged in ready-to-dispense quantities and containers needing only the addition of required labeling.

§ 2.2. Renewal of license.

A. A license so issued shall be valid until December 31 of the year of issue. A renewal of the license shall be made on or before December 31. ~~The fee shall be the same fee as that set for a pharmacist license.~~ *The annual renewal fee shall be $50.*

Between January 1, 1994, and January 1, 1995, the

annual renewal fee shall be $25.

B. If a practitioner fails to renew his license to sell within the Commonwealth by the renewal date, he must pay the back renewal fee and a $25 late fee within 60 days of expiration.

C. Failure to renew the license to sell within 60 days following expiration shall cause the license the lapse. The selling of controlled substances with a lapsed license shall be illegal and may subject the practitioner to disciplinary action by the board. Reinstatement is at the discretion of the board and may be granted by the executive director upon submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of $50.

D. The annual fee for renewal of an inactive license to sell shall be $35.

§ 2.3. Acts to be performed by the licensee.

A. The selection of the controlled substance from the stock, any, preparation or packaging of a controlled substance or the preparation of a label for a controlled substance to be transferred to a patient shall be the personal responsibility of the licensee.

1. Any compounding of a controlled substance shall be personally performed by the licensee.

2. Only one person who is not a licensee may be present in the storage and selling area at any given time for the purpose of assisting the licensee in the preparation, packaging and labeling of a controlled substance.

B. Prior to the dispensing, the licensee shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of sale ~~as provided in § 4.3 B~~ as certification of the accuracy of, and the responsibility for, the entire transaction.

C. If the record of sale is maintained in an automated data processing system as provided in ~~§ 4.5~~ *§ 4.4* , the licensee shall personally place his initials with each entry of a sale ~~as provided in § 4.3 B~~ as a certification of the accuracy of, and the responsibility for, the entire transaction.

§ 2.4. Licensees ceasing to sell controlled substances ; *inventory required prior to disposal* .

~~Licensees ceasing to sell controlled substances; inventory required prior to disposal.~~

A. Any licensee who desires to cease selling controlled substances shall notify the board 10 days prior to cessation and his license will be placed on an inactive status.

B. Any Schedule II through V controlled substances shall be inventoried and may be disposed of by transferring the controlled substance stock to another licensee or other practitioner or by destruction as set forth in these regulations.

C. The licensee or other responsible person shall inform the board of the name and address of the licensee to whom the controlled substances are transferred.

§ 2.5. Inactive status.

Any licensee ~~in~~ *who elects to take* an inactive status *shall not engage in the sale of controlled substances. To reactivate his license, he* shall apply to the board ~~to reactivate his license~~ and shall pay the fee charged for license renewal. *Engaging in the sale of controlled substances with an inactive license may subject the licensee to disciplinary action by the board.*

PART III.
INSPECTION REQUIREMENTS, STANDARDS AND SECURITY FOR STORAGE AREA.

§ 3.1. Maintenance of a common stock of controlled substances.

Any two or more licensees who elect to maintain a common stock of controlled substances for dispensing shall:

1. Designate a licensee who shall be the primary person responsible for the stock, the required inventory, the records of receipt and destruction, safeguards against diversion and compliance with these regulations.

2. Report to the board the name of the licensee and the location of the controlled substance stock on a form provided by the board.

3. Upon a change in the licensee so designated, an inventory of all Schedule II through V controlled substances shall be conducted in the manner set forth in § 54.1-3404 of the Drug Control Act and such change shall immediately be reported to the board.

4. Nothing shall relieve the other individual licensees who sell controlled substances at the location of the responsibility for the requirements set forth in these regulations.

§ 3.2. Inspection and notice required.

A. The area designated for the storage and selling of controlled substances shall be inspected by an agent of the board prior to the issuance of a license.

B. Applications for licenses which indicate a requested inspection date, or requests which are received after the application is filed, shall be honored provided a 14-day notice to the board is allowed prior to the requested inspection date.

C. Requested inspection dates which do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

D. At the time of the inspection, the controlled substance selling and storage area shall comply with §§ 3.3, 3.4, 3.5, 3.6 and 3.7 of these regulations.

E. No license shall be issued to sell controlled substances until adequate safeguards against diversion have been provided for the controlled substance storage and selling area and approved by the board or its authorized agent.

§ 3.3. Physical standards.

Physical standards for the controlled substance selling and storage area:

1. The building in which the controlled substances selling and storage area is located shall be constructed of permanent and secure materials. Trailers and other movable facilities shall not be permitted;

2. There shall be an *enclosed* area *of not less than 60 square feet* that is designated as the controlled substances selling and storage area ; , *which shall be used exclusively for the storage, preparation, dispensing, and record-keeping related to the sale of controlled substances. The work space used in preparation of the drugs shall be contained within the enclosed area. A controlled substance selling and storage area inspected and approved prior to the effective date of these regulations shall not be required to meet the size requirement of this regulation;*

3. Controlled substances maintained for ultimate sale shall be maintained separately from any other controlled substances maintained for other purposes;

4. The selling and storage area, work counter space and equipment in the area shall be maintained in a clean and orderly manner;

~~5. The counter work space shall be used only for the preparation and selling of controlled substances and necessary record keeping;~~

~~6. The selling and storage area shall not be operated or maintained in conjunction with any activity that would compromise the quality of the controlled substances;~~

~~7.~~ *5.* A sink with hot and cold running water shall be available within the immediate vicinity of the selling and storage area; and

~~8.~~ *6.* The entire area described in this regulation shall be well lighted and ventilated; the proper storage temperature shall be maintained to meet official specifications for controlled substance storage.

§ 3.4. Access to selling area.

Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the licensee shall not be through the selling and storage area.

§ 3.5. Minimum equipment.

The licensee shall be responsible for maintaining the following equipment in the designated area:

1. A current copy of the United States Pharmacopeia Dispensing Information Reference Book;

2. A refrigerator with a monitoring thermometor, located in the selling area, if any controlled substances requiring refrigeration are maintained;

3. A copy of the current Virginia Drug Control Act and board regulations;

4. A current copy of the Virginia Voluntary Formulary;

5. A laminar flow hood if sterile product(s) are to be prepared; and

6. Prescription balances and weights, if the licensee is engaged in extemporaneous compounding.

§ 3.6. Safeguards against diversion of controlled substances.

A device for the detection of breaking shall be installed in the controlled substances selling and storage area. The installation and the device shall be based on accepted burglar alarm industry standards, and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device;

2. The device shall be maintained in operating order;

3. The device shall fully protect the immediate controlled substance selling and storage areas and shall be capable of detecting breaking by any means whatsoever in the area when the area is closed;

4. The alarm system must have an auxiliary source of power;

5. The alarm system shall be capable of being activated and operated separately from any other alarm system in the area or the business in which the controlled substance selling and storage area is located;

6. The alarm system is controlled only by the

licensee; and

7. An emergency key or access code to the system ~~shall~~ *may* be maintained as set forth in § 3.7 B of these regulations.

§ 3.7. Selling area enclosures.

A. The controlled substance selling and storage area of the licensee shall be provided with enclosures subject to the following conditions:

1. The enclosure shall be construed in such a manner that it protects the controlled substance stock from unauthorized entry and from pilferage at all times whether or not the licensee is on duty;

2. The enclosure shall be of sufficient height as to prevent anyone from reaching over to gain access to the controlled substances;

3. Entrances to the enclosed area must have a door which extends from the floor and which is at least as high as the adjacent counters or adjoining partitions; and

4. Doors to the area must have locking devices which will prevent entry in the absence of the licensee.

B. The door keys *and alarm access code* to the selling and storage area shall be subject to the following requirements:

1. Only the licensee shall be in possession of *the alarm access code and* any keys to the locking device on the door to such enclosure;

2. The selling and storage area must be locked when the licensee is not present and engaged in preparation or selling of drugs; and

~~2.~~ *3.* The licensee ~~or the licensee so designated pursuant to subdivision 1 of § 3.1~~ may place a key *and the access code* in ~~an~~ *a sealed* envelope or other *sealed* container ~~which contains a seal and a signature placed by the licensee on the container~~ *with the licensee's signature across the seal* in a safe or vault within the office or other secured place ~~; and~~ *for use by another licensee.*

~~3. The key may be used to allow emergency entrance to the selling area by other licensees licensed under these regulations.~~

C. ~~Restricted access to the selling and storage area.~~ The controlled substance selling and storage area is restricted to the licensee and ~~a~~ *one* person designated by the licensee. ~~Such other persons~~ *The designated person* may be present in the selling and storage area only during the hours when the licensee is on duty to render personal supervision.

~~§ 3.8. Controlled substances outside of the selling area.~~

~~Any Schedule II through VI controlled substances not stored within the selling area and kept for stock replenishing shall be secured and access to it shall be restricted to the licensee.~~

~~§ 3.9.~~ *§ 3.8.* Prescriptions awaiting delivery.

Prescriptions prepared for delivery to the patient may be placed in a secure place outside of the controlled substance selling area and access to the prescriptions restricted by the licensee to designated assistants. The prepared prescriptions may be transferred to the patient whether or not the licensee is on duty *with prior approval of the licensee* .

~~§ 3.10.~~ *§ 3.9.* Expired controlled substances; security.

Any controlled substance which has exceeded the expiration date shall be separated from the stock used for selling and may be maintained in a designated area with the unexpired stock prior to the disposal of the expired controlled substances.

~~§ 3.11.~~ *§ 3.10.* ~~Destruction~~ *Disposal* of Schedule II through V controlled substances.

If a licensee wishes to ~~destroy~~ *dispose of* unwanted Schedule II through V controlled substances ~~maintained for selling~~ , he shall use *one of* the following procedures ~~for the destruction~~ :

1. Return the drugs to the Drug Enforcement Administration (DEA) by delivery to the nearest DEA office;

2. Transfer the drugs to another person or entity authorized to possess Schedule II through V drugs; or

3. Destroy the drugs according to the following procedures:

~~1.~~ *a.* At least 14 days prior to the destruction date, the licensee shall provide a written notice to the board office; the notice shall state the following:

~~a.~~ *(1)* Date, time ~~and~~ , manner ~~or~~ , *and* place of destruction;

~~b.~~ *(2)* The ~~name(s)~~ *names* of the ~~licensee~~ *licensees* who will witness the destruction process ~~;~~ .

~~2.~~ *b.* If the destruction date is to be changed or the destruction does not occur, a new notice ~~must~~ *shall* be provided to the board office as set forth above in this subsection.

~~3.~~ *c.* The DEA Drug Destruction Form No. 41 ~~must~~ *shall* be used to make a record of all controlled substances to be destroyed.

~~4.~~ *d.* The controlled substances ~~must~~ *shall* be destroyed *in accordance with all applicable local, state, and federal laws and regulations* by burning in an incinerator ; ~~an alternate method of flushing may be used if incineration is not possible and if permitted by the municipality~~ *or by other methods approved in advance by the board* .

~~5.~~ *e.* The actual destruction shall be witnessed by the licensee and another licensee of the board not employed by the practitioner.

~~6.~~ *f.* Each form shall show the following information:

~~a.~~ *(1)* Legible signatures of the licensee and the witnessing person.

~~b.~~ *(2)* The license number of the licensee and other licensed person destroying the controlled substances.

~~c.~~ *(3)* The date of destruction.

~~7.~~ *g.* At the conclusion of the destruction of the controlled substance stock:

~~a.~~ *(1)* ~~Two~~ *Three* copies of the completed destruction form shall be sent to: Drug Enforcement Administration, Washington Field Division, Room 2558, 400 6th Street, SW, Washington, DC 20024, Attn: Diversion Control Group.

~~b.~~ *(2)* A copy of the completed destruction form shall be sent to the office of the board.

~~c.~~ *(3)* A copy of the completed destruction form shall be retained with the inventory records.

PART IV.
WRITTEN PRESCRIPTION AND RECORD KEEPING STANDARDS.

§ 4.1. Sign and written prescription ~~requirement~~ *requirements* .

~~Requirements are:~~

~~1.~~ *A.* The licensee shall provide the patient with a written prescription whether or not he intends to sell the controlled substance to the patient ; .

~~2.~~ *B.* The licensee shall provide a sign in the public area of the office. The sign must be legible to the public with normal vision and must advise the public that the controlled substances may be obtained from him or from a pharmacy ; .

~~3.~~ *C.* The licensee after delivery of the written prescription to the patient shall, in each case, advise the patient of their right to obtain the controlled substance from him or from a pharmacy ; ~~and~~ .

~~4.~~ *D.* If the patient chooses to purchase the controlled substance from the licensee, the written prescription shall be returned to the licensee ; ~~be~~ *and* signed by the patient ; ~~marked void by the licensee and filed chronologically~~ . *If the licensee chooses to use the hard copy prescription as his record of sale, he shall record all information and file as required by § 4.3. If the licensee chooses to record the sale in book form or maintain it in an automated data system, he shall mark the prescription void, file chronologically, and maintain for a period of two years.*

§ 4.2. Manner of maintaining inventory records for licensees selling controlled substances.

A. Each licensee shall maintain the inventories and records of controlled substances as follows:

1. Inventories and records of all controlled substances listed in Schedule II shall be maintained separately from all other records of the licensee ; .

2. Inventories and records of controlled substances listed in Schedules III, IV and V may be maintained separately or with records of Schedule VI controlled substances but shall not be maintained with other records of the licensee ; .

3. ~~Location of records.~~ All records of Schedule II through V controlled substances shall be maintained at the same location as the stock of controlled substances to which the records pertain [~~or retrieved and made available for inspection or audit by authorized agents within 72 hours~~ *except that records maintained in an off-site database shall be retrieved and made available for inspection within 48 hours of a request by the board or an authorized agent*];

4. ~~Inventory after controlled substance theft.~~ In the event that an inventory is taken as the result of a theft of controlled substances pursuant to § 54.1-3404 of the Drug Control Act, the inventory shall be used as the opening inventory within the current biennial period. Such an inventory does not preclude the taking of the required inventory on the required biennial inventory date.

5. All records required by this section shall be filed chronologically.

~~§ 4.3. Form of records of Schedule II through VI drugs sold.~~

~~A. The record of selling of controlled substances shall be in a book form or may be maintained in an automated data system as provided in § 4.5.~~

~~B. The licensee shall personally inspect the prescription product prior to dispensing to the patient and verify its accuracy in all respects by initialing the record of each sale at the time of inspection.~~

§ ~~4.4.~~ *§ 4.3. Manner of maintaining* records for Schedule II through VI ~~drugs~~ *controlled substances* sold.

A. The *hard copy prescription or* records of ~~selling~~ *sale* for Schedule II controlled substances shall be *maintained* as follows:

1. ~~The record of the selling of Schedule II controlled substances~~ *They* shall be ~~separate~~ *maintained separately* from other records.

2. ~~The record~~ *They* shall be maintained in chronological order and shall show the selling date, a number which identifies the sale, the name and address of the patient, the name and strength of the controlled substance , *the initials of the licensee,* and the quantity sold.

B. The *hard copy prescription or* records of ~~selling~~ *sale* for Schedule III through V controlled substances shall be *maintained* as follows:

1. ~~The record~~ *They* shall be *maintained* in the manner set forth in ~~subdivision B A 2~~ *subsection A* of this section.

2. The ~~selling records~~ *hard copy prescription or records of sale* for Schedule III through V controlled substances may be maintained ~~separate~~ *separately* from other selling records or may be maintained with selling records for Schedule VI controlled substances provided the Schedule III through V controlled substance records are readily retrievable from the selling records for Schedule VI controlled substances. The records shall be deemed readily retrievable if a red "C" is placed uniformly on the record entry line for each Schedule III through V controlled substance sold.

§ ~~4.5.~~ *§ 4.4.* Automated data processing records of sale.

A. An automated data processing system may be used for the storage and retrieval of the sale of controlled substances instead of manual record keeping requirements, subject to the following conditions:

1. Any computerized system shall also provide retrieval via ~~CRT~~ *computer monitor* display or printout of the sale of all controlled substances during the past two years, the listing to be in chronological order and shall include all information required by the manual method ; ~~and~~ .

2. If the system provides a printout of each day's selling activity, the printout shall be verified, dated and signed by the licensee. The licensee shall verify that the data indicated is correct and then sign the document in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). In place of such printout, the licensee shall maintain a bound log book, or separate file, in which the licensee shall sign a statement each day, in the manner previously described, attesting to the fact that the selling information entered into the computer that day has been reviewed by him and is correct as shown.

3. A hard copy prescription shall be placed on file chronologically and maintained for a period of two years.

B. ~~Printout of dispensing data requirement.~~ Any computerized system shall have the capability of producing a printout of any selling data which the practitioner is responsible for maintaining under the Drug Control Act.

PART V.
PACKAGING, REPACKAGING AND LABEL STANDARDS.

§ 5.1. Repacking of controlled substances; records required *; labeling requirements* .

~~A. Record required.~~

A. A licensee repackaging controlled substances shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the controlled substance(s) repackaged, strength, if any, quantity prepared, initials of the licensee supervising the process, *the assigned contr number, or the* manufacturer's or distributor's name an control number, ~~or the assigned number,~~ and an expiration date.

~~B. Expiration date.~~

B. The controlled substance name, strength, if any, the *assigned control number, or the* manufacturer's or distributor's name and control number, ~~or assigned control number,~~ and an appropriate expiration date shall appear on any subsequently repackaged units *as follows* :

1. If U.S.P.-N.F. Class B or better packaging material is used for oral unit dose packages, an expiration date not to exceed six months or the expiration date shown on the original manufacturing bulk containers, whichever is less, shall appear on the repackaged units;

2. If it can be documented that the repackaged unit has a stability greater than six months, an appropriate expiration date may be assigned; and

3. If U.S.P.-N.F. Class C or less packaging material is used for oral, solid medication, an expiration date not to exceed 30 days shall appear on the repackaged units.

§ 5.2. Labeling of prescription as to content and quantity.

A. Any controlled substances sold by a licensee sha

bear on the label of the container, in addition to other requirements, the following information:

1. The name and address of the practitioner and the name of the patient;

2. The date of the dispensing; and

3. The controlled substance name and strength, when applicable.

a. If a trade name controlled substance is sold, the trade name of the controlled substance or the generic name of the controlled substance.

b. If a generic controlled substance is sold in place of a trade name controlled substance, in addition to the requirements of § 32.1-87 A of the Code of Virginia, one of the following methods shall be used:

(1) The generic name; or

(2) A name for the product sold which appears on the generic manufacturer's label; or

(3) The generic name followed by the word "generic for" followed by the trade name of the controlled substance for which the generic controlled substance is substituted.

4. The number of dosage units, or if liquid, the number of millimeters dispensed.

§ 5.3. Packaging standards for controlled substance sold.

A controlled substance shall be sold only in packaging approved by the current U.S.P.-N.F. for the controlled substance. In the absence of such packaging standard for the controlled substance, it shall be dispensed in a well-closed container.

§ 5.4. Special packaging.

A. Each controlled substance sold to a person in a household shall be sold in special packaging, except when otherwise requested by the purchaser, or when such controlled substance is exempted from such requirements promulgated pursuant to the Poison Prevention Packaging Act of 1970.

B. Each licensee may have a sign posted near the compounding and selling area advising the patients that nonspecial packaging may be requested. *If nonspecial packaging is requested, documentation of such request shall be maintained for two years from the date of dispensing.*

PART VI.
PATIENT'S CHOICE OF SUPPLIER AND RETURN OF CONTROLLED SUBSTANCES.

§ 6.1. Choice of controlled substance supplier.

A licensee shall not interfere with the patient's right to choose his supplier of medication or cooperate with any person or persons in denying a patient the opportunity to select his supplier of prescribed medications.

§ 6.2. Returning of controlled substances.

Controlled substances shall not be accepted for return or exchange by any licensee for resale after such controlled substances have been taken from the premises where sold, unless such controlled substances are in the manufacturer's original sealed container or in a unit-dose container which meets the U.S.P.-N.F. Class A or Class B container requirement and have not be stored under conditions whereby it may have become contaminated.

PART VII.
GROUNDS FOR REVOCATION OR SUSPENSION.

§ 7.1. Grounds for revocation or suspension.

The Board of Pharmacy may revoke, suspend, refuse to issue or renew a license to sell controlled substances or may deny any application if it finds that the applicant:

1. Has been negligent in the sale of controlled substances;

2. Has become incompetent to sell controlled substances because of his mental or physical condition;

3. Uses drugs or alcohol to the extent that he is rendered unsafe to sell controlled substances;

4. Has engaged in or attempted any fraud or deceit upon the patient or the board in connection with the sale of controlled substances;

5. Has assisted or allowed unlicensed persons to engage in the sale of controlled substances;

6. Has violated or cooperated with others in violating any state or federal law or any regulation of the board relating to the sale, distribution, dispensing or administration of controlled substances;

7. Has had his federal registration to dispense controlled substances revoked or suspended; or

8. Has been convicted of violating any federal drug law or any drug law of Virginia or of another state or has had his license to practice medicine, osteopathy or podiatry suspended or revoked in Virginia or in any other state.

VA.R. Doc. No. R93-787; Filed August 31, 1993, 12:15 p.m.

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 680-13-03. Petroleum Underground Storage Tank Financial Requirements.**

Statutory Authority: §§ 62.1-44.34:11, 62.1-44.34:12 and 62.1-44.15(10) of the Code of Virginia.

Effective Date: November 3, 1993.

Summary:

The technical amendments to VR 680-13-03, Petroleum Underground Storage Tank Financial Responsibility Requirements, are necessary to conform the regulation to amendments to the State Water Control Law which became effective on July 1, 1992, and July 1, 1993. The amendments change the compliance dates for financial responsibility from July 1, 1992, to the existing federal compliance dates; change the financial responsibility requirements from $50,000 for corrective action and $150,000 for third party claims to a sliding scale ranging from $5,000 to $50,000 for corrective action and $15,000 to $150,000 for third party claims; and make the sliding scale retroactive to December 22, 1989, which increases the amount of reimbursement underground storage tank owners and operators may receive. VR 680-13-03. Petroleum Underground Storage Tank Financial Requirements.

VR 680-13-03. Petroleum Underground Storage Tank Financial Requirements.

§ 1. Definitions.

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

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator or petroleum storage tank vendor.

"Board" means the State Water Control Board.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; but not including any death, disablement, or injuries covered by worker's compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Corrective action" means all actions necessary to abate, contain and cleanup a release from an underground storage tank, to mitigate the public health or environmental threat from such releases and to rehabilitate state waters in accordance with Parts V and VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements Regulation). The term does not include those actions normally associated with closure or change in service as set out in Part VII of VR 680-13-02 or the replacement of an underground storage tank.

"Department of Waste Management" means the Virginia Department of Waste Management which has jurisdiction over the proper handling and disposal of solid and hazardous wastes in the Commonwealth of Virginia.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10 K report submitted to the U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or (iv) a year-end financial statement authorized under § 6 B or § 6 C of this regulation. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Legal defense cost" is any expense that an owner or operator, or petroleum storage tank vendor, or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Underground Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, school boards or political subdivision of a state.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in th

understanding of this regulation and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum storage tank vendor" means a person who manufactures, sells, installs, or services an underground petroleum storage tank, its connective piping and associated equipment.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner, operator or petroleum storage tank vendor of an underground storage tank through one of the mechanisms listed in §§ 6 through 12, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator or petroleum storage tank vendor.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or *"UST"* means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49

U.S.C. App. 1671, et seq.), or

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Stormwater or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

§ 2. Applicability.

A. This regulation applies to owners and operators of all petroleum underground storage tank (UST) systems regulated under VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements Regulation) and petroleum storage tank vendors except as otherwise provided in this section.

B. Owners and operators of petroleum UST systems and petroleum storage tank vendors are subject to these requirements if they are in operation on or after the date for compliance established in § 3.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this regulation.

D. The requirements of this regulation do not apply to owners and operators of any UST system described in § 1.2 B or C of VR 680-13-02.

E. If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in § 3.

§ 3. Compliance dates.

Owners of petroleum underground storage tanks and petroleum storage tank vendors are required to comply with the requirements of this regulation ~~by the following dates:~~ *in accordance with the compliance dates established in federal regulations by the United States Environmental Protection Agency.*

~~1. All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989.~~

~~2. All petroleum marketing firms owning 100-999 USTs; October 26, 1989.~~

~~3. All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1990.~~

~~4. All petroleum UST owners not described in subdivisions 1 through 3 of this section, including all local government entities; October 26, 1990.~~

~~5. All petroleum storage tank vendors; October 26, 1990.~~

§ 4. Amount and scope of required financial responsibility.

A. Owners or operators of petroleum underground storage tanks and petroleum storage tank vendors must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in ~~at least~~ the following per-occurrence *and annual aggregate* amounts:

1. ~~$50,000 for corrective action~~ *Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $5,000 per occurrence for taking corrective action and $15,000 per occurrence for compensating third parties, with an annual aggregate of $20,000* ;

2. ~~$150,000 for compensating third parties for bodily injury and property damage.~~ *Owners and operators with between 600,001, to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $10,000 per occurrence for taking corrective action and $30,000 per occurrence for compensating third parties, with an annual aggregate of $40,000;*

3. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annua

basis into all underground storage tanks owned or operated, $20,000 per occurrence for taking corrective action and $60,000 per occurrence for compensating third parties, with an annual aggregate of $80,000;

4. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $30,000 per occurrence for taking corrective action and $120,000 per occurrence for compensating third parties, with an annual aggregate of $150,000;

5. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000;

6. Petroleum storage tank vendors and other owners and operators, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000.

~~B. Owners or operators of petroleum underground storage tanks and petroleum storage tank vendors must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amount: $200,000.~~

~~C.~~ *B.* For the purposes of subsections ~~B~~ *A* and ~~F~~ *E* only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

~~D.~~ *C.* Except as provided in subsection ~~E,~~ *D,* if the owner or operator or petroleum storage tank vendor uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

1. Taking corrective action;

2. Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

3. Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in ~~subsections~~ *subsection* A ~~and~~ B of this section.

~~E.~~ *D.* If an owner or operator or petroleum storage tank vendor uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be $200,000.

~~F.~~ *E.* If assurance is being demonstrated by a combination of mechanisms, the owner or operator or petroleum storage tank vendor shall demonstrate financial responsibility in the appropriate amount specified in § 4 ~~B~~ *A* of annual aggregate assurance, by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or Guarantee) to provide assurance.

~~G.~~ *F.* The amounts of assurance required under this section exclude legal defense costs.

~~H.~~ *G.* The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator and petroleum storage tank vendor.

§ 5. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an owner or operator or petroleum storage tank vendor may use any one or combination of the mechanisms listed in §§ 6 through 12 to demonstrate financial responsibility under this regulation for one or more underground storage tanks.

B. An owner or operator or petroleum storage tank vendor may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this regulation, the financial statements of the owner or operator or petroleum storage tank vendor are not consolidated with the financial statements of the guarantor.

§ 6. Financial test of self-insurance.

A. An owner or operator, petroleum storage tank vendor, and/or guarantor, may satisfy the requirements of § 4 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator or petroleum storage tank vendor, and/or guarantor must meet the requirements of subsections B or C, and D of this section based on year-end financial statements for the latest completed fiscal year.

B.1. The owner or operator, petroleum storage tank vendor, and/or guarantor must have a tangible net worth at least equal to the total of the applicable aggregate amount required by § 4 ~~B~~ *A* for which a financial test is used to demonstrate financial responsibility.

2. The owner or operator, petroleum storage tank vendor, and/or guarantor must also have a tangible net worth of at least 10 times:

a. The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for

which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147, to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 or the Department of Waste Management under VR 672-10-1 §§ 10.5 L, 10.7 C, 10.7 E, 9.7 C, 9.7 E, 10.7 G, 9.7 G (Virginia Hazardous Waste Management Regulations); and

b. The sum of current plugging and abandonment cost estimates for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR § 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

3. The owner and operator or petroleum storage tank vendor and/or guarantor must comply with subdivision a or b below:

a.(1) The fiscal year-end financial statements of the owner or operator or petroleum storage tank vendor and/or guarantor must be examined by an independent certified public accountant and be accompanied by the accountants report of the examination; and

(2) The firms year-end financial statements cannot include an adverse auditors opinion, a disclaimer of opinion, or a "going concern" qualification.

b.(1)(a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(b) Report annually the firms tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of at least BB ($200,000 to $299,999); and

(2) The firms year-end financial statements, if, independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. The owner or operator or petroleum storage tank vendor and/or guarantor must have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I.

C.1. The owner or operator or petroleum storage tank vendor and/or guarantor must have a tangible net worth at least equal to the total of the applicable aggregate amount required by § 4 ~~B~~ *A* for which a financial test is used to demonstrate financial responsibility.

2. The owner or operator or petroleum storage tank vendor and/or guarantor must also:

a. Meet the financial test requirements for self insurance of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage in each state of business operations to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147, to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 or the Department of Waste Management under VR 672-10-1 §§ 10.5 L, 10.7 C, 10.7 E, 9.7 C, 9.7 E, 10.7 G, 9.7 G (Virginia Hazardous Waste Management Regulations); and

b. Meet the financial test requirements for self-insurance of current plugging and abandonment cost estimates in each state of business operations to EPA under 40 CFR § 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

3. The fiscal year-end financial statements of the owner or operator or petroleum storage tank vendor and/or guarantor must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

4. The firms year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. If the financial statements of the owner or operator or petroleum storage tank vendor and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator or petroleum storage tank vendor and/or guarantor must obtain a special report by an independent certified public accountant stating that:

a. He has compared the data that the letter from the chief financial officer specified as having been derived from the latest year-end financial statements of the owner or operator or petroleum storage tank vendor and/or guarantor with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

6. The owner or operator or petroleum storage tank vendor and/or guarantor must have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To demonstrate that it meets the financial test under

subsections B or C of this section, the chief financial officer of the owner or operator, petroleum storage tank vendor and/or guarantor must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate Alternative I or II, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an owner or operator or petroleum storage tank vendor using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator or petroleum storage tank vendor must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the owner or operator, petroleum storage tank vendor and/or guarantor. If the board finds, on the basis of such reports or other information, that the owner or operator, petroleum storage tank vendor and/or guarantor no longer meets the financial test requirements of § 6 B or C and D, the owner or operator or petroleum storage tank vendor must obtain alternate coverage within 30 days after notification of such a finding.

G. If the owner or operator or petroleum storage tank vendor fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the board that he or she no longer meets the requirements of the financial test, the owner or operator or petroleum storage tank vendor must notify the board of such failure within 10 days.

§ 7. Guarantee.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

1. A firm that:

a. Possesses a controlling interest in the owner or operator or petroleum storage tank vendor;

b. Possesses a controlling interest in a firm described under subdivision A 1a of this section; or

c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator or petroleum storage tank vendor; or

2. A firm engaged in a substantial business relationship with the owner or operator or petroleum storage tank vendor and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of § 6 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and must deliver the letter to the owner or operator or petroleum storage tank vendor. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator or petroleum storage tank vendor. If the board notifies the guarantor that he no longer meets the requirements of the financial test of § 6 B or C and D, the guarantor must notify the owner or operator or petroleum storage tank vendor within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator or petroleum storage tank vendor receives the notification, as evidenced by the return receipt. The owner or operator or petroleum storage tank vendor must obtain alternate coverage as specified in § 19 C.

C. The guarantee must be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An owner or operator or petroleum storage tank vendor who uses a guarantee to satisfy the requirements of § 4 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

§ 8. Insurance and group self-insurance pool coverage.

A.1. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or group self insurance pool.

2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools must comply with Virginia Code § 62.1-44.34:12 and the State Corporation Commission Bureau of Insurance Regulation No. 33.

B. Each insurance policy must be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a

certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

C. Each insurance policy must be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of corrective action or damaged third party, as provided in this regulation, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11.

§ 9. Surety bond.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond must be worded identically as specified in Appendix V, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator or petroleum storage tank vendor fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The owner or operator or petroleum storage tank vendor who uses a surety bond to satisfy the requirements of § 4 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

§ 10. Letter of credit.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit must be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. An owner or operator or petroleum storage tank vendor who uses a letter of credit to satisfy the requirements of § 4 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

D. The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator or petroleum storage tank vendor by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator or petroleum storage tank vendor receives the notice, as evidenced by the return receipt.

§ 11. Trust fund.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the owner or operator or petroleum storage tank vendor. The wording of the trust agreement must be identical to the wording specified in Appendix VII, and must be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator or petroleum storage tank vendor may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this regulation is substituted for all or part of the trust fund, the owner or operator or petroleum storage tank vendor may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the owner or operator or petroleum storage tank vendor for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the owner or operator or petroleum storage tank vendor such funds as the board specifies in writing.

§ 12. Standby trust fund.

A. An owner or operator or petroleum storage tank vendor using any one of the mechanisms authorized by §§ 7, 9 and 10 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement or trust agreement must be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner or operator or petroleum storage tank vendor may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

§ 13. Substitution of financial assurance mechanisms by owner or operator or petroleum storage tank vendor.

A. An owner or operator or petroleum storage tank vendor may substitute any alternate financial assurance mechanisms as specified in this regulation, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of § 4.

B. After obtaining alternate financial assurance as specified in this regulation, an owner or operator or petroleum storage tank vendor may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

§ 14. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator or petroleum storage tank vendor.

1. Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator or petroleum storage tank vendor receives the notice of termination, as evidenced by the return receipt.

2. Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured may not occur until 60 days after the date on which the owner or operator or petroleum storage tank vendor receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the owner or operator or petroleum storage tank vendor receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in § 15, the owner or operator or petroleum storage tank vendor must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator or petroleum storage tank vendor fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator or petroleum storage tank vendor must immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. The evidence of the financial assurance mechanism subject to the termination maintained in accordance with § 16 B.

§ 15. Reporting by owner or operator or petroleum storage tank vendor.

A. An owner or operator must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board within 30 days after the owner or operator identifies or confirms a release from an underground storage tank required to be reported

under § 5.4 or § 6.2 of VR 680-13-02.

B. An owner or operator or petroleum storage tank vendor must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board if the owner or operator or petroleum storage tank vendor fails to obtain alternate coverage as required by this regulation within 30 days after the owner or operator or petroleum storage tank vendor receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

3. Failure of a guarantor to meet the requirements of the financial test,

4. Other incapacity of a provider of financial assurance.

C. An owner or operator or petroleum storage tank vendor must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board as required by §§ 6 G and 14 B.

D. An owner or operator must certify compliance with the financial responsibility requirements of this regulation as specified in the new tank notification form when notifying the board of the installation of a new underground storage tank under § 2.3 of VR 680-13-02.

E. The board may require an owner or operator or petroleum storage tank vendor to submit evidence of financial assurance as described in § 16 B or other information relevant to compliance with this regulation at any time.

§ 16. Recordkeeping.

A. Owners or operators and petroleum storage tank vendors must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this regulation for an underground storage tank until released from the requirements of this regulation under § 18. An owner or operator and petroleum storage tank vendor must maintain such evidence at the underground storage tank site or the owner's or operator's and petroleum storage tank vendor's place of business in this Commonwealth. Records maintained off-site must be made available upon request of the board.

B. Owners or operators and petroleum storage tank vendors must maintain the following types of evidence of financial responsibility:

1. An owner or operator or petroleum storage tank vendor using an assurance mechanism specified in §§ 6 through 11 must maintain a copy of the instrument worded as specified.

2. An owner or operator or petroleum storage tank vendor using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

3. An owner or operator or petroleum storage tank vendor using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

4. An owner or operator or petroleum storage tank vendor using an insurance policy or group self-insurance pool coverage must maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

5.a. An owner or operator or petroleum storage tank vendor using an assurance mechanism specified in §§ 6 through 11 must maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The owner or operator or petroleum storage tank vendor must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

§ 17. Drawing on financial assurance mechanisms.

A. The board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

1.a. The owner or operator or petroleum storage tank vendor fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

b. The board determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, or petroleum storage tank vendor, or the owner or operator has notified the board pursuant to Parts V and VI of VR 680-13-02 of a release from an underground storage tank covered by the mechanism; or

2. The conditions of subdivision B 1 or B 2a or B 2b of this section are satisfied.

B. The board may draw on a standby trust fund when:

1. The board makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part VI of VR 680-13-02; or

2. The board has received either:

a. Certification from the owner or operator or petroleum storage tank vendor and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or,

b. A valid final court order establishing a judgment against the owner or operator or petroleum storage tank vendor for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this regulation and the board determines that the owner or operator or petroleum storage tank vendor has not satisfied the judgment.

c. If the board determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for third-party liability claims in the order in which the board receives certifications under subdivision B 2a of this section and valid court orders under subdivision B 2b of this section.

§ 18. Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under this regulation for an underground storage tank after the tank has been properly closed or a change-in-service properly completed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by Part VII of VR 680-13-02.

§ 19. Bankruptcy or other incapacity of owner, operator, petroleum storage tank vendor or provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator or petroleum storage tank vendor as debtor, the owner or operator or petroleum storage tank vendor must notify the board by certified mail of such commencement and submit the appropriate forms listed in § 16 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator or petroleum storage tank vendor by certified mail of such commencement as required under the terms of the guarantee specified in § 7.

C. An owner or operator or petroleum storage tank vendor who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The owner or operator or petroleum storage tank vendor must obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the owner or operator or petroleum storage tank vendor does not obtain alternate coverage within 30 days after such notification, he must immediately notify the board in writing.

D. Within 30 days after receipt of written notification that the Virginia Underground Petroleum Storage Tank Fund has become incapable of covering costs in excess of those specified in § 4 up to $1 million, for paying for assured corrective action or third-party compensation costs, the owner or operator or petroleum storage tank vendor must obtain alternate financial assurance in accordance with Subpart H of 40 CFR Part 280.

§ 20. Replenishment of guarantees, letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator or petroleum storage tank vendor shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required, or

2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by § 4 of this regulation. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

§ 21. Virginia Underground Petroleum Storage Tank Fund (Fund).

A. The Fund will be used for costs in excess of the financial responsibility requirements specified under § 4 A up to $1 million per occurrence for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks in accordance with the following:

1. Corrective action disbursements for accidental releases with no associated third party disbursements from the fund shall not exceed ~~$950,000 per occurrence.~~ *:*

a. $995,000 for the $5,000 corrective action requirement;

b. $990,000 for the $10,000 corrective action requirement;

c. $980,000 for the $20,000 corrective action requirement;

d. $970,000 for the $30,000 corrective action requirement;

e. $950,000 for the $50,000 corrective action requirement.

Third party disbursements for accidental releases with no corrective action disbursements from the fund shall not exceed ~~$850,000 per occurrence.~~ *:*

a. $985,000 for the $15,000 third party requirement;

b. $970,000 for the $30,000 third party requirement;

c. $940,000 for the $60,000 third party requirement;

d. $880,000 for the $120,000 third party requirement;

e. $850,000 for the $150,000 third party requirement.

Combined corrective action and third party disbursements from the fund shall not exceed ~~$800,000 per occurrence, except as specified in subdivision C 2 of this subsection.~~ *:*

a. $980,000 for the $20,000 combined requirement;

b. $960,000 for the $40,000 combined requirement;

c. $920,000 for the $80,000 combined requirement;

d. $850,000 for the $150,000 combined requirement;

e. $800,000 for the $200,000 combined requirement.

The first priority for disbursements from the fund shall be for corrective action costs necessary to protect human health and the environment. Third party liability claims against the Fund shall only be paid in accordance with final court orders where the board has been represented or in cases of an agreed settlement between the third party and the board.

2. Owner or operator managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI of VR 680-13-02 may proceed to pay for all costs incurred for such activities. An accounting submitted to the board of all costs incurred will be reviewed and those costs in excess of the financial responsibility requirements up to $1 million which are reasonable and have been approved by the board will be reimbursed from the Fund.

3. Joint owner or operator and board managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI of VR 680-13-02 may proceed to pay for those costs up to the ~~first $50,000~~ *amount of required financial responsibility specified in § 4 A* . An accounting of all costs incurred shall be submitted to the board and those costs which are reasonable and approved by the board will be applied to the owner or operator financial responsibility requirement. After the owner or operator meets the financial responsibility requirement the site will become a state managed cleanup. In order to have an orderly transition from the owner or operator managed cleanup to a board managed cleanup, the owner or operator shall only initiate activities associated with Part VI §§ 6.4 through 6.8 of VR 680-13-02 which can be completed within the owner or operator financial responsibility requirement.

Owners or operators who cannot complete a corrective action activity within the financial responsibility requirement, shall make available upon demand by the board the unexpended financial requirement moneys for the board's use in continuing a state managed cleanup at the site. The foregoing does not relieve owners or operators of their responsibility to conduct activities associated with Part VI §§ 6.1 through 6.3 of VR 680-13-02.

4. No person shall receive reimbursement from the Fund for any costs or damages incurred:

(a) Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental

regulations under VR 680-13-02 or this regulation; or

(b) Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee or agent, or anyone within the privity or knowledge of that person; or

(c) Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has (i) failed to carry out the instructions of the board, committed willful misconduct or been negligent in carrying out or conducting actions under Part V or VI of VR 680-13-02 or (ii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting actions under Parts V or VI of VR 680-13-02; or

(d) Where the claim has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism.

5. No person shall receive reimbursement from the Fund for third party bodily injury or property damage claims:

(a) Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the claimant, his employee or agent, or anyone within his privity or knowledge; or

(b) Where the claim has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism.

B. The Fund will be used to demonstrate financial responsibility requirements for owners or operators in excess of the amounts specified under § 4 ~~B~~ *A* up to the $1 million or $2 million annual aggregate, as applicable, required by 40 CFR Part 280, Subpart H for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

C. This Fund may also be used for the following:

1. Costs incurred by the board for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the board to protect human health and the environment.

2. Costs incurred by the board for taking both corrective action and third party liability claims up to $1 million for any release of petroleum into the environment from an underground storage tank:

a. Whose owner or operator cannot be determined by the board within 90 days; or

b. Whose owner or operator is incapable, in the judgment of the board, of carrying out such corrective action properly and paying for third party liability claims.

3. Costs incurred by the board for taking corrective action for any release of petroleum into the environment from tanks which are otherwise specifically listed in VR 680-13-02 § 1.1 as exemptions in the definition of an underground storage tank.

4. All other uses authorized by Virginia Code § 62.1-44.34:11.

D. The board shall seek recovery of Fund moneys expended for corrective action in accordance with Virginia Code § 62.1-44.34:11 where the owner or operator has violated substantive environmental regulations under VR 680-13-02 or this regulation.

E. The board shall have the right of subrogation for moneys expended from the Fund as compensation for bodily injury, death, or property damage against any person who is liable for such injury, death or damage.

F. No funds shall be paid for reimbursement of moneys expended by an owner or operator for corrective action and for compensating third parties for bodily injury and property damage prior to ~~the effective date of this regulation~~ *December 22, 1989* .

G. No disbursements shall be made from the Fund for owners or operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

§ 22. Notices to the State Water Control Board.

All requirements of this regulation for notification to the State Water Control Board shall be addressed as follows:

Executive Director
State Water Control Board
2111 North Hamilton Street
P.O. Box 11143
Richmond, Virginia 23230-1143

§ 23. Delegation of authority.

The executive director, or in his absence a designee acting for him, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

APPENDIX I

LETTER FROM CHIEF FINANCIAL OFFICER

NOTE: The instructions in brackets are to be replaced

by the relevant information and the brackets deleted.

I am the chief financial officer of [insert: name and address of the owner or operator*, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements)]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator " or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulation for each state of business operations (specify state):

..... Amount

Closure (§§ 264.143 and 265.143) ..... $ .....

Post-Closure Care (§§ 264.145 and 265.145) ..... $ .....

Liability Coverage (§§ 264.147 and 265.147) ..... $ .....

Corrective Action (§ 264.101(b)) ..... $ .....

Plugging and Abandonment (§§ 144.63) ..... $ .....

[Other State Programs (specify state)

Closure ..... $ .....

Post-Closure Care ..... $ .....

Liability Coverage ..... $ .....

Corrective Action ..... $ .....

Plugging and Abandonment ..... $ .....]

Virginia Hazardous Waste Management Regulations:

Closure (VR 672-10-1 §§ 10.7.C. and 9.7.C) ..... $ .....

Post-Closure Care (VR 672-10-1 §§ 10.7.E and 9.7.E.) $ .....

Liability Coverage (VR 672-10-1 §§ 10.7.G. and 9.7.G.) ..... $ .....

Corrective Action (VR 672-10-1 § 10.5.L.2.) ..... $ .....

Plugging and Abandonment (40 CFR § 144.63) ..... $ .....

..... TOTAL ..... $ .....

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteri of § 6 B are being used to demonstrate compliance wi the financial test requirements. Fill in the information fo Alternative II if the criteria of § 6 C are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee ... $ .....

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee ..... $ .....

3. Sum of lines 1 and 2 ..... $ .....

4. Total tangible assets ..... $ .....

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6] ..... $.....

6. Tangible net worth [subtract line 5 from line 4] .. $ .....

7. Is line 6 at least equal to line 1 above? Yes ... No ...

8. Is line 6 at least equal to the sum of line 1 plus 10 times line 2? Yes ... No ...

9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? Yes ... No ...

10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? Yes ... No ...

11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? Yes ... No ...

12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of at least BB ($200,000 to $299,999)? [Answer "Yes" only if both criteria have been met.] Yes ... No ...

13. If you did not answer Yes to one of lines 9 through 12, please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 4 through 8 above and the financial statements for the latest fiscal year.

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee ... $ .....

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee ..... $ .....

3. Sum of lines 1 and 2 ..... $ .....

4. Total tangible assets ..... $ .....

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6] ..... $ .....

6. Tangible net worth [subtract line 5 from line 4] .. $ .....

7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] ..... $ .....

8. Is line 6 at least equal to line 1 above? Yes ... No ...

9. Is line 6 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes ... No ...

10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.] Yes ... No ...

11. Is line 7 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes ... No ...

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets ..... $ .....

13. Current liabilities ..... $ .....

Net working capital [subtract line 13 from line 12] . $ .....

15. Is line 14 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes ... No ...

16. Current bond rating of most recent bond issue Yes ... No ...

17. Name of rating service Yes ... No ...

18. Date of maturity of bond Yes ... No ...

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rura Electrification Administration? Yes ... No ...

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For Alternatives I and II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of VR 680-13-03 as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

APPENDIX II

GUARANTEE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and to any and all third parties, and obligees, on behalf of [owner or operator*] of [business address].

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of § 6.B or C and D of the Virginia Petroleum Underground Storage Tank Financial Requirement Regulation VR 680-13-03, and agrees to comply with the requirements for guarantors as specified in § 7.B of VR 680-13-03.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3. of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.] This guarantee satisfies VR 680-13-03 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location! arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the State Water Control Board and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of § 17 of VR 680-13-03, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with Part VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of § 17 of VR 680-13-03, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the State Water Control Board, shall fund a standby trust in accordance with the provisions of § 17 of VR 680-13-03 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of § 6 B or C and D of VR 680-13-03, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration o any obligation of [owner or operator] pursuant to VR 680-13-02 and VR 680-13-03.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of VR 680-13-03 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct resul

of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of VR 680-13-03 as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]

Signature of witness or notary:

APPENDIX III

ENDORSEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Group Self-Insurance Pool]:

Address of [Insurer or Group Self-Insurance Pool]:

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03).

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the corrective action "each occurence" and third party "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11 of VR 680-13-03.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the

insurance by the ["Insurer" or "Pool"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in Appendix III of VR 680-13-03 and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer or Group Self-Insurance Pool]
[Name of person signing]
[Title of person signing], Authorized Representative of [name of Insurer or Group Self-Insurance Pool]
[Address of Representative]

APPENDIX IV

CERTIFICATE OF INSURANCE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Group Self-Insurance Pool]:

Address of [Insurer or Group Self-Insurance Pool]:

Name of Insured:

Address of Insured:

Certification:

1. [Name of Insurer or Group Self-Insurance Pool], [the "Insurer" or "Pool"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s) in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03).

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the corrective action "each occurrence" and third party "each occurrence" and "annual aggregate" limits of the Insurer's or Groups liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Pool"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by

the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11 of VR 680-13-03.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of VR 680-13-03 and that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer]
[Type name] [Title], Authorized Representative of
[name of Insurer or Group Self-Insurance Pool]
[Address of Representative]

APPENDIX V

PERFORMANCE BOND

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]* Type of organization: [insert "individual" "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.
Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:
Corrective Action (per occurrence ..... $ .....
Third Party Liability (per occurrence) ..... $ .....
Annual aggregate ..... $ .....

Surety's bond number:

Know All Persons by These Presents, that we, the principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under §§ 62.1-44.34:8 through § 62.1-44.34:12 of the Code of Virginia, Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, and under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03), to provide financial assurance for [insert: "taking corrective action" and/or

"compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with Part VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements) and the State Water Control Board's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in VR 680-13-03, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator*] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to ["take corrective action, in accordance with Part VI of VR 680-13-02 and the State Water Control Board's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in, accordance with VR 680-13-02 and the Board's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under § 17 of VR 680-13-03.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under § 17 of VR 680-13-03.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of VR 680-13-03 as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
State of Incorporation:
Liability limit: $ ....
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ ....

APPENDIX VI

IRREVOCABLE STANDBY LETTER OF CREDIT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and address of issuing institution] [Name and address of the Executive Director of the State Water Control Board of the Commonwealth of Virginia and Director(s) of other state implementing agency(ies)] Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No .... in your favor, at the request and for the account of [owner or operator* name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No..... and

(2) your signed statement reading as follows: "I certify

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. that the amount of the draft is payable pursuant to regulations issued under authority of §§ 62.1-44.34:8 through 62.1-44.34:12 of the Code of Virginia and Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $ [insert dollar amount] per occurrence and [in words] $ [insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation, of [insert owner or operator*] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03 (Virginia Petroleum Underground Storage Tank Financial Requirements Regulation).

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of VR 680-13-03 as such regulations were constituted on the date

shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX VII

TRUST AGREEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator*], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of ....." or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es)

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. of the facility(ies) where the tanks are located that are covered by the standby trust agreement.;

Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "VR 680-13-03" is the Petroleum Underground Storage Tank Financial Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert, owner or operator] under a workers compensation, disability benefits, or unemployment

compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the State Water Control Board, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of VR 680-13-03 as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]

Attest:

[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]

[Signature of Witness]
[Name of Witness]
[Title]
[Seal]

APPENDIX VIII

CERTIFICATION OF ACKNOWLEDGEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of

County of

On this [date], before me personally came [owner or operator*] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]
My Commission expires:

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

APPENDIX IX

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Owner or operator or petroleum storage tank vendor] hereby certifies that it is in compliance with the requirements of VR 680-13-03 (Petroleum Underground Storage Tank Financial Requirements Regulation).

The financial assurance mechanism[s] used to demonstrate financial responsibility under VR 680-13-03 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator or petroleum storage tank vendor]
[Name of owner or operator or petroleum storage tank vendor] [Title] [Date]
[Signature of notary]
[Name of notary] [Date] My Commission expires:

APPENDIX X

CERTIFICATION OF VALID CLAIM

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

The undersigned, as principals and as legal representatives of [insert owner or operator*] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $.

[Signatures] ..... [Signature(s)]
Owner or Operator ..... Claimant(s)

Attorney for ..... Attorney(s) for
Owner or Operator ..... Claimant(s)

(Notary) Date ..... (Notary) Date

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

VA.R. Doc. No. R94-5; Filed September 14, 1993, 3:19 p.m.

EXECUTIVE MEMORANDUM 3-93

Subject:

Natural Disaster Due To Pine Bark Beetle Infestation

Preface:

A severe outbreak of southern pine bark beetle infestation is attacking and killing vast acres of pine forest in Virginia, particularly the counties of Albemarle, Appomattox, Buckingham, Campbell, Chesterfield, Fluvanna, Goochland, Hanover, Louisa, Page, Pittsylvania, Rockingham, and Shenandoah. The outbreak of this destructive insect has killed over eight million trees at 18,000 infested locations and its spread will not likely subside until cold winter weather arrives. As a result of this natural disaster and with a lack of adequate markets, the inaccessibility of timber, and the rapid deterioration of the infected trees, Virginia landowners have already lost over $100 million in timber value, with losses over the longer term likely to reach nearly $1 billion.

The sudden destruction of such vast quantities of our forest resource could lead to future timber shortages and have a negative impact on the landowners' financial well-being and the forest products industry.

Purpose:

This memorandum establishes that all executive branch state agencies with related function should take action to abide by the policies listed below.

General Policy:

As Governor I call upon all executive branch agencies of the Commonwealth, to the fullest extent allowed by law and within their current appropriations, to provide assistance to the landowners and the Department of Forestry to publicize the need for insect suppression efforts and to support timber salvage efforts.

I also call upon the forest products industry and forestry organizations to provide as much support as possible to these private landowners in timber salvage efforts, reforestation of the infested areas and the prevention and suppression of forest fires on those lands damaged by the insect outbreak.

Finally, I am appealing to the U.S. Internal Revenue Service to be sensitive to the financial burden which these landowners will face and, to the extent possible, provide assistance and support to the affected taxpayers to allow them to receive any tax advantages available under federal laws and regulations.

Continuation:

This Executive Memorandum shall be effective upon its signing and shall remain in full force and effect until superseded or rescinded by further Executive Memorandum. Given under my hand this 23rd day of August 1993.

/s/ Lawrence Douglas Wilder
Governor

VA.R. Doc. No. R94-3; Filed September 2, 1993, 4:18 p.m.

EXECUTIVE ORDER NUMBER SEVENTY-FOUR (93)

JOB TRAINING PARTNERSHIP ACT AND RELATED PROGRAMS

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and including, but not limited to, Sections 2.1-704, 2.1-707, and 2.1-710 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby assign authority for carrying out the State's responsibilities under the federal Job Training Partnership Act, PL 97-300 as amended by PL 102-367 (hereafter referred to as the Act).

The purpose of programs funded under the Act is to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the workforce and enhancing the productivity and competitiveness of the nation.

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

The Governor's Job Training Coordinating Council is hereby continued as an advisory body in accordance with Section 2.1-704 of the Code of Virginia and the provisions of the Act, as hereinafter provided. The Secretary of Health and Human Resources will provide policy guidance and direction for the Council.

The Council's primary duty shall be to recommend a coordinated state policy for all job training programs that results in better job opportunities, improved program coordination, and reduced duplication of services and activities. The Council shall have the following specific advisory responsibilities:

1. To recommend to the Governor a coordination and special services plan, as required by the Act;

2. To recommend to the Governor substate service delivery areas, to plan resource allocations not subject to Section 202(b) or 262(b) of the Act, to provide management guidance and review for all programs in the state, to develop appropriate linkages with other employment and training programs, to coordinate

activities with private industry councils established under the Act, to develop the Governor's Coordination and Special Services Plan, and to recommend variations in performance standards;

3. To advise the Governor and local entities on job training plans and to certify the consistency of such plans with criteria set forth in the Governor's Coordination and Special Services Plan for coordinating activities under the Act with other federal, state and local employment-related programs, including programs operated in designated urban enterprise zones in accordance with Section 59.1-274 of the Code of Virginia;

4. To review the operation of programs conducted in each service delivery area, including the availability, responsiveness, and adequacy of state services, and to recommend to the Governor, state agencies, appropriate chief elected officials, private industry councils, service providers, the General Assembly, and the general public, ways to improve the effectiveness of programs or services provided under the Act;

5. To review the reports made pursuant to paragraphs (D) and (E) of Section 104(b)(12) and to make recommendations for technical assistance and corrective action, based on the results of such reports;

6. To prepare a summary of the reports made pursuant to paragraphs (D) and (E) of Section 104(b)(12) detailing promising service delivery approaches developed in each service delivery area for the training and placement of women in nontraditional occupations, and to disseminate annually such summary to service delivery areas, service providers throughout the state and to the Secretary of Labor;

7. To review the activities of the Governor to train, place and retain women in nontraditional employment, including activities under section 123, to prepare a summary of activities and an analysis of results, and to disseminate annually such summary to service delivery areas, service providers throughout the state and to the Secretary of Labor;

8. To consult with the sex equity coordinator established under section 111(b) of the Carl D. Perkins Vocational and Applied Technology Education Act, to obtain from the sex equity coordinator a summary of activities and analysis of results in training women in nontraditional employment under the Carl D. Perkins Vocational and Applied Technology Education Act, and to disseminate annually such summary to service delivery areas, service providers throughout the state and to the Secretary of Labor;

9. To review and comment on the state plan developed for the state employment service agency;

10. To make an annual report to the Governor, which shall be a public document, and to issue such other studies, reports, or documents as it deems advisable to assist service delivery areas in carrying out the purposes of the Act;

11. To identify, in concert with appropriate state agencies, the Commonwealth's employment and training and vocational education needs, and to assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state, and local programs and services represent a consistent, integrated, and coordinated approach to meeting those needs; to comment at least once annually on the measures taken pursuant to section 113(b)(14) of the Carl D. Perkins Vocational Education Act; and

12. To review plans of all state agencies that provide employment, training, and related services, including the state plan developed pursuant to Section 8(a) of the federal Wagner-Peyser Act and the plan required pursuant to Section 114 of the federal Carl D. Perkins Vocational Education Act of 1984; and to provide comments and recommendations to the Governor, the General Assembly and the appropriate state and federal agencies on the appropriateness and effectiveness of employment and training and related service delivery systems in the Commonwealth.

All reports, recommendations, reviews, and plans prepared by the Council shall be transmitted to the Secretary of Health and Human Resources and the Secretary of Economic Development, who jointly will advise the Governor on appropriate actions to be taken with respect to such submissions.

All state agencies, institutions, and collegial bodies are instructed to cooperate and assist the Council in the performance of its duties when requested to do so. The Council may seek advice and assistance from any available source. The Council may establish such ad hoc advisory committees as it deems necessary and appropriate for the performance of its duties. Local government officials and community leaders throughout the Commonwealth are requested and urged to advise and assist the Council in the performance of its duties.

The Council shall consist of thirty members appointed by the Governor and serving at his pleasure. The Governor shall appoint the chairman of the Council, who shall be a nongovernmental member. The Council shall consist of representatives of the groups listed below.

1. Nine members shall be private sector representatives from private for-profit companies or other major nongovernmental employers. One member from this group shall represent agricultural interests. Three of the private sector members shall represent private sector organizations with 500 or fewer

employees.

2. Seven state officials, or their designees, shall be appointed as follows:

One member of the General Assembly of Virginia,

The Commissioner of the Virginia Employment Commission,

The Commissioner of the Department of Rehabilitative Services,

The Commissioner of the Department of Social Services,

A community college president, appointed from nominations of the Advisory Council of Community College Presidents,

The Director of Workforce Services of the Department of Economic Development, and

The Division Chief for Adolescent Education of the Department of Education.

3. One member shall be a representative of units of general local government or consortia thereof and shall represent administrative entities or grantees under the Act, and shall be appointed from nominations of the chief elected officials of such units or consortia.

4. One member shall be a representative of local educational agencies who shall be appointed from nominations by the Virginia Association of School Administrators.

5. Nine members shall be representatives of organized labor and community-based organizations.

6. Three members shall be appointed from the general public.

Members of the Council will be eligible for reimbursement for their travel expenses in accordance with state travel regulations.

GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

In accordance with Section 2.1-708 of the Code of Virginia, the Governor's Employment and Training Department receives all federal funds allocated under Titles II and III of the Act and is responsible for implementing Titles I, II, and the substate part of Title III.

In accordance with Section 2.1-707 of the Code of Virginia, the Department, under the direction of its Executive Director, shall provide assistance to the Council. Such staff support as is deemed necessary by the Executive Director for the conduct of the Council's business is to be furnished by the Governor's Employment and Training Department. Such funding as is deemed necessary by the Executive Director for the Council's operation is to be provided from funds appropriated to the Department.

The Governor's Employment and Training Department and each other state agency that administers employment and training programs shall coordinate their planning and develop means to assure the best quality job training and placement programs for participants in programs funded under the Act.

The administrative entities of the service delivery areas have been designated by the Governor as the substate grantees under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA). Oversight of the substate grantees and reporting requirements shall be the shared responsibility of the Governor's Employment and Training Department and the Virginia Employment Commission as outlined in a memorandum of understanding between the Department and the Commission.

VIRGINIA EMPLOYMENT COMMISSION

In accordance with Section 2.1-710 of the Code of Virginia, the Virginia Employment Commission is designated as the agency responsible for administering and managing the following programs authorized by PL 97-300 as amended by PL 102-367:

Dislocated Worker Unit under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA); and

Labor Market Information (Title IV, Part E).

The Commission will continue to operate the Title III Dislocated Worker Program through completion and closeout, to include National Reserve Discretionary Projects.

The Commission will receive the state program allocation through the Governor's Employment and Training Department for the purpose of implementing the responsibilities of the Dislocated Worker Unit.

DEPARTMENT OF EDUCATION

In accordance with Section 2.1-710 of the Code of Virginia, the Virginia Department of Education is designated as the agency responsible for administering the state education grants authorized by Section 123 of the Act. The Department of Education will receive appropriate funds granted under the Act through the Governor's Employment and Training Department. In addition to those funds, the Department of Education will arrange for matching funds as required by the Act to provide education and training programs for eligible participants

through agreements with administrative entities in service delivery areas in Virginia and, where appropriate, local education agencies. Funds available for program coordination will be used in conformity with the adopted Governor's Coordination and Special Services Plan.

OLDER WORKER PROGRAM

The Governor's Employment and Training Department is designated as the agency responsible for administering employment and training programs for older individuals authorized under Title V of the Older Americans Act and the Job Training Partnership Act. The agency also may negotiate with national Title V sponsors to administer older worker programs in Virginia.

These programs shall be designed to assure the training and placement of older individuals in employment opportunities with private business concerns. Wherever possible, these programs shall train participants for jobs in growth industries and jobs that reflect the use of new technological skills. Funds available shall be allocated in conformity with the Governor's Coordination and Special Services Plan.

The JTPA older worker program for eligible individuals shall be developed in conjunction with the service delivery areas and shall be consistent with the substate plan goals of the service delivery areas and the Governor's Coordination and Special Services Plan.

This Executive Order will become effective upon its signing and will remain in full force and effect until June 30, 1994, unless amended or rescinded by further executive order.

This Executive Order rescinds Executive Order Number Fifty-Eight (92) issued the 23rd day of November, nineteen hundred and ninety two.

Given under my hand and under the Seal of the Commonwealth of Virginia this 23rd day of August, 1993.

/s/ Lawrence Douglas Wilder
Governor

VA.R. Doc. No. R94-2; Filed September 2, 1993, 4:18 p.m.

EXECUTIVE ORDER NUMBER SEVENTY-EIGHT (93)

DECLARATION OF A STATE OF EMERGENCY ARISING FROM THE IMMINENT ARRIVAL OF HURRICANE EMILY TO VIRGINIA

As a precautionary measure, and to ensure that all government resources of the Commonwealth are available and ready, I am declaring a state of emergency, effective August 30, 1993, for all areas of the state due to the impending arrival of Hurricane Emily. The potential onslaught of this major storm imperils the coastal regions of the state to the dangers of high winds and storm surge. The interior regions are endangered by possible torrential rains with resultant riverine flooding.

The health and general welfare of the citizens of the affected areas require that state action be taken to help alleviate the conditions brought about by this potential situation, which constitutes an emergency as contemplated under the provisions of Section 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by Sections 44-75.1 and 44-146.17 of the Code of Virginia, as Governor, as Commander in Chief of the armed forces of the Commonwealth, and as Director of Emergency Services, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I do hereby declare that a state of emergency exists in the affected areas of the Commonwealth and direct that appropriate assistance be rendered by agencies of the state government to alleviate any conditions accruing from Hurricane Emily.

I further direct that the Adjutant General of Virginia make available, on state active duty service, such members of the Virginia National Guard and such equipment as might be necessary to alleviate the effects of the hurricane in the state.

Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following benefits will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the Code of Virginia, and subject to the concurrence of the Board of Military Affairs, I now approve of future expenditures out of appropriations to the Department of Military Affairs

for such federal-type benefits as being manifestly for the benefit of the military service.

Recognizing the uncertainty of the hurricane at the time of the execution of this document, I am prepared to take further executive action if the storm escalates, changes its direction or otherwise imperils the Commonwealth to the extent that I deem such further steps are necessary.

This Executive Order shall be effective upon its signing, and shall remain in full force and effect until June 30, 1994, unless sooner amended or rescinded by further executive order. That portion providing for benefits for members of the National Guard in the event of injury or death shall continue to remain in effect after termination of this Executive Order as a whole.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of August, 1993.

/s/ Lawrence Douglas Wilder
Governor

VA.R. Doc. No. R94-1; Filed September 2, 1993, 4:18 p.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

BOARD OF PHARMACY

Title of Regulation: **VR 530-01-1. Regulations Governing the Practice of Pharmacy.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: September 14, 1993

VA.R. Doc. No. R94-15; Filed September 15, 1993, 3:15 p.m.

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Title of Regulation: **VR 530-01-2. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.**

Governor's Comment:

No objections to the proposed regulations.

/s/ Lawrence Douglas Wilder
Governor
Date: September 10, 1993

VA.R. Doc. No. R94-11; Filed September 13, 1993, 11:04 a.m.

TREASURY BOARD

Title of Regulation: **VR 640-02. Security for Public Deposits Act Regulations.**

Governor's Comment:

The Department of the Treasury submitted revised proposed regulations which included substantive changes as a result of public comment. I do not object to the revised draft of these regulations. However, I reserve the right to comment on the final package, including any additional changes made as a result of final review by the Office of the Attorney General and public hearings and comments, before promulgation. I recommend the Treasury Board consider the suggestions made by the Department of Planning and Budget to clarify the revised proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: September 9, 1993

VA.R. Doc. No. R94-10; Filed September 14, 1993, 10:41 a.m.

THE LEGISLATIVE Record
VOLUME 3 NUMBER 4 VIRGINIA DIVISION OF LEGISLATIVE SERVICES SEPTEMBER 1993

HJR 526: Joint Subcommittee Studying the BPOL Tax

August 6, 1993, Richmond

During the second meeting of the joint subcommittee studying the BPOL tax, representatives from the business community and local government voiced their concerns about the business, professional, and occupational license (BPOL) tax and offered suggestions for possible changes.

Concerns

Business

The recurring theme from the business sector is how inequitable and regressive the BPOL tax is and the complexity of its administration. A business subject to the tax in one locality may not be subject to it in a neighboring locality, or the rates for the same business might be different. This can create bookkeeping nightmares for businesses located in more than one locality, particularly smaller businesses.

Determining into which BPOL tax category businesses fall can be confusing. The guidelines prepared by the Department of Taxation for use by the localities in making this determination have not been updated in several years. Therefore, a great deal of discretion is afforded the local jurisdictions, which makes it difficult for businesses to plan with any certainty.

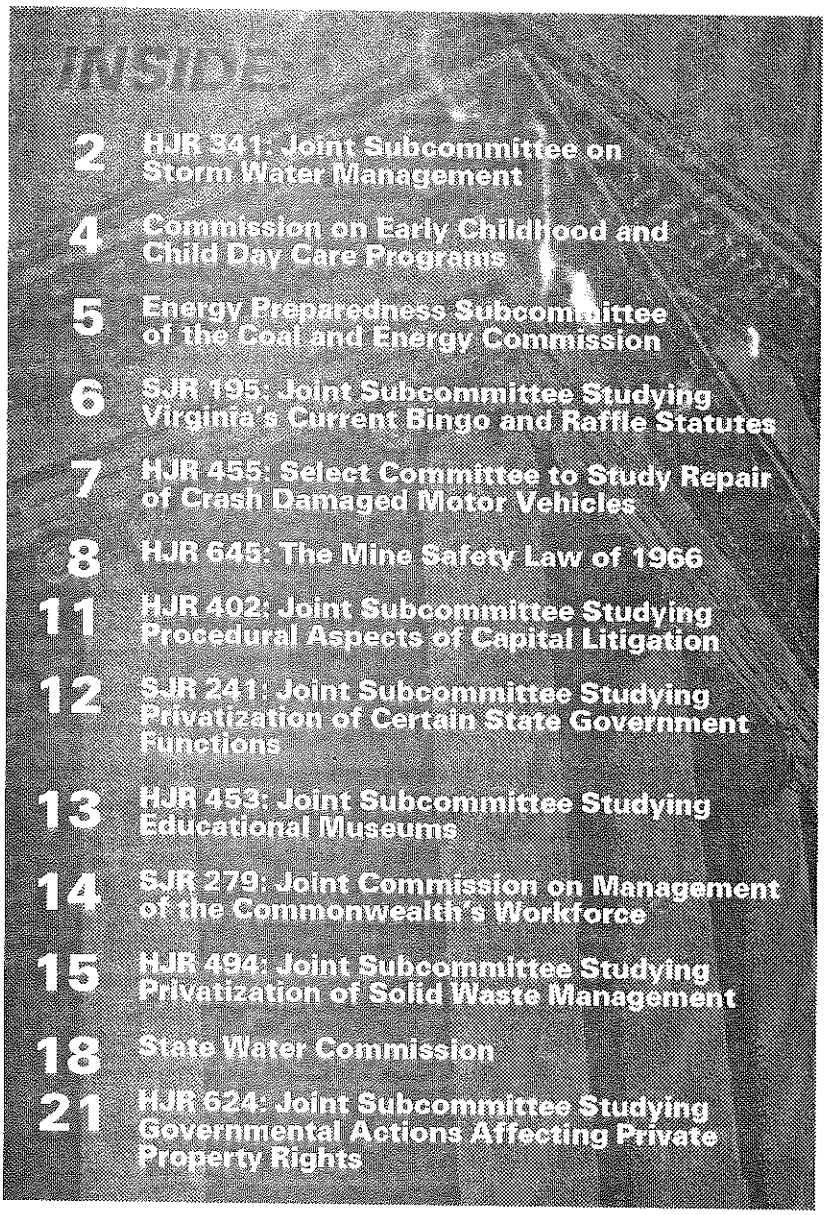
Local Government

Local government representatives emphasize how important the BPOL tax revenues are to the localities that levy the tax. In most of those localities, the tax ranks fourth in producing revenues, exceeded only by real estate, personal property, and local sales taxes. Repealing the tax should not be considered without a replacement tax or an increase in the rates of some other existing tax to generate comparable revenues.

Local government officials agree that administration of the tax can be problematic and expensive. While open to the call for improvements to administering the tax, local officials generally do not want to hand over the reins completely to the Department of Taxation.

Possible Solutions

Suggested solutions to the problems enumerated during the meeting include:



- gradual repeal of the BPOL tax over a 10-year period;
- immediate repeal of the tax and enactment of a local business net income tax;
- revision of classifications and rates to reflect the current economy;
- administration and audit of BPOL tax by the Virginia Department of Taxation;
- short-term exemptions or reduced rates for new businesses;
- designation of threshold level of receipts before BPOL tax applies;
- creation of a model ordinance for use by localities; and
- a statewide mechanism for protest resolution.

At the suggestion of one of the speakers, an advisory committee composed of individuals from the business and local government sectors will be established to assist the joint subcommittee in developing mutually acceptable options addressing the BPOL tax problems. The next meeting of the joint subcommittee, in October, will focus on the administration of the tax. At that time the joint subcommittee expects to hear from the Department of Taxation, local government administrators, and the advisory committee.

The Honorable David G. Brickley, *Chairman*
Legislative Services contact: Joan E. Putney

SJR 341: Joint Subcommittee on Storm Water Management

July 7, 1993, Richmond

The first meeting of the Joint Subcommittee on Storm Water Management began with an overview of the statutory and regulatory framework applicable to storm water. A representative of the Washington Metropolitan Council of Governments followed with a presentation on the effects of storm water and the potential options for its control and reduction.

The purpose of SJR 341 is to study the efficiency and consistency of the Commonwealth's storm water management and permitting policies. The subcommittee is to consider and make recommendations on (i) methods of providing more efficient approval and regulation of storm water management facilities; (ii) the feasibility of combining storm water management responsibilities in one permitting agency; (iii) opportunities to streamline the permitting process; (iv) the fiscal impact of storm water management laws and regulations on property owners; and (v) the cost effectiveness and appropriateness of siting policies for storm water management facilities.

The joint subcommittee generally agreed that the control of storm water and the protection of water quality is needed. It was noted that the first round of storm water permits would in large part be a data collection effort. Concern was expressed that some management measures have been deficient, which has created uncertainty over what may be required in the future and added expense to those who must install and manage storm water control structures. Some estimate that 30 to 40 percent of the funds raised by localities for storm water management go to administrative expenses and not to actual storm water control.

The following issues were raised:
- Should all streams be treated equally?
- Who is going to pay for, and be responsible for, long-term maintenance of storm water management measures?
- Where should these facilities be sited (in stream or off stream)?
- When should storm water be managed in regional facilities?
- What types of BMPs are available for developed areas?
- What types of funding mechanisms and incentives can be used to encourage storm water management?
- What are the different policies and approaches taken by the various state agencies involved in storm water management permitting?
- Are localities using efficient methods for raising funds for storm water management programs?

Storm Water Management Techniques

Impact of Uncontrolled Storm Water

A major result of development and urbanization is an increase in the amount of impervious surface and an accompanying decrease in the amount of pervious area. Increasing the amount of impervious area allows greater amounts of precipitation to run over the surface area, reducing the amount that can soak into the soil. This increases the opportunity for water to come into contact with pollutants and increases the amount of water running into bodies of water.

There are numerous changes that can take place in a stream system due to uncontrolled storm water run off, including:
- Increased levels of nutrients and pollutants, including nitrogen, phosphorus, heavy metals, sediment, hydrocarbons, organic carbon loads, and bacteria.
- Elevated water temperature.
- Reduction in recharge of ground water. This can have an effect on drinking water supplies. In addition, the base flow of a stream may be lowered due to the decreased availability of ground water.
- Sharp increases in flow volume and rate during storms. Rather than gradual, moderate increases in stream velocity and volume, sharp increases occur, well above those which would normally take place. This phenomenon is seen even with small storms and can make it difficult for smaller aquatic species to stay in that area.
- Increased erosion.
- Changes in stream shape and the condition and character of the stream bottom.
- The entire stream ecology may be altered, leading to decreased diversity of aquatic species and smaller numbers within surviving populations.

The extent of these changes can be correlated with the increasing amount of impervious surface in an area. Additional impacts can result from reducing the extent of wetlands and riparian forests. Because these changes can have aesthetic, as well as ecological, consequences, more than just water quality needs to be considered when determining the impact of storm water. The effect on the local community's use and enjoyment of the stream and local environment must be examined as well.

Control Mechanisms and Techniques

Numerous methods and technologies for the control of storm water are available. A general mechanism for storm water control is watershed master planning. That is, what is occurring within a whole watershed system, especially in terms of development and future growth? And what are the management goals?

Watershed planning must incorporate development criteria such as erosion and sediment control plans, best management practices (BMPs), site plans and community involvement. Measures might include:

- protection of steep slopes,
- protection of nontidal wetlands,
- protection of forest cover,
- open space requirements,
- cluster development,
- transfer of development rights (TDR's),
- road specifications that minimize surface area runoff, and
- site fingerprinting.

It is important to prevent erosion and to keep sediment on site during construction practices. Basic control measures limiting the area and duration of disturbance and requiring immediate revegetation are helpful tools. Enforcement and the availability of civil penalties are also useful.

It was noted that BMPs are only part of the solution and that any BMP will likely require some form of long-term maintenance. Each BMP should be analyzed based on the conditions present at each site as part of plan review. Inspection is very important.

In general there is a move toward "wet systems," extended detention, and methods that allow for some form of "pretreatment." Pretreatment involves attempts to remove the heavier and larger particulates and some pollutants before reaching infiltration methods or settling ponds.

Best Management Practices (BMP's)

Four types of BMP's were described, including wet ponds, infiltration, filters, and oil and grit separators.

Wet Ponds. A wet pond is a management system that looks like a pond and into which storm water flows. Pollutants settle out in the pond before water continues to flow to, or down, a stream. Vegetation in the pond can be used to slow flow and capture pollutants. Wet ponds have an advantage over dry ponds (low areas that fill up during wet periods and then drain) because of a tendency for resuspension of pollutants in dry ponds with each storm. These pollutants can then be transported downstream. It does not appear that wet ponds have this problem. Wet systems have the added benefits of being more aesthetically pleasing and of providing wildlife habitat.

Wet ponds placed in series have advantages over an individual pond. There are a number of options to placing wet ponds in series, creating increased efficiency and redundancy. One method establishes the initial pond as a marsh-like area. The marsh plants take pollutants out of the water and slow incoming flow.

Infiltration. Infiltration allows water and contaminants to flow over the land surface and filter into the soil. Potential contamination of ground water is a concern with this method. It was noted that sandy soils provide little treatment of pollutants before ground water is reached. Three to five feet of soil are needed before rock or the water table is reached in order to receive some degree of treatment.

Filters. Filters can be used in infiltration systems to increase efficiency. Grass swales capture some materials and can slow flow, allowing more infiltration to occur. An "area filter" may be constructed to look like, and be utilized as, a park or open space. An example is the peat-sand filter, which includes an upper layer of grass followed by peat, limestone, more peat, and then sand. These man-made filters can be very effective in allowing infiltration and in removing pollutants from storm water.

Oil and Grit Separators. Separators are common in commercial areas of less than five acres. They consist of a series of underground chambers into which water flows. Through construction design, the first chamber is expected to catch large objects and floatables. More settling and outflow occur in the second chamber. Studies show that oil and grit separators are not very effective, particularly in situations where they are not properly maintained.

Future Meetings

The agencies involved in storm water permitting and management discussed their respective programs, and the differences and conflicts in requirements and philosophies between those programs, at the subcommittee's September 10 meeting, which also included an update of the progress of an interagency task force formed to address those issues. The joint subcommittee will hold a public hearing at 10:00 a.m. on October 1 in Fairfax County. A business meeting will follow.

The Honorable Janet D. Howell, *Chairman*
Legislative Services contact: Shannon R. Varner

Commission on Early Childhood and Child Day Care Programs

August 30, 1993, Richmond

At its first meeting following the 1993 Session, the commission reviewed progress on implementing its recommendations from the previous year. The commission's major initiative during the 1993 General Assembly Session was the passage of SB 777 and HB 2380, identical bills that revised the licensure system for child day programs.

Implementation of New System

Department of Social Services

An oversight task force composed of representatives of entities covered by the legislation is providing recommendations on the transition. Conveying accurate information to the public is a priority of the task force. Child day center and family day home regulations are expected to become effective in November 1993, when the Department of Social Services will begin accepting applications from child day centers required to be licensed for the first time. Licenses will be issued starting in January. A Notice of Intended Regulatory Action has been filed for other regulatory changes required by the legislation, including procedures for intermediate sanctions. The department has scheduled 17 training sessions throughout the state to familiarize child care providers with the new requirements and instituted a toll free number for licensing information. Some parks and recreation programs are still concerned about licensure requirements, so the department is meeting with representatives.

Exempt Centers

A work group of licensed and exempt providers will make recommendations for the implementation of the new statutory requirements for child day centers that are exempt from licensure because they are sponsored by a religious institution. Procedures are being developed for certifying preschools and nursery schools operated by accredited private schools that can be exempt from licensure.

Family Homes

Six hundred family day homes voluntarily registered between July 1992 and July 1993, and a work group that includes building code officials has been established to discuss issues that involve day care and the building code.

Council on Child Day Care and Early Childhood Programs

SB 776, a commission-sponsored bill, gave the council the authority to provide grants and loans to promote the development and expansion of quality child care programs. Child care providers are usually ineligible for traditional bank loans. The Child Day Care Financing Program uses Child Care and Development Block Grant funds to make direct loans to assist child day centers in meeting and maintaining regulatory requirements: $150,000 has been set aside through September 1993 and $450,000 for FY 1994. Providers apply to the Virginia Small Business Financing Authority to receive fixed-rate, installment loans of $1,500 to $15,000.

The council is using established resource and referral programs to develop a statewide community-based resource and referral network to help the public locate and select child care and early childhood programs. The program will begin with three sites this year and will be known as Centers for Families That Work. The council is also launching an education campaign for parents and providing training, lending libraries, and assistance with voluntary registration and the U.S.D.A. Child Care Food Program to providers.

Zoning Issues

A member of the Virginia Alliance of Family Day Care Associations explained how zoning ordinances can discourage the establishment of family day homes. Some zoning ordinances are more restrictive than state licensing requirements, some are changed without notification, and in some localities, it is difficult to learn what the applicable zoning provisions are. Being state licensed often means that a provider is operating illegally because of zoning restrictions and local association covenants. This encourages providers to avoid state licensure and operate underground. Quality child care is compromised because providers who are unregulated often do not know about and cannot take advantage of training opportunities, resource centers, peer support groups, or nutritional programs. The commission was asked to study the issue of zoning restrictions on family day providers by forming an advisory committee and to support pre-emptive statewide legislation that would permit family day providers to operate legally if they are in compliance with state regulations governing family day homes.

The commission will form an advisory committee on zoning and family day homes. The commission's next two meetings will be in Hampton Roads and Waynesboro and will include tours of child day programs.

The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Jessica F. Bolecek

Energy Preparedness Subcommittee of the Coal and Energy Commission

August 10, 1993, Richmond

The first 1993 meeting of the Energy Preparedness Subcommittee focused on funding the Commonwealth's energy programs after federal oil overcharge revenues are exhausted. Oil overcharge funds were distributed to states by the federal government under a program that required oil companies to disgorge excess profits earned during the oil shortages of the 1980s. Oil overcharge funds have now been collected and distributed and cannot be relied upon as a revenue source for energy programs.

The U.S. Department of Energy allocated over $110 million in oil overcharge funds to the Commonwealth from 1987 through 1991. The principal recipients of these funds were (i) the Low-Income Home Energy Assistance Program (LIHEAP) ($33 million); (ii) the Weatherization Assistance Program (WAP) ($32.8 million); (iii) the Institutional Conservation Program (ICP) ($7.5 million); and (iv) the State Energy Conservation Program/Energy Extension Service (SECP/EES) ($8.7 million). These four programs account for over $82 million of the oil overcharge funds allocated to the Commonwealth, funds that continue to provide a major source of funding in the current biennium for the Commonwealth's energy programs. Virginia will receive about $8 million in the 1992-1994 budget period, which will be allocated among LIHEAP ($3 million), ICP ($2.3 million), SECP/EES ($1.7 million), and WAP ($750,000). Spokespersons for these programs stressed the valuable services provided by the programs and urged the members to develop alternative sources of revenue.

Programs Administered by the Division of Energy

The Institutional Conservation Program has made grants of over $26 million for technical assistance and energy conservation improvements at 751 schools and hospitals. This money was matched by almost $18 million in local funds. The improvements have resulted in estimated annual savings of $10.5 million, and conservation of 2.08 trillion BTUs. The State Energy Conservation Program/Energy Extension Service has provided consumer outreach, transportation programs, and grants to local governments. SECP/EES programs have saved an average of 66 trillion BTUs and $465 million annually, according to DMME estimates. DMME-administered energy programs have reached an estimated 1.5 million people, or 24 percent of the state's population, between 1987 and 1991.

The Division of Energy plays a key role in implementing the Virginia Energy Plan announced in 1991 by Governor Wilder. The plan calls for a 25 percent reduction in the use of energy in state facilities by 1998. Such a reduction would save the Commonwealth $25 million and 42 trillion BTUs annually. The division will act as a clearinghouse for the portion of the $2 billion in federal funds that may be allocated to Virginia for implementation of the federal Energy Policy Act of 1992. The federal act provides opportunities for leveraging public and private resources, and may require that states pledge matching funds in order to receive certain competitive grants.

Options for Replacing Oil Overcharge Funds

Three options are under consideration for dealing with the revenue shortfall caused by the cessation of oil overcharge moneys. First, the loss of funds for improving the energy efficiency of public buildings could be offset by third party financing programs, such as master lease programs and loans that could be repaid from the savings generated by increased energy efficiency. Second, the loss of oil overcharge funds could be offset by the allocation of general fund revenue.

The third option is the imposition of a surcharge on the consumption of energy. One example of such a program is New York's Utility Assessment Fund, which receives one third of one percent of the gross operating revenues of gas and electrical utilities. The state's Energy Office received $6.3 million of the $69 million raised by the tax. A separate second fee is assessed on gas and oil utilities to raise revenue for the State Energy Research and Development Fund. In 1992-93, $2.6 million was raised from the fees.

California is another state that funds its energy programs through a surcharge. Rather than taxing the utilities as in New York, California requires end users of electricity to pay a surcharge of .0002 cents per kilowatt hour. The $34.2 million raised in the 1991-92 fiscal year supported the California Energy Commission, which functions as a combination of Virginia's State Corporation Commission and Division of Energy.

Four scenarios of how the energy surcharge option could be implemented in Virginia were presented. The options ranged from raising $2 million to fund Division of Energy programs to raising $12 million to fund the four programs and a new research and development effort. Surcharges required to raise the funds ranged from .00002 cents to .000115 cents per kilowatt hour of electricity and from .004 cents to .013 cents per thousand cubic feet of natural gas.

Weatherization Assistance Program

The effect of the cutoff of oil overcharge funds threatens the viability of the state's weatherization assistance program. The WAP currently receives between $3.1 and $3.3 million in federal funds under the U.S. Department of Energy's weatherization assistance program. In order to qualify for these DOE funds, however, a state's weatherization program must provide statewide coverage. At present, WAP services are provided by 26 local operators across the Commonwealth, but some local operators have questioned their ability to continue operating year round without the oil overcharge money.

After averaging more than $8 million in funding over the eight fiscal years from 1984-85 through 1991-92, appropriations for the weatherization program fell to $3.7 million in 1992-93, and $3.1 million in 1993-94. The program used these appropriations and carryover funds to serve 3,627 households in 1991-92, and 2,880 homes in 1992-93; about 2,000 households will receive weatherization services in the current biennium. Since its inception, the program has served over 74,000 households and approximately 135,433 low-income persons.

An evaluation of WAP services conducted in 1989 and 1990 by the Virginia Center for Coal and Energy Research has led to changes in the services provided by the program. Energy savings rates have increased substantially as a result of shifting from installing replacement windows and storm doors to improvements in furnace efficiency and insulation. As the effectiveness of the program's expenditures has increased, the percentage of funds spent on administrative expenses has dropped from 12 percent to 4.5 percent.

The department is investigating several funding sources as alternatives to oil overcharge funds. Appalachian Power Company is funding a $150,000 pilot project in Southwest Virginia. Local operators have been asked to look at Community Development Block Grants and other programs as supplemental funding sources. The program in Montgomery County is attempting to leverage its funds by charging ineligible customers for weatherization services, and applying the profit to the low-income assistance program.

Low Income Home Energy Assistance Program

Funding for the Low Income Home Energy Assistance Program has fallen from $40.5 million in the 1989-90 fiscal year to approximately $29.5 million for the 1993-94 fiscal year. Much of this drop is attributable to the cessation of oil overcharge funds, which provided over $20 million to the program in the four fiscal years ending in 1992-93. No oil overcharge moneys will be available for the 1993-94 fiscal year.

The Department of Social Services administers the three programs under LIHEAP. The Fuel Assistance program provided over $24 million to almost 125,000 households in 1992-93. The Crisis Assistance program, which is required to provide assistance to households with energy related, weather related, or supply shortage emergencies that cannot be met by the Fuel Assistance program or other local resources, provided $500,000 to over 13,000 households in 1992-93. The Cooling Assistance program provided $677,595 to 2,954 households.

Five potential sources of additional funding for energy assistance programs were identified: unclaimed customer deposits at utility companies could be set aside for these programs; the AFDC-EA program could be expanded to cover special needs; the state income tax return form could provide a check-off for allocating portions of refunds to energy programs; the administrative costs of LIHEAP could be reduced by the implementation of centralized application processing; and the legislature could appropriate money from the general fund for these programs. A subcommittee member suggested that the agencies institute a better system of tracking clients of the WAP and LIHEAP programs. He suggested that the agencies determine whether money spent on improving the energy efficiency of housing stock reduces the need to distribute payments for fuel bills.

The subcommittee will hold another meeting in the fall, at which time it will develop recommendations for consideration by the Coal and Energy Commission.

The Honorable James F. Almand, *Chairman*
Legislative Services contact: Franklin D. Munyan

SJR 195: Joint Subcommittee Studying Virginia's Current Bingo and Raffle Statutes

August 9, 1993, Richmond

Convening its initial meeting of the 1993 interim, the joint subcommittee heard testimony from several local government officials responsible for administering the Commonwealth's bingo and raffle laws.

Local Investigations

In Henrico County, a special grand jury has been impaneled to look into the problems experienced there, including percentage of gross receipts going to charities, rental rates charged for bingo facilities, and control of bingo operations. To date, no report has been issued by the special grand jury.

To address the uniform administration of bingo laws, several localities have been working together, including Hanover, Chesterfield, Henrico, and the City of Richmond. Focusing on the "bottom line" — bingo and raffles as a mechanism to raise money for charities — these localities have worked to address their shared problems and jointly recommend legislation to ensure the bottom line will be met. Suggested areas of change were identified:

- clarifying those charitable purposes for which bingo proceeds may be used;
- limiting the number of charitable organizations for which a person may operate bingo games;
- aligning effective dates for statutory change to the reporting requirements for charities;
- specifying officials responsible for enforcement;
- clarifying what games are permissible and when they may be played; and
- revisiting allowing corporate sponsors to operate bingo games and raffles.

State Control

The joint subcommittee discussed whether it was advisable that bingo and raffle laws be administered by the state, thereby preempting localities from control. State Police, the Lottery Department, and the Department of Taxation were suggested as possible state agencies under which the control of bingo and raffles would fit. It was also suggested that a separate state agency be established.

Suppliers

The joint subcommittee also heard testimony from manufacturers and distributors of bingo supplies, who indicated that the number one weakness in Virginia's bingo laws is in their enforcement. The joint subcommittee was cautioned about restraint of trade considerations should a licensing program for suppliers and others in the bingo industry come to fruition.

Future Meetings

The joint subcommittee scheduled a public hearing to be held on Wednesday, September 22, in Richmond and a third meeting on Thursday, October 28, in Richmond, in conjunction with the fall meeting of the North American Gaming Regulators Association (NAGRA), at which time several NAGRA officials will discuss other states' regulation of bingo and raffles.

The Honorable Charles J. Colgan, *Chairman*
Legislative Services contact: Maria J.K. Everett

HJR 455: Select Committee to Study Repair of Crash Damaged Motor Vehicles

August 2, 1993, Richmond

Other States' Laws

Staff briefed the members on laws of Florida, Maryland, North Carolina, and Tennessee, relating to crash-damaged vehicles and their titling and inspection. Tennessee's and North Carolina's statutes were similar to Virginia's in that they showed a concern to detect and deter use of stolen parts. However, both the Maryland and North Carolina statutes provided for post-crash inspections, with a greater emphasis on safety than the salvage vehicle inspections performed in Virginia by the Department of Motor Vehicles. The Florida statute provided for extensive regulation of the motor vehicle repair business.

A Warrenton citizen described his experience with the purchase of a late model used motor vehicle with undisclosed crash damage. He urged that some form of damage disclosure be made to prospective buyers prior to sale and that this disclosure take a form other than a statement on the vehicle title. Most vehicle buyers, he pointed out, never see the vehicle title at the time of sale, but only some time later after all liens have been satisfied. He urged the group to consider recommending the enactment of legislation similar to North Carolina's, which, among other things, requires the pre-sale disclosure of any crash in which the vehicle sustained damage equal to or greater than 25 percent of its pre-crash fair market value.

DMV

Several representatives of the Department of Motor Vehicles (DMV) briefed the members on the examination required by Virginia law to be performed on salvage vehicles before they can be returned to service on the highways. Between January and June 1993, DMV issued 18,252 salvage certificates, 341 salvage rebuilt titles, and 22,007 "nonrepairable" certificates. It was stressed that although some checks are made relating to the safety of the examined vehicles, these examinations are more concerned with checks for stolen parts than with the adequacy of the repairs or the overall safety of the vehicles.

Insurance Company

An insurance company spokesman expressed opposition to requiring inspection of all crash-damaged motor vehicles. The burden such a program would place both on DMV and the owners of the vehicles would be "impossible and unjustifiable." Such a requirement would also increase the costs of insurance companies (and thus lead also to higher insurance premiums) because resulting delays in returning damaged vehicles to service would increase "loss of use" and rental car payments to insureds. He also opposed reducing the 75 percent threshold (the percentage of damage compared to pre-damage value that a vehicle must sustain before being classified as a salvage vehicle) to 50 percent or any lower number because it would cause more total loss claims to be paid, thus again increasing costs to insurance companies.

Legislation Suggested

The committee was urged to recommend legislation that would specifically address the repair of vehicle crash damage, not "wear and tear" damage (checked for in annual safety inspections) or the kinds of theft-related items checked in DMV's examination of salvage vehicles. Such legislation might also require that shops repairing crash-damaged vehicles provide their customers with affidavits stating that the vehicles had been returned to manufacturer's standards.

The Honorable Robert Tata, *Chairman*
Legislative Services contact: Alan B. Wambold

HJR 645: The Mine Safety Law of 1966

August 17, 1993, Wise

Much of the current interest on mine safety issues has resulted from the explosion and deaths of eight coal miners at the Southmountain Coal Company Mine #3 on December 7, 1992. Though the scope of the study of the Virginia Mine Safety Law of 1966 is not limited to the causes of the Southmountain disaster, it featured prominently in the subcommittee's third meeting.

DMME Investigation

The Mine Safety Law grants the Department of Mines, Minerals and Energy (DMME) the jurisdiction to investigate explosions and serious accidents. The investigation, completed May 6, 1993, revealed that the volume of air on the actively mined section was inadequate to carry away explosive methane gas. The gas migrated to the working section from abandoned areas where the deteriorating roof was releasing gas from the Kelly seam of coal. The probable source of ignition of the methane/air mixture was a butane cigarette lighter. The ensuing methane explosion suspended and ignited coal dust, which increased the magnitude of the explosion.

The report identified the following contributing factors to the explosion:

- Failure to ventilate active and abandoned panels and maintain adequate ventilation controls;
- Failure to apply proper amounts of rock dust (which suppresses coal dust) to the mine roof, face and ribs;
- Failure to properly conduct weekly examinations of abandoned areas and preshift examinations of active workings;
- Failure to comply with the approved roof control plan; and
- Failure to prohibit the use of, and failure of some miners to refrain from carrying, smokers' articles underground.

Report of Governor's Task Force of Advisors

Former Delegate James W. Robinson was appointed by Governor Wilder to chair a Task Force of Advisors charged with assisting the DMME in their investigation of the Southmountain mine explosion. The duties of the task force included suggesting any specific recommendations that could prevent a similar incident. The task force delivered its report to the Governor on August 6 and presented a summary of its findings to the subcommittee.

The recommendations of the task force fall into one of three types: revisions to investigation techniques and methodology, suggestions to prevent accidents and fatalities, and other recommendations. Suggested revisions to investigation techniques and methodologies aimed at improving the validity of investigation findings include reviewing the interview process, authorizing the Chief of the Division of Mines to order autopsies, requiring an internal review of DMME activities for accidents involving three or more fatalities, reviewing the role of the Mine Safety Board, and using robotics in dangerous rescue operations.

The task force suggested that accidents and fatalities could be prevented by (i) strengthening Code requirements related to methane detection and violation; (ii) improving compliance with existing mine safety law; (iii) providing more effective miner involvement in ensuring safe work conditions; (iv) improving the knowledge of miners to work safely; and (v) improving the preparedness of operators and the state to respond to mine disasters and emergencies.

Five other recommendations were presented by the task force. First, DMME should fully consider the recommendations of the 1983 report of Governor Robb's Advisory Committee on Mine Safety made following the McClure mine disaster. Second, the joint subcommittee was asked to review oversight of the existing law concerning prohibited acts by miners, including substance abuse. Third, DMME inspectors should review all record books during regular inspections and compare their findings to preshift and onshift examination books. Fourth, copies of the completed examination reports should be posted at a visible location. Finally, the length of time between a disaster and the commencement of the investigation's interviews should be reduced.

A summary of the implementation of the recommendations made in 1983 by Governor Robb's Advisory Committee on Mine Safety showed that implementation of 13 of the 16 recommendations has been completed and is ongoing for the remaining three. One of the recommendations that has not been fully implemented calls for the department to share information with the federal mine safety inspection program. The other recommendations for which DMME's efforts are ongoing call for the state to take a stronger role in the education, training, and certification of miners and for an extensive review of the safety requirements contained in the surface coal mining laws.

Correlation Between Violations and Accidents, Injuries, and Fatalities

During the July meeting of the subcommittee, members requested the department to provide additional information regarding the relationship between cited violations, accidents, and injuries. The department presented the subcommittee with statistical information supplied by the Mine Safety and Health Administration (MSHA), classifying fatal mine accidents in Virginia, five other states, and nationally according to their cause. The information also addressed whether the accident was attributable to a violation and whether the accident was due to mine conditions or practices. The designation of an accident as being caused by a condition rather than a practice, or the reverse, involves subjective judgments. Where an accident was found to have resulted from both mine conditions and practices, the MSHA data attributed it to mine conditions. This approach is the opposite of that taken by DMME in its classification. The department grouped accidents due to both conditions and practices according to their primary cause, and those for which the

primary cause could not be determined were counted as resulting from mining practices. Another cause of the discrepancy between the MSHA and DMME statistics is that the state's analysis was based on a sample of accidents and fatalities, while the federal agency looked at all fatalities.

The MSHA data addressed coal mining and "metal and non-metal" mining for the period 1988-1992, as to both "events" and fatal injuries. A comparison of the MSHA data to information presented by DMME in July on fatal injuries in coal mines provides some interesting comparisons. Nationally, MSHA found that 68 percent of the fatal injuries were attributable to violations; in Virginia, DMME found the figure is 58 percent. While according to MSHA's analysis nationwide 74 percent of the fatal injuries nationwide were attributed to mine conditions, the fatal injuries in Virginia were found by the DMME to be attributable equally to mine conditions and mining practices. This discrepancy may be due (to an unknown degree) to the different approaches taken by MSHA and DMME in categorizing accidents caused by both mine conditions and practices. Both MSHA and DMME admitted that the categorization of the cause of accidents was often difficult and involved the subjective judgment of their expert reviewer.

At the subcommittee's July meeting, members asked whether DMME data indicated that mines with high rates of violations had correspondingly high rates of closure orders, injuries, and fatalities. With respect to mineral mines, there was a significant correlation between the rates of closure orders and injuries and violations. No similar correlation was found to exist with respect to coal mining, however.

The data for rates of injuries per 200,000 production hours based on number of violations revealed that the 25 percent of mineral mines with the most violations had much higher rates of lost time injuries than did the other 75 percent of mineral mines in 1992. However, the serious injury rate for the mineral mines in the top quartile for violations in 1992 was less than it was for mineral mines in the bottom three quartiles. The rate of lost time injuries for the 25 percent of coal mines with the greatest number of violations in 1992 was significantly higher than it was for mines in the bottom 75 percent. Similarly, the rate of serious injuries for the quarter of coal mines with the most violations was higher than for the other three-quarters of coal mines.

With respect to the rate of fatalities in 1992, however, there was an inverse relationship between the mines with the greatest number of violations and those with the most fatalities. While the rate of fatalities in the 25 percent of coal mines with the most violations was zero, the rate of fatalities in the 75 percent of coal mines with the fewest violations was 0.17 per 200,000 hours of production. The same inverse relationship, with the coal mines included in the quartile of mines with the most violations having lower-than-average fatality rates, was found in three of the other four years analyzed. A statistically valid analysis of the fatality rates in mineral and coal mines could not be calculated due to the small number of fatal accidents in the years studied.

Additional data supplied by the department also revealed that the mines with the highest rates of safety law violations varied from year to year. Twelve mineral mines were included among the 25 percent with the most violations in each of the five years from 1988 to 1992. The number with four appearances in the top quartile of violators in this five-year period was 17; 28 appeared three times; 58 appeared twice; and 133 mines appeared on one list of the top quartile of violators. The results for coal mines were similar. Four coal mines were among the 25 percent of coal mines with the most violations in each of the five years. Thirteen coal mines made the list of top violators in four years; 23 for three; 184 for two; and 196 coal mines made an appearance on the list only once.

Public Hearings

The subcommittee held hearings on August 17 in Wise and on the following day in Richlands to receive comments from the public on ways to improve Virginia's mine safety laws. Individuals representing a wide range of opinions expressed their views to the subcommittee. Following a request by Senator Wampler for information regarding the cost of additional miner training and education, the chairman appointed a subcommittee to meet with the department to collect information regarding program costs.

The joint subcommittee has scheduled additional meetings in Richmond on August 30, September 29, October 27, and November 23.

August 30, 1993, Richmond

The members of the joint subcommittee studying the necessity of improvements to the Commonwealth's mine safety law decided at their fourth meeting to recommend several fundamental changes in the scope of the state law. The changes follow the decisions made at the second meeting to develop separate sets of safety standards for each of the four types of mining under study: underground coal, surface coal, underground mineral, and surface mineral mining.

Extent of Coverage of Standards

The Mine Safety Law authorizes the Chief of the Division of Mines to promulgate standards and regulations covering both the health and the safety of persons. The law primarily includes prescriptive standards for miner safety, but laws and regulations address some health issues, including dust, noise, trauma (first aid), airborne contaminants in mineral mining, and the use of diesel equipment in coal mining. The federal Mine Safety and Health Act includes comprehensive health standards.

The joint subcommittee decided that standards for both surface mineral mining and surface coal mining should cover miner safety only. With respect to underground mineral mining and underground coal mining, the subcommittee chose to endorse the establishment of comprehensive coverage for miner

safety and limited coverage for miner health. The subcommittee will decide at a future meeting what constitutes the proper scope of the state's limited coverage for health issues associated with underground mining.

Mandated vs. Voluntary Requirements

Currently, the mine safety laws mandate standards for certain conditions and practices that mine operators are required to maintain and enforces those requirements through inspection and certification programs. Though the state law's safety standards may not be as detailed as those in the federal mine safety law, they reflect an attempt to be comprehensive.

After much discussion of the ability of state inspectors to focus their attention on mineral mines which are not currently being inspected by the federal Mine Safety and Health Administration (MSHA) or which have high accident rates, the members endorsed an approach for all four types of mines whereby the state will mandate a limited set of mine conditions and practices and will operate a state inspection program to achieve compliance. Limiting the scope of the state's regulation of mine conditions and practices was seen as allowing the department's resources to be focused on areas of greatest danger, while avoiding duplication of some federal regulations. The precise conditions and practices to be regulated under this limited approach will be ascertained at a future meeting. Similarly, the definition of "mines" and the frequency of inspections will be the subject of future determination by the subcommittee.

MSHA requires that certain work be done by certified or qualified persons, but does not issue certifications to, or provide training for, miners. All of the states surveyed, including Virginia, operate miner certification programs. The subcommittee agreed that Virginia's mine safety laws should continue to provide a program for the issuance of certificates.

The Department of Mines, Minerals and Energy (DMME) is now providing miner safety training through a job safety analysis program. DMME also maintains two classroom instructors who conduct education for individuals seeking certification by the Board of Examiners. MSHA imposes training requirements on all mines except crushed stone, sand, and gravel. DMME does not now provide assistance to operators to comply with federal training requirements. The subcommittee decided not to establish state-mandated training requirements and instead to rely on existing federal training requirements. In addition, the state should provide training to assist operators and miners in achieving compliance with these federal requirements. The type and scope of the state's assistance has not yet been determined, but the cost of state-provided training could be significant.

Statutory Structure

Most of the provisions of the mine safety law establish prescriptive standards governing underground coal mining. Safety provisions in the mine safety law apply to mineral mining to the extent that they are applicable. While the chief has general authority to promulgate regulations for mineral mining, he may do so with respect to coal mining only where prescriptive standards are not provided.

The subcommittee considered whether the mine safety law should continue with its current structure or should establish general guidance and delegate to the chief the authority to promulgate specific standards. The members decided that the best option for both coal and mineral mining is to establish some prescriptive standards in law and delegate authority to promulgate regulations where no prescriptive standards are established.

Penalties for Violations of Law

The subcommittee considered and rejected establishing a system of civil penalties for violations of the mine safety law. The current system, which provides that violators are subject to criminal sanctions, closure orders, and injunctions, was endorsed unanimously. Some members expressed concerns that the current system does not adequately address repeated violations and habitual offenders. Other members countered that repeated violations may be enjoined under the current law and that the subcommittee may address adopting escalating sanctions for repeat offenders at a future meeting.

The last issue addressed by the members concerned who should be liable for violations of the mine safety law. The law regarding whether mine employees can be prosecuted for violations contains conflicting provisions. The members endorsed a proposal that the law be drafted to establish liability for the operator, an individual, or both, depending on the provision. This recommendation applies to coal and mineral mining, both surface and underground.

Public Hearing

The business meeting was preceded by a public hearing that featured presentations by 23 speakers, 14 of whom represented the mineral mining industry. Speakers engaged in quarrying objected to duplication of the inspection and enforcement aspects of the federal mine safety law. They argued that directing state efforts to training and education was a better way to allocate scarce state resources.

Four state mineral mine inspectors, speaking on their own behalf and not as DMME representatives, testified that the existing inspection program provides a valuable service. They challenged the industry's assertions that duplication and conflicting requirements of the state and federal mine safety programs are serious problems. They noted that many small operations are not being inspected by MSHA and would not be inspected by anyone if the state's inspection program were terminated.

The subcommittee will hold its next meeting on September 29 in Richmond.

The Honorable Alson H. Smith, Jr., *Chairman*
Legislative Services contact: Franklin D. Munyan

HJR 402: Joint Subcommittee Studying Procedural Aspects of Capital Litigation

July 21, 1993, Richmond

At the second meeting of the Joint Subcommittee Studying Procedural Aspects of the Trial, Appeal and Collateral Proceedings of Capital Cases, members began the task of receiving and evaluating presentations on the specific issues identified for their consideration.

Contemporaneous Objection Rule

Proponents of modifications to the contemporaneous objection rule urged that change was needed to conform with United States Supreme Court precedent. It was argued that the decision in *Ford v. Georgia*, 111 S.Ct. 850 (1991) requires the Virginia contemporaneous objection rule, at least in capital cases, to be less restrictive, because the rule, as it is currently applied, will prevent consideration of claims on appeal that are presented in a way that is not identical to the objection raised at trial. In addition, the advocates of the modifications expressed the view that cases involving the death penalty have a heightened requirement of reliability and, therefore, procedural barriers should be relaxed to ensure that any potentially meritorious claim can be reviewed by an appellate court.

Those opposed to changing the contemporaneous objection rule disputed the notion that *Ford v. Georgia* had any applicability to the Virginia rule. They noted that the rule has worked well for many years and that it has been repeatedly upheld by the Virginia Supreme Court and federal courts. The rule has the desirable effects of preventing excessive retrials, requiring thorough preparation and presentation of the case at trial, and ensuring that the trial judge will have the opportunity to consider any objections and rule upon them at the time, frequently correcting any potential error through curative instructions to the jury or other means.

There was also concern expressed that should the contemporaneous objection rule be modified, capital cases, which already take six to ten years to conclude, will be substantially delayed while the uncertainty created by any change is litigated in the courts.

Plain Error Rule

Related to modifications in the contemporaneous objection rule is the proposal that Virginia adopt a modified plain error rule for the direct appeal of any case involving a death sentence. Advocates of this approach note that such a procedure would allow appellate courts to review the record before them and not be forced to overlook a clear instance of error in the trial simply because there was not a proper objection made at the time the error occurred. Proponents also point out that the proposed change is minor, given that the prisoner would still be required to enumerate the alleged plain errors in his assignments of error filed with the court during the appellate process. It was also noted that over half of the states have some form of a plain error rule.

Opposition to the adoption of a plain error rule followed some of the same arguments presented against the contemporaneous objection rule modifications. In addition, it was noted that such a rule would put the appellate courts in the business of trying the case without the benefit of having before them the live witnesses, the exhibits, the evidence, or the advocates. Such a rule would relieve counsel of their obligation to thoroughly prepare for and competently present the defendant's case at trial. Moreover, it was noted that Virginia already has within the contemporaneous objection rule exceptions that will permit the reviewing court to recognize any error, even if unobjected to at trial, which would, if left uncorrected, result in a manifest injustice to the prisoner.

Successive Habeas Corpus Petitions

Some of the presenters before the subcommittee urged a relaxation of the statutory restrictions on second or successive habeas corpus petitions. This requested change, which, as presented, would not be limited to capital cases, is proposed in order to specify that allegations in a successive petition will only be barred if the basis for those allegations was actually known to the petitioner at the time of a prior habeas petition. According to the proponents, this would guarantee that a habeas petitioner would not be out of court simply because he was unable, through lack of knowledge, to present his claim in a previous petition.

Opposition to this proposal rested first upon the assertion that petitioners would be under no obligation to investigate their grounds for potential relief prior to filing a petition and would thereby be able to present one claim at a time through a series of habeas petitions, resulting in endless litigation and, in the case of a capital sentence, indefinite postponement of execution. The concern was also raised that "actual knowledge" is virtually impossible to discern; therefore, a simple denial of knowledge by the petitioner would permit successive habeas corpus petitions.

Instructing the Sentencing Jury on Parole Eligibility

The subcommittee was asked to consider allowing the sentencing jury in a capital case to be instructed on the defendant's parole eligibility in the event a life sentence is given. The basis for this request was a perception that juries in capital cases often elect not to give a life sentence because they feel the defendant will be released on parole in a very short period of time. The primary concern raised in response to this request relates to the extreme difficulty in predicting parole eligibility in any given case.

Upcoming Meeting

The subcommittee's next meeting is scheduled for September 28 in Richmond. At that time, the subcommittee intends to look at the following issues:

- Availability of a judicial forum for the review of newly discovered evidence in a capital case;
- Advisability of instructing the sentencing jury in greater detail on the definition and nature of mitigation evidence;
- The advisability of establishing a statewide public defender office for the trial of capital cases; and
- A review of the bill currently before Congress involving substantial habeas corpus reform.

The Honorable Clifton A. Woodrum, *Chairman*
Legislative Services contact: Frank S. Ferguson

SJR 241: Joint Subcommittee Studying Privatization of Certain State Government Functions

August 16, 1993, Richmond

The subcommittee was established to examine the functions of state government to determine which of them can be successfully privatized. At its initial meeting, the subcommittee discussed the background of SJR 241, heard of privatization efforts in Virginia and other states, and discussed some of the issues involved with privatization.

Background of SJR 241

Chairman Stosch spoke briefly of his motivation for initiating the study. He stated that due to increasing budget constraints, the Commonwealth must seek more efficient and innovative ways of providing services to its citizens. He also declared that he wanted state employees to know that the intent of the study was not to sacrifice their jobs. To the contrary, he said that he hoped that the subcommittee will work closely with state agencies in order to find solutions advantageous to all parties involved.

Current Privatization Efforts

States all over the country have undertaken efforts to privatize certain governmental functions, and Virginia has been no exception. The General Assembly recently passed the Corrections Private Management Act, which would allow for private management of certain state prisons. To date, no such privately operated prisons exist in Virginia. The General Assembly has also passed the Virginia Highway Corporation Act of 1988, which would permit privately operated toll roads. This was the first legislation of this type in the nation. Although no roads have been constructed under the act, the Dulles Toll Road Extension has been approved.

In addition to large state functions such as roads and prisons, Virginia state agencies sometimes seek to contract out smaller items. According to a 1988 survey, a few examples of such private contracting include advertising, courier services, equipment maintenance, graphic services, office supplies, painting, photography, travel services, and video production. The extent of private contracting varies from agency to agency.

Other states have also been active in the privatization movement. For example, California, Kansas, Louisiana, New Mexico, Tennessee, and Texas have turned over some state prisons to private companies; Maryland uses the private sector for drug testing; many states contract out for highway maintenance and construction; a number of states contract with the private sector for vehicle fleet maintenance; Florida, Kentucky, and Massachusetts have all privatized at least one mental health institution; and Wyoming and Tennessee contract with the private sector for child support enforcement.

Privatization Issues

There are many issues to be considered when deciding whether a government function should be privatized. These issues include the impact of privatization on public employees and methods for reducing or eliminating an adverse impact; legal issues such as applicability of freedom of information and civil rights provisions; the extent to which the real costs of a service can be determined so that a fair comparison can be made between the public and private sector; the extent to which government will retain responsibility and liability for a particular function; and the degree of competition that can be maintained once a function is privatized.

Work Plan/Future Meetings

The subcommittee discussed the appropriate method for meeting the objectives of SJR 241. It was suggested that the subcommittee develop a framework for evaluating each potential function to be privatized prior to deciding which functions should be examined. It was also suggested that the subcommittee determine the extent to which the real cost of a function can be determined from existing state accounting procedures.

The next meeting of the subcommittee is scheduled for September 21, 1993, in Richmond.

The Honorable Walter A. Stosch, *Chairman*
Legislative Services contact: Jeffrey F. Sharp

HJR 453: Joint Subcommittee Studying Educational Museums

August 2, 1993, Richmond

HJR 453 directed the Joint Subcommittee Studying Educational Museums and the Appropriate Level of Public Support to be Provided Such Institutions to conduct a "comprehensive study" of educational museums, to develop criteria for eligibility for receipt of public funds as well as guidelines for state appropriations, and to examine "ways in which the Commonwealth might encourage and promote the arts."

Government Funding

Whether established by governments or private entities, museums and other cultural institutions operate as nonprofit enterprises, relying on public and private funding to support their cultural and educational missions. In 1989, private giving to the visual and performing arts stood at approximately $7.5 billion nationally, comprising approximately 97 percent of all arts funding. Federal support for the arts is provided either directly through government agencies and programs or indirectly through tax deductions and other benefits. In 1989, direct federal arts spending totaled about $1 billion. Major sources of this direct support are the National Endowment for the Arts (NEA), the National Endowment for the Humanities (NEH), the Institute of Museum Services (IMS), and the Smithsonian Institution.

Similarly, states support museums and arts organizations through direct appropriations and tax benefits; in addition, arts councils in every state and territory provide a range of services. The arts claimed $284 million in combined legislative funding in 1990. Continuing economic challenges have prompted many states to develop new strategies for arts and museum funding, such as earmarked revenue sources, state income tax check-offs, special local taxes, and percent-for-art legislation, which dedicates a part of the construction or renovation cost of public buildings to art works or agencies.

Virginia

The Commonwealth boasts over 400 history, science, art, and children's museums. Sustained by public and private dollars, these cultural and educational institutions attracted more than 23 million visitors in fiscal year 1992. It is estimated that private funding surpasses government support for these institutions by a three-to-one margin. Like the federal government, the Commonwealth provides indirect funding for museums through a variety of tax deductions and exemptions. Direct funding for Virginia's museums is typically supplied through direct legislative appropriations or the 13-member Virginia Commission for the Arts. While the legislature has articulated a goal of an annual general fund appropriation for the commission of $1 per capita, limited fiscal resources might delay the realization of such a goal. In fiscal year 1992, the commission awarded nearly $1.7 million in grant moneys; a total of 731 grants were awarded to 499 artists, museums, and cultural organizations.

State Institutions

Claiming top priority for Virginia's direct museum appropriations are the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Frontier Culture Museum, the Jamestown-Yorktown Foundation, the Board of Regents of Gunston Hall, the Virginia Museum of Natural History, and the Chippokes Plantation Farm Foundation. These institutions are subject to the Virginia Personnel Act, the Freedom of Information Act, the Administrative Process Act, the Procurement Act, and the state budget planning and development process.

Nonstate Organizations

Virginia also provides direct appropriations to several nonstate museums and cultural organizations. These agencies must file a request for aid with the Department of Planning and Budget biennially in odd-numbered years, must certify that local or private matching funds are available, and must provide documentation of their tax exempt status in the Internal Revenue Code. In 1993, the General Assembly directed $2,324,025 in general funds for financial assistance for cultural and artistic affairs to 21 nonstate agencies. The accounts of these recipient organizations are subject to audit by the Auditor of Public Accounts. In addition, nonprofit organizations receiving appropriations greater than $10,000 for construction, design, or planning services must comply with the provisions of the Virginia Public Procurement Act in the expenditure of the state appropriation.

Although each nonstate museum seeking an appropriation must comply with a defined applications process, no clear criteria exist for awarding state funds to these entities. Possible criteria for receipt of state funding might include evidence of nonprofit or tax-exempt status; compliance with applicable federal, state, and local laws; demonstrated fiscal responsibility; and specific characteristics, such as museum size, location, security, patronage, and employment levels. Capping all state appropriations as a percentage of the nonstate agency's budget was also cited as a way to ensure fairness in funding.

Tax Exemptions

Section 30-19.05 of the *Code of Virginia* mandates sales and use tax exemptions for cultural institutions. Established in 1966, the state retail sales and use tax originally included 22 exemptions, which have more than quintupled. The statute now includes specific exemptions that are narrowly construed to address only certain cultural organizations, effectively providing a government subsidy for various entities. Among those organizations covered by an exemption are the Virginia Histori-

cal Society, the Maymont Foundation, the Chrysler Museum, the John Marshall House, and the Roanoke Arts Council. Sales and use tax exemptions for cultural organizations are available in 45 states; 12 states offer specific, narrow exemptions, 12 offer different eligibility criteria, and 21 provide "blanket" exemptions. The Department of Taxation is now examining the revenue impact of the current exemptions; a preliminary report should be available in September, followed by a final report in December 1993.

Funding Criteria

Various issues might be considered in developing criteria for funding nonstate museums. Distinguishing between capital and operating support, establishing limits for geographic regions, requiring—rather than requesting — financial accounting, and considering similarities in the missions of certain state and nonstate agencies were noted as significant concerns. Determining what entity would administer or review this criteria is also necessary.

Future Meetings

The committee expects to meet in September in Norfolk, followed by additional meetings in Roanoke and Northern Virginia as the study progresses.

The Honorable A. Victor Thomas, *Chairman*
The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Kathleen G. Harris

SJR 279: Joint Commission on Management of the Commonwealth's Workforce

July 7, 1993, Richmond

"Strategic planning is a process for clarifying an organization's mission and for developing strategies intended to bring about the successful fulfillment of that mission." Dr. Michael Brooks, special assistant to the provost at Virginia Commonwealth University, outlined the components of a strategic planning process for the Joint Commission on Management of the Commonwealth's Workforce at its second meeting.

Strategic Planning

Although there are many approaches to strategic planning, most include several common elements: statement of mission or purpose for the organization, a determination of the organization's major strengths and weaknesses, an analysis of external influences, identification of strategic issues or problems, description of a desired future state or vision for the organization, and a plan to accomplish the vision.

Dr. Brooks illustrated how strategic planning might be applied to the work of the commission. A clear statement of the mission of the personnel system is needed. What are the system's responsibilities to its employees and the general public? What philosophy should be adopted? What is working well and what needs to be improved? What are the external forces that will significantly influence the Commonwealth's workforce over the next few years? What are the specific issues that might arise in the analysis of strengths, weaknesses, opportunities, and threats? What would you like the workforce to look like in 10 years? And what can be done to make that vision a reality?

Dr. Brooks believes that the joint commission's role in strategic planning for the Commonwealth's workforce might be one of oversight, similar to the relationship of the Board of Visitors to VCU's strategic planning process. The commission's professional advisory committee could generate ideas and act as a sounding board and communication link with state employees.

Continuous Quality Improvement

Strategic planning can be an effective tool of continuous quality improvement. The most important characteristic they share is a focus on the customer and a desire to improve the product or service to meet the needs of the customer. "It's the implementation that will make or break the plan," said Linda Morrison, director of continuous quality improvement for Washington Analytical Services Center, a subsidiary of EG&G, Inc.

Mrs. Morrison outlined the continuous quality improvement process, which often begins with a significant emotional event, such as a change in leadership. The event always has to be personal so that people feel a need for change. It may be, for example, a "thorn in the side." Removing the thorn is one way to begin a quality improvement process.

To analyze a process that needs improvement, Mrs. Morrison outlined eight steps: define the process, form a team, document the process pictorially, establish measurements and benchmarks, look for improvement opportunities, develop improvements, test the improvements, and implement the change. Total quality management is based on prevention. For example, an organization should not select:

- a process that can be eliminated,
- a process that interests no one,
- a process in transition,
- a desired solution versus a process, or
- a system versus a process.

The quality improvement process includes eight steps that individuals are sometimes tempted to shortcut by making intuitive decisions. Shortcuts can create a crisis and skipping steps often means jumping to conclusions.

Mrs. Morrison concluded her presentation with some questions for the commission to ponder:

- Do we tackle a whole system or a series of processes?
- Do we model the behavior we desire?
- Do we reward the behavior we want?
- Do we hire for education, experience, or personality?
- Do personnel policies reward or stifle innovation?
- Are new ideas welcomed or tolerated?
- If training is 1/100 the cost of failure, why is it always cut?
- Do we want human resource professionals to lead the way or stand by and watch?

Family-Friendly Policies

Dorthula Powell-Woodson, discussing family-friendly work policies, cited several concerns. Most of the state's family-friendly policies are available only to classified employees, excluding the 12,000 wage and temporary employees. Agencies may exercise their own discretion in how and if these policies are implemented. Finally, employees may be unaware of the benefits available to them because some agencies do a better job than others at disseminating the information.

Leave sharing, implemented in January, allows employees to donate a portion of their leave balance to other employees. The amended parental leave policy, based on new federal requirements, provides up to 12 weeks of unpaid leave for the birth or adoption of a child, care for ill family members, or for personal illness. Job sharing, first implemented in 1977, provides an opportunity for two employees to share one position. Family sick leave was instituted in 1953 and allows employees to use up to six days of their accumulated sick leave for illness or death of an immediate family member. Leave-without-pay, implemented in 1970, allows employees to take leave for a number of reasons at the discretion of the agency. Typically, the reasons have been medical or educational. The status can be unconditional, which guarantees the right to return to the job, or conditional, which permits the agency to fill the position. If the employee returns and if the position is available, he may be placed in the position. In addition, Mrs. Powell-Woodson cited telecommuting, dependent-care spending account, State Employee Assistance Services, and the CommonHealth Program as family-friendly programs or policies. Finally, the Commonwealth operates a few child care centers for children of employees. The Virginia Department of Transportation, for example, can care for 47 children at its Richmond child day care facility.

The Honorable Richard J. Holland, *Chairman*
Legislative Services contact: Nancy L. Roberts

HJR 494: Joint Subcommittee Studying Privatization of Solid Waste Management

July 27, 1993, Richmond

The second meeting of the joint subcommittee included presentations on financial issues and full cost reporting by the Auditor of Public Accounts, a representative of Craigie Incorporated, and two representatives of local government. The Department of Environmental Quality (DEQ) and a representative from the Solid Waste Association of North America (SWANA) followed with briefings on information resources.

Full Cost Reporting

Last year, the study group discussed full cost reporting, including the process, its merits and how it could be integrated into the current reporting requirements of local governments. This year, the joint subcommittee continues to look at this issue and has heard from different interest groups and those with experience in the area.

Auditor of Public Accounts

A draft recommendation from last year's study group was to incorporate full cost reporting into the existing *Comparative Report of Local Government Revenues and Expenditures* (*Comparative Report*). The draft recommendation was, in part, based on a belief that there would be "substantial benefit to local governments at very little expense," but the Auditor's office opposes the recommendation, for the following reasons:

- The *Comparative Report*, which summarizes the revenues and expenditures of local governments, includes all counties and cities but only towns with populations greater than 3,500. Therefore, only 32 of the approximately 190 towns in Virginia are included.
- The *Comparative Report* includes information on revenues and expenditures only. It does not include information on the type or level of service provided, nor does it report the cost to residents who receive services from the private sector. It does not contain information such as tax base and other considerations which would be useful in comparing actual costs of solid waste management from jurisdiction to jurisdiction.
- The *Comparative Report* uses accounting principles established nationally by the Governmental Accounting Standards Board (GASB). These "generally accepted accounting principles" are universally understood by local government auditors. The use of generally accepted accounting principles for the audited information, which is the basis of the *Comparative Report*, prevents the need for duplicative efforts and added expense to local governments. These principles do **not** require full cost reporting of solid waste activities. A requirement for full cost accounting would require changes to the accounting

system of all but 14 of the 168 local governments currently included in the *Comparative Report.*

■ Changes in accounting and financial reporting are time consuming and expensive. The Auditor's office did not have an exact figure on how much it would cost local governments to institute full cost reporting and accounting changes that would fit into the format of the *Comparative Report,* but the costs could be substantial.

■ The *Comparative Report,* in its current form, is used by numerous groups and agencies. Any change to the report would have an impact on those entities' ability to use the *Comparative Report.*

Craigie Incorporated

Craigie Incorporated (investment bankers) provided case studies on the basic funding for, and management of, solid waste in various localities. The five localities described have different financing and solid waste management structures. The method of accounting varies depending on the revenue sources for waste management, the methods used for capital financing, and the local organizational structure.

Henrico and Prince William. Henrico and Prince William Counties both operate county-owned landfills and finance their operations in part by tipping fees and transfers from the general fund. Only Henrico has private landfill space available. Henrico finances with general obligation bonds and employs a special revenue fund, whereas Prince William utilizes revenue bonds and an enterprise fund. Both use private collection, with Henrico also utilizing public collection in some areas.

Public Service Authorities. The Virginia Peninsula Public Service Authority (VPPSA) and the New River Resource Authority (NRRA) were formed under Virginia's Water and Sewer Authorities Act. Both operate regional yard waste facilities and have both public and private collection (in VPPSA collection depends on jurisdiction). VPPSA bids out recycling service for some of its members, has members bid out transportation and disposal services individually, serves as a financing conduit for county transfer stations and closure costs, has private landfill space available to members, and is financed by tipping fees, lease payments, and revenue bonds. On the other hand, NRRA owns and operates a regional landfill, works on regional recycling efforts, has no private landfill space readily available, is financed by tipping fees paid by members and revenue bonds, and has part A and part B permits for, and is buying land for, a new regional landfill.

Radford. The City of Radford has city-wide collection with disposal and financing being done through the NRRA. Solid waste revenues and expenditures are through its general fund. Direct revenues exceed direct expenses. The full cost reporting aspects of this fact was not addressed.

Accounting for audit purposes does not necessarily have anything to do with accounting for decision-making purposes. Areas with small financial reserves take a short-term view in evaluating public vs. private proposals. Such localities may be looking to deal with current budget stress and reduce tax expenditures for the next year while consciously or unconsciously deciding to postpone consideration about future years.

York Experience

York County currently operates a 95-acre landfill, which was planned to handle waste until 1998 or 2003. However, the county is closing the landfill on October 9, 1993, due to the cost and long-term liability associated with new regulations taking effect under Subtitle D of the federal Resource Conservation and Recovery Act (RCRA). It was estimated that the per-ton cost would increase from $33 to more than $90 in order to pay for these added costs. As an alternative, York has contracted with a landfill in Hampton. The site is owned by Hampton and run by a private entity. The county has retained an option to negotiate with VPPSA for other disposal alternatives.

Because jurisdictions differ, solid waste management alternatives and financing options should remain flexible. Cost is not the only factor a local government must consider when making solid waste management decisions. Local officials must be responsive to the desires and needs of their constituents, and a uniform accounting mandate could have disproportionate impacts, both positive and negative, from locality to locality.

Charlottesville Experience

A description of the experiences of the City of Charlottesville focused on the difficulties in full cost reporting associated with indirect costs. Jurisdictions vary in their allocation of indirect costs. Some include costs that others exclude, making it difficult to compare one jurisdiction to another.

Costs may not actually be forgone when privatization occurs. True overhead costs may not be directly translated into actual tax savings. For example, in some localities, administrative staff has already been reduced through "right sizing" and no whole position can be eliminated when privatization occurs.

In addition, privatization can add costs to government. There are transition, administration, and monitoring costs to consider. Current staff may not have the skills required to monitor and negotiate contracts. There may be added expense in acquiring and developing these skills. It is estimated that transition, administration, and monitoring costs will run about 20% of the price of a contract.

Phoenix, Arizona, is looked to as a good example of privatization. However, Phoenix has had 14 years to refine its system, has developed contract negotiation and monitoring expertise, and has grown at such a rapid rate that reductions in municipal work force due to privatization were readily absorbed by private waste management operators. In an area that cannot absorb workers, the social cost of privatization must be taken into account.

Information Resources

Last year's draft report found that localities need access to more information on solid waste management and privatization. This year, the committee is looking at the availability of technical and privatization information.

Department of Environmental Quality, Waste Division

The Department of Environmental Quality (DEQ) has a vast amount of information on solid waste management, ranging from data on recyclable materials markets to pollution prevention to hazardous waste reporting. DEQ holds conferences and numerous information sessions throughout the state to aid localities and businesses in the management of all types of waste and answers hundreds of calls a month for information on these topics. Information on waste management and new laws and regulations is regularly distributed to local governments and planning district commissions.

DEQ is working to strengthen its outreach and ties with localities through new programs. A permit coordination effort is underway, as is the development of an integrated affairs section. The creation of seven regional offices will also help.

In some instances DEQ staff provide on-site technical assistance to companies, limited by a lack of funding and the need to not infringe on private enterprises that provide this type of service. The department does not make specific recommendations of consultants to help industries or localities. It does, however, maintain lists, indicating areas of expertise.

While agreeing that the information available from DEQ is quite extensive, the committees expressed concern that localities may not have the resources to get privatization information such as model RFPs. DEQ does not maintain specific privatization information nor does it have the staff, the funding, or the expertise on staff to play such a role. Suggested repositories included the Department of Housing and Community Development, the Commission on Local Governments, the Virginia Municipal League, the Virginia Association of Counties, the University and Community College systems, the Center for Innovative Technology and the Virginia Resources Authority. DEQ would make sure that those requesting information on the topic would be pointed in the right direction.

A number of states provide funding to localities for solid waste management. The Commonwealth does not, except in some very limited areas. The state provides grants of $400 to $40,000 for recycling and litter education. A total of $500,000 is available for 327 localities to help with implementing recycling mandates.

Solid Waste Association of North America

The Solid Waste Association of North America (SWANA) has many programs and methods for educating its membership. Its Center for Solid Waste Education and Training conducts classes on the economics, costs, and use of enterprise funds for solid waste systems. SWANA provides technical assistance through its Solid Waste Assistance Program, which is designed to collect and provide, on request, current solid waste informational materials. On-site assistance, written advice, and over-the-phone responses are provided as well. SWANA has a peer matching program that matches individuals seeking assistance with colleagues in the field who possess the needed skill. These services are available to those who join SWANA.

It appears that information is lacking on the cost of new regulations affecting solid waste management, such as leachate collection and clean air requirements. This makes any analysis of future costs and planning efforts difficult. An argument was made for the creation of a standardized landfill design for different parts of the state which could then be site modified. This would provide some increased certainty on cost.

Privatization in Virginia

The climate for privatization in Virginia is relatively good for landfills. Private companies need volume in order to make a profit. Rural areas are having some difficulty because private haulers would rather go through an area where houses and collection points are close together rather than miles apart.

Concern was expressed that the requirements of Subtitle D are too strict and that some effort should be made to assure that such regulations are made less burdensome or at least do not get more stringent in the future. Some of the large costs in solid waste management are the costs of constructing a landfill that will meet the requirements of Subtitle D and the monitoring required for the 30-year period following closure of the landfill. Arguably, the standards in RCRA are too stringent when applied to certain geographic areas.

The design and monitoring requirements of RCRA are, for the most part, national standards aimed at protecting public health and the environment. The EPA administrator does have some discretion to reduce the 30-year monitoring requirement if local conditions warrant.

The real importance of full cost accounting is not to compare one jurisdiction to another but to enable a local jurisdiction to compare the cost of public vs. private operation. A question was raised as to whether there is some reporting mechanism by which localities can break out numbers from the information they currently have, and if so, should it be mandated? This may be difficult to do since conditions vary from jurisdiction to jurisdiction, and the information sought will vary as well.

An important theme stressed by members of the committee is that the public is demanding, and has a right to know, the true cost of governmental activity and whether that activity is efficient.

Interest was expressed in developing guidelines on how to go through the process that Charlottesville and York conducted in making their privatization and full cost reporting decisions.

Local officials were requested to put together information on this topic for the joint subcommittee. (Subsequent to this meeting a subcommittee was formed to address this issue.)

Future Meetings

The subcommittee met in September to discuss full cost reporting and the issues found in subdivisions (i) and (ii) of HJR 494. Subdivision (i) requires an examination of "the fiscal constraints on local governments in meeting solid waste management and recycling needs." Subdivision (ii) requires a review of "the abilities of local governments to comply with requisite capital outlays associated with meeting solid waste management and recycling requirements and the needs of their citizens."

The Honorable Shirley F. Cooper, *Chairman*
Legislative Services contact: Shannon R. Varner

State Water Commission

July 21, 1993, Richmond

The second 1993 meeting of the State Water Commission was aimed at setting the groundwork for this year's effort to outline the state's role in water supply and development. Following a staff overview of water law in Virginia, the Water Division of the Department of Environmental Quality outlined the current and projected water supply and demand for the Richmond and Hampton Roads areas, the Army Corps of Engineers presented their experiences with a national drought study and new computer technology available for water supply planning, the Hampton Roads Planning District Commission detailed its water supply position statement, and the commission considered potential options for a state water agenda.

Water Supply and Demand in Richmond and Hampton Roads

Richmond Metropolitan Area

The potential total safe yield from the five surface water sources is 384 million gallons per day (mgd). This figure does not take into account the needed instream reserve for the maintenance of aquatic habitat and other beneficial instream uses. The 1990 capacity of the systems which withdraw surface water was 159 mgd. In addition, groundwater withdrawals amounted to six mgd.

1990 demand totaled 96 mgd with a peak demand of 136. Demand of 147 mgd is projected for 2030 with a peak demand of 229. The Richmond Regional Planning District Commission projects that a peak demand deficit could occur during the mid-1990s, with an average demand deficit projected for approximately 2025.

A number of obstacles exist to increasing the available supply from current sources. Groundwater level declines may limit that resource's use, and instream flow requirements have not been determined. Thus, the water needs for the protection of instream values such as habitat and recreational use may limit withdrawal. Certain areas in need of more water may not have sufficient access. New or expanded treatment capacity and pumping and transmission limitations must be provided for.

Increased use of ground water and the development of additional surface water sources are being explored. In 1988, the Richmond Regional Planning District Commission began development of a regional water resources plan. Disagreement over implementation resulted in no action on a plan that had been approved by the member jurisdictions. The Metropolitan Chamber of Commerce has initiated a water supply study aimed at resolving the localities' differences. Its report is expected in September.

North Hampton Roads

The northern portion of the Hampton Roads area includes the cities of Newport News, Hampton, Poquoson, and Williamsburg and York and James City Counties. A number of reservoirs, the Chickahominy River, and groundwater are the area's water supply. The surface water safe yield is 66 million gallons per day; 7 mgd can be taken from groundwater. Treatment capacity is 61 mgd. 1990 demand was 55 mgd. Demand in 2030 is estimated to be 86 mgd. Deficits are projected to occur in the late 1990s.

Conservation measures and the conjunctive use of surface and groundwater are underway to address the deficit. The long-term solution has centered on developing new surface water sources. In 1979, James City County planned to develop the Ware Creek Reservoir, but EPA vetoed a Corps permit issued for the project and court battles continue over the issue.

Earlier this year, the Cohoke Reservoir project in King William County was selected from 31 alternatives by the Regional Raw Water Study Group. State and federal applications have been submitted for the project, but James City County has withdrawn from the regional group because it believes that the Ware Creek project is the only timely solution to meet its needs.

South Hampton Roads

The southern portion of Hampton Roads includes the cities of Norfolk, Virginia Beach, Portsmouth, Chesapeake, Suffolk, and Franklin and Isle of Wight and Southampton Counties.

Reservoirs, the Northwest, Blackwater and Nottoway Rivers, and groundwater make up the area's water supply. Surface water safe yield is 105 mgd. Another 11 mgd is withdrawn from groundwater. Treatment capacity is 99 mgd. 1990 demand was 110 mgd, which is about 11 million gallons in excess of reliable treatment capacity. Demand in 2030 is projected to be 167 mgd. The area is considered to be on the verge of a safe yield deficit.

Conservation measures, including mandatory restrictions, have brought impressive results. Virginia Beach's per capita consumption is about 82 gallons per day, compared to 136 gallons per day statewide. There is virtually no margin for further reductions through conservation.

Innovative approaches being taken in the area include the current development of an aquifer storage and recovery system to store excess water underground for later use. Portsmouth is using electrodialysis reversal to improve groundwater quality.

For nearly 25 years Virginia Beach has been involved in efforts to construct a pipeline from Lake Gaston, which would supply 60 million gallons of water a day to Virginia Beach, Portsmouth, Chesapeake, Suffolk, Franklin, and Isle of Wight. Numerous legal challenges have been resolved, yet some still remain. The Department of Commerce has denied North Carolina's request for review of the project under provisions of the Coastal Zone Management Act. The Federal Energy Regulatory Commission's draft environmental assessment will be completed shortly and a final decision is expected by the end of the year.

Richmond and Hampton Roads highlight the interdependence between areas. Often, one locality acts a major supplier to a number of others. Because these arrangements are contractual, uncertainty exists for both water suppliers and consumers.

The Richmond and Hampton Roads areas depend on groundwater to some degree. The careful conjunctive use of ground water and surface water is increasingly important. The Ground Water Management Act of 1992 is designed to allow maximum use of the resource while protecting its integrity.

These areas also provide examples of the difficulties in developing new water sources. Significant amounts of time and money have been spent on the Lake Gaston and Ware Creek proposals. The efforts of the Regional Raw Water Study Group and the Richmond Regional Planning Commission illustrate the difficulties in developing regional strategies satisfactory to all localities.

Lake Gaston Project

A representative from the City of Virginia Beach made a brief presentation on the Lake Gaston Pipeline project. The status was outlined as follows:

- the engineering design has been completed;
- construction plans and specifications that allow the contractors to build the project are complete;
- the right-of-way has been acquired;
- the consent of the localities through which the pipeline will pass has been obtained;
- financing for the project is in place (a $200 million bond referendum has been approved by the citizens of Virginia Beach);
- law suits are still pending but five have been resolved in favor of the City;
- the process under the Coastal Zone Management Act is complete;
- approval from the Federal Energy Regulatory Commission is expected in September or October;
- limited construction is underway;
- Norfolk will receive the water in its reservoir, then treat and deliver it;
- Chesapeake, Franklin, and Isle of Wight have the opportunity to tap into the pipeline; and
- the target date for operation is 1996.

Delegate Parker noted that Virginia Beach had made agreements with the receiving areas but not with the sending area, suggesting to the sending area that the receiving area believes it has superior rights. He stressed that he does not want water policy to be used as a growth management tool but that the message Virginia Beach is sending is a bad one. He also noted that even though the intake is in Lake Gaston, the water actually comes from Buggs Island Lake, used to maintain the level of water in Lake Gaston.

National Drought Study

In 1989 the U.S. Congress provided funding for a study of drought preparedness and planning. Twenty-nine areas applied to the Corps to be part of the study, and four were selected, including the James River basin. A drought preparedness study found that paper plans do not work when it came to a real situation, something the Corps has sought to correct.

The Corps has taken several steps, including the development of a planning mechanism, creating a National Drought Atlas (outlining the frequency and severity of droughts and wet periods), and the development and use of computer technology to compare one scenario to another.

Water flows in basins, surface water flows into groundwater, and groundwater flows back to surface water, regardless of political subdivisions or the division of responsibility for water quality among agencies. This raises the question of the state's role in unifying these responsibilities. Based on information from other states, the following observations were offered:

- State water policy should not dictate to local governments how they should manage their water because better solutions are inevitably found at the local level.
- The state should provide a set of consistent planning principles for water allocation decisions.
- The state can act as liaison to a broader base of experience found nationally.
- The state can provide funding for research.

Hampton Roads PDC Statement

The Hampton Roads area is vulnerable to drought conditions because the region's reservoirs have relatively small tributary watersheds and the groundwater is susceptible to saltwater intrusion.

Historical Background

Water supply planning has been an ongoing effort in the Hampton Roads area for decades. Between 1965 and 1981, more than 40 studies of the region's water resources were completed, and many more locality-specific water supply plans and studies were also undertaken. Since 1981, the number of such studies has grown exponentially, with the latest count exceeding 100. Efforts to optimize existing water supply systems through improved treatment, transmission, and distribution are also underway.

Water supply projects involving development and protection of the region's groundwater supply are ongoing in most of the region's localities. They include continued studies of the resource and the development of a groundwater impact mitigation program.

Over the past 15 years the region's localities have expended more than $397 million on major water-supply-related projects and activities. The region's four jurisdictions expect to spend an additional $600 million by the year 2000. These figures do **not** include the cost of system expansion to serve existing and future residents or the cost of system operation and maintenance. The expenditures by private developers to provide service to new developments and by individual residents to connect to the public system are also not included.

Each locality is pursuing and requiring conservation by residents and businesses. Conservation efforts include replacing declining block rate schedules with uniform rates, a rebate program that pays customers to replace toilets with "ultra-low flow" toilets, comprehensive leak detection, reduction of in-treatment plant water loss and increased recycling of treatment plant waste water, adoption of building codes requiring the use of water-conserving plumbing fixtures, and encouraging the use of vegetation and water-wise landscaping.

These efforts have greatly reduced water consumption throughout the region, which is well below both national and statewide per-capita rates.

Current Intergovernmental Responsibilities

The federal government, primarily through the Army Corps of Engineers and USEPA, is charged with permitting facilities affecting waters of the United States and with assuring that water supply purveyors provide safe drinking water. The state has parallel responsibilities carried out by DEQ and the Department of Health. Historically, local governments have been charged by enabling legislation with provision of a safe drinking water supply to their citizens.

The ability of local governments to carry out these responsibilities is constrained by state and federal regulation. They are further constrained because many state and federal programs are not integrated and often work at cross purposes. In some cases, water supply projects may be caught between two or more state or federal regulatory programs that aim to achieve competing or conflicting objectives.

The HRPDC and other regional agencies provide local governments with technical support, cooperative planning efforts and opportunities to develop consensus on water supply issues.

Water supply in the region is characterized by a number of hybrids which do not fit into traditional government levels. In a number of instances localities have developed contractual relationships governing the provision of water supply. In general, water supply systems are physically interconnected, enabling them to function regionally.

Recommendations on State Water Policy

The Hampton Roads Planning District Commission made recommendations for a new or expanded role for the state in water supply. According to the recommendations, the state should:

- integrate the water supply planning and regulation responsibilities of the Departments of Environmental Quality and Health;
- assure that the "local veto" is not misused by helping to facilitate consensus on water supply proposals between source communities and water supply purveyors;
- provide funding for technical studies of state water resources;
- provide the necessary technical and political support for local water supply development projects when interstate water resources development is involved;
- ensure that all feasible alternatives to providing water supplies are examined from an environmental, economic and social perspective, with the provision that the state must be willing to concur, at some point, that sufficient study has been completed;
- not use water supply control as a state growth management mechanism;
- assure that compensation policies for interjurisdictional transfers of water reflect the relative contributions of localities to the state treasury and thus the budgets of other localities; and
- allow the development and use of groundwater to support provision of municipal water supply during periods of drought or other emergency situations.

The recommendations also note that the state should move quickly to rationalize the state role in water supply, especially to ensure that water supply does not become an issue in 1995 when potential decisions on base closures may occur.

Options

Staff presented an outline of the potential options for the development of a state role in water resources. The areas of planning, development, utilization, and incentives were outlined.

Planning — quality, quantity, and current and future needs as well as assessment of alternatives and options, whether from a statewide or local/regional perspective.

Development — the physical process by which water is captured and distributed. Long- and short-range alternatives include conjunctive use, storage, drought preparedness, water levels that trigger conservation, water supplies such as reservoirs, and distribution systems. As with planning, options range from total state control to local autonomy.

Utilization — decisions about who gets the water, under what circumstances, for what purposes, and in what quantities. Responsibility for the establishment and implementation of criteria for water transfers can rest solely with the state, solely with localities, or with a combination of the two. Also included in utilization are regulation of the transfer of water and at what level regulation will be required (i.e., between basins, between jurisdictions, or between some other unit of analysis); protection of the sending area (considerations include payment, economic development worries, flow reserves, and the development of storage for these areas); and mechanisms for dispute resolution (ranging from the development of a special court with exclusive jurisdiction to no state role at all).

Incentives — the methods by which those who have an interest in water are encouraged to participate in any agenda established for planning, development, and utilization. At issue is under what conditions the state should provide incentives, which depends in large part on the role of the state in an overall water agenda.

The commission directed staff to develop the options in draft legislative form for review by the commission at a work session.

Discussion

Several additional issues were raised by members of the commission:

- A complete understanding of location, quantity, and availability of the waters of the Commonwealth is needed. This would allow for some determination of what the real options are.
- What effect will a state policy have on existing and planned inter-jurisdictional agreements and planning?
- The problems with water supply are just beginning and if action is not taken in the near future serious problems will occur.
- The state role to date has been focused on water quality rather than water supply and development. The state agencies are in the position to deny reservoirs and water supply systems but not to create those systems.
- Who will be responsible for water management?
- What localities other than the City of Richmond lay claim to surface water grants from the Commonwealth?

Future Meetings

A meeting was scheduled to review the issues surrounding small water works on September 13. The date of the work session on the state agenda for water resources will be announced.

The Honorable Lewis W. Parker, Jr., *Chairman*
Legislative Services contact: Shannon R. Varner

HJR 624: Joint Subcommittee Studying Governmental Actions Affecting Private Property Rights

August 16, 1993, Richmond

The subcommittee was established to study Virginia governmental actions which may result in a taking of private property under current federal or Virginia constitutional law and the need, if any, for legislation to change current law or procedures. At its initial meeting the subcommittee was briefed on the current status of "takings" law, the types of takings legislation introduced in other states, and the comments of various interested parties.

Current Status of Takings Law

The legal basis of a taking claim is the Fifth Amendment of the U.S. Constitution, which states, in part, "Nor shall private property be taken for public use without just compensation." This is what is referred to as the "takings" clause. Also, the Virginia Constitution states that "the General Assembly shall not pass any law . . . whereby private property shall be taken or damaged for public uses, without just compensation . . . ."

The critical question is **when** does a taking occur that will trigger a property owner's right to just compensation? When a government actually acquires a property, or physically occupies a property, it is obvious that a taking has occurred. However, in 1922, the U.S. Supreme Court, for the first time, held that a taking can occur through government regulation that goes too

far in restricting the use of one's property. This is referred to as a "regulatory taking." The Supreme Court, over the years, has struggled to define when a regulatory taking occurs, and the Court's taking standards have changed frequently.

In 1978, in the *Penn Central* Case, the Supreme Court listed three factors to be considered in determining whether a regulatory taking has occurred: (1) the economic impact of the government action, (2) the extent to which reasonable investment-backed expectations are disturbed, and (3) the character of the government action.

In a 1980 case, the Supreme Court used a two-part analysis to determine whether there had been a taking: (1) whether the challenged regulation substantially advances legitimate state interests, and (2) whether the regulation "denies an owner economically viable use of his land."

Other important takings cases include (i) the *Nollen* case, which held that there must be a nexus between the proposed regulation of the property and the legitimate state interest sought to be advanced, and (ii) the *First English* case, which held that governments must pay compensation for temporary as well as for permanent taking of property.

Most recently, the Supreme Court heard the case of *Lucas v. South Carolina Coastal Council*, where the owner of two beachfront lots was denied the right to develop those lots for residential use by a newly enacted Beachfront Management Act. The owner filed suit, claiming a regulatory taking. It was not contested by the government that the regulation left the lots without economic value. The court held that the government must pay compensation where government action has "deprived a landowner of all economically beneficial uses" of the property. However, the court also declared that there would be exceptions to this rule where development could have been prevented under the common law nuisance doctrines of the state, or the denied use is not part of the owner's title to the property.

The Supreme Court did not determine whether these exceptions might apply in this case, but remanded the case back to the South Carolina courts for a final determination as to whether there had been a regulatory taking of Mr. Lucas' property. Recently, the parties reached an out-of-court settlement.

The bottom line with this series of takings cases is that there is no firm rule one can rely on to predict how the court will decide a case. The court looks at the regulatory takings issue on a case-by-case basis and the outcomes of the cases seem to depend a great deal upon the nuances of the facts in each particular case.

Takings Legislation in Other States

Approximately 31 states have introduced takings, or private property rights, legislation over the past year or two. Most of this legislation is based on President Reagan's Executive Order 12,360 and the implementing Attorney General Guidelines, which require that all federal regulations be approved in order to assist federal departments and agencies in gauging the takings implications of their actions. Other state legislation would require that the state or localities compensate landowners whenever a regulation reduced the value of the property by more than a certain amount, typically 50 percent

To date, takings legislation has passed in Arizona, Delaware, Indiana, Utah, and Washington. The Arizona law will not take effect unless approved by voter referendum in November 1994. All of the approved legislation appears to involve takings assessment, rather than compensation.

Public Comment

The Chairman invited interested parties to introduce themselves and briefly state their interest in the study. A number of speakers expressed support for the type of legislation being considered by the subcommittee. Among the reasons for such support was (i) the need to clarify legislatively what the courts have declared judicially with regard to takings law, (ii) the feeling that governments do not give appropriate weight to private property rights, (iii) the impact that government regulation has on property values, and (iv) the lack of resources available to most property owners to deal with proposed regulations. Several speakers expressed concern about potential takings legislation. Among concerns expressed was (i) the opinion that citizens already have adequate protections under the Fifth Amendment, (ii) the potential cost of takings legislation, (iii) the possible impact on historic resource ordinances, and (iv) that local governments will have their regulatory powers diminished.

The Honorable Glenn R. Croshaw, *Chairman*
Legislative Services contact: Jeffrey F. Sharp

The Legislative Record summarizes the activities of 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.

Special Projects
Division of Legislative Services
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.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Policy of Non-Discrimination on the Basis of Disability

The Virginia Department of Agriculture and Consumer Services (VDACS) does not discriminate on the basis of disability in access to employment or in its programs and activities. The VDACS Coordinator for the Americans with Disabilities Act and 504 has been designated to coordinate VDACS compliance with the non-discrimination requirements contained in § 35.107 (28 CFR 35.107) of the Department of Justice regulations which implement Title II of the Americans with Disabilities Act. To ensure full and equal access to all programs and activities, the Virginia Department of Agriculture and Consumer Services, upon request, shall provide reasonable accommodations and auxiliary aids, at no cost to the individual. Information concerning the provision of the Americans with Disabilities Act and the rights provided thereunder within the Virginia Department of Agriculture and Consumer Services, are available from the Americans with Disabilities Act/504 Coordinator, Harriet Smith, 1100 Bank Street, Richmond, Virginia 23219, telephone (804) 786-3531 or TDD Voice (804) 371-6344.

DEPARTMENT OF EMERGENCY SERVICES

† Policy of Nondiscrimination on the Basis of Disability

The Department of Emergency Services does not discriminate on the basis of disability in access to employment or in its programs and activities. The Americans with Disabilities Act and 504 has been designated to coordinate compliance with the nondiscrimination requirements contained in § 35.107 (28 CFR 35.107) of the Department of Justice regulation implementing Title II of the Americans with Disabilities Act. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided thereunder, are available from this agency's Americans with Disabilities Act/504 Coordinator.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Virginia Coastal Resources Management Program

† Public Notice of Approved Routine Program Implementations

On August 9, 1993, the Department of Environmental Quality submitted two routine program changes to the Office of Ocean and Coastal Resources Management of NOAA for incorporation into the Virginia Coastal Resources Management Program (VCRMP). As required by the Coastal Zone Management Act, Tidewater localities and affected federal and state agencies were notified on the same date of the proposed incorporation of the Virginia Water Protection Permit and the amendments authorizing the assessment of restoration orders, civil charges and penalties as applied to the Wetlands Act, the Coastal Primary Sand Dune Act and the Subaqueous Lands Act. A public notice describing the submission was simultaneously published in The Virginia Register and the Richmond Times-Dispatch. On September 3, 1993, Virginia received notice that NOAA has accepted these changes to Virginia's coastal program. Federal Consistency applies as of September 10, 1993, when notice of this concurrence was published in the Richmond Times-Dispatch. Please contact John Marling for further information regarding Federal Consistency, or Jeannie Lewis Smith for the complete RPI package at the Department of Environmental Quality, Division of Intergovernmental Coordination, 902 North 9th Street, Richmond, Virginia 23219, telephone (804) 786-4500.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

Virginia Voluntary Formulary Board

† Adoption and Issuance of Revisions to the Virginia Voluntary Formulary

Pursuant to the authority vested in the Virginia Voluntary Formulary Board by § 32.1-79 et seq. of the 1950 Code of Virginia, notice is hereby given of a public hearing by the Virginia Voluntary Formulary Board, to be held at 10 a.m. on October 22, 1993, Main Floor Auditorium, James Madison Building, 109 Governor Street, Richmond, Virginia.

The said hearing shall consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary.

The Virginia Voluntary Formulary lists drugs of accepted therapeutic value commonly prescribed within the state which are available from more than one source of supply. The formulary also lists manufacturers of drug products which the Virginia Voluntary Formulary Board has found to be acceptable based upon the data submitted by these manufacturers and their respective distributors.

The proposed revision to the Virginia Voluntary Formulary adds and deletes drugs and drug products to the formulary that became effective February 17, 1993, and the most recent supplement to that formulary.

Copies of the proposed revisions to the Virginia Voluntary Formulary are available for inspection at the Bureau of Pharmacy Services, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on October 22, 1993, will be made a part of the hearing record and considered by the board.

Legal Notice of Opportunity to Comment on Proposed State Plan of Operations and Administration of Special Supplemental Food Program for Women, Infants, and Children (WIC) for Federal Fiscal Year 1994

Pursuant to the authority vested in the State Board of Health by § 32.1-12 and in accordance with the provisions of Title 9, Chapter 1.1:1 of Public Law 95-627, notice is hereby given of a public comment period to enable the general public to participate in the development of the Special Supplemental Food Program for Women, Infants, and Children (WIC) for Federal Fiscal Year 1994.

Written comments on the proposed plan will be accepted in the office of the Director, WIC Program, State Department of Health, 1500 East Main Street, Room 132, Richmond, Virginia 23219, until 5 p.m. on October 6, 1993.

The proposed State Plan for WIC Program Operations and Administration may be reviewed at the office of your health district headquarters during public business hours beginning September 6, 1993. Please contact your local health department for the location of this office in your area.

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
FINAL (Transmittal Sheet) - RR04
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.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-13-07. Ground Water Withdrawal Regulation.

Publication: 9:24 VA.R. 4500-4519 August 23, 1993.

Correction to Final Regulation:

Page 4503, § 2.2 B, line 3, change "VR 680-40-01:1" to "VR 680-41-01:1"

Page 4504, § 3.1 A 7, line 7, delete "Any person described in § 3.1 A 4 who files an application by the date required may continue their existing withdrawal until such time as the board takes action on the outstanding application for a ground water withdrawal permit."

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

BOARD FOR ACCOUNTANCY

† **October 18, 1993 - 10 a.m.** – Open Meeting
† **October 19, 1993 - 8 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) review applications; (ii) review correspondence; (iii) review and disposition of enforcement cases; and (iv) conduct routine board business.

Contact: Mark N. Courtney, CPE Administrator, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

† **October 25, 1993 - 10 a.m.** – Open Meeting
City Council Chambers, 715 Princess Ann Street, Fredericksburg, Virginia.

A meeting to conduct a formal administrative hearing in regard to the Board for Accountancy v. Charles E. Coker, CPA.

Contact: Carol A. Mitchell, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

DEPARTMENT FOR THE AGING

Long-Term Care Council

† **October 13, 1993 - 10 a.m.** – Open Meeting
Virginia Housing Center, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general business meeting of the council.

Contact: Cathy Saunders, Director, Long-Term Care Council, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2912 or toll-free 1-800 552-4464.

GOVERNOR'S ADVISORY BOARD ON AGING

† **October 28, 1993 - 8 a.m.** – Open Meeting
Sheraton Inn, 36th and Atlantic Avenue, Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will hold a general session to discuss the draft report of the Long-Term Care and Aging Task Force and to plan legislative activities for the upcoming session of the General Assembly.

Contact: Bill Peterson, Planner, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2803 or (804) 225-2271/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Aquaculture Advisory Board

† **October 26, 1993 - 2 p.m.** – Open Meeting
Virginia State University, Foster Hall, Room 114, Petersburg, Virginia. ♿

The board will meet in regular session to discuss issues related to the Virginia aquaculture industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the Virginia Aquaculture Advisory Board identified in this notice at least 5 days before the meeting date so that

suitable arrangements can be made for any appropriate accommodation.

Contact: T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, Department of Agriculture and Consumer Services, P.O. Box 1163, Suite 1003, Richmond, VA 23209, telephone (804) 371-6094.

Virginia Egg Board

† **October 19, 1993 - 10 a.m.** – Open Meeting
Marriott Hotel, Hershberger Road, Roanoke, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will discuss the new tax amendment concerning the Virginia Egg Excise Tax Regulations, processed eggs involving Virginia Tech research, two new programs that will be introduced with Henrico County's W.I.C.K. Program and Environmental Program with the City of Winchester. Any person who needs any accommodation in order to participate at the meeting should contact Cecilia Glembocki, Program Director, at least 5 days before the meeting on October 19 so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Cecilia Glembocki, Program Director, 911 Saddleback Court, McLean, VA 22102, telephone (703) 734-8931.

Pesticide Control Board

† **October 14, 1993 - 10 a.m.** – Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, Board Room 204, Richmond, Virginia.

Committee meetings.

† **October 15, 1993 - 9 a.m.** – Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, Board Room 204, Richmond, Virginia.

A general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda at 9 a.m. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least two days before the hearing date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

STATE AIR POLLUTION CONTROL BOARD

October 4, 1993 - 9 a.m. – Open Meeting
George Washington Inn, Williamsburg, Virginia.

The board will hold its annual meeting in conjunction with the Advisory Board on Air Pollution. Call for details.

Contact: Dr. Kathleen Sands, Policy Analyst, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 225-2722.

* * * * * * * *

† **November 17, 1993 - 10:30 a.m.** – Public Hearing
Pohick Regional Public Library, 6450 Sydenstricker Road, Burke, Virginia.

† **December 3, 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 and the requirements of § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions.** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

The 1990 Clean Air Act amendments require that the Northern Virginia vehicle emissions testing program be upgraded from a "basic" program, which tests vehicle exhaust emissions at idle speed, to an "enhanced" program, which tests exhaust emissions from most vehicles during a simulated driving cycle and also tests for excessive fuel evaporation.

The regulation defines affected motor vehicles and requires that they be presented to a test-only emissions inspection station biennially to receive a test based on vehicle model year and weight class. Information regarding the vehicle's performance on the test is given to the motorist and a pass, fail, waiver or rejection signal is electronically stored for the purpose of enforcement through registration. The inspection may cost the motorist up to $20 and there is an administrative fee of $2 per vehicle, per year of registration, due at the time of registration. This will, in most cases, be collected by the Department of Motor Vehicles and deposited into a fund for the purpose of funding the state oversight costs of this program.

Cars and trucks weighing less than 8,500 pounds, of model years 1968 and newer, will be subject to the "high-tech" exhaust emissions inspection, called IM240, which tests cars in a simulated driving cycle. All but the 1968-70 model years will also get a test of the

vehicle's fuel vapor recovery system and of the fuel supply system to detect evaporative leaks. Heavier trucks will get a test of the exhaust emissions at idle and with the engine running at 2,500 RPM, called a "two-speed idle test." In addition to vehicles registered in the area defined by the law, vehicles not registered but operated regularly in the program area, such as on federal installations, will also be subject to testing, regardless of where they are registered. State and local government vehicles are also included.

The test is valid for two years no matter how may times the vehicle is bought or sold. If a motorist wishes to request a waiver of the test, he must spend at least $450 on emissions-related repairs. The cost amount is adjusted each January by applying the Consumer Price Index released the previous fall by the federal government. The waiver is also valid for two years.

Random testing of vehicles is required and will be accomplished using either roadside pullovers for an idle test or a remote sensing device next to the roadway.

The regulation defines conditions under which an inspection station may be granted a permit and emissions inspectors may be granted a license. Certain conditions for consumer protection, such as location of stations, parameters for determining the number of inspection stations, and motorist waiting time are included in the regulation.

Comparison with federal requirements: The following provisions of the regulation are more stringent than federal requirements:

1. Coverage is extended from the nonattainment area to include Fauquier County based on the requirement in the state statute.

2. Consumer protection requirements regarding the location of inspection stations, the number of inspection lanes, and the hours of operation provide parameters for these aspects of the program, based on requirements in the state statute, which are not requirements of the federal regulation.

3. Manufacturers or distributors of emissions testing equipment are prohibited from owning or operating emissions inspection stations by statute.

4. The federal requirement for this program is that a calculated reduction in certain emissions, in grams of emissions per vehicle mile traveled, be met through a program based on a model program developed by EPA. Some aspects of a state's program may match the model program, some may be less stringent, and some may be more stringent. Aspects of greater stringency must make up for those aspects which are less stringent.

EPA's model program, i.e. the performance standard, includes:

Network type: Centralized

Start date: January 1, 1995

Test frequency: Annual testing

Model year coverage: 1968 and lower

Vehicle type coverage: Light duty vehicles and light duty trucks rated up to 8,500 pounds GVWR

Transient, mass-emissions test (IM240): 1986 and newer vehicles

Two-speed test, no resistance load: 1981-1985 vehicles

Idle test: 1980 and older

Virginia's proposed program, designed to meet the performance standard, includes these variations on the model program:

Test frequency: Biennial testing

Vehicle type coverage: Vehicles rated up to 26,000 pounds GVWR, with exceptions for diesels, motorcycles, and antique vehicles

Transient, mass-emissions test (IM240): 1968 and newer light duty vehicles and trucks up to 8,500 pounds GVWR

Two-speed test, no resistance load: 1968 and newer heavy duty vehicles and trucks up to 26,000 pounds GVWR

The following provision of the regulation is less stringent than federal requirements:

Used vehicles held in a motor vehicle dealer's inventory for resale may be registered for one year without an emissions inspection provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's or distributor's warranty at the time of resale. This deferment is based on a requirement in the state statute.

Location of proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the office of the Air Programs Section, 9th Street

Office Building, 8th Floor, 200-202 North 9th Street, Richmond, Virginia, and at the office of the Mobile Sources Section, Department of Environmental Quality, 7240-D Telegraph Square Drive, Lorton, Virginia, telephone (703) 339-8553, between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Statutory Authority: §§ 46.2-1179 and 46.2-1180 of the Code of Virginia.

Written comments may be submitted through December 3, 1993, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: David Kinsey, Policy Analyst, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1620.

ALCOHOL SAFETY ACTION PROGRAM - MOUNT ROGERS

† **October 6, 1993 - 12:30 p.m.** – Open Meeting
Oby's Restaurant, North Main Street, Marion, Virginia.

The Mt. Rogers ASAP Board of Directors meets every other month to conduct program business. The order of business at all regular meetings shall be as follows: (i) call to order; (ii) roll call; (iii) approval of minutes; (iv) unfinished business; (v) new business; and (vi) adjournment.

Contact: J.L. Reedy, Jr., Director, Mt. Rogers ASAP, 1102 A N. Main St., Marion, VA 24354, telephone (703) 783-7771.

ALCOHOLIC BEVERAGE CONTROL BOARD

October 13, 1993 - 9:30 a.m. – Open Meeting
October 25, 1993 - 9:30 a.m. – Open Meeting
November 8, 1993 - 9:30 a.m. – Open Meeting
November 22, 1993 - 9:30 a.m. – Open Meeting
2901 Hermitage Road, Richmond, Virginia.

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

November 4, 1993 - 9:30 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia.

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9907.

BOARD FOR BARBERS

October 4, 1993 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to (i) review applications; (ii) review correspondence; (iii) review enforcement cases and dispositions; and (iv) conduct routine board business.

Contact: Mark N. Courtney, Acting Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

CHILD DAY-CARE COUNCIL

† **October 14, 1993 - 9:30 a.m.** – Open Meeting
Theater Row Building, 730 East Broad Street, Lower Level, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss issues, concerns and programs that impact child day centers, camps, school-age programs, and preschool/nursery schools. The public comment period will be 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, Theater Row Bldg., 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

October 15, 1993 - 8:30 a.m. – Open Meeting
Office of Coordinator, Interdepartmental Regulation, 730 East Broad Street, Theatre Row Building, 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, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

VIRGINIA COUNCIL ON COORDINATING PREVENTION

† **October 15, 1993 - 10 a.m.** – Open Meeting
9th Street Office Building, 6th Floor, Cabinet Conference Room, Richmond, Virginia.

A regular quarterly meeting. The primary agenda item will be a review of state prevention planning efforts.

Contact: Ron Collier or Sharyl Adams, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Prevention, 109 Governor St., P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530.

BOARD OF CORRECTIONS

† **October 20, 1993 - 10 a.m.** – Open Meeting
6900 Atmore Drive, Board Room, Richmond, Virginia.

A regular monthly meeting to consider such matters as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

October 6, 1993 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to amend regulations entitled: **VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.** The regulation mandates entry-level training requirements for dispatchers.

Statutory Authority: § 9-170 (1) and (8) of the Code of Virginia.

Contact: L. T. Eckenrode, Division Director, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

October 6, 1993 - 1 p.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to consider matters relating to the board's responsibilities for criminal justice training and improvement of the criminal justice system. Public comments will be heard before adjournment of the meeting.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

Private Security Services Advisory Board

† **October 29, 1993 - 9 a.m.** – Open Meeting
Virginia Beach Hilton, 5th and Oceanfront, Virginia Beach, Virginia.

A meeting to discuss business of the advisory board.

Contact: Martha M. Clancy, Criminal Justice Analyst, 805 E. Broad St., 9th Floor, Private Security Section, Richmond, VA 23219, telephone (804) 786-4700.

Committee on Training

† **October 5, 1993 - 9 a.m.** – Open Meeting
State Capitol, House Room 4, Richmond, Virginia.

A meeting to invite public comment in response to Senate Resolution 46 (SR 46), which requires the Department of Criminal Justice Services to study and make findings and recommendations as to whether all private investigators should be regulated by the Commonwealth of Virginia.

Contact: Martha M. Clancy, Criminal Justice Analyst, 805 E. Broad St., 9th Floor, Private Security Section, Richmond, VA 23219, telephone (804) 786-4700.

October 6, 1993 - 9 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss matters related to training for criminal justice personnel.

Contact: Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

BOARD OF EDUCATION

October 28, 1993 - 8:30 a.m. – Open Meeting
November 17, 1993 - 8:30 a.m. – Open Meeting
November 18, 1993 - 8:30 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia. (Interpreter for the 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.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073 or toll-free

1-800-292-3820.

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December 3, 1993 - 4 p.m. – Public Hearing
James Monroe Building, 101 North 14th Street, Richmond, Virginia.

December 3, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **VR 270-01-0034. Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits.** The proposed revisions increase user fees to the schools and update and provide consistency between the regulations and current practice. For more information or to receive a copy of the proposals contact Carol Buchanan at the address below.

Statutory Authority: §§ 22.1-321 and 22.1-327 of the Code of Virginia.

Contact: Carol Buchanan, Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2848 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

† **October 7, 1993 - 5:30 p.m.** – Open Meeting
† **November 4, 1993 - 5:30 p.m.** – Open Meeting
† **December 2, 1993 - 5:30 p.m.** – Open Meeting
Chesterfield County Administration Building, 10001 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 - GLOUCESTER

† **October 27, 1993 - 6:30 p.m.** – Open Meeting
Gloucester Administration Building Conference Room, Gloucester, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting. Matters on the agenda to be addressed will be (i) distribution of the updated plan; and (ii) the annual exercise and appointment of a nominating committee to present a slate of officers at the next quarterly meeting.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

October 6, 1993 - 3 p.m. – Open Meeting
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

A regularly scheduled meeting.

Contact: L. A. Miller, Fire Chief, Winchester Fire and Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (703) 662-2298.

DEPARTMENT OF ENVIRONMENTAL QUALITY

October 6, 1993 - 10 a.m. – Open Meeting
Department of Environmental Quality, 4900 Cox Road, Main Board Room, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Waste Division will hold a meeting to receive public comments and ideas on the proposal to amend Virginia Waste Management Board regulations entitled VR 672-10-1, Virginia Hazardous Waste Management Regulations. The proposal is to amend the Hazardous Waste Management Regulations to incorporate EPA amendments in federal regulations for the period from July 1, 1991, through September 30, 1993.

October 6, 1993 - 2 p.m. – Open Meeting
Department of Environmental Quality, 4900 Cox Road, Main Board Room, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Waste Division will hold a meeting to receive public comments and ideas on the proposal to develop Virginia Waste Management Board regulations entitled VR 672-20-20, Regulations Governing Management of Coal Combustion Byproduct. The purpose is to develop regulations that establish standards and procedures pertaining to management, use and disposal of coal combustion byproducts or residues.

October 7, 1993 - 10 a.m. – Open Meeting
Monroe Building, 101 North 14th Street, 10th Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Waste Division will hold a meeting to receive public comments and ideas on the proposal to amend Virginia Waste Management Board regulations entitled VR 672-30-1, Virginia Regulations Governing the Transportation of Hazardous Materials. The proposed Amendment 12 to these regulations incorporates changes to U.S. Department of Transportation ("DOT")

and U.S. Nuclear Regulatory Commission ("NRC") regulations on hazardous materials transportation and motor carrier safety. The proposal is to incorporate federal changes adopted from June 2, 1992, through July 1, 1993.

October 7, 1993 - 10 a.m. – Open Meeting
Monroe Building, 101 North 14th Street, First Floor Conference Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Waste Division will hold a meeting to receive public comments and ideas on the proposal to develop Virginia Waste Management Board regulations entitled VR 672-20-30, Regulations Governing Management of Vegetative Waste. The proposed regulations would establish standards and procedures pertaining to management, use and disposal of vegetative waste and to encourage the development of facilities for the decomposition of vegetative waste.

Contact: William F. Gilley, Regulatory Service Manager, Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966 or (804) 371-8737/TDD ☎

CITIZEN'S ADVISORY COUNCIL ON FURNISHING AND INTERPRETING THE EXECUTIVE MANSION

October 5, 1993 - 10:30 a.m. – Open Meeting
The Executive Mansion, Capitol Square, Richmond, Virginia. ♿

A general business meeting.

Contact: Cathy Walker Green, Executive Mansion Director, The Executive Mansion, Capitol Square, Richmond, VA 23219, telephone (804) 371-2642.

VIRGINIA FIRE SERVICES BOARD

October 21, 1993 - 7:30 p.m. – Public Hearing
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A public hearing business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

October 22, 1993 - 9 a.m. – Open Meeting
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training

October 21, 1993 - 10 a.m. – Open Meeting
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A committee meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

October 21, 1993 - 9 a.m. – Open Meeting
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A committee meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

October 21, 1993 - 1 p.m. – Open Meeting
Ramada Inn, 1130 Motel Drive, Woodstock, Virginia.

A committee meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **October 19, 1993 - 9:30 a.m.** – Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A general business meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

Examination Committee

† **October 19, 1993 - 8:45 a.m.** – Open Meeting
6606 W. Broad St., 5th Floor, Richmond, Virginia. ♿

A planning session.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephon (804) 662-9907 or (804) 662-7197/TDD ☎

Executive Committee

† **October 18, 1993 - 4 p.m.** – Open Meeting
6606 W. Broad St., 5th Floor, Richmond, Virginia.

A planning session.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD

Inspection/Compliance Committee

† **October 19, 1993 - 8 a.m.** – Open Meeting
6606 W. Broad St., 5th Floor, Richmond, Virginia.

A planning session.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD

Legislative Committee

† **October 18, 1993 - 5 p.m.** – Open Meeting
6606 W. Broad St., 5th Floor, Richmond, Virginia.

A planning session.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD

BOARD OF GAME AND INLAND FISHERIES

† **October 14, 1993 - 9 a.m.** – Open Meeting
National Wildlife Federation Education Center, 8925 Leesburg Pike, Vienna, Virginia.

The board will tour department-owned and related facilities in the area that provide hunting, fishing and boating recreational opportunities and observe how these activities relate to urban areas.

† **October 15, 1993 - 9 a.m.** – Open Meeting
National Wildlife Federal Education Center, 8925 Leesburg Pike, Vienna, Virginia.

Committees of the Board of Game and Inland Fisheries will meet, beginning with the Finance/Funding Committee, followed by the Planning Committee, Wildlife and Boat Committee, Law and Education Committee, and Liaison Committee. Each committee will review agenda items appropriate to their authority, including a discussion on the board's funding initiative, a regulation proposal to provide for the humane care of wildlife, the agency's public participation guidelines, and a regulation establishing a permit fee structure.

† **October 16, 1993 - 9 a.m.** – Open Meeting
National Wildlife Federal Education Center, 8925 Leesburg Pike, Vienna, Virginia.

The board will hold an Executive Session to discuss personnel, legal and land matters at 8 a.m. At 9 a.m., the public meeting will convene. Any proposed regulations discussed in committee meetings will be presented to the full board for their consideration for adoption for advertisement. The board is also expected to further consider and possibly vote on alternative funding options for the agency. Other general and administrative matters, as necessary, will be discussed and the appropriate actions taken.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

DEPARTMENT OF GENERAL SERVICES

October 11, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of General Services intends to **repeal** regulations entitled: **VR 330-02-06, Regulations for the Certification of Laboratories Analyzing Drinking Water** and **adopt** regulations entitled: **VR 330-02-06:1, Regulations for the Certification of Laboratories Analyzing Drinking Water.** The purpose of the proposed action is to repeal outdated regulations and promulgate regulations to provide a mechanism to assure that laboratories are capable of providing data for compliance under the State Drinking Water Act.

Statutory Authority: § 2.1-429 of the Code of Virginia and 40 CFR 141.

Contact: Dr. James L. Pearson, Director, Division of Consolidated Laboratory Services, 1 N. 14th St., Richmond, VA 23219, telephone (804) 786-7905.

BOARD FOR GEOLOGY

November 19, 1993 - 10 a.m. – Open Meeting
3600 West Broad Street, Conference Room 3, Richmond, Virginia.

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD

BOARD OF HEALTH PROFESSIONS

† **October 14, 1993 - 1 p.m.** – Public Hearing
Central Library, 4100 Virginia Beach Boulevard, Meeting Room B, Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **October 14, 1993 - 3 p.m.** – Public Hearing
City Hall, 418 Patton Street, City Council Chambers, Danville, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **October 15, 1993 - 1 p.m.** – Public Hearing
Northern Virginia Community College, 8333 Little River Turnpike, Annandale Campus, Community Cultural Center, Annandale, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **October 15, 1993 - 3 p.m.** – Public Hearing
City Hall, 497 Cumberland Street, City Council Chambers, Bristol, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **October 18, 1993 - 9 a.m.** – Public Hearing
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

December 4, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health Professions intends to adopt regulations entitled: **VR 365-01-2. Regulations Governing Practitioner Self-Referral.** The purpose of the proposed regulations is to implement the Practitioner Self-Referral Act enacted by the 1993 General Assembly.

Statutory Authority: § 54.1-2510 of the Code of Virginia.

Contact: Richard D. Morrison, Ph.D., Deputy Director for Research, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

† **October 19, 1993 - 10 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly board meeting, including consideration of recommendations from the Regulatory Research Committee on legislative studies. A public comment period will be at noon.

Contact: Richard D. Morrison, Ph.D., Deputy Director for Research, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

Regulatory Research Committee

† **October 18, 1993 - 1 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider findings and recommendations to the regulation of tattooists and tattoo parlors, marriage and family therapists, private vocational rehabilitation providers, and treatment providers for sexual assault offenders.

Contact: Richard D. Morrison, Ph.D., Deputy Director for Research, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

October 26, 1993 - 9:30 a.m. – Open Meeting
Blue Cross Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting. All council task forces will meet at 8:30 a.m. prior to the full council meeting.

November 23, 1993 - 9:30 a.m. – Open Meeting
Blue Cross Blue Shield of Virginia, 2015 Staples Mill Road Richmond, Virginia.

A monthly meeting.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

DEPARTMENT OF HISTORIC RESOURCES

† **November 10, 1993 - 7:30 p.m.** – Public Hearing
City Hall, 900 East Broad Street, Richmond, Virginia.

† **November 16, 1993 - 7:30 p.m.** – Public Hearing
Lyceum, 201 South Washington Street, Alexandria, Virginia.

† **November 17, 1993 - 7:30 p.m.** – Public Hearing
Roanoke City Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

December 6, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Historic Resources intends to adopt regulations entitled: **VR 392-01-02. Evaluation Criteria and Procedures for Nomination of Property to the National Register of Historic Places or for Designation as a National Historic Landmark.** Th proposed regulation establishes the evaluation criteria

by which the director shall determine whether property should be nominated to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. Pursuant to the requirements of § 10.1-2202 of the Code of Virginia, the criteria are consistent with the criteria set forth in 36 CFR, Part 60, the federal regulations that implement the National Historic Preservation Act, as amended (P.L. 89-665). In addition, the proposed regulation sets out procedures for written notification to property owners and local governments, along with a requirement for public hearings in certain cases, prior to the nomination of property by the director to the National Park Service. Finally, the proposed regulation sets out the procedure by which affected property owners can object to the proposed inclusion of their property in the National Register or to the proposed designation of their property as a National Historic Landmark. The proposed procedures are consistent with the requirements of §§ 10.1-2206.1 and 10.1-2206.2 of the Code of Virginia.

Statutory Authority: § 10.1-2202 of the Code of Virginia.

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

Board of Historic Resources

† **November 10, 1993 - 7:30 p.m.** – Public Hearing
City Hall, 900 East Broad Street, Richmond, Virginia.

† **November 16, 1993 - 7:30 p.m.** – Public Hearing
Lyceum, 201 South Washington Street, Alexandria, Virginia.

† **November 17, 1993 - 7:30 p.m.** – Public Hearing
Roanoke City Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

December 6, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Historic Resources intends to adopt regulations entitled: **VR 390-01-03. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.** The proposed regulation establishes the evaluation criteria by which the board shall determine whether property should be designated for inclusion in the Virginia Landmarks Register. Pursuant to the requirements of § 10.1-2205 of the Code of Virginia, the criteria are consistent with the criteria set forth in 36 CFR, Part 60, the federal regulations that implement the National Historic Preservation Act, as amended (P.L. 89-665). In addition, the proposed regulation sets out procedures for written notification of property owners and local governments, along with a requirement for public hearings in certain cases, prior to a designation by the board. Finally, the proposed regulation sets out the procedure by which affected property owners can object to a proposed designation and prevent the board from making the designation. The proposed procedures are consistent with the requirements of §§ 10.1-2206.1 and 10.1-2206.2 of the Code of Virginia.

Statutory Authority: § 10.1-2205 of the Code of Virginia.

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

† **October 20, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ⓢ (Interpreter for the deaf provided upon request)

A general business meeting to consider the following properties for listing on the Virginia Landmarks Register:

Azurest, Chesterfield County
Burlington, Orange County
Fairview, Spotsylvania County
Fredericksburg Town Hall and Market Square, Fredericksburg
La Vue, Spotsylvania County
Loretta, Fauquier County
River House, Clarke County
St. John's Episcopal Church, King George County
Thomas Jefferson High School, Richmond (city)

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

State Review Board

† **October 19, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ⓢ (Interpreter for the deaf provided upon request)

A meeting to consider the nomination of the following properties to the National Register of Historic Places:

Azurest, Chesterfield County
Burlington, Orange County
Fairview, Spotsylvania County
Fredericksburg Town Hall and Market Square, Fredericksburg
La Vue, Spotsylvania County
Loretta, Fauquier County
River House, Clarke County
St. John's Episcopal Church, King George County
Thomas Jefferson High School, Richmond (city)

Contact: Margaret T. Peters, Information Officer,

Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

October 5, 1993 - 9 a.m. – Open Meeting
November 2, 1993 - 9 a.m. – Open Meeting
December 7, 1993 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ♿ (Interpreter for the deaf provided upon request)

A Local Emergency Preparedness committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

October 12, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to adopt regulations entitled: **VR 394-01-1. Public Participation Guidelines.** The purpose of the proposed action is to amend existing regulations to conform with new legislation.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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October 12, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-2. Certification Standards for Building Inspection Personnel, Amusement Device Inspectors, Blasters, Plumbers, Electricians, and Building Related Mechanical Workers/1990.** The purpose of the proposed action is to amend existing regulations to establish certification standards for certain local building and fire inspectors.

Statutory Authority: §§ 15.1-11.4, 36-98.3, 36-137 and 27-97 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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October 12, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-4. Amusement Device Regulations/1990.** The purpose of the proposed action is to amend existing regulations to add standards for gravity rides.

Statutory Authority: §§ 36-98 and 36-98.3 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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October 12, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-6. Virginia Statewide Fire Prevention Code/1990.** The purpose of the proposed action is to update to 1993 National Model Fire Prevention Code.

Statutory Authority: § 27-97 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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October 12, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code - Volume I - New Construction Code/1990.** The purpose of the proposed action is to amend existing regulation to update to 1993 National Model Building Code.

Statutory Authority: § 36-98 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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October 12, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code - Volume II - Building Maintenance Code/1990.** The purpose of the proposed action is to amend existing regulation to update to 1993 National Model Building Code.

Statutory Authority: §§ 36-98 and 36-103 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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October 12, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1990.** The purpose of the proposed action is to amend existing regulation to update to 1993 National Model Building Code.

Statutory Authority: §§ 36-73 and 36-85.7 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

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October 12, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 19, 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 Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-200. Virginia Private Activity Bond Regulations.** The purpose of the proposed amendments is to change year-end carryforward allocation priorities.

Statutory Authority: § 15.1-1399.15 of the Code of Virginia.

Contact: Charles Gravatt, Financial Assistance Coordinator, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7025.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **October 20, 1993 - 1 p.m.** – Open Meeting
601 South Belvidere Street, Richmond, Virginia.

A 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 they may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular 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.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

October 18, 1993 - 1 p.m. – Open Meeting
Marriott Hotel, Richmond, Virginia.

The regular meeting of the advisory commission will be held in conjunction with the annual conference of the Virginia Municipal League. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission's office at (804) 786-6508 or (804) 786-1860 TDD by October 8, 1993.

November 8, 1993 - 1 p.m. – Open Meeting
The Homestead, Hot Springs, Virginia.

The regular meeting of the advisory commission will be held in conjunction with the annual conference of the Virginia Association of Counties. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission's office at (804) 786-6508 or (804) 786-1860 TDD by October 29, 1993.

Contact: Robert H. Kirby, Secretary, 702 8th Street Office Bldg., Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

DEPARTMENT OF LABOR AND INDUSTRY

Migrant and Seasonal Farmworkers Board

October 6, 1993 - 10 a.m. – Open Meeting
State Capitol, House Room 1, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular meeting of the board. The election of officers will take place at this meeting.

Contact: Marilyn Mandel, Director, Office of Planning and Policy Analysis, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2385 or (804) 786-2376/TDD ☎

STATE COUNCIL ON LOCAL DEBT

October 20, 1993 - 11 a.m. – Open Meeting
November 17, 1993 - 11 a.m. – Open Meeting
December 15, 1993 - 11 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting, subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4928.

COMMISSION ON LOCAL GOVERNMENT

November 4, 1993 - 9 a.m. – Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Meeting Room 3, Richmond, Virginia.

Oral presentations - Town of Colonial Beach - Westmoreland County. Arbitration of school funding issue at request of localities.

Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices by October 21, 1993.

November 5, 1993 - 9 a.m. – Open Meeting
Richmond area (site to be determined).

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the commission's meeting and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Executive Committee

October 14, 1993 - 5 p.m. – Open Meeting
December 2, 1993 - 5 p.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

Board of Visitors

October 29, 1993 - 10 a.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

MANUFACTURED HOUSING BOARD

October 12, 1993 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 19, 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 Manufactured Housing Board intends to amend regulations entitled: **VR 449-01-01. Public Participation Guidelines.** The purpose of the proposed amendments is to comply with statutory changes by establishing procedures for soliciting input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14:7.1 and 36-85.18 of the Code of Virginia.

Contact: Curtis L. McIver, Associate Director, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

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October 12, 1993 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

November 19, 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 Manufactured Housing Board intends to adopt regulations entitled: **VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed amendments is to provide increased consumer protection for buyers and users of manufactured homes through mandatory licensing and regulation of manufactered home manufacturers, dealers, brokers and salespeople, statutorily mandated warranties, and a Transaction Recovery Fund. The regulation will be used in the administration and enforcement of the Manufactured Housing Licensing Law and Recovery Fund.

Statutory Authority: §§ 36-85.18 and 36-85.36 of the Code of Virginia.

Contact: Curtis L. McIver, Associate Director, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

MARINE RESOURCES COMMISSION

† **October 26, 1993 - 9:30 a.m.** – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing.

The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646, or (804) 247-2292/TDD ☎

MATERNAL AND CHILD HEALTH COUNCIL

Subcommittee on Teen Pregnancy Prevention

October 28, 1993 - 10 a.m. – Open Meeting
The Belmont Recreation Center, 1600 Hilliard Road, Richmond, Virginia. ♿

A regularly scheduled quarterly business meeting.

Contact: Jeanne McCann, Coordinator, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Prevention and Children's Resources, 109 Governor St., 10th Floor, Richmond, VA 23219, telephone (804) 786-1530.

BOARD OF MEDICINE

October 7, 1993 - 8 a.m. – Open Meeting
October 8, 1993 - 8 a.m. – Open Meeting
October 9, 1993 - 8 a.m. – Open Meeting
October 10, 1993 - 8 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

The Board of Medicine will meet on Thursday, October 7, 1993, in open session to conduct general board business, receive committee and board reports, and discuss any other items which may come before the board. The board will also meet on Thursday, Friday, Saturday and Sunday to review reports, interview licensees, and make case decisions on

disciplinary matters. The board will also review any regulations that may come before it. The board will entertain public comments during the first 15 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 622-7197/TDD ☎

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October 27, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The proposed amendments address misleading or deceptive advertising, pharmacotherapy for weight loss, examinations for licensure in medicine and osteopathy, licensure for endorsement, examination fee, and delete a statement lacking statutory authority.

Statutory Authority: §§ 54.1-100 through 54.1-114, 54.1-2400, 54.1-2914 of the Code of Virginia.

Written comments may be submitted until October 27, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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October 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.** The proposed amendments address traineeship and examination after inactive practice when seeking physical therapist and physical therapist assistant licensure. In addition, a process fee is established for withdrawal of applications.

Statutory Authority: §§ 54.1-2400, 54.1-2943 and 54.1-2946 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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October 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-05-1. Regulations Governing the Practice of Physicians' Assistants.** The purpose of the proposed amendments is to establish requirements granting prescriptive authority to physicians' assistants to prescribe and administer Schedule VI controlled substances and devices, and establish a clear and concise definition of the academic study required for prescriptive authority.

Statutory Authority: §§ 54.1-2400 and 54.1-2952.1 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

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October 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-08-1. Regulations for the Certification of Occupational Therapists.** The proposed amendments address English proficiency by foreign-trained occupational therapists and examination criteria for certification.

Statutory Authority: §§ 54.1-2400, 54.1-2956.1 and 54.1-2956.4 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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October 22, 1993 - 10 a.m. – Public Hearing
6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

November 24, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to adopt regulations entitled: **VR 465-11-1. Licensed Acupuncturists.** The proposed initial regulations address the reenactment of the statutes pertaining to licensed acupuncturists and include: general provisions for acupuncturists, requirements for licensure, scope of practice, renewal and reinstatement of licensure, and fees. The regulations are promulgated through the Acupuncture Advisory Committee and the Board of Medicine. The public hearing is being held at a location that is accessible to the disabled.

Statutory Authority: §§ 54.1-100 through 54.1-114, 54.1-2400, and 54.1-2956.9 through 54.1-2956.11 of the Code of Virginia.

Written comments may be submitted until November 24, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

Credentials Committee

October 8, 1993 - 8:15 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

The committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23233, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Occupational Therapy

NOTE: CHANGE IN MEETING DATE AND TIME.
November 1, 1993 - 10 a.m. – Open Meeting
6606 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to (i) review regulations relating to foreign educated therapists to consider additional requirement or alternatives to ensure minimal competency to practice occupational therapy with safety to the public; and (ii) to review public comments on proposed regulations and other issues which may come before the board. The chairperson will entertain public comments during the first 15 minutes of the meeting.

Contact: Eugenia Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

November 4, 1993 - 9 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ♿

A meeting to receive specific reports from officers and staff; review and evaluate traineeship evaluation forms; review requirements for facilities to employ foreign educated trainees and related forms; clarify decision to allow foreign educated therapist to sit for the examination during the traineeship; clarify, by regulation, the period for license requirements in another state to be eligible for waiver of the required traineeship for foreign applicants; review § 6.1 of the regulations; review passing score for licensure examination and the use of storage of schedule VI drugs; and conduct such other business which may come before the advisory board. The advisory board will also review the public comments on proposed regulations and make recommendations to the Board of Medicine. The chairperson will entertain public comments during the first 15 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF)

NOTE: CHANGE IN MEETING TIME
October 6, 1993 - 10 a.m. – Open Meeting
Omni Hotel, Norfolk Waterside, 777 Waterside Drive, Norfolk, Virginia. ♿

A regular monthly meeting. Agenda may be obtained by calling Jane Helfrich.

Tuesday:	Informal session	8 p.m.
Wednesday:	Committee meetings	9 a.m.
	Regular session	10 a.m.

Contact: Jane V. Helfrich, Board Administrator, Mental Health, Mental Retardation and Substance Abuse Services Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

October 7, 1993 - 7 p.m. – Open Meeting
1845 Orange Road, 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 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, 1845 Orange Rd., Culpeper, VA 22701, telephone (703) 825-4562.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

October 23, 1993 - 8:30 a.m. – Open Meeting
Virginia Military Institute, Smith Hall, Board Room, Lexington, Virginia. ♿

A regular meeting. Committee reports will be received.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Examiners

October 12, 1993 - 10 a.m. – Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Big Stone Gap, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to receive public comment regarding the Board of Examiners' intent to promulgate the Board of Examiners Certification Regulation, VR 480-04-2.1.

Contact: Harry Childress, Chairman, Board of Examiners, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8100.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

October 13, 1993 - 1 p.m. – Open Meeting
2300 West Broad Street, Richmond, Virginia.

A regular business meeting open to the public.

Contact: Karen Ruby, Manager, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-0481.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

† **October 23, 1993 - 9 a.m.** – Open Meeting
Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, Virginia. ♿

A meeting to include reports from the executive, finance, marketing, outreach, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the August meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎

BOARD OF NURSING

† **October 18, 1993 - 10 a.m.** – Open Meeting
County Administrator's Office, 315 School Street, Tazewell, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct a formal hearing with licensee. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

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November 5, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **VR 495-01-1. Board of Nursing Regulations.** The proposed amendments will adjust fees as required to cover expenditures, simplify and clarify regulations and to proposed requirements for the approval of medication administration program.

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

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909.

Special Conference Committee

October 18, 1993 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences with licensees to determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

October 20, 1993 - 8:30 a.m. – Open Meeting
Eastern Shore Community College, 29300 Lankford Highway, Conference Room, Melfa, Virginia. (Interpreter for the deaf provided upon request)

October 20, 1993 - Noon – Open Meeting
Virginia Employment Commission, 5145 East Virginia Beach Boulevard, Employer Room, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct an informal conference with certified nurse aides to determine if any action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: Corinne F. Dorsey, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

December 1, 1993 - 9:30 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9907.

BOARD FOR OPTICIANS

October 12, 1993 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct board business and any other matters which may require board action.

Contact: Mr. Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF OPTOMETRY

October 20, 1993 - 8 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Informal conference committee meetings. Public comment will not be received.

October 20, 1993 - 8 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A formal hearing. Public comment will not be received.

October 20, 1993 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general board meeting. A brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910.

VIRGINIA OUTDOORS FOUNDATION

October 5, 1993 - 10 a.m. – Open Meeting
State Capitol, House Room 1, Richmond, Virginia. ♿

A general business meeting. Agenda available on request.

Contact: Tyson R. Van Auken, Executive Director, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-5539 or (804) 786-2121/TDD ☎

DEPARTMENT OF STATE POLICE

November 19, 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 State Police intends to amend regulations entitled: **VR 545-00-01. Regulations Relating to Public Participation Policy.** This amendment to the agency's public participation guidelines identifies specific public participation procedures consistent with recent changes to the Administrative Process Act. The policy will now provide for use of ad hoc advisory groups, standing advisory committees or consultation with groups and individuals registering interest in assisting with drafting or formation of regulation under given

circumstances.

Statutory Authority: §§ 9-6.14:7.1, 18.2-295, 18.2-308.2:2, 46.2-1165, 52-8.4, 52-25.1, and 54.1-4009 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 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 State Police intends to amend regulations entitled: **VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.** These proposed changes to the regulations are made to be consistent with recent changes in state law, federal regulations, nationally accepted standards and automotive practices. Minor technical and administrative changes are included.

Statutory Authority: §§ 46.2-909, 46.2-1002, 46.2-1018, 46.2-1022, 46.2-1023, 46.2-1024, 46.2-1025, 46.2-1052, 46.2-1053, 46.2-1056, 46.2-1058, 46.2-1063, 46.2-1065, 46.2-1070, 46.2-1090.1, 46.2-1093, 46.2-1163, 46.2-1164, 46.2-1165, and 46.2-1171 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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† **November 4, 1993 - 2 p.m.** – Public Hearing
State Police Academy, 7700 Midlothian Turnpike, Richmond, Virginia.

December 3, 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 State Police intends to adopt regulations entitled: **VR 545-01-11. Regulations Governing Purchases of Handguns in Excess of One Within a 30-Day Period.** The purpose of the proposed action is to adopt permanent regulations to carry out the provisions of Chapter 486 of the 1993 Acts of Assembly, which amended § 18.2-308.2:2 of the Code of Virginia governing the purchase of handguns in excess of one within a 30-day period.

Statutory Authority: § 18.2-308.2:2 of the Code of Virginia.

Contact: Lieutenant R. Lewis Vass, Assistant Records Management Officer, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

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† **November 4, 1993 - 2 p.m.** – Public Hearing
State Police Academy, 7700 Midlothian Turnpike, Richmond, Virginia.

December 3, 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 State Police intends to adopt regulations entitled: **VR 545-01-12. Regulations Governing the Creation of a Criminal Firearms Clearinghouse.** The proposed regulations establish, within the Department of State Police, a Criminal Firearms Clearinghouse as a central repository of information on all firearms seized, forfeited, found, or otherwise coming into the hands of any state and local law-enforcement agency.

Statutory Authority: § 52-25.1 of the Code of Virginia.

Contact: Lieutenant R. Lewis Vass, Assistant Records Management Officer, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

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November 19, 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 State Police intends to adopt regulations entitled: **VR 545-01-13. Regulations Relating to Standards and Specifications for Regrooved or Regroovable Tires.** This regulation establishes specifications which define standards for regroovable or regrooved tires.

Statutory Authority: § 46.2-1042 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 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 State Police intends to adopt regulations entitled: **VR 545-01-14. Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles.** This regulation establishes standards and specifications for the warning stickers or decals required to be placed on all-terrain vehicles sold by retailers in the Commonwealth.

Statutory Authority: §§ 46.2-915.1 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 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 State Police intends to adopt regulations entitled: **VR 545-01-15. Regulations Relating to Standards and Specifications for Back-Up Audible Alarm Signals.** This regulation establishes specifications for the back-up audible alarm signals required on garbage and refuse collection and disposal vehicles and certain vehicles used primarily for highway repair and maintenance.

Statutory Authority: § 46.2-1175.1 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 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 State Police intends to adopt regulations entitled: **VR 545-01-16. Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.** This regulation establishes standards and specifications for warning lights used in the escorting or towing of overdimensional materials, equipment, boats or manufactured housing units by authority of a highway permit issued pursuant to § 46.2-1139 of the Code of Virginia.

Statutory Authority: § 46.2-1026 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

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November 19, 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 State Police intends to adopt regulations entitled: **VR 545-01-17. Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.** This regulation establishes specifications for safety lights used on farm tractors and multi-purpose drying units in excess of 108 inches in width which are hauled, propelled, transported or moved on the highway.

Statutory Authority: § 46.2-1102 of the Code of Virginia.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

POLYGRAPH EXAMINERS ADVISORY BOARD

† **December 7, 1993 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to administer the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns and to consider other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

PREVENTION AND PROMOTION ADVISORY COUNCIL

† **October 21, 1993 - 9 a.m.** – Open Meeting
Dorey Park Recreation Center, 7200 Dorey Park Drive, Richmond, Virginia. ♿

Council retreat and business meeting.

Contact: Harriett Russell, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Prevention and Children's Resources, Madison Bldg., 109 Governor St., 10th Floor, Richmond, VA 23219, telephone (804) 786-1530.

BOARD OF PROFESSIONAL COUNSELORS

October 28, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿

A meeting of the informal conference committee. Public comment will not be heard.

Contact: Evelyn B. Brown, Director, or Bernice Parker, Administrative Assistant, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7328.

Task Force on Substance Abuse Certification

October 18, 1993 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street,

Richmond, Virginia. ♿

A meeting to promulgate regulations governing the practice of certification for substance abuse counselors.

Contact: Evelyn B. Brown, Director, or Bernice Parker, Administrative Assistant, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7328.

BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

October 18, 1993 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A regular quarterly meeting. Agenda items are likely to include approval of final reports of legislative studies, continuing professional education, strategic planning and legislation.

Contact: Joyce K. Brown, Secretary to the Board, 3600 W. Broad St., Richmond, VA 23220-4917, telephone (804) 367-8564 or (804) 367-9753/TDD ☎

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS (PAIMI) ADVISORY COUNCIL

† **October 28, 1993 - 9 a.m.** – Open Meeting
Shoney's Inn, 7007 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regularly scheduled bi-monthly council meeting.

Contact: Rebecca W. Currin, Monroe Bldg., 101 N. 14th St., 17th Fl., Richmond, VA 23219, telephone (804) 225-2042 or toll-free 1-800-552-3962.

BOARD OF PSYCHOLOGY

October 25, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **VR 565-01-02. Regulations Governing the Practice of Psychology.** The proposed amendments increase license renewal fees for psychologists and school psychologists and increase application fees for clinical psychologists. The proposed amendments also increase examination fees. The proposed regulations conform to § 54.1-113 of the Code of Virginia.

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

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

† **October 14, 1993 - 10 a.m.** – Open Meeting
The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia.

A quarterly board meeting which will include updates on budget requests for 1994-96, and reports on operational contracts and other ideas of interest.

Contact: Selena L. Blackwell, Executive Secretary, 110 S. 7th St., 1st Floor, Richmond, VA 23219, telephone (804) 344-5560.

REAL ESTATE APPRAISER BOARD

October 13, 1993 - 2 p.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, Virginia.

A meeting to conduct regulatory review.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

REAL ESTATE BOARD

† **October 7, 1993 - 8:30 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4-A, Richmond, Virginia.

A formal administrative hearing in regard to the Real Estate Board v. Lisa E. Coats; File No. 92-00580.

Contact: Stacie G. Camden, Legal Assistant, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2393.

VIRGINIA RESOURCES AUTHORITY

October 12, 1993 - 9:30 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

A meeting to approve minutes of the meeting of September 14, 1993, to review the authority's operations for the prior months, and to consider other matters and take other actions as they 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.

November 9, 1993 - 9:30 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

A meeting to approve minutes of the meeting of October 12, 1993, to review the authority's operations for the prior months, and to consider other matters and take other actions as they may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Mutual Building, 909 E. Main St., Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or fax (804) 644-3109.

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

† **October 14, 1993 - 10 a.m.** – Open Meeting
Main Street Station, 1500 East Main Street, Suite 115, Richmond, Virginia.

A regular meeting.

Contact: Hazel L. Sanon, Secretary, 1500 East Main St., Suite 115, P.O. Box 2448, Richmond, VA 23219, telephone (804) 786-1750.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

October 6, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

SMALL BUSINESS ADVISORY BOARD

October 7, 1993 - 8:30 a.m. – Open Meeting
Sunset Beach Inn, 32246 Lankford Highway, Cape Charles, Virginia.

A regular meeting.

Contact: David V. O'Donnell, Director of Small Business and Financial Services, Department of Economic Development, Office of Small Business and Financial Services, 1021 East Cary St., 11th Floor, Richmond, VA 23219, telephone (804) 371-8260.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

November 8, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **VR 615-45-3. Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.** These regulations will establish guidelines for local departments of social services on sharing with the Family Advocacy Program information on founded child protective services complaints involving military families.

Statutory Authority: § 63.1-248.6 of the Code of Virginia.

Written comments may be submitted until November 8, 1993, to Suzanne Fountain, CPS Program Consultant, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Margaret Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

BOARD OF SOCIAL WORK

October 22, 1993 - 9 a.m. – Open Meeting
October 23, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A formal hearing. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9914.

COMMONWEALTH TRANSPORTATION BOARD

† **October 20, 1993 - 2 p.m.** – Open Meeting
Northern Virginia Community College, The Forum Room, Annandale Campus, 8333 Little River Turnpike, Annandale, Virginia. ♿ (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

† **October 21, 1993 - 10 a.m.** – Open Meeting
Northern Virginia Community College, The Forum Room, Annandale Campus, 8333 Little River Turnpike, Annandale, Virginia. ♿

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TREASURY BOARD

October 20, 1993 - 9 a.m. – Open Meeting
November 17, 1993 - 9 a.m. – Open Meeting
December 15, 1993 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.

A regular meeting of the board.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

BOARD OF VETERINARY MEDICINE

† **October 5, 1993 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general board meeting.

† **October 6, 1993 - 9 a.m.** – Open Meeting
Comfort Inn, 3200 West Broad Street, Suite 240, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Informal conferences.

Contact: Terri H. Behr, Administrative Assistant, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915 or (804) 662-7197/TDD ☎

VIRGINIA RACING COMMISSION

† **October 13, 1993 - 9:30 a.m.** – Open Meeting
State Corporation Commission Building, 1300 East Main Street, Richmond, Virginia. ♿

A regular commission meeting.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

† **November 10, 1993 - 8:30 a.m.** – Open Meeting
Hyatt Richmond, 6624 West Broad Street, Richmond, Virginia.

Council members will gather at the Hyatt for transportation to correctional institutions to conduct on-site visits to vocational education programs at the institutions. Council committees will meet at the Hyatt from 2 p.m. to 5 p.m.

† **November 11, 1993 - 8:30 a.m.** – Open Meeting
Hyatt Richmond, 6624 West Broad Street, Richmond, Virginia.

There will be a council session at the Hyatt to conduct council business and receive reports from liaison agency representatives.

Contact: Jerry M. Hicks, Executive Director, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218 or fax (804) 743-2088.

VIRGINIA VOLUNTARY FORMULARY BOARD

October 22, 1993 - 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 17, 1993, and the most recent 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 October 22, 1993, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

STATE WATER CONTROL BOARD

† **October 12, 1993 - 1 p.m.** – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

The State Water Control Board's staff is scheduling a series of meetings of the James River Surface Water Management Area Advisory Group. The duties of this advisory group are to assist in determining the appropriateness of a designation, the boundaries of the proposed area, and the adequacy of data. The group must also evaluate the data to determine the minimum instream flow level that will activate the surface water withdrawal permits and set the various stages of conservation plans. Other tentatively scheduled meetings are Tuesday, November 9, 1993, and December 14, 1993. Contact should be made prior to the meeting date so as to be informed of any changes in the time of meeting, location or cancellation.

October 25, 1993 - 7:30 a.m. – Open Meeting
Eastern Shore Community College, 29300 Lankford Highway, Lecture Hall, Melfa, Virginia. ♿ (Interpreter for the deaf provided upon request)

October 26, 1993 - 2 p.m. – Open Meeting
James City County Board of Supervisors Room, 101 C. Mounts Bay Road, Building C, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

The staff of the Department of Environmental Quality will convene two public meetings to receive comments from the public on the proposed amendments to the Ground Water Withdrawal Regulation, VR 680-13-07. A question and answer session on the proposed action will be held one-half hour prior to the beginning of both of these meetings.

Contact: Terry D. Wagner, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5203.

† **October 26, 1993 - 1 p.m.** – Open Meeting
Clarke County Parks and Recreation Building, Business Route 7, Berryville, Virginia.

The State Water Control Board's staff is scheduling a series of meetings of the Shenandoah River Surface Water Management Area Advisory Group. The duties of this advisory group are to assist in determining the appropriateness of a designation, the boundaries of the proposed area, and the adequacy of data. The group must also evaluate the data to determine the minimum instream flow level that will activate the surface water withdrawal permits and set the various stages of conservation plans. Other tentatively scheduled meetings are Tuesday, November 30, 1993, and December 21, 1993. Contact should be made prior to the meeting date so as to be informed of any changes in the time of meeting, location or cancellation.

† **October 28, 1993 - 1 p.m.** – Open Meeting
Municipal Building, 112 North Main Street, Board of Supervisors Room, Bridgewater, Virginia.

The State Water Control Board's staff is scheduling a series of meetings of the North River Surface Water Management Area Advisory Group. The duties of this advisory group are to assist in determining the appropriateness of a designation, the boundaries of the proposed area, and the adequacy of data. The group must also evaluate the data to determine the minimum instream flow level that will activate the surface water withdrawal permits and set the various stages of conservation plans. Other tentatively scheduled meetings are Thursday, November 18, 1993, and December 16, 1993. Contact should be made prior to the meeting date so as to be informed of any changes in the time of meeting, location or cancellation.

Contact: Thomas Felvey, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

COLLEGE OF WILLIAM AND MARY

November 5, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the College of William and Mary intends to adopt regulations entitled: **Motor Vehicle Parking and Traffic Rules and Regulations.** The proposed regulation regulates traffic and parking on the campus of the College of William and Mary.

Statutory Authority: § 23-9.2:3 of the Code of Virginia.

Written comments may be submitted until November 5, 1993, to Mark Gettys, Parking Services, College of William and Mary, P.O. Box 8795, Williamsburg, Virginia 23187-8795.

Contact: Nancy S. Nash, Assistant to the Vice President for Administration and Finance, P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2743.

VIRGINIA DEPARTMENT OF
YOUTH & FAMILY SERVICES
Youth Begins With You.

BOARD OF YOUTH AND FAMILY SERVICES

October 14, 1993 - 8:30 a.m. – Open Meeting
700 Centre, 7th and Franklin Streets, 4th Floor, Richmond, Virginia. ♿

Committee meeting to be held from 8:30 - 10 a.m.; the general meeting will begin at 10 a.m. to review programs recommended for certification or probation,

and to consider adoption of draft policies and other matters that may come before the board.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

LEGISLATIVE

HOUSE COMMITTEE ON AGRICULTURE

October 13, 1993 - 9 a.m. – Open Meeting
Eastern Shore of Virginia Chamber of Commerce, 19056 Parkway, Melfa, Virginia.

The committee will meet to discuss agricultural policy. At 1:30 p.m., a ribbon-cutting ceremony for the Farmers Market will take place.

Contact: Martin G. Farber, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **October 12, 1993 - 9:30 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

A briefing on the Commonwealth's Personnel Function.

Contact: Phil Leone, General Assembly Bldg., 910 Capitol Square, Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

STUDY COMMITTEE REVIEWING CRASH-DAMAGED MOTOR VEHICLES

October 7, 1993 - 10 a.m. – Open Meeting
State Capitol, House Room 4, Richmond, Virginia.

The third meeting in a series to discuss possible recommendations to the 1994 General Assembly. HJR 455.

Contact: Dr. Alan Wambold, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING ENVIRONMENTAL AND BUILDING CODE MATTERS

† **October 18, 1993 - 1 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The joint subcommittee will meet for organizational purposes and to set an agenda for the interim. HJR 519.

Contact: Clarence M. Conner, Jr., Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE REGARDING THE INSPECTION OF CERTAIN FOOD ESTABLISHMENTS

† **October 12, 1993 - 1:30 p.m.** – Open Meeting
State Capitol, House Room 1, Richmond, Virginia.

The joint subcommittee will meet to examine the efficacy of the responsibility and authority shared by the State Board of Health and the Board of Agriculture and Consumer Services regarding the inspection of certain food establishments in the 14 localities having local ordinances regulating retail food stores.

Contact: Jessica Bolecek, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING VEHICLES POWERED BY CLEAN FUELS

October 20, 1993 - 10 a.m. – Open Meeting
James Madison University, Hall of Fame Room, Convocation Center, Harrisonburg, Virginia.

The subcommittee will meet to receive testimony and discuss legislative recommendations regarding clean fuels. HJR 100.

Contact: Dr. Alan Wambold, Research Associate, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

October 20, 1993 - 9:30 a.m. – Open Meeting
Speaker's Conference Room, General Assembly Building, 910 Capitol Square, Richmond, Virginia.

A general business meeting to award contract for the Virginia Administrative Code.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Bldg, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

STATE WATER COMMISSION

† **December 1, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia.

A meeting to discuss proposed legislation.

Contact: Shannon Varner, Staff Attorney, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA COMMISSION ON YOUTH

† **October 6, 1993 - 11 a.m.** – Open Meeting
Lynchburg Detention Center, Lynchburg, Virginia.

Detention Task Force meeting. HJR 446.

† **October 7, 1993 - 10 a.m.** – Open Meeting
Speaker's Conference Room, General Assembly Building, 910 Capitol Square, Richmond, Virginia.

A task force meeting for Serious Juvenile Offenders study. HJR 431.

† **October 13, 1993 - 1 p.m.** – Open Meeting
Speaker's Conference Room, General Assembly Building, 910 Capitol Square, Richmond, Virginia.

Treatment subcommittee regarding Guardians ad Litem and Courtroom Environment Study, Confidentiality of Juvenile Records and Model Child Custody/Visitation Schedules study. HJR 490, SJR 205, and SJR 243.

Contact: Joyce Huey, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

October 4
Air Pollution Control Board, State
Barbers, Board for

October 5
† Criminal Justice Services Board
- Subcommittee on Training
Executive Mansion, Citizens' Advisory Council on Furnishing and Interpreting the
Hopewell Industrial Safety Council
Outdoors Foundation, Virginia
† Veterinary Medicine, Board of

October 6
† Alcohol Safety Action Program - Mount Rogers
Criminal Justice Services Board
- Committee on Training
Emergency Planning Committee, Local - Winchester
Environmental Quality, Department of
Labor and Industry, Department of
- Migrant and Seasonal Farmworkers Board
Mental Health, Mental Retardation and Substance Abuse Services Board
Sewage Handling and Disposal Appeals Review Board
† Veterinary Medicine, Board of
† Youth, Virginia Commission on

October 7
Crash-Damaged Motor Vehicles, Study Committee Reviewing
† Emergency Planning Committee, Local - Chesterfield County
Environmental Quality, Department of
Medicine, Board of
Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board
† Real Estate Board
Small Business Advisory Board, Virginia
† Youth, Virginia Commission on

October 8
Medicine, Board of
- Credentials Committee

October 9
Medicine, Board of

October 10
Medicine, Board of

October 12
† Audit and Review Commission, Joint Legislative
† Inspection of Certain Food Establishments, Joint Subcommittee Regarding
Mines, Minerals and Energy, Department of
- Examiners, Board of
Opticians, Board for
Resources Authority, Virginia
† Water Control Board, State

October 13
† Aging, Department for the
- Long-Term Care Council
Agriculture, House Committee on
Alcoholic Beverage Control Board
Motor Vehicles, Department of
- Medical Advisory Board
Real Estate Appraiser Board
† Virginia Racing Commission
† Youth, Virginia Commission on

October 14
† Agriculture and Consumer Services, Department of
- Pesticide Control Board

† Child Day-Care Council
† Game and Inland Fisheries, Board of
Longwood College
- Executive Committee
† Public Telecommunications Board, Virginia
† Sewage Handling and Disposal Advisory Committee
Youth and Family Services, Board of

October 15
† Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Coordinating Prevention, Virginia Council on
† Game and Inland Fisheries, Board of
Interdepartmental Regulation of Children's Residential Facilities, Coordinating Committee for

October 16
† Game and Inland Fisheries, Board of

October 18
† Accountancy, Board for
† Environmental and Building Code Matters, Joint Subcommittee Studying
† Funeral Directors and Embalmers, Board of
- Executive Committee
- Legislative Committee
† Health Professions, Board of
- Regulatory Research Committee
Intergovernmental Relations, Advisory Commission on
Nursing, Board of
- Special Conference Committee
Professional Counselors, Board of
- Task Force on Substance Abuse Certification
Professional and Occupational Regulation, Board of

October 19
† Accountancy, Board for
† Agriculture and Consumer Services
- Virginia Egg Board
† Funeral Directors and Embalmers, Board of
- Examination Committee
- Inspection/Compliance Committee
† Health Professions, Board of
† Historic Resources, Department of
- State Review Board

October 20
† Corrections, Board of
† Historic Resources, Board of
† Housing Development Authority, Virginia
Local Debt, State Council on
Nursing, Board of
- Special Conference Committee
Optometry, Board of
† Transportation Board, Commonwealth
Treasury Board
Virginia Code Commission

October 21
Fire Services, Board of
- Fire/EMS Education and Training
- Fire Prevention and Control
- Legislative/Liaison Committee
† Prevention and Promotion Advisory Council
† Transportation Board, Commonwealth

October 22
Fire Services Board, Virginia
Social Work, Board of

October 23
Military Institute, Virginia
- Board of Visitors
† Natural History, Museum of
- Board of Trustees
Social Work, Board of

October 25
† Accountancy, Board for
Alcoholic Beverage Control Board
Water Control Board, State

October 26
† Agriculture and Consumer Services, Department of
- Aquaculture Advisory Board
Health Services Cost Review Council, Virginia
† Marine Resources Commission
Water Control Board, State

October 27
† Emergency Planning Committee, Local - Gloucester

October 28
Education, Board of
† Governor's Advisory Board of Aging
Maternal and Child Health Council
- Subcommittee on Teen Pregnancy Prevention
Professional Counselors, Board of
† Protection and Advocacy for Individuals with Mental Illness Advisory Council
† Water Control Board, State

October 29
† Criminal Justice Services Board
- Private Security Services Advisory Board
Longwood College
- Board of Visitors

November 1
Medicine, Board of
- Advisory Board on Occupational Therapy

November 2
Hopewell Industrial Safety Council

November 4
Audiology and Speech-Language Pathology, Board of
† Emergency Planning Committee, Local - Chesterfield County
Local Government, Commission on
Medicine, Board of
- Advisory Board on Physical Therapy

November 5
Local Government, Commission on

November 8
Alcoholic Beverage Control Board
Intergovernmental Relations, Advisory Commission on

November 9
Resources Authority, Virginia

November 10
† Historic Resources, Department of
† Vocational Education, Virginia Council on

November 11
† Vocational Education, Virginia Council on

November 16
† Historic Resources, Department of

November 17
Education, Board of
† Historic Resources, Department of
Local Debt, State Council on
Treasury Board

November 18
Education, Board of

November 19
Geology, Board for

November 22
Alcoholic Beverage Control Board

November 23
Health Services Cost Review Council, Virginia

December 1
Nursing Home Administrators, Board of
† Water Commission, State

December 2
† Emergency Planning Committee, Local - Chesterfield County
Longwood College
- Executive Committee

December 7
Hopewell Industrial Safety Council
† Polygraph Examiners Advisory Board

December 15
Local Debt, State Council on
Treasury Board

PUBLIC HEARINGS

October 6
Criminal Justice Services, Department of

October 12
Housing and Community Development, Board of
Manufactured Housing Board

October 14
Health Professions, Board of

October 15
Health Professions, Board of

October 18
Health Professions, Board of

October 21
Fire Services Board, Virginia

October 22
Medicine, Board of
Voluntary Formulary Board, Virginia

November 4
† State Police, Department of

November 10
† Historic Resources, Board of
† Historic Resources, Department of

November 16
† Historic Resources, Board of
† Historic Resources, Department of

November 17
† Historic Resources, Board of
† Historic Resources, Department of

November 17
† Air Pollution Control Board, State

December 3
Education, State Board of

Calendar of Events