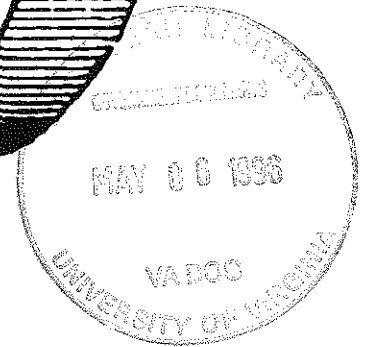
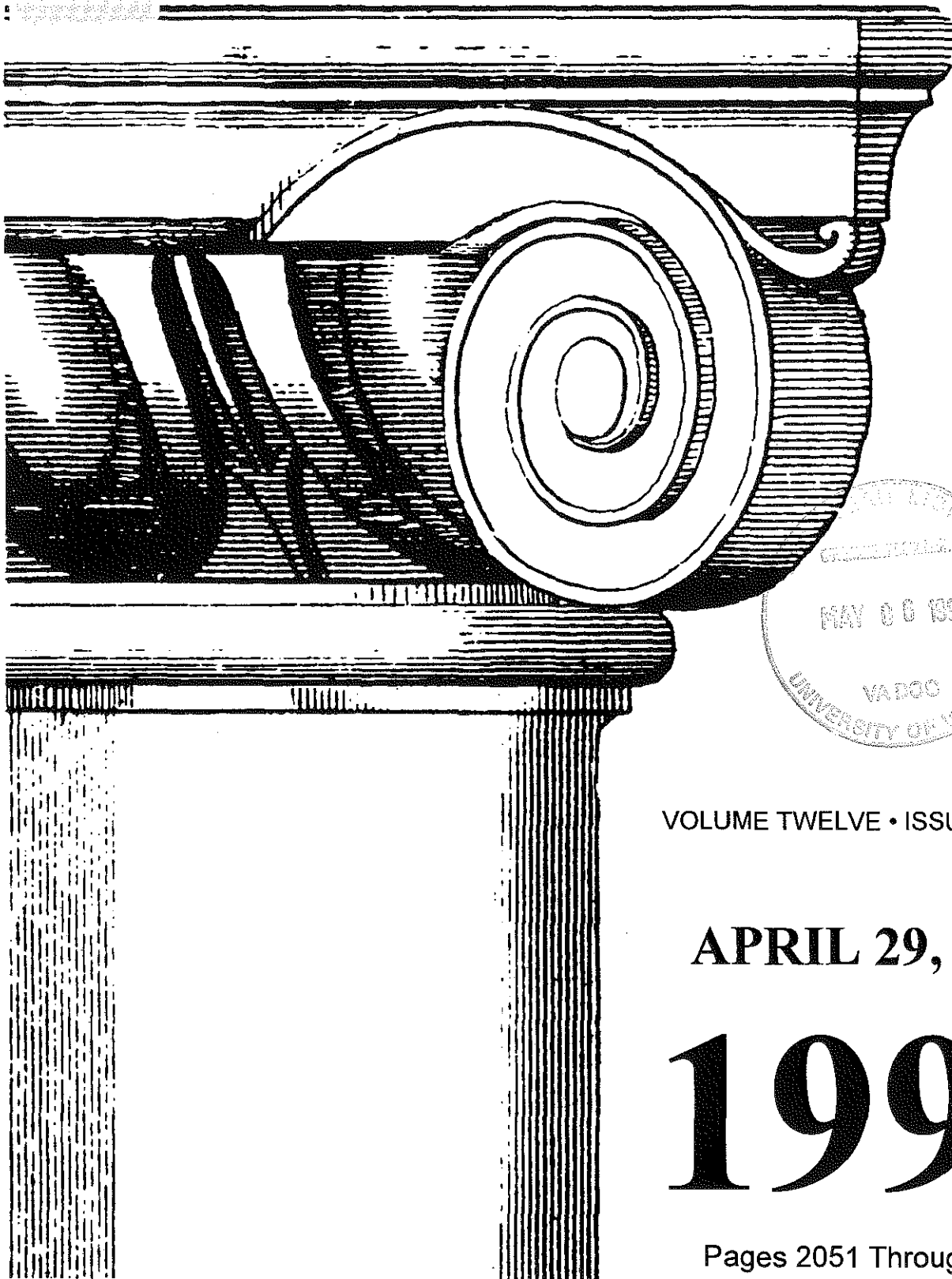


COB 5/8.26/12-16 r.2.

THE VIRGINIA REGISTER

OF REGULATIONS

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VOLUME TWELVE • ISSUE SIXTEEN

APRIL 29, 1996

1996

Pages 2051 Through 2232

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 new and amended sections of regulations, both as proposed and as finally adopted, 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 and executive orders issued by the Governor, the *Virginia Tax Bulletin* issued periodically by the Department of Taxation, and notices of 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 intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

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 Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 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 agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate standing committees and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-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 21-day extension period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

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

EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt 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 to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) deliver the Notice of Intended Regulatory Action to the Registrar in time to be published within 60 days of the effective date of the emergency regulation; and (ii) deliver the proposed regulation to the Registrar in time to be published within 180 days of the effective date of the emergency regulation. If the agency chooses not 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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 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. **12:8 VA.R. 1096-1106 January 8, 1996**, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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The Virginia Register of Regulations is published pursuant to Article 7 (§ 9-6.14:22 et seq.) of Chapter 1.1:1 of the Code of Virginia. Individual copies, if available, may be purchased for \$4.00 each from the Registrar of Regulations.

Members of the Virginia Code Commission: Joseph V. Gartlan, Jr., Chairman; W. Tayloe Murphy, Jr., Vice Chairman; Robert L. Calhoun; Russell M. Carneal; Bernard S. Cohen; Jay W. DeBoer; Frank S. Ferguson; E. M. Miller, Jr.; Jackson E. Reasor, Jr.; James B. Wilkinson.

Staff of the Virginia Register: E. M. Miller, Jr., Acting Registrar of Regulations; Jane D. Chaffin, Deputy Registrar of Regulations.

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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to consider amending regulations entitled: **6 VAC 15-20-10 et seq. Rules and Regulations Governing the Certification Process**. The purpose of the proposed action is to amend these regulations in order to accommodate recommendations by the Joint Legislative Audit and Review Commission, the board, and the department to strengthen certain areas of the certification process. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Public comments may be submitted until May 15, 1996.

Contact: Amy Miller, Regulatory Coordinator, Department of Corrections, P.O. Box 26963, Richmond, VA 26963-6963, telephone (804) 674-3119 or FAX (804) 674-3509.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† Notice of Intended Regulatory Action

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 consider amending regulations entitled: **13 VAC 5-20-10 et seq. Virginia Certification Standards**. The purpose of the proposed action is perform triennial regulatory review and to update to 1996 model codes and standards. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 27-97, 36-98.3 and 36-137 of the Code of Virginia.

Public comments may be submitted until May 31, 1996.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-294; Filed April 8, 1996, 12:14 p.m.

† Notice of Intended Regulatory Action

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 consider amending regulations entitled: **13 VAC 5-30-10 et seq. Virginia Amusement**

Device Regulations. The purpose of the proposed action is perform triennial regulatory review and to update to 1996 model codes and standards. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 31, 1996.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-293; Filed April 8, 1996, 12:14 p.m.

† Notice of Intended Regulatory Action

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 consider amending regulations entitled: **13 VAC 5-50-10 et seq. Virginia Statewide Fire Prevention Code/1993**. The purpose of the proposed action is perform triennial regulatory review and to update to 1996 model codes and standards. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 27-97 of the Code of Virginia.

Public comments may be submitted until May 31, 1996.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-291; Filed April 8, 1996, 12:13 p.m.

† Notice of Intended Regulatory Action

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 consider amending regulations entitled: **13 VAC 5-60-10 et seq. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993**. The purpose of the proposed action is perform triennial regulatory review and to update to 1996 model codes and standards. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-98 of the Code of Virginia.

Public comments may be submitted until May 31, 1996.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-290; Filed April 8, 1996, 12:14 p.m.

Notices of Intended Regulatory Action

† Notice of Intended Regulatory Action

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 consider amending regulations entitled: **13 VAC 5-70-10 et seq. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1993.** The purpose of the proposed action is perform triennial regulatory review and to update to 1996 model codes and standards. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 36-98 and 36-103 of the Code of Virginia.

Public comments may be submitted until May 31, 1996.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-295; Filed April 8, 1996, 12:13 p.m.

† Notice of Intended Regulatory Action

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 consider amending regulations entitled: **13 VAC 5-90-10 et seq. Virginia Industrialized Building and Manufactured Home Safety Regulations.** The purpose of the proposed action is perform triennial regulatory review and to update to 1996 model codes and standards. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 36-73 and 36-85.7 of the Code of Virginia.

Public comments may be submitted until May 31, 1996.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-292; Filed April 8, 1996, 12:13 p.m.

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-30-10 et seq. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to consider amendments to clarify, simplify, and reduce the regulatory burden pursuant to recommendations to Executive Order 15(94). The board will consider repealing existing regulations and adopting new regulations if amendments are substantial and too complex for ease of understanding and compliance.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2942 through 54.1-2948 of the Code of Virginia.

Public comments may be submitted until May 29, 1996.

Contact: Warren Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-301; Filed April 10, 1996, 11:25 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physicians' Assistants.** The purpose of the proposed action is to consider amendments to clarify, simplify, and reduce the regulatory burden pursuant to recommendations to Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400, 54.1-2952 and 54.1-2952.1 of the Code of Virginia.

Public comments may be submitted until May 29, 1996.

Contact: Warren Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-303; Filed April 10, 1996, 11:25 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-80-10 et seq. Regulations for Certification of Occupational Therapists.** The purpose of the proposed action is to consider amending requirements for examination and supervised practice by a trainee, amending supervisory responsibilities, reducing the initial fee for certification, and clarifying existing regulations in accordance with board review pursuant to Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.1 through 54.1-56.5 of the Code of Virginia.

Public comments may be submitted until May 29, 1996.

Contact: Warren Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-303; Filed April 10, 1996, 11:25 a.m.

DEPARTMENT OF REHABILITATIVE SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Rehabilitative Services intends to consider amending regulations entitled: **22 VAC 30-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to make the department's regulations more representative of public needs and views through greater public participation and control in the regulatory process and making changes mandated by 1993 amendments to the Administrative Process Act. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 51.5-14 of the Code of Virginia.

Public comments may be submitted until May 30, 1996.

Contact: Mary C. Lutkenhaus, Policy Analyst, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288-0300, telephone (804) 662-7610, FAX (804) 662-7696, toll-free 1-800-552-5019, or toll-free 1-800-464-9950/TDD ☎

VA.R. Doc. No. R96-289; Filed April 8, 1996, 9:39 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† Notice of Intended Regulatory Action

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 consider amending regulations entitled: **22 VAC 40-680-10 et seq. Virginia Energy Assistance Program.** The purpose of the proposed action is to receive comments regarding the use of Low-Income Home Energy Assistance Program (LIHEAP) funding for the 1996-97 program year, and future years. The energy assistance program is reviewed annually. Regulatory requirements are contained in the Low Income Home Energy Assistance Act, Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, as amended) Human Services Amendments of 1994 (Public Law 103-252, signed May 18, 1994). The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 29, 1996, to Charlene H. Chapman, Energy and Emergency Assistance, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219.

Contact: L. Richard Martin, Legislative Coordinator, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1825.

VA.R. Doc. No. R96-309; Filed April 9, 1996, 3:51 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

STATE AIR POLLUTION CONTROL BOARD

June 4, 1996 - 10 a.m. -- Public Hearing
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

June 28, 1996 -- Public 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 Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq. General Provisions; and 9 VAC 5-80-360 et seq. Article 3, Acid Rain Operating Permits (Rule 8-7).** The proposed regulation establishes an acid rain operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

Request for Comments: 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.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Office of Air Program Development, Department of Environmental Quality (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices

(listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
355 Deadmore Street
Abingdon, Virginia
Ph: (540) 676-4800

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (540) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
116 North Main Street
Bridgewater, Virginia 22812
Ph: (540) 828-2595

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Public Comment Periods - Proposed Regulations

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

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

Contact: Robert A. Mann, Office Director, Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4419.

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

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7423, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

May 21, 1996 - 10:30 a.m. -- Public Hearing
Department of Social Services, 730 East Broad Street,
Richmond, Virginia.

June 28, 1996 -- Public 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 Virginia Health Services Cost Review Council intends to amend regulations entitled: **12 VAC 25-20-10 et seq. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed amendments is to eliminate requirements for nursing homes and hospitals to submit budget filings, for nursing homes to submit commercial diversification surveys, and for hospitals to submit quarterly filings to the Virginia Health Services Cost Review Council. A method for assessing fees, not related to budget filings, is provided.

Statutory Authority: §§ 9-158 and 9-160 of the Code of Virginia.

Public comments may be submitted until June 28, 1996, to Ann Y. McGee, Virginia Health Services Cost Review Council, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Marsha Mucha, Executive Secretary Senior, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371 or FAX (804) 371-0284.

BOARD OF MEDICINE

May 24, 1996 - 1 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia.

June 28, 1996 - Public 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: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.** The proposed amendment to 18 VAC 85-20-90 B permits the use of Schedule III and IV drugs in the treatment of obesity under specified conditions and a treatment plan.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.
Language which has been stricken indicates proposed text for deletion.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: 9 VAC 5-20-10 et seq. **General Provisions (adding 9 VAC 5-20-25).**

9 VAC 5-80-360 et seq. Article 3, Acid Rain Operating Permits (Rule 8-7) (adding 9 VAC 5-80-360 through 9 VAC 5-80-700).

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

Public Hearing Date: June 4, 1996 - 10 a.m.

Public comments may be submitted until June 28, 1996.
(See Calendar of Events section
for additional information)

Basis: The legal basis for the proposed regulation amendments is the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia), specifically § 10.1-1308 which authorizes the board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the regulation is to require the owner of an affected source to operate within the terms and conditions of a permit that forms the legally enforceable basis for all federal and specific state statutory requirements. The proposed amendments are being made to comply with the operating permit requirements of Title IV and Title V of the federal Clean Air Act.

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

1. The regulation applies to sources that are subject to the requirements of the federal acid rain program under Title IV of the Clean Air Act. It includes the operating permit requirements of both Title IV and Title V of the Clean Air Act. Unless superseded by the requirements of the acid rain program, the requirements of Rule 8-5, which apply to sources other than those covered by Title IV and implement the Title V operating permit requirements, are included in Rule 8-7.
2. There are nine power plants with 33 emissions units that will have to submit applications for initial permits. These affected units are those existing units listed in the federal acid rain program regulations. In addition, new emissions units that meet criteria listed in the regulation will also be subject to Rule 8-7. Exemptions from the requirements of Rule 8-7 are available to new and retired emissions units that meet the criteria specified in the regulation.
3. All submittals to the department with respect to the acid rain program must be submitted by a representative of the source designated by the source for this purpose. Certain requirements pertain to the designated representative. However, the designated representative

does not have to be responsible for the general operating permit requirements under the rule.

4. With regard to Title V requirements for the existing affected units, applications must be submitted and permits must be issued to these sources during the three years following EPA approval of Virginia's operating permit program, including Rule 8-5. One-third of the permits must be issued by the end of each of the three years. With regard to sulfur dioxides requirements under Title IV, federally-specified applications must be received by January 1, 1996. The permit, both the acid rain portion (related to sulfur dioxide) and the portion related to Title V, must be issued and take effect by January 1, 1998. However, much of the acid rain portion of the permit will not apply until January 1, 2000. With regard to nitrogen oxide requirements under Title IV, the source must apply by January 1, 1998, and the board must reopen the sources' permits by January 1, 1999, to add these requirements. The permits will be renewed every five years on the first day of the year.

5. In applying for a permit under the regulation, the applicant must submit information on all regulated pollutants emitted from all emission units not exempted as insignificant. The applicant must provide all pertinent emissions and operation information sufficient for the department to determine the applicable requirements for the source and to write terms and conditions that pertain to the emissions units which must be covered in the permit. The regulation also requires both the applicant and the department to identify completely the regulatory requirements applicable to the stationary source. The permit must include terms and conditions for all emissions units not exempted as insignificant.

6. Regulated pollutants include the following: (i) criteria pollutants such as nitrogen oxides, volatile organic compounds and sulfur dioxide; (ii) hazardous air pollutants listed in § 112(b) of the Act and any other list of pollutants promulgated under § 112 including those for which risk management plans have to be filed under § 112(r); (iii) pollutants designated under § 111 of the Act and regulated by the new source performance standards such as total reduced sulfur and sulfuric acid mist; and (iv) ozone depleting substances regulated by Title VI of the Act.

7. The applicable requirements for the source are all applicable federal requirements and applicable state requirements. Applicable federal requirements include the requirements of EPA regulatory programs that have been approved as part of Virginia's State Implementation Plan or are otherwise federally required to implement the Clean Air Act. Applicable state requirements include only those regulatory requirements that are required by state code for a specific subject or category of sources but are not required by EPA. Applicants may request to

include in their permit terms and conditions covering other state requirements. The permit may not make any requirement federally enforceable that is not already federally enforceable prior to issuance of the permit.

8. Once a designated representative has submitted a complete and timely acid rain portion of an application, the owners and operators of the source are deemed to be in compliance with the acid rain requirements. However, any supplemental information requested must be submitted on time in order for this determination to remain intact.

9. Acid rain sources must also adhere to a set of standard requirements that pertain only to emissions units that are designated as affected under the acid rain program. These requirements pertain to the permit application and the terms of the permit, monitoring, allowances for emissions of sulfur dioxide, emissions limitations for nitrogen oxides, excess emissions and offset plans, and recordkeeping and reporting. The standard requirements also include terms concerning liability and limits on the rights of owners and operators holding acid rain operating permits.

10. The regulation requires the applicant to submit a compliance plan and schedule as part of the application. The plan must state that the applicant is in compliance with all the requirements applicable to the stationary source. For requirements with which the applicant is not in compliance, the applicant must provide an explanation of what is being done to come into compliance and a schedule for attaining compliance with those requirements. The plan and any schedules, once verified by the department, must be included as part of the permit.

11. In addition to the general compliance plan and schedule requirements, a compliance plan pertaining to acid rain requirements must also be filed. The plan must stipulate that the source will meet the allowance requirements and emission limitations for sulfur dioxide and the emission limitations for nitrogen oxides or that it will meet alternative requirements. The rule provides that a repowering extension plan can be submitted by sources which cannot meet the sulfur dioxide emission limits. The rule also provides several compliance options for sources to meet their nitrogen oxide emission limits: early election, alternative emission limitation, emissions averaging or compliance extension.

12. The regulation requires the inclusion of a permit shield for all terms and conditions specified in the permit, including any requirements that are specifically identified as not being applicable. The permit shield specifies that a source is not in violation of its permit as long as it is in compliance with the terms and conditions of the permit.

13. The regulation requires a public comment period of 30 days for draft permits for initial permits, significant modifications, permit modifications for affected units, fast-track modifications and permit renewals following notice in a local newspaper and to persons on the mailing list for such purposes. Certain local officials and states within 50 miles of the facility or whose air quality

may be affected by the facility must also be notified of the draft permit. The notice must describe the facility for which a permit has been drafted, the emissions from the facility, and where and from whom additional information can be obtained. A public hearing can be held either at the department's or the public's request if the department finds that there is a significant air quality issue pertinent to the draft permit.

14. The regulation requires the department, after review of the comments on the draft permit and the development of a proposed permit, to send the proposed permit to EPA. EPA has 45 days during which it can object to the permit. EPA can object if a proposed permit is not in compliance with the applicable requirements or if the requirements of the operating permit regulation have not been carried out. If EPA objects to issuance of a permit, the department has 90 days to revise and issue the permit. EPA can issue the permit if the department fails to revise and issue the permit within the 90-day period. This review process is limited to initial permits, renewal permits, reopened permits and significant permit modifications.

15. Several mechanisms are provided in the regulation to modify the permit for emissions units that are covered only by the requirements of Title V of the Clean Air Act: administrative permit amendments, minor permit modifications and significant permit modifications. Administrative permit amendments cover only administrative changes to the permit such as correction of typographical errors, name changes or changes in ownership. Minor permit modifications cover a limited number of operational or emissions changes that occur at the source and that do not require reanalysis of permit terms or conditions, such as a case-by-case determination of an emissions limitation. Significant permit modifications are those modifications that require significant change and reanalysis of the permit to establish the new permit term or condition.

16. Several mechanisms are provided in the regulation to modify the permit for affected units: permit modifications, fast-track modifications, administrative permit amendments, and automatic permit amendments. Permit modifications consist of relaxation of an excess emission offset requirement after approval of the offset plan, incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period, determinations concerning failed repowering projects, and, at the option of the designated representative, any of the fast-track modifications. Fast-track modifications consist of incorporation of a compliance option, addition of a nitrogen oxides averaging plan, or a change in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension. In addition to administrative changes to the permit, an administrative permit amendment also covers such things as changes in the designated representative or alternate, activation of a compliance option that has been conditionally approved, or termination of a compliance option. Automatic permit amendments are changes that are made to a permit without review. There are two types of automatic permit amendments: (1)

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allowance allocations to, transfers to and deductions from an affected unit's allowance tracking system account and (2) incorporation of an approved offset plan.

17. The regulation provides operational flexibility for the source through several mechanisms: alternative operating scenarios, changes that contravene an express permit term, and changes that are not addressed or prohibited by the permit. Alternative operating scenarios can be submitted as part of the application and permit terms and conditions can be written to cover those scenarios. A change that expressly contravenes a permit term or condition can be made as long as the change does not exceed emissions allowed under the permit, violate applicable requirements, trigger new source review or federal hazardous air pollutant modification requirements, or involve monitoring, recordkeeping, reporting or compliance certification requirements. A change that is not addressed or prohibited by the permit can be made as long as the change does not violate applicable requirements or any permit term or condition.

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

1. **Public:** The regulation will be an advantage to the community because it will provide through the operating permits issued under the program a clear documentation of which air quality requirements apply to each source and an enforceable mechanism to ensure that a source is complying with the requirements applicable to it. On the other hand, in order to prepare the initial application under the regulation, sources will need to invest substantial amounts of time, labor, and money. These are federal requirements, however, which will be applied nationwide. Implementing the program in Virginia will not discourage a source from locating in the state.

2. **Department:** The regulation will be an advantage to the department because it will provide through the operating permits issued under the program a clear documentation of which air quality requirements apply to each source and an enforceable mechanism to ensure that a source is complying with the requirements applicable to it. In addition, the department will enhance its ability to determine compliance and will have a better knowledge of all air emissions in the state. This advantage is especially important with respect to older sources built prior to 1972 which have been exempt from the requirement to get permits under the new source review program. The number of permitted sources in the state, therefore, will expand. In terms of cost, the regulation will require additional time and staff to ensure that clear and enforceable permit terms and conditions are written and that these terms and conditions are complied with. However, the program ensures that these costs are covered through the permit fees charged under the operating permit program.

Localities Affected: There is no locality which will bear any identified disproportionate material impact due to the proposed regulation which would not be experienced by other localities.

Impact: There are nine facilities with 33 emissions units that are subject to the regulation. In addition, sources may opt into the Title IV program and become subject to the regulation. The costs to affected entities are the costs of gathering the information needed to complete a permit application, completing the permit application, and the associated costs of inventorying emissions, including paying for stack tests to determine what pollutants are emitted and the quantity of those pollutants. Costs will vary from source to source due principally to the number of regulated pollutants emitted by the source and the number of emissions units and emissions points that make up the source. Another factor that will affect cost is use of a consultant to carry out the tasks of gathering information, completing the permit application, or inventorying emissions instead of the staff working at the source. Consultants are usually hired when the source has insufficient staff or expertise to do the work. In this instance, the costs for the source could be double what they would otherwise be. The costs presented here are based on the source doing the work itself, rather than hiring a consultant. The costs presented here are based on discussions with representatives of several companies who are in the process of developing the information for an operating permit application. These companies tend to be average or above average in the number of processes or operations within the source and the number of pollutants emitted. A good percentage of sources affected by the regulation will be using a team of people to develop the information needed to apply. These people will be gathering information and determining the emissions levels from the various emissions units at the source and, in some instances, will be developing alternative operating scenarios for submission as part of the application. The costs of the staff needed to perform these tasks ranges from \$300,000 to \$650,000 per source. While these appear to be the average costs, there will undoubtedly be sources whose costs will be lower or higher due to their operational and emissions characteristics. In order to verify the emissions data estimated by company staff or to directly measure hazardous air pollutants, many companies plan to hire consultants who are expert in stack testing. Stack tests are generally expensive; the average cost of one stack test including analysis is \$20,000. In addition, stack tests are currently being developed for many metals and other hazardous air pollutants. Such stack tests cost more due to the cost of development. There is some savings, however, when the same test can be used for multiple stacks. Several of the company representatives contacted indicate their intention to have stack tests done. On average, companies expect to spend \$200,000 on these tests. The costs discussed above are the initial application costs under the proposed program. Each permit issued must be renewed every five years. The costs of applying for a renewal permit should be considerably less than the costs for an initial application. The range in cost for a typical renewal permit may be from \$10,000 to \$15,000. However, costs tend to be higher for sources whose operations or products change frequently both at the time of renewal and during the duration of the permit, due to the possibility of having to modify the permit's terms and conditions. Current estimates show that the agency's direct and indirect costs for administering the entire federal operating permit program (of which this regulation forms a part) will total approximately \$9.3 million annually for the first

two years of the program. Costs should increase slightly in the following years due to the probable increase in cost of living. However, the permit fee program adjusts for these increases by increasing the fee by the same percentage as the increase in the Consumer Price Index. The source of department funds to carry out this regulation are the permit fees to be charged to affected entities under both federal and state statutory and regulatory provisions.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation

It is the purpose of these regulations to extend the requirements of Title V of the Clean Air Act Amendments of 1990 (CAAA) to sources of air emissions covered under Title IV -the acid rain provisions- of the CAAA. These regulations apply only to the 33 emission units regulated under Title IV and to any sources that may choose to opt in to the Title IV program. The regulations applicable to sources covered under Title V but not under Title IV have already been promulgated.

Title V of the CAAA establishes a comprehensive permit program modeled after the National Pollution Discharge Elimination System (NPDES) permits used to regulate discharges into the nation's waterways. The Title V permits are intended to include all of the statutory obligations applicable to a given source under the CAAA and the state implementation plan. Compliance with the terms of the permit provides sources with a shield against findings of non-compliance with respect to those parts of the CAAA requirements covered in the permit. With the exception of those provisions needed to comply with Title IV, these permit provisions are identical to those sources that are not covered under Title IV.

Title IV of the CAAA regulates emissions of sulfur dioxide (SO₂) and oxides of nitrogen (NO_x) from large sources. These substances are known to contribute to the acidification of water in the atmosphere which is associated with a number of detrimental environmental and health effects. The regulation of SO₂ is accomplished by an innovative market approach known as allowance trading. The regulation of NO_x is accomplished by more standard technology standards. The provisions of Title IV apply explicitly to only 33 generating facilities in Virginia. However, these provisions will also apply to any new large sources of acid precursors and to any sources who are not required to comply with Title IV but wish

to do so to take advantage of the opportunities provided under the SO₂ allowance trading market.

Estimated Economic Impact

Title V

The regulations for implementing Title V requirements have already been promulgated for all sources except the 33 units covered under Title IV. The Title V rules contained in this regulation are incidental to the development of Title IV rules for these facilities. Consequently, this analysis will focus, for the most part, on the Title IV rules. However, it will be useful to consider the impact of Title V briefly if only to clarify the discussion of the Title IV program.

Title V of the CAAA establishes a comprehensive permit program for the larger stationary sources of regulated air emissions. It dramatically expands the air emissions permitting requirements over what was required under the previous law. The new law requires that all major sources obtain permits from state air pollution agencies.¹ If Virginia fails to implement the required permit program, it is subject to mandatory sanctions and to a federally operated permit program. The permit program must be self-funding from fees paid by the permitted sources.

The permit program applies the substantive requirements of the CAAA to individual sources, establishes monitoring and reporting requirements, and establishes certain standards for participation by EPA and by other interested parties in the permitting process.

The legislative history of Title V indicates that the permit program was intended to accomplish three objectives: (1) consolidating all air pollution control obligations in one document to improve enforcement and reduce costs of compliance, (2) clarifying what each source must do to be in compliance, and (3) simplifying and expediting procedures for modifying a permit. In summary, Title V is intended to reduce the administrative costs associated with compliance with air emission rules and to allow for more efficient planning by firms on how to meet the requirements.

The essence of Title V, then, is to reduce some of the costs of air emissions regulation by developing information about sources at an initial, permitting, stage rather than to wait and develop the information when the regulations are being enforced. While such a regulatory mechanism does cost more at the permitting stage, it may reduce the total costs of the regulation in a number of ways.

Enforcement efforts may be more effective and less expensive. The reason for this is that the Department of Environmental Quality (DEQ) will know, at the time of permitting, what limits apply to what sources. Now, this information must be developed as a part of the enforcement process and greatly increases the costs of undertaking a given enforcement activity. Developing enforcement information at permitting time, allows enforcement activity to be more responsive to new information, more timely, and

¹ The units regulated under this regulation are all deemed major sources due to their emissions of SO₂ and NO_x, as provided by title IV.

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more efficiently targeted where the enforcement effort will have the greatest impact.

The enhanced permitting process may also improve public confidence in air emissions regulation. Interested members of the public will now be in a much better position to determine a source's obligations and whether the source is meeting those obligations. In some cases, this may provide citizens with the information they need to aid in the enforcement of the regulations by providing DEQ with information about firms that are in apparent violation of the terms of their permit. The information needed for the public to become involved in the process has been prohibitively expensive to obtain in the past.

The greater availability of information about source obligations may have an impact on the levels of emissions themselves. Firms whose obligations and actual performance are known, may find it in their own self-interest to over-control their emissions. Such over-control has been used by firms in the past to give their products a competitive advantage in markets where consumers have preferences over the environmental impact of their purchases. Without an enhanced permitting process, it would be difficult to evaluate claims of firms that they are exceeding their legal requirements for reducing emissions.

Under the earlier emission regulations, a firm expecting to generate air emissions faced a great deal of legal uncertainty that may have had an impact on how it chose to control its emissions. This regulatory risk gives firms incentives to choose a control strategy that reduces regulatory risk rather than one that minimizes the costs of actually controlling emissions. So, paying the added cost of enhanced permitting will allow firms to concentrate on lowering production and abatement costs rather than on reducing regulatory risk.

An added benefit of the Title V permit program is that it establishes a foundation on which any of a variety of emissions trading programs could be established. One of the key difficulties in establishing economic incentive programs for reducing the cost of air emissions reduction is the lack of a reliable inventory of sources and their emissions. This permit process requires that specific source limits be made explicit and that measurements of actual emissions be periodically reported to DEQ. This information is essential for implementing virtually any kind of emissions trading program. Once inventories are established and monitoring mechanisms are in place, moving to a market-like incentive program just requires replacing the current technology standards with an emission credit (allowance) or fee program.

The rules promulgated to implement Title V require that states give a certain amount of flexibility to sources to change their operations without obtaining changes in the sources' permits. While the flexibility envisioned in the regulations is helpful, it is not significant in terms of the total costs of administration and compliance. As long as the emissions limits in the permits are implemented primarily as technology standards that the sources must meet, the costs of compliance will remain far above the minimum necessary to achieve the given air quality standards.

A regulatory shift as great as the move to much wider stationary source permitting is bound to have many unexpected consequences. However, a preliminary assessment indicates that these provisions will have both immediate and long term benefits. Title V acts to reduce regulatory risk by moving a significant part of the compliance determination forward so that it happens before sources make many of their important compliance decisions. This should lead to significant savings even in the short run. In the longer term, the permit program lays a necessary foundation for much greater use of economic incentive programs that have been shown to greatly reduce the costs of compliance.

Title IV

The emissions trading program²

Title IV of the 1990 act limits electric utilities' emissions of sulfur dioxide (SO₂)—a major cause of acid rain.³ It includes a regulatory system to reduce the costs of meeting these emissions limits by allowing utilities to choose cost-effective pollution controls. In Title IV, the Congress combined a regulatory approach known as emissions trading with compliance measures to ensure that emissions limits are met.

Under this program, utilities receive emissions "allowances" from EPA that allow them to emit SO₂ during or after a specified year. Each utility is allotted a specific number of allowances annually; at year's end, each must have one allowance for each ton of SO₂ emitted. By the year 2010, the program limits annual SO₂ emissions to 8.95 million tons by granting only the corresponding number of allowances to utilities.

To help utilities reduce their costs of complying with lower SO₂ limits, they are given flexibility to choose how they will meet the overall reduction requirements of Title IV. For example, they can switch to fuel with a lower sulfur content or install pollution control devices. They can also buy and sell SO₂ allowances. That is, if a utility's cost to reduce SO₂ emissions is higher than the market price of allowances, the utility can save money for itself and its customers by purchasing the necessary number of allowances to comply with the requirements, instead of fully reducing its emissions. For these extra allowances to be available, however, another utility generally must reduce emissions below its requirement. This utility can sell its surplus allowances to utilities with higher costs at a likely profit for the selling utility and its customers.

Title IV is regarded as a major turning point because it uses market-based incentives to implement environmental mandates. In particular, the marketable allowance system for controlling acid rain presumes that cost-effectiveness will be the driving factor in utilities' decisions. The new program seeks to reduce the costs of controlling pollution by providing more flexibility in how emissions reduction goals are achieved.

² This section based directly on GAO. 1994.

³ It also limits utilities' emissions of nitrogen oxide, which also contributes to acid rain.

Acid rain is created when the SO₂ and nitrogen oxides given off in the combustion of fossil fuels react in the atmosphere to form sulfuric and nitric acids. These acids then fall to the earth, sometimes hundreds of miles downwind from their source, in wet form, such as rain or snow, or in dry form, such as small particles or gases. Many U.S. and international scientists have linked acid rain with damage to sensitive aquatic and forest ecosystems. The dominant precursor of acid rain in the United States is SO₂ from coal-fueled power plants. For example, damage to higher elevation forests in the Appalachian mountains are frequently attributed to SO₂ emissions from older coal-burning power plants in the Midwest. Electric utility plants account for about 70 percent of the nation's annual SO₂ emissions.

The allowance trading program differs from the traditional approach to environmental protection, commonly referred to as "command and control." Under a command-and-control approach, sources of pollution were required to install certain control technology or meet plant-specific emissions reductions across all affected sources. According to critics of this regulatory approach, command-and-control is needlessly costly because it imposes similar reduction requirements on sources that sometimes have very different control costs, rather than concentrating reductions at the sources with the lowest control costs. In addition, sources can comply with the regulation without achieving the actual emissions reductions needed to meet the overall environmental objectives. For example, in some cities that have not attained the standard for ozone emissions at ground level, economic growth can lead to an increased number of sources of ozone. Even if all these sources comply with the regulation and emit relatively low levels of ozone, the overall emissions can be too high.

Title IV offers a different approach for controlling pollution. After setting the overall reductions in emissions to be achieved, the individual emissions were divided up among the existing sources. These allocations added up to meet a total emissions cap. Sources must install continuous emissions monitors (CEM) and regularly report their actual emissions to EPA. If they violate their emissions limits, they forfeit allowances to cover the excess emissions and pay automatic fines set at several times the estimated average cost of compliance. However, the allowance trading system also rewards utilities that go beyond the law's requirements by enabling them to earn profits from the sale of their extra allowances. Sources that reduce emissions below their allocations can sell their extra allowances to others that face higher costs to reduce emissions.

According to the legislative history of Title IV as described in a Senate Committee report,⁴ the allowance trading system presented several benefits. First, the flexibility of the allowance system was expected to minimize the overall cost of the program and significantly reduce regional costs of compliance. Second, the allowance system was expected to result in emissions reductions greater than those required or reductions earlier than anticipated, or both. Third, the allowance system would allow cost-effective compliance

while accommodating growth in the demand for energy. Fourth, the incentives provided by the market in allowances were expected to stimulate innovations in technologies that would reduce emissions and conserve energy.

The acid rain control program imposes a nationwide emissions cap, reducing annual SO₂ emissions from utilities by an estimated 8.5 million tons from 1980 levels, beginning January 1, 2000. This reduction is implemented in two phases. Phase 1, beginning January 1, 1995, applies to the 110 highest-emitting utility plants and mandates that annual emissions be reduced by about 3.5 million tons. This phase primarily affects large midwestern coal-fired plants. Phase 2, beginning January 1, 2000, requires an additional annual reduction of about 5 million tons, imposing a nationwide annual emissions cap of 8.95 million tons of SO₂. Phase 2 applies to the Phase 1 plants and virtually all of the approximately 700 remaining utility plants throughout the nation, which are generally cleaner and smaller. No units in Virginia are covered by Phase 1 requirements,⁵ and 33 units are covered under phase 2.

The program's mechanism for allocating each utility's emissions reductions is an extensive system of permits and emissions allowances. An allowance is a limited authorization to emit a ton of SO₂. Allowances are allocated on the basis of specific formulas contained in the law.⁶ The allowances may be traded or banked for future sale or use. Utilities generally must either reduce emissions or acquire allowances from another utility to make up the shortfall. With certain exceptions, new power plants—those that began operation after Title IV's enactment—have to obtain allowances from those already holding allowances. Within the allowance system, incentives are provided for the early use of scrubbers. For example, Virginia Power's Mt. Storm facility was fitted with a scrubber and Virginia Power has obtained bonus allowances which it has banked for future use. Anyone may trade in allowances—including brokers, environmental groups, and private citizens—and trading can be conducted nationwide with no geographic restrictions.⁷

Each utility must install EPA-certified CEM equipment and regularly report its emissions to EPA. This monitoring and reporting requirement ensures that actual emissions are accurately tracked. At the end of the year, EPA grants utilities 30 days to obtain the allowances necessary to cover their actual emissions during the previous year. After this grace period, EPA deducts allowances from a utility's allowance holdings in an amount equal to its recorded emissions. The deduction of allowances, as well as the issuance, transfer, and tracking of allowances, is conducted through EPA's automated allowance tracking system. Operating like a bank,

⁴ Three Years Later: Report Card on the 1990 Clean Air Act Amendments, U.S. Senate Committee on Environment and Public Works (Nov. 15, 1993), pp. 71-72.

⁵ While this is true, there are units owned by Virginia electric utilities that are covered under Phase 1; Virginia Power's Mt. Storm plant in West Virginia is an example. While we have limited our focus to Virginia plants, there is little doubt that regulations affecting power plants near Virginia will have an impact on electric rates in the Commonwealth.

⁶ Allowances are allocated to each utility according to its generating capacity and historical emissions during the base period 1985-87. Each combustion unit, or boiler, in a power plant is allocated allowances. A utility can have multiple power plants, and plants can have one or more combustion units.

⁷ No matter how many allowances a utility holds, it will not be allowed to emit SO₂ levels that violate the national or state health- protection standards for SO₂.

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this system tracks the allowances held by utilities and any other companies, organizations, or individuals possessing allowances. The tracking system provides EPA with a way to determine compliance by ensuring that actual emissions do not exceed the available allowances.

Title IV provides that if a utility does not have enough allowances to cover its emissions, it is subject to an automatic penalty of \$2,000 per ton of excess SO₂, indexed yearly to inflation. This amount is several times more than the estimated average cost per ton of reducing SO₂ emissions. A utility that does not comply also has its allowance holdings reduced in the next year by one allowance for each excess ton of SO₂ emitted.

Finally, each utility must file a permit and compliance plan with EPA describing how it will meet its emissions limits. In Phase 1, EPA is responsible for issuing permits and reviewing the utilities' compliance plans; in Phase 2, DEQ will issue permits and review the plans. Permit applications and compliance plans for Phase 1 were due on February 15, 1993, and permits and compliance plans for Phase 2 will be required by January 1, 1996. Utilities can reduce emissions by switching from high-sulfur coal to low-sulfur coal or natural gas, installing scrubbers, shifting some electricity production from dirtier plants to cleaner ones, and encouraging more efficient electricity use by customers.

To stimulate trading early in the program and ensure the availability of allowances for utilities needing them, Title IV required EPA to hold allowance auctions once a year. As mandated by Title IV, in both Phase 1 and Phase 2, 2.8 percent of the allowances are withheld from utilities each year for direct sale by EPA and for sale at this auction. At the auction, EPA initially offers 150,000 allowances for sale; from 1996 to 1999, it will offer 250,000 allowances; thereafter, it will offer 200,000 annually. The first two auctions occurred in March 1993 and 1994. Anyone can participate in these auctions as a buyer or seller, and private parties selling allowances may specify a minimum sale price.

For a source covered by (or opting into) the allowance trading program, the cost of controlling a ton of SO₂ at the margin is no greater than the price of an allowance. This is because the source always has the option of buying allowances rather than reducing emissions by another ton. If control costs are higher than the allowance price, then the allowance price is the cheapest incremental compliance option: the marginal cost of compliance.

How has the market performed?

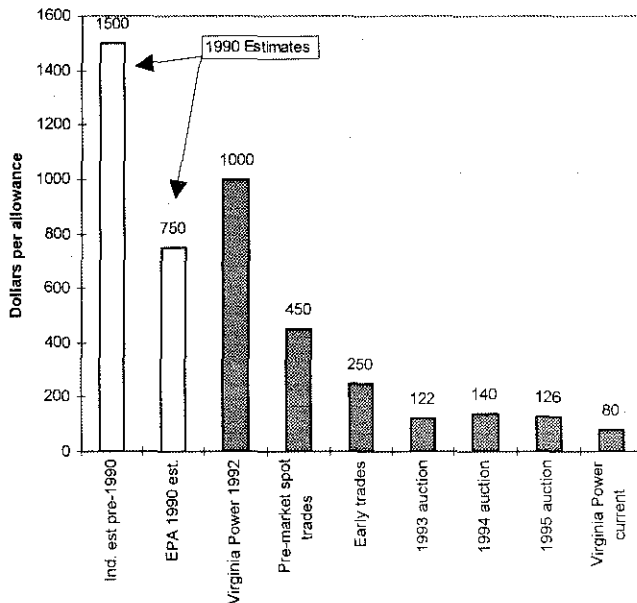
One way of assessing the performance of the allowance trading market is to observe the price of the allowances themselves. Since allowance prices will not be greater than the cost of using the cheapest form of emissions control -- otherwise no one would buy them -- then the allowance price may be taken as a good approximation of the marginal cost of control; that is, the cost of taking one more ton of SO₂ out of the air.

By this measure the allowance trading program has been a great success. Table 1 shows the estimated costs from 1990, when the act was passed, and the actual offers and transactions since then. At the time of the passage of the CAAA, industry estimated \$1,500 as the marginal cost of

sulfur removal. EPA estimated \$750. When Virginia Power built their Mt. Storm facility in West Virginia, the utility attempted to purchase allowances in order to avoid (or delay) the cost of building a scrubber on that facility. Virginia Power reports that no allowances were available at a price of \$1,000.⁸ Thus, at that time, allowance prices were greater than \$1,000. Since the opening of the allowance market, the price of allowances has fallen dramatically. As of March, 1996, Virginia Power reported receiving an offer of allowances priced at \$80 per ton. The cost of removing SO₂ from some utility's effluent has fallen to something less than \$80, a 10-fold reduction in Virginia Power's control costs in less than 5 years.

Why have costs fallen so far from the early estimates? The answer seems to be that the allowance trading system has caused a dramatic restructuring of the markets for inputs to the electric power industry.⁹ The most important changes have been in the markets for low sulfur coal and for scrubbers.

Figure 1: Trend in Allowance Prices



Expanded use of low sulfur coal is the most common compliance option for Phase I utilities. This is largely because of a dramatic decline in coal prices since 1990. The 1990 estimates for the price of low sulfur coal in eastern markets was \$40 a ton by 1995, but the price is now less than \$25. This decline in prices is due to productivity increases in mining and transporting coal as well as to increased competition in the rail transportation industry.

The opportunity for blending in low sulfur coal to reduce emissions has led to significant innovations in the use of

⁸ Personal conversations with Leo Meyer, 3/96.

⁹ See Butraw, 1995.

blended fuels in power plants initially designed for higher sulfur coal.

The scrubber market has also seen dramatic cost reductions. Scrubber prices have fallen by half since the passage of the CAAA.¹⁰ At the same time, capacity factors and removal rates have improved. Virginia Power reports a greater than expected 95% capacity factor and removal efficiency for scrubbing stack gasses at its Mt. Storm facility.

Much of the cost reductions in these markets were driven by the increased competition in the input markets due to the allowance trading market. Firms have much more flexibility in choosing control technologies, and allowances are available as an additional way of reducing emissions at any given plant.

Table 1. Projected annual costs

Source: (General Accounting Office, 1994)

billion dollars	Command and control baseline	Intra-firm transfers only	Inter-firm trading
1997 (Phase I)	1.3	1.1	n/a
2002 (Phase II)	4.5	2.6	1.4
2009 (Phase II)	4.9	3.1	2.0
2002 Virginia only	0.11	0.039	0.022

In Virginia alone, the projected annual costs of meeting Phase II requirements in the year 2002 were \$110 million under the old regulations. When these estimates were made in 1994, the projected costs under the allowance trading program were \$39 to \$22 million depending on how much trading takes place between firms. Given recent observations in the allowance market, these estimates may be taken as the upper bound on costs; more likely estimates would be \$26 to \$15 million respectively.¹¹ The savings just to power plants located in Virginia will probably be in the range of \$84 to \$95 million each year. Electric utilities in Virginia have indicated that they will be purchasing allowances as a significant part of their compliance strategy for Phase II.

These savings will be translated into lower electricity rates and, depending on rate regulation decisions in the interim, possibly higher profits for electric utilities operating in Virginia. These savings will be a significant benefit to the Virginia economy over the costs that would have been incurred under the command and control regulations.

Why has this market been so successful?

According to economic theory, the allowance market has three principle advantages over command and control regulation in lowering the cost of compliance. First, firms gain flexibility internally. They are judged by their performance, not by the technology they choose for

compliance. This gives firms incentive to choose the cheapest possible way of achieving the performance goal. And firms are rewarded for innovation since their costs will fall if they develop a cheaper method of reducing emissions.

The second advantage of an allowance market is that once firms achieve the performance standard, they still have incentive to reduce emissions even further because they can profit by selling allowances if their cost of control is lower than the prevailing allowance price. Performance standards alone cannot give incentive for over-control.

Third, an allowance market allocates costs between firms in the most efficient way. Firms in the west that have ready access to cheap, low sulfur coal can reduce emissions much cheaper than utilities in Virginia. Thus, Virginia can reduce its costs by paying western utilities to over-control in return for relaxing the controls on Virginia power plants. Again, performance standards cannot, by themselves, achieve this form of cost saving.

These savings – especially the savings not available from a pure performance standard – can only be achieved if the market functions reasonably well. That is if it is reasonably competitive and has low trading costs. The less competitive the market and the greater the costs of trading, the less will be the savings. The SO₂ allowance trading market has been successful because it satisfies both of these requirements. There are many buyers and sellers and so the market is not subject to monopoly pricing or collusion among buyers or sellers.

The trading has not been as active as some had hoped, but this is probably due to the slow response that state rate regulators have made in determining how allowance trading will be treated in determining utility rates. As the trend toward greater competition in the utility industry continues, the pace of trading will increase. Even at this level of trading, the market for allowances provides increased competition for the input market and provides utilities with insurance that reduces the risk of implementing new technologies that are now available under the performance standard.¹²

Key to the performance of this market is that the costs of trading have been kept to a minimum. The allowance itself is a clearly defined asset that is completely fungible. As a result, there is no need for costly risk intermediation. This is especially important for utilities because they face the risk of any losses, but any gains must be returned to ratepayers. This leads to highly risk averse behavior on the part of regulated utilities. Trades are not regulated. The only requirement is that they be recorded with EPA on or before the date that they are used for compliance determination.

For firms in the allowance market, allowances have become just another input to production: like coal or computers. Compliance with the acid rain regulations is no longer being treated as a regulatory compliance issue but as a finance and operations issue. In the case of Virginia power, allowance trading has been moved out of the environmental compliance group. All SO₂ allowance decisions are made in the fossil

¹⁰ GAO, 1994.

¹¹ These lower estimates are based on an allowance price of \$100. A lower allowance price would imply greater savings.

¹² Butraw, 1995.

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and oil group. Allowances are just another input to electricity generation for Virginia Power.

The costs to Virginia of acid precipitation

While the allowance trading program does greatly reduce the costs of limiting the damage from acid precipitation, even these lower costs can only be justified if they produce a benefit of sufficient magnitude to justify the costs. That the cost estimates have fallen by an order of magnitude since Congress established the program gives some hope that, even if the program could not have been justified at 1990 cost estimates, it may be a bargain at 1996 costs. Unfortunately, the state of our knowledge about even something as basic as the physical chemistry involved in moving from SO₂ in stack gasses to acidified precipitation is very limited.

One of the most comprehensive source of information relating to the benefits of sulfur dioxide emissions reductions is the National Acid Precipitation Assessment Program (NAPAP), an interdisciplinary research effort initiated by the Acid Precipitation Act of 1980 and reauthorized with the 1990 Clean Air Act Amendments. The results of a decade of NAPAP coordinated research are compiled in the 1990 NAPAP Integrated Assessment Report which examines which regions and resources of the nation are affected by acidic precipitation, the extent of the damages incurred, the link between emissions of precursor pollutants and observed levels of acidic depositions and the effectiveness of possible alternative public policies designed to mitigate the damaging effects of acid rain.

The findings of the 1990 NAPAP report offer some insights to the potential benefits of SO₂ reductions to the Commonwealth. The effects of sulfur dioxide emissions and sulfur-related acidic depositions on five "areas of effect"; aquatic ecosystems, terrestrial systems, materials and cultural resources, visibility conditions and human health, are considered. Chapter Four of the report provides physical measures and qualitative descriptions of the sensitivity of different resources to changing levels of sulfur-related acidic deposition. Chapter Five extends the analysis done in Chapter Four to predict and compare the effects of five different sulfur dioxide emissions scenarios on each of the five areas of effects. Of particular relevance to SO₂ reduction policies in Virginia is a comparison of two of the scenarios presented in Chapter 5, "S1" and "S4". Under S1, no new emissions reductions requirements are implemented. It is assumed that sulfur dioxide emissions will initially increase through the year 2005 and thereafter decrease such that total sulfur dioxide reductions (from 1980 levels) equal 10 million tons in the year 2030.¹³ Scenario S4 represents the implementation of additional emissions reduction requirement that would result in total sulfur dioxide emissions reductions (from 1980 levels) of 10 million tons by the year 2000

Before drawing on the findings of the NAPAP report to assess the potential benefits to Virginia of SO₂ reductions, it should be noted that the projections made in Chapters 4 and 5 are intended to be used as part of a comparative analysis, rather than as definitive, absolute measures of the effects of future SO₂ emissions. Many uncertainties are present in the mathematical models used to generate the projections, including unknown future energy demands, fuel availability

and economic activity. Furthermore, significant uncertainties exist relating to the physical and chemical processes that convert precursor pollutant emissions to acidic depositions. And, for most models, projections are made on a regional level that aggregates data across a geographic region including other states and possibly excluding certain portions of the Commonwealth. Thus, for the purposes of considering the benefits of SO₂ reductions for Virginia, the projected effects of different SO₂ reduction strategies, as described in Chapters 4 and 5, should be examined in relative terms and viewed primarily as indicators of areas in which benefits will accrue, rather than as definitive, absolute measures of SO₂ reduction benefits.

Aquatic Ecosystems

The NAPAP report evaluates the effects of continued "current" (1985) levels and hypothesized higher levels of sulfur deposition on the surface water chemistry and biota of waterways in acid sensitive regions of the United States that have been sampled as part of the National Surface Water Survey (NSWS). Multiple chemical and watershed models are used to determine the effects of sulfur deposition on the pH and acid neutralizing capacity (ANC) of surface waters.¹³ The results of the chemical models are then used in biological fish response models to determine the impact of the chemical changes on fish species most sensitive to increasing water acidity. Portions of Virginia fall within (or in very close proximity to) two of the NSWS regions, the Mid-Atlantic Coastal Plain and the Southern Blue Ridge Province of the Southeastern Highlands.¹⁴

Mid-Atlantic Coastal Plain: Insufficient information was available to quantitatively model the responses of waterways in this region to changing levels of sulfur depositions; however, a qualitative assessment is provided for the most acid sensitive waterways. Approximately 10% of the streams in the Mid-Atlantic Coastal Plain Region are located in lowland forest near the coast, including waterways near the Chesapeake Bay.¹⁵ These streams have less than 3mg/L of dissolved organic carbon and a low acid neutralizing capacity, usually between zero and 10 µeq/L. They are poorly buffered and thus subject to "acidic episodes", making them quite likely to respond to changes in sulfur deposition levels. The anadromous fish populations inhabiting these streams are highly sensitive to increasing aluminum concentrations associated with prolonged sulfur depositions and would decline if the streams were to acidify.¹⁶ The NAPAP report concludes that, when faced with sulfurous deposits, these low ANC streams of the Mid-Atlantic Coastal Plain "...may acidify if sulfur deposition increases but could experience pH increases and aluminum decreases if sulfur deposition is reduced."

¹³ See State of Science/Technology (SOS/T) Reports 10, 11,13 and 14 for detailed description of the models used.

¹⁴ See Box 4.4-1, pg. 271. NAPAP 1990 Integrated Assessment Report, for map illustrating geographic regions included in the study.

¹⁵ Region defined by NAPAP for this study are illustrated in Box 4.4-1, pg. 271.

¹⁶ Anadromous fish are species of fish that swim upstream to spawn, such as Shad.

Insufficient data was available for streams in this region to run aquatic projection models under scenarios S1 and S4 in Chapter Five.

Southern Blue Ridge Province: The soils surrounding waterways in the Southern Blue Ridge Province have the capacity to retain a large proportion of the sulfate deposited, thus temporarily mitigating the impact of acidic depositions on waterways within the region. Currently, none of the sampled streams are acidic; and, due to uncertainties regarding the future sulfur retention capacity of the soils, it is difficult to determine the future effects of current acidic depositions. Nevertheless, NAPAP estimates that approximately 10% of the streams in the region would be acidic after 50 years at the current rate of deposition. Based on NAPAP projections, an estimated 30%-50% reduction in sulfur deposition is necessary in order to keep the ANC of streams at the same level 50 years from now, as it is today.

Similarly, the projections made for scenarios S1 and S4 in Chapter Five indicate that, because of the sulfur retention capabilities of the surrounding soils (as well as a relatively high current ANC), the acid-base chemistry of waterways in the Southern Blue Ridge Province is not expected to change significantly over the next 50 years, regardless of the emissions reduction scenario.¹⁷ Longer term projections, however, show that the ANC and pH of streams may then decrease for 200 years or more as sulfate currently retained by watershed soils is released. The NAPAP report indicates that, "Declines in ANC and pH and possible adverse effects on fish beyond the 50-year projections would be expected to be less for the S3-S5 scenarios than for the S1 scenarios because of lower sulfur loading to the watershed soils." Thus, it appears that the benefits of emission reduction activities to streams in the Southern Blue Ridge Province will most likely be realized beyond an initial 50 year time period during which the watershed soils are still able to accommodate sulfur depositions.

Terrestrial Effects

The NAPAP report examines terrestrial effects in terms of the impact of acidic depositions on forests, soils and agricultural lands. The portion of the NAPAP analysis most relevant to Virginia's terrestrial systems involves an evaluation of changes in the base saturation of forest soils under different acidic deposition scenarios. The "base saturation" of a soil is the percentage of base cations (plant nutrients such as calcium, magnesium and potassium) on the cation exchange site of soil particles. Exchange sites not filled by base cations are occupied by aluminum and hydrogen which are cations that can be toxic to plants. The lower the soil base saturation, the greater the likelihood of plant nutrient deficiencies and, if base saturation is low enough (<10%), concentrations of aluminum in solution may become strong enough to prove toxic to plants.

Three, 50 year deposition scenarios are used for the analysis:

a constant deposition over the next 50 years at "current" (1985) levels (corresponding to scenario S1 in Chapter Five)

a linear 30% increase in sulfur deposition over the next 25 years, remaining at that level for another 25 years, and

five years at current deposition levels followed by a linear 50% decrease over 10 years, remaining at that level for 35 years (corresponding to scenario S4)

500 simulations are run predicting potential changes in soil base saturation for forested watersheds in the eastern United States under each of the three scenarios. Model inputs are randomly selected from a range of soil and watershed characteristics identified by the National Soil Survey Laboratory.¹⁸

The model simulations under all three scenarios indicate that forest soils will not likely undergo large changes (i.e. >5%) in base saturation over a 50 year time period. The maximum changes observed in the simulation results are 12%-18% decreases in the base saturation of some sensitive soils (See Figure 4.5-16, pg. 321, NAPAP 1990 Integrated Assessment Report).

It is not possible to determine from the simulation results how many soils, what region of soils or which forest systems are represented by the modeled scenarios. The report does, however, identify key characteristics of soils which are most likely to experience significant changes in base saturation. Soils most vulnerable to acidic depositions are those with the lowest cation exchange capacity, the highest sulfur deposition and the shallowest depth. (See Figure 4.5-18&19, pg. 322 NAPAP 1990 Integrated Assessment Report) Maps 4.5-20, a-d page 323 of the NAPAP report, identify the proportion of forest land in the Commonwealth with these characteristics.

S1 and S4 scenarios are not run for forest soils in Chapter Five, however, the conditions under both scenarios fall within the parameters of the sensitivity analyses of Chapter Four. Therefore, using the Chapter Four analysis, the report draws the conclusion that, "Reduction of sulfur deposition by 50% over 10 years would cause a slight increase in the base saturation of some shallow forest soils with low cation exchange capacity, but most soils will not be affected."

Another terrestrial effect relevant to Virginia that is considered in the study, relates to the function of sulfurous deposits as a source of passive fertilization on sulfur deficient agricultural lands. In Chapter Five, (section 5.5.6) the economic costs associated with the effects of reduced emissions on the availability of sulfur as a source of passive fertilization are examined.¹⁹ Projections are made for cropland throughout much of the eastern United States based on statewide estimates that sulfur is limiting crop growth on 20%-40% of all agricultural soils. The report finds that the future value of the combined costs to consumers and producers associated with reduced sulfur deposits under the S4 scenario (as compared to the S1 scenario) total

¹⁷ Although under scenario S1, the percentage of streams with pH<6 is 0% initially, it rises to 9% in 1990 and remains there for the remainder of the 50 year projection.

¹⁸ See page 324 of the NAPAP report for a detailed description of the model and a discussion of its limitations.

¹⁹ It is assumed that farmers will compensate for reductions in passively available sulfur by increasing the application of commercial sulfur.

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approximately \$18 million to \$36 million per year in 2010 and \$3 million to \$6 million per year in 2030 (in 1989 dollars).²⁰

Materials and Cultural Resources

Again, NAPAP researchers were limited in their ability to assess the sensitivity of construction materials and cultural resources to changing levels of sulfurous deposits by the lack of precise dose response functions with which to accurately project the effects of acidic deposition on the materials of interest. Thus, the NAPAP study provides sensitivity analyses only for materials with quantitative dose-response functions, (carbonate stone and galvanized steel), while pointing out that these materials comprise only a small proportion of the total material affected by acidic deposition.

As a measure of the effects of acidic deposition on cultural resources, the sensitivity of carbonate stone (marble and limestone) objects to changes in the level of both wet and dry sulfur deposition is assessed in terms of the number of years that transpire before the exposed surface of an object erodes to a level at which further damage is considered "critical".

Data for the analysis is collected from five test sites representing a range of exposure conditions, including:

- Industrial, Urban -- Steubenville, OH
- Urban, Non-industrial -- Washington D.C.
- Suburban with industrial influences -- Chester, N.J.
- Suburban surrounded by rural lands -- Research Triangle Park, NC
- Rural -- Newcomb, N.Y.

At each test site, the life spans of objects under three sulfur deposition reduction scenarios are compared to their life spans under current levels of sulfur deposition. (See Table 4.6-2 for "Current Levels" of deposition) The three reduction scenarios include,

- an "immediate" 50% reduction in sulfur related acidity levels,
- a 50% reduction starting in 10 years and entirely phased in within one year (an "accelerated reduction"), and
- a 50% reduction starting in 10 years and phased in over a 30 year time period (a "gradual" reduction for which erosion rates vary year by year and a separate rate must be calculated for every year).

Every object has a "critical threshold" indicating the depth of surface material remaining before further erosion is considered critical. A number of critical thresholds ranging from .2 to 1.0 cm is considered under each scenario. Both the accelerated and gradual 50% reductions significantly expanded the life span of objects at all test sites. The accelerated reduction scenario extended life spans in a range of 1-5% more than did the gradual reduction scenario. (See Table 4.6-3, pg. 344, NAPAP 1990 Integrated Assessment Report).

While insufficient information is available to quantify the relationship, the NAPAP report indicates that a more significant source of damage to carbonate stone objects

subjected to increasing sulfurous deposition, takes the form of the spalling and soiling of an object's surface resulting from the accumulation of gypsum, a white mineral ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$).

The sensitivity of unpainted galvanized steel is examined as an indicator of the effects sulfur-related acidic depositions have on construction materials.²¹ The life spans of two types of galvanized steel are considered, an "electroplated" steel to which a zinc coating is applied at a thickness of about 20 μm , and a "hot dipped" steel where the thickness of zinc applied can be controlled, and for the purposes of these analyses, has been specified at 120 μm . The life spans of these two types of steel are examined to determine what percentage of the corrosion rate for galvanized steel is attributable to sulfur related acidic deposits.²²

Corrosion rates at the same five test sites are then estimated under three scenarios involving the current degree of exposure to sulfur related acidic deposition, an immediate 20% increase in the degree of exposure to sulfur related acidity and an immediate 50% decrease in exposure to sulfur related acidic deposition. (See table 4.6-4 pg. 348, NAPAP 1990 Integrated Assessment Report) The rates of corrosion are utilized to estimate the life spans of objects under each scenario. Estimates are made both for objects with a critical thickness of 20 μm and for those with a thickness of 120 μm . (see table 4.6-5 pg. 349, NAPAP 1990 Integrated Assessment Report). The corrosion rate projections indicate that, under an immediate 50% reduction in emissions, life spans increase anywhere from 19-52%, indicating changes that are significant but not necessarily in proportion with emission reductions. The percentage changes in life spans associated with changes in exposure levels under the immediate reduction scenario are the same, regardless of the critical thickness of the object. However, life spans do vary somewhat depending upon the test site at which the object is located. The greatest changes in life spans occur in more urban / industrial areas, such as Steubenville, OH and Washington D.C.²³

The effects of the timing of the changes in exposure are also considered in the study. A comparison is made between the changes in life spans generated by a 50% reduction in exposure introduced over a period of 40 years and those occurring under an immediate 50% reduction in exposure. For objects "tailored for long economic lives" (i.e. with thicker zinc coatings), life spans under the immediate reductions

²¹ The report estimates the changes in levels of exposure to sulfur-related acidity available to react with metals; a level which is *not* necessarily proportionate to changes in levels of sulfur dioxide emissions, SO_2 air concentrations or total annual sulfur depositions.

²² The report indicates that some bias is introduced into the estimates for two test sites, Washington D.C. and Steubenville, OH, because of the neutralizing effects of alkaline particulate deposition encountered at these two, urban sites. Excluding these two sites, the combined contribution of sulfur-related acidity to the corrosion rate at the remainder of the sites ranges from 30% to 50%. The models may be failing to account for the degree to which the alkaline particulate help offset the corrosive effects of the sulfur depositions, thus lending an upward bias to the percentage estimates.

²³ Again, this could be related to the potential upward bias introduced into estimates of the corrosion rate by the presence of alkali particulate having a neutralizing effect on acidic deposits at two test sites.

²⁰ See page 472 of the NAPAP report for a detailed discussion of the limitations of this analysis.

were greater than life spans under the phased in reductions by only 1%-4%. The normal life spans of objects constructed with thinner zinc coatings are in the range of 2-30 years. This means that objects constructed in the earlier stages of the 40 year reduction strategy will not receive the full benefits of the entire 50% reduction. The NAPAP study finds that any of these short lived objects constructed within the first fifteen years of the forty year reduction period will experience a decrease in life span of 3-5 years under the phased in 50% reduction scenario as compared to the life span it would be expected to attain under the immediate 50% reduction.

Visibility Effects

The NAPAP report examines the sensitivity of visibility to changes in ambient sulfate concentrations, including:

- a 20% increase in ambient sulfate concentrations and
- 20%-100% decreases in ambient sulfate concentrations (in 20% increments)

An assessment is made of visibility quality throughout the rural east and is calculated as an average over three National Park sites; Shenandoah, VA, Acadia, ME and the Great Smokies, TN.

Visibility changes are assessed in terms of the percentage change in visual range and light extinction, the total number of "just noticeable changes" (JNCs)²⁴ that occur, and by photographs taken to illustrate the changing degrees of visibility.

The study finds that, on an annual average basis, sulfates contribute 57% of light extinction in the rural east. Furthermore, while not precisely proportional, changes in light extinction and visual range are approximately proportional to changes in ambient sulfate concentrations.

Approximate Proportional Relationships Between Changes in Ambient Sulfate and Changes in Light Extinction and Visual Range

Percentage Change in Ambient Sulfates	Percentage Change in Light Extinction	Percentage Change in Visual Range
+20	+11	-10
-20	-11	+13
-40	-23	+30
-60	-34	+52
-80	-46	+84
-100	-57	+133

The report concludes that visibility in the eastern rural areas of the United States is closely linked to sulfate air concentration levels and that any dis-proportionality is minor and would be on the order of 1:10.

²⁴ A JNC (Just Noticeable Change) is a unit measure of improved visibility derived from the perception of "just noticeable" improvements from one scene appearance to the next.

Beyond a certain threshold level of visibility improvements, additional unit reductions in ambient sulfate yield greater marginal improvements in visibility than were achieved below the threshold level.

Percentage Change in Ambient Sulfate	Number of JNCs	Marginal Change in Number of JNCs
-20	1	1
-40	3	2
-60	6	3
-80	9	3
-100	13	4

While a 20% reduction in ambient sulfate generates only a small improvement in visibility (one JNC), each additional decrease in ambient sulfate (in 20% increments) yields progressively larger marginal improvements in visibility.

A comparison is then made of the changes in light extinction and number of JNCs achieved under different levels of ambient sulfate occurring on days in the upper and lower 20th percentiles of ambient sulfate concentration occurrences. The results of the comparison reinforce the conclusion that marginal improvements in visibility are greater for larger reductions in ambient sulfate. The same percentage change in ambient sulfate resulted in much larger percentage changes in light extinction for the days experiencing the highest levels of sulfate than for days experiencing the lowest sulfate levels. Correspondingly, the number of JNCs achieved under a particular percentage reduction of sulfates is much larger for days in the upper 20th percentile than for those in the lower 20th percentile. (See Table 4.7-2, pg.365, NAPAP 1990 Integrated Assessment Report)

The analysis performed in Chapter Five examines estimated visibility conditions under Scenario S4 in the year 2010 and compares them against a 1985 visibility baseline. Many of the conclusions are identical to the finding of Chapter Four, however, the analysis does add that there is a seasonal pattern to improvement with summer being the season in which the greatest improvements occur. Furthermore, a regional analysis is performed showing that "...the greatest visibility improvements are expected to occur in a wide band along the Appalachians from northern Georgia to southern New England, with greater than average improvements also occurring throughout the Ohio River Valley."²⁵

Health Effects

The NAPAP report examines the sensitivity of both direct and indirect health effects to changes in the level of acidic deposition. The direct health effects result from exposure to sulfur dioxide as well as acidic aerosols, ozone and nitrogen dioxide. Indirect health effects relate to the harmful effects of

²⁵ The regional analysis is based on data from both the mathematical model utilized for projecting light extinction levels as well as from estimates of total light extinction based on airport visibility measurements. Thus, while useful as a qualitative indication of the regional impacts of ambient sulfate, should not be viewed as a definitive assessment of such impacts.

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lead and methylmercury released into drinking water or into the food chain as a result of the acidification of soils and waterways.

Direct health effects: The direct health effects of changing air quality levels are evaluated in terms of the number of people living in counties where sulfur dioxide concentrations exceed the National Ambient Air Quality Standards (NAAQS).²⁶ Underlying the use of this measure is the assumption that the NAAQS represent SO₂ levels which pose little health risk to humans. The NAPAP report points out that this number represents the number of people exposed to "potential" health risks rather than to "actual" risks, explaining that concentrations of SO₂ in excess of the NAAQS represent an actual health risk only to individuals with particular risk factors such as a pre-existing disease or a tendency to exercise outdoors.

Given the uncertainties associated with the projected future emissions levels and the assumed relationship between emissions and resulting acidic depositions, the study findings indicate that air pollution concentrations do have an effect on the number of people at potential risk of living with sub-standard air quality conditions. In the base year, nine counties had sulfur dioxide concentrations in excess of the NAAQS. A 20% increase in air concentrations, results in an additional 10 counties with SO₂ concentrations in excess of NAAQS. For 20%, 40% and 60% reductions in air concentrations, the number of counties with sulfur dioxide concentrations in excess of the NAAQS falls to three, one and zero, respectively.²⁷

In Chapter Five, a similar analysis is performed, except that, instead of assuming national reductions in SO₂ emissions from both non-utility and utility sources as is done in the Chapter Four analysis, air quality changes are calculated for each non-attainment county by adjusting 1985 baseline air quality values proportionately with the NAPAP scenario changes in SO₂ emissions from utility sources only. The study finds that the number of counties in violation of NAAQS is unchanged under both Scenarios S1 and S4, with one exception.²⁸ The report does indicate, however, that for some sites in close proximity to large utilities, significant reductions in SO₂ emissions were experienced. While the benefits of these regional reductions were not captured in the NAAQS analysis, the report points out that they could yield significant health benefits to individuals living in close proximity to the utilities.

Additionally, based on a comparison of regional sulfate levels from 1985-2030 under scenarios S1 and S4, the report finds that, "Insofar as acidic sulfate trends are roughly similar to sulfate trends, it is estimated that between 2000 and 2020 the region generally defined by the states of Ohio, Indiana,

West Virginia, Pennsylvania, New Jersey, Maryland, Virginia, North Carolina, Kentucky, Tennessee, and northern Georgia could experience the greatest decrease in acidic sulfate levels with implementation of S4 compared with S1."

Indirect Health Effects: The NAPAP study provides a very limited assessment of possible indirect health effects resulting from increased levels of lead in drinking water sources as a result of acidic deposition. The modeled relationship between lead exposure levels and acidic deposition is valid only for conditions where extreme acidification occurs. Such conditions are most likely to apply to untreated water drawn from surface-water sources located in regions that are particularly vulnerable to acidification, such as the Northeast and Upper Midwest.

Given these conditions exist, the study finds that a 20% increase in acidic deposition results in a 5%-15% increase in lead exposure in drinking water over a 10-40 year time period. A 20-60% decrease in acidic precursor emissions results in a 10%-20% reduction in lead exposure from drinking water over a 10-40 year time period.

Chapter Five draws on the results of Chapter Four to conclude that scenario S1 will have virtually no beneficial impact on reducing levels of lead released into drinking water sources through the year 2030, although small improvements may be experienced by the year 2050. Under S4, some reduction in lead concentrations will be experienced by the year 2010 and will continue through 2050. Under either scenario, the effects of reduced acidic depositions will be most dramatic for water coming from a surface water source.

Conclusions on the benefits of controlling acid precipitation

The millions of dollars spent on research into the physical, biological and economic impact of SO₂ emissions has greatly improved our understanding of many of the important issues, but the error band on our estimates of the economic benefits of reducing acidification are still so large that they have little policy relevance. Much more stringent control and much less stringent control are both well within the 90% confidence band (and even the 80% band.) That said, the more the costs fall, the greater the likelihood that the costs are justified by the benefits earned. While we cannot say with any confidence that the level of control mandated by the CAAA is economically justifiable, we can certainly say that we have chosen the best possible mechanism for achieving the level of control chosen.

Businesses and entities affected

The allowance trading program reduces the costs of generating electricity relative to the command and control policies it replaces. Lower costs for electricity will provide a significant benefit to businesses as well as local governments and non-profit organizations. Of course electric rates would be even lower if lesser reductions in sulfur emissions were required. It is not known whether such a change would produce net benefits or costs. It is clear that, whatever level of control we choose, the allowance trading program minimizes the costs of the regulation on business.

²⁶ For this section of the study, "Air Quality" is calculated using data obtained from the Aerometric Information and Retrieval System (AIRS) and 1985 county population estimates from the U.S. Census Bureau.

²⁷ See Figure 4.8-1 pg. 373 of the NAPAP report to see changes in the number of people living in areas where NAAQS are exceeded under different percentage changes in air quality, as compared to the number at the base year (1985) level of air quality.

²⁸ Under Scenario S1, one county exceeds the NAAQS in the year 2000, temporarily increasing the population at risk by 2,364,536 people.

Localities particularly affected

The cost savings from the allowance trading program will accrue to businesses, consumers, and stockholders throughout the Commonwealth. However, the benefits of reducing acidification will not be evenly distributed. Some farmers will actually lose money due to the reduced "free" sulfur fertilizer that will no longer be provided by the combustion of coal. The benefits will be concentrated in higher elevation forests. The timber and tourist industries concentrated in these areas will share significant benefits. In parts of the state with waters low in buffering capacity, there may be measurable damage to the biological productivity of those waters.

Projected impact on employment

It is not known what effect this regulation will have on employment in Virginia. It is not known whether lower electric rates or building scrubbers would provide a greater number of jobs. We can say that it would not make sense to choose to build scrubbers as a way of reducing unemployment because this would cost far too much for each job created to be justifiable. There would be much cheaper ways of generating the same number of jobs. Some coalfield jobs will shift from high sulfur reserves to lower sulfur fields.

If Virginia's electric rates were driven substantially above those of other states, we would be at a competitive disadvantage for attracting industry to the Commonwealth. The allowance trading program helps limit any differences in electricity costs between Virginia and those states with larger reserves of cheaper low sulfur coal.

Affects on the use and value of private property

This regulation helps protect the property interests of those damaged by SO₂ emissions from electric utilities. This would include owners of certain forested lands, owners of poorly buffered surface waters, and owners of businesses dependent on the tourist industries in areas subject to damage.

Depending on how certain rate regulation issues are resolved, lower costs of SO₂ control may increase the earnings to owning shares in electric utilities. This would increase the value of those shares relative to command and control regulations but would reduce them relative to no control of sulfur emissions.

Summary

While it is not known whether the level of SO₂ control chosen is the level that maximizes economic benefits, it is clear that the allowance trading program established by Title IV of the Clean Air Act Amendments of 1990 has greatly reduced the costs of achieving that level of control. Compared to the command and control program it replaces, this regulation represents a very significant economic benefit for the Commonwealth of Virginia.

Title V of the amendments streamlines compliance and enforcement activities under the clean air regulations by requiring a significant investment of resources at the time of permitting. There is reason to believe that this change will have positive net economic benefits. This investment in the permitting process has the added benefit that it lays the

administrative foundation for expanding the use of the type of market mechanisms used in Title IV.

We conclude that this regulation has significant net benefits relative to the regulation it replaces. However, due to the uncertainty over the economic value of the damages from acid precipitation, it is not possible to say with any confidence whether a greater or lower level of SO₂ control would be preferable in terms of net economic benefits.

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U S Government Accounting Office (GAO). 1994. "Air Pollution: Allowance Trading Offers an Opportunity to Reduce Emissions at Less Cost," GAO/RCED-95-30, Washington, D.C.

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U S National Acid Precipitation Assessment Program (NAPAP). (1991) "1990 Integrated Assessment Report," Washington, D.C.

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

The Department of Environmental Quality takes no issue with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The regulation amendments concern provisions covering acid rain operating permits. The proposed regulation establishes an acid rain operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

APPENDIX M.

DOCUMENTS INCORPORATED BY REFERENCE.

9 VAC 5-20-21. 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 these regulations, documents of the types specified below have been incorporated by reference.

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

Additional information on key federal regulations and non-statutory documents incorporated by reference and their availability may be found in ~~Section II subsection E~~ of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (1994) in effect July 1, 1994. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

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

D. Copies of materials incorporated by reference in this appendix section may be examined by the public at the

headquarters office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

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

A. 1. Code of Federal Regulations.

4. a. The provisions specified below from the Code of Federal Regulations (CFR) in effect as of July 1, 1994, are incorporated herein by reference.

a. (1) 40 CFR Part 40 - National Primary and Secondary Ambient Air Quality Standards.

(1) (a) Appendix A - Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Paros-aniline Method).

(2) (b) Appendix B - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(3) (c) Appendix C - Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

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

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

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

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

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

(9) (i) Appendix I - Reserved.

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

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

b. (2) 40 CFR Part 58 - Ambient Air Quality Surveillance.

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

e. (3) 40 CFR Part 60 - Standards of Performance for New Stationary Sources.

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

d. (4) 40 CFR Part 61 - National Emission Standards for Hazardous Air Pollutants.

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

e. (5) 40 CFR Part 63 - National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in ~~Part VI~~ *Article 2 (9 VAC 5-60-90 et seq.) of Part II of Chapter 60*, Rule 6-2, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories.

2. b. Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 783-3238.

B. 2. U.S. Environmental Protection Agency.

4. a. The documents specified below from the U.S. Environmental Protection Agency are incorporated herein by reference.

a. (1) Guideline on Air Quality Models (revised), EPA-450/2-78-027R, OAQPS No. 1.2-080, July 1986, as amended by Supplement A, PB88150958, July 1987.

b. (2) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

2. b. Copies may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone (703) 487-4650.

C. 3. U.S. government.

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

2. b. Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 783-3238.

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

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

a. (1) D323-82, "Test Method for Vapor Pressure of Petroleum Products (Reid Method)" from Section 5, Volume 05.01 of the 1985 Annual Book of ASTM Standards.

b. (2) D97-87, "Test Method for Pour Point of Petroleum Oils" from Section 5, Volume 05.01 of the 1989 Annual Book of ASTM Standards.

(3) D129-91, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-95, "Standard Classification of Coals by Rank."

(5) D396-92, "Standard Specification for Fuel Oils."

(6) D975-94, "Standard Specification for Diesel Fuel Oils."

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

(8) D1265-92, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-94, "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry."

(10) D4057-88, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-90, "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

2. b. Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; phone (215) 299-5400.

E. 5. American Petroleum Institute (API).

4. a. The following document from the American Petroleum Institute is incorporated herein by reference: API Publication 2517, Evaporation Loss from External Floating Roof Tanks, Third Edition, 1989.

2. b. Copies may be obtained from: American Petroleum Institute, 2101 L Street, Northwest, Washington, D.C. 20037; phone (202) 682-8000.

F. 6. American Conference of Governmental Industrial Hygienists (ACGIH).

4. a. The following document from the ACGIH is incorporated herein by reference: Threshold Limit Values for Chemical Substances 1991-1992 and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

2. b. Copies may be obtained from: ACGIH, 6500 Glenway Avenue, Building D-7, Cincinnati, Ohio 45211-4438; phone (513) 661-7881.

G. 7. National Fire Prevention Association (NFPA).

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4. a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

a. (1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 1985 Edition.

b. (2) NFPA 30, Flammable and Combustible Liquids Code, 1987 Edition.

c. (3) NFPA 30A, Automotive and Marine Service Station Code, 1987 Edition.

2. b. Copies may be obtained from the National Fire Prevention Association, Batterymarch Park, Quincy, Massachusetts 02269; phone (617) 770-3000.

Article 3.

Acid Rain Operating Permits (Rule 8-7).

9 VAC 5-80-360. Applicability.

A. Except as provided in subsection C of this section, the provisions of this rule apply to any affected source that has an affected unit under the provisions of 9 VAC 5-80-380.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. The provisions of this rule shall not apply to the following:

1. Any new unit exempted under 9 VAC 5-80-390.
2. Any affected unit exempted under 9 VAC 5-80-400.
3. Any emissions unit that is determined to be shutdown under the provisions of 9 VAC 5-80-10, 9 VAC 5-80-20, 9 VAC 5-80-30, 9 VAC 5-80-40, or 9 VAC 5-80-540 (permanent shutdown for emissions trading).

D. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this rule by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

E. The provisions of 9 VAC 5-80-440 concerning application requirements shall not apply to insignificant activities designated in 9 VAC 5-80-720 with the exception of the requirements of 9 VAC 5-80-440 D 1 and 9 VAC 5-80-710.

9 VAC 5-80-370. Definitions.

As used in this rule and related permits and orders issued by the board, all words and terms not defined herein shall have the meaning given them in 9 VAC 5-10-10 et seq., unless the context clearly indicates otherwise; otherwise, words and terms shall have the following meaning:

"Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with 9 VAC 5-80-450 or 40 CFR Part 76.

"Acid rain compliance plan" means the document submitted for an affected source in accordance with 9 VAC 5-

80-430 specifying the method or methods (including one or more acid rain compliance options under 9 VAC 5-80-450 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

"Acid rain emissions limitation" means:

1. For the purposes of sulfur dioxide emissions:

a. The tonnage equivalent of the basic Phase II allowance allocations authorized by the administrator to be allocated to an affected unit for use in a calendar year;

b. As adjusted:

(1) By allowances allocated by the administrator pursuant to § 403, § 405(a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and § 406 of the federal Clean Air Act;

(2) By allowances allocated by the administrator pursuant to Subpart D of 40 CFR Part 72; and thereafter

(3) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(c); and

2. For purposes of nitrogen oxides emissions, the applicable limitation established by 40 CFR Part 76, as modified by an acid rain permit application submitted to the board, and an acid rain permit issued by the board, in accordance with 40 CFR Part 76.

"Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

"Acid rain permit" or "permit" means the legally binding written document, or portion of such document, issued by the board (following an opportunity for appeal pursuant to 40 CFR Part 78 or the Administrative Process Act), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

"Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the federal Clean Air Act, 40 CFR Parts 72, 73, 75, 76, 77, and 78, regulations implementing § 410 of the federal Clean Air Act, and this rule.

"Acid rain program regulations" means regulations implementing Title IV of the federal Clean Air Act, including 40 CFR Parts 72, 73, 75, 76, 77, and 78, regulations implementing § 410 of the federal Clean Air Act, and this rule.

"Actual sulfur dioxide emissions rate" means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the "1985 actual sulfur dioxide emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."

"Administrative record" means the written documentation that supports the issuance or denial of the acid rain permit and that contains the following:

1. The permit application and any supporting or supplemental data submitted by the designated representative.
2. The draft permit.
3. The statement of basis.
4. Copies of any documents cited in the statement of basis and any other documents relied on by the board in issuing or denying the draft permit (including any records of discussions or conferences with owners, operators, or the designated representative of affected units at the source or interested persons regarding the draft permit), or, for any such documents that are readily available, a list of those documents and a statement of their location.
5. Copies of all written public comments submitted on the draft permit or denial of a draft permit.
6. The record of any public hearing on the draft permit or denial of a draft permit.
7. The acid rain permit.
8. Any response to public comments submitted on the draft permit or denial of a draft permit and copies of any documents cited in the response and any other documents relied on by the board to issue or deny the acid rain permit, or, for any such documents that are readily available, a list of those documents and a statement of their location.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation. Affected units are specifically designated in 9 VAC 5-80-380.

"Allocate" or "allocation" means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

"Allowable emissions" means the emission rates of an affected source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation of both) and the most stringent of the following:

1. Applicable emission standards.
2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.
3. Any other applicable emission limitation, including those with a future compliance date.

"Allowance" means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

"Allowance deduction" or "deduct when referring to allowances" means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR Part 75, or for any other allowance surrender obligations of the acid rain program.

"Allowances held" or "hold allowances" means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with 40 CFR 73.50, in an allowance tracking system account.

"Allowance tracking system" means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.

"Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.

"Allowance transfer deadline" means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this rule (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement provided for in the State Implementation Plan or the Federal Implementation Plan, including any source-specific provisions such as consent agreements or orders.
2. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to 9 VAC 5-80-390, except for terms or conditions derived from applicable state requirements or from any requirement of these regulations not included in the definition of applicable requirement.
3. Any standard or other requirement prescribed under these regulations, particularly the provisions of 9 VAC 5-

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40-10 et seq., 9 VAC 5-50-10 et seq., or 9 VAC 5-60-10 et seq., adopted pursuant to requirements of the federal Clean Air Act or under § 111, § 112 or § 129 of the federal Clean Air Act.

4. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

5. Any standard or other requirement of the acid rain program under Title IV of the federal Clean Air Act or the acid rain program regulations.

6. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or these regulations.

7. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

8. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

9. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this rule.

"Applicable requirement" means any applicable federal requirement or applicable state requirement.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this rule (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement prescribed by any regulation adopted pursuant to a specific requirement of the Code of Virginia governing a specific subject or category of sources.

2. Any regulatory provision or definition directly associated with or related to any of the specific state requirements listed in this definition.

"Authorized account representative" means a responsible natural person who is authorized, in accordance with 40 CFR Part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

"Basic Phase II allowance allocations" means:

1. For calendar years 2000 through 2009 inclusive, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

2. For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

"Certificate of representation" means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source or sources and of the affected units at such source or sources with regard to matters under the acid rain program.

"Certifying official" means:

1. For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

2. For partnership or sole proprietorship, a general partner or the proprietor, respectively; and

3. For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 "Standard Classification of Coals by Rank" (see 9 VAC 5-20-21).

"Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquified or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

"Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where:

1. For purposes of 40 CFR Part 75 (continuous emissions monitoring), a unit is "coal-fired" independent of the percentage of coal or coal-derived fuel consumed in any calendar year (expressed in mmBtu); and

2. For all other purposes under the acid rain program (including for calculating allowance allocations pursuant to 40 CFR Part 73 and applicability of the requirements of 40 CFR Part 76), a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMFUEL."

"Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

"Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

"Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

"Common stack" means the exhaust of emissions from two or more units through a single flue.

"Complete application" means an application that contains all the information required pursuant to 9 VAC 5-80-430 and 9 VAC 5-80-440 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Compliance certification" means a submission to the administrator or board that is required by the acid rain program regulations to report either or both of the following:

1. An affected source or an affected unit's compliance or noncompliance with a provision of the acid rain program and that is signed and verified by the designated representative in accordance with Subpart B of 40 CFR Part 72, 9 VAC 5-80-470 and 9 VAC 5-80-490 P, and the acid rain program regulations.
2. An affected source or an emissions unit's compliance or noncompliance with any applicable requirement and that is signed and verified by the responsible official in accordance with 9 VAC 5-80-430 G.

"Compliance plan" means the document submitted for an affected source in accordance with 9 VAC 5-80-430 specifying the method or methods by which each emissions unit at the source will meet applicable requirements.

"Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR 73.31(a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

"Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

"Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this rule, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program. Whenever the term "designated representative" is used in this rule, the term shall be construed to include the alternate designated representative listed in the certificate of representation in accordance with 40 CFR 72.22 and 72.24. The designated representative may not be the responsible official with regard to the requirements of this rule that do not pertain to the acid rain program.

"Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for Testing and Materials ASTM D975-91, "Standard Specification for Diesel Fuel Oils" (see 9 VAC 5-20-21).

"Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

"Draft permit" or "draft acid rain permit" means the version of a permit, or the acid rain portion of an operating permit, for which the board offers public participation under 9 VAC 5-80-670 or affected state review under 9 VAC 5-80-690.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of 40 CFR Part 75.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of an affected source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in this rule or 40 CFR Part 72.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means:

1. Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; or

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2. Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

"Existing unit" means a unit (including a unit subject to 40 CFR Part 60 or § 111 of the federal Clean Air Act) that commenced commercial operation before November 15, 1990, and that on or after November 15, 1990, served a generator with a nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990, served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an "existing unit."

"Facility" means any institutional, commercial, or industrial structure, installation, plant, source, or building.

"Federal implementation plan" means the plan, including any revision thereof, which has been promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including the following:

1. Requirements approved by the administrator pursuant to the provisions of § 111 or § 112 of the federal Clean Air Act;
2. Requirements in the State Implementation Plan;
3. Any permit requirements established pursuant to (i) 40 CFR 52.21 or (ii) 9 VAC 5-80-10 et seq., with the exception of terms and conditions established to address applicable state requirements; and
4. Any other applicable federal requirement.

"Federal Power Act" means 16 USC § 791a et seq.

"Final permit" means the version of a permit issued by the board under this rule that has completed all review procedures required by 9 VAC 5-80-670 and 9 VAC 5-80-690.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year.

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by the American Society for Testing and Materials in ASTM D396-90a, "Standard Specification for Fuel Oils" (see 9 VAC 5-20-21), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"Gas-fired" means the combustion of natural gas, or a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for at least 90% of the average annual heat input during the previous three calendar years and for at least 85% of the annual heat input in each of those calendar years; and any fuel other than coal or any other coal-derived fuel for the remaining heat input, if any.

"General account" means an allowance tracking system account that is not a unit account.

"Generator" means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

"Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

"Hazardous air pollutant" means any pollutant listed in § 112(b)(1) of the federal Clean Air Act.

"Heat input" means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Independent power production facility" means a source that:

1. Is nonrecourse project-financed;
2. Is used for the generation of electricity, 80% or more of which is sold at wholesale; and
3. Is a new unit required to hold allowances under Title IV of the federal Clean Air Act;

provided that direct public utility ownership of the equipment comprising the facility does not exceed 50%.

"Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;
2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
3. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Locality particularly affected" means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

"National allowance data base" or "NADB" means the data base established by the administrator under § 402(4)(C) of the federal Clean Air Act.

"Natural gas" means a naturally occurring fluid mixture of hydrocarbons containing little or no sulfur (e.g., methane, ethane, or propane), produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure conditions under ordinary conditions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"New unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

"Nonrecourse project-financed" means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by § 201(e) of the Federal Power Act, as amended, 16 USC § 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The

existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants shall not disqualify a facility from being "nonrecourse project-financed" as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from revenues generated by the facility, rather than from other sources of funds. Projects that are 100% equity financed are also considered "nonrecourse project-financed" for purposes of § 416(a)(2)(B) of the federal Clean Air Act.

"Offset plan" means a plan pursuant to 40 CFR Part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

"Oil-fired" means the combustion of fuel oil for more than 10% of the average annual heat input during the previous three calendar years or for more than 15% of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel, other than coal or any other coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), for the remaining heat input, if any; provided that for purposes of the monitoring exceptions of 40 CFR Part 75, the supplemental fuel used in addition to fuel oil, if any, shall be limited to gaseous fuels, other than a coal-derived fuel.

"Operating permit" means a permit issued under this rule, Rule 8-5 (9 VAC 5-80-50 et seq.), 40 CFR Part 72, or any other regulation implementing Title V of the federal Clean Air Act.

"Owner," with respect to affected units, means any of the following persons:

1. Any holder of any portion of the legal or equitable title in an affected unit;
2. Any holder of a leasehold interest in an affected unit;
3. Any purchaser of power from an affected unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or
4. With respect to any allowance tracking system general account, any person identified in the submission required by 40 CFR 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

"Owner or operator" means any person who is an owner or who operates, controls, or supervises an affected unit or affected source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected source.

"Permit" (unless the context suggests otherwise) means any permit or group of permits covering a source subject to

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this rule that is issued, renewed, amended, or revised pursuant to this rule.

"Permit modification" means a revision to a permit issued under this rule that meets the requirements of 9 VAC 5-80-570 on minor permit modifications, 9 VAC 5-80-580 on group processing of minor permit modifications, or 9 VAC 5-80-590 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9 VAC 5-80-570, 9 VAC 5-80-580, or 9 VAC 5-80-590 or any administrative permit amendment that meets the requirements of 9 VAC 5-80-560.

"Permit revision for affected units" means a permit modification, fast track modification, administrative permit amendment for affected units, or automatic permit amendment, as provided in 9 VAC 5-80-600 through 9 VAC 5-80-630.

"Phase II" means the acid rain program period beginning January 1, 2000, and continuing into the future thereafter.

"Potential electrical output capacity" means the MWe capacity rating for the units which shall be equal to 33% of the maximum design heat input capacity of the steam generating unit, as calculated according to Appendix D of 40 CFR Part 72.

"Potential to emit" means the maximum capacity of an affected source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Power distribution system" means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

"Power purchase commitment" means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

1. A power sales agreement;
2. A state regulatory authority order requiring a utility to (i) enter into a power sales agreement with the facility; (ii) purchase from the facility; or (iii) enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;
3. A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source executed within the time frame established by the terms of the letter of intent but no later than November 15, 1992, or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, 1992; or

4. A utility competitive bid solicitation that has resulted in the selection of the qualifying facility of independent power production facility as the winning bidder.

"Power sales agreement" means a legally binding agreement between a qualifying facility, independent power production facility or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

"Primary fuel" or "primary fuel supply" means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

"Proposed permit" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with 9 VAC 5-80-690.

"Qualifying facility" means a "qualifying small power production facility" within the meaning of § 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of § 3(18)(B) of the Federal Power Act.

"Qualifying power purchase commitment" means a power purchase commitment in effect as of November 15, 1990, without regard to changes to that commitment so long as:

1. The identity of the electric output purchaser, the identity of the steam purchaser and the location of the facility remain unchanged as of the date the facility commences commercial operation; and
2. The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.

"Qualifying repowering technology" means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; or
2. Any oil- or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

"Receive" or "receipt of" means the date the administrator or the board comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or the board in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.
2. Any pollutant for which an ambient air quality standard has been promulgated.
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.
5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.
6. Any pollutant subject to a regulation adopted pursuant to a specific requirement of the Code of Virginia governing a specific subject or category of sources.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association or cooperative:
 - a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity, or
 - b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - (2) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board; or
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal

geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For affected sources:

- a. The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and
- b. The designated representative or any other person specified in this definition for any other purposes under this rule or 40 CFR Part 70.

"Schedule of compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct noncompliance, with an applicable requirement of the acid rain program, including any applicable acid rain permit requirement.

"Secretary of Energy" means the Secretary of the United States Department of Energy or the secretary's duly authorized representative.

"Simple combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

"Solid waste incinerator" means a source as defined in § 129(g)(1) of the federal Clean Air Act.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the federal Clean Air Act. For purposes of § 502(c) of the federal Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

"Stack" means a structure that includes one or more flues and the housing for the flues.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9 VAC 5-20-110, requirements within any applicable order or variance, and any permit requirements established pursuant to 9 VAC 5-80-10 et seq.

"State implementation plan" means the plan, including any revision thereof, which has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;
2. By United States Postal Service certified mail with the official postmark or, if service is by the administrator or

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the board, by any other mail service by the United States Postal Service; or

3. By other means with an equivalent time and date mark used in the regular course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR Part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

"Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990. "Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

"Unit" means a fossil fuel-fired combustion device.

"Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

"Utility" means any person that sells electricity.

"Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

"Utility regulatory authority" means an authority, board, commission, or other entity (limited to the local, state, or federal level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

"Utility unit" means a unit owned or operated by a utility:

1. That serves a generator that produces electricity for sale, or
2. That during 1985, served a generator that produced electricity for sale.

Notwithstanding subdivisions 1 and 2 of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after

November 15, 1990, is not a utility unit for purposes of the acid rain program.

Notwithstanding subdivisions 1 and 2 of this definition, a unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

9 VAC 5-80-380. Affected units.

A. Each of the following units shall be an affected unit:

1. A unit listed in Table 1 of 40 CFR 73.10(a).
2. An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 and any other existing utility unit, except a unit under subsection B of this section.
3. A utility unit, except a unit under subsection B of this section, that:
 - a. Is a new unit;
 - b. Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990.
 - c. Was a simple combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990;
 - d. Was an exempt cogeneration facility under subdivision B 4 of this section but during any three calendar-year period after November 15, 1990 sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;
 - e. Was an exempt qualifying facility under subdivision B 5 of this section but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;
 - f. Was an exempt independent power production facility under subdivision B 6 of this section but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or
 - g. Was an exempt solid waste incinerator under subdivision B 7 of this section but during any three calendar-year period after November 15, 1990 consumes 20% or more (on a Btu basis) fossil fuel.

B. The following types of units are not affected units subject to the requirements of the acid rain program:

1. A simple combustion turbine that commenced operation before November 15, 1990.
2. Any unit that commenced commercial operation before November 15, 1990 and that did not, as of

November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

3. Any unit that did not serve a generator which produced electricity for sale during 1985 or as of November 15, 1990, and does not currently serve a generator that produces electricity for sale.

4. A cogeneration facility which:

a. For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it shall be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or

b. For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.

5. A qualifying facility that:

a. Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15% of its total planned net output capacity; and

b. Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130% of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

6. An independent power production facility that:

a. Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15% of its total planned net output capacity; and

b. Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130% of its total planned net output capacity. If the emissions rates of the units are

not the same, the administrator may exercise discretion to designate which units are exempt.

7. A solid waste incinerator, if more than 80% (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than 80% for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than 80% for such an incinerator to be exempt. If, during any three-calendar-year period after November 15, 1990, such incinerator consumes 20% or more (on a Btu basis) fossil fuel, such incinerator shall be an affected source under the acid rain program.

8. A nonutility unit.

C. A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the board, unless the petition is found to have contained significant errors or omissions.

9 VAC 5-80-390. New units exemption.

A. This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05% or less by weight, as determined in accordance with subdivision D 1 of this section.

B. The designated representative, authorized in accordance with Subpart B of 40 CFR Part 72, of a source that includes a unit under subsection A of this section may petition the board for a written exemption, or to renew a written exemption, for the unit from the requirements of the acid rain program as described in subdivision C 1 of this section. The petition shall be submitted on a form approved by the board which includes the following elements:

1. Identification of the unit.

2. The nameplate capacity of each generator served by the unit.

3. A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subsection A of this section.

4. A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.

5. The special provisions in subsection D of this section.

C. The board shall issue, for any unit meeting the requirements of subsections A and B of this section, a written exemption from the requirements of the acid rain program except for the requirements specified in this section, 40 CFR 72.2 through 72.7, and 40 CFR 72.10 through 72.13 (general provisions); provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking

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system account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1) (new units exemption).

1. The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subdivision 2 of this subsection, provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.
 2. In considering and issuing or denying a written exemption under this subsection, the board shall apply the permitting procedures in 9 VAC 5-80-510 C by:
 - a. Treating the petition as an acid rain permit application under such provisions;
 - b. Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and
 - c. Issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions, provided that no provision under 9 VAC 5-80-510 C concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.
 3. A written exemption issued under this section shall have a term of five years from its effective date, except as provided in subdivision D 3 of this section.
- D. The following provisions apply to units exempted under this section:

1. The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:
 - a. For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using American Society for Testing and Materials (ASTM) methods ASTM D4057-88 and ASTM D129-91, ASTM D2622-92, or ASTM D4294-90 (see 9 VAC 5-20-21).
 - b. For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05% or less by weight.
 - c. For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D1072-90 and ASTM D1265-92 (see 9 VAC 5-20-21); provided that if the

gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ASTM method ASTM D1072-90 (see 9 VAC 5-20-21).

2. The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under subdivisions 1 a and 1 c of this section and a copy of the purchase agreements for the fuel under subdivision 1 of this subsection, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.
3. On the earlier of the date the written exemption expires, the date a unit exempted under this section burns any fuel with a sulfur content in excess of 0.05% by weight (as determined in accordance with subdivision 1 of this subsection), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this section and shall be subject to all requirements of the acid rain program, except that:
 - a. Notwithstanding 9 VAC 5-80-430 C, the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date the unit is no longer exempted under this section.
 - b. For purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subsection A of this section.

9 VAC 5-80-400. Retired units exemption.

- A. This section applies to any affected unit that is retired prior to the issuance, including renewal, of an acid rain permit for the unit as a final permit.
- B. The designated representative, authorized in accordance with Subpart B of 40 CFR Part 72, of a source that includes a unit under subsection A of this section may petition the board for a written exemption, or to renew a written exemption, for the unit from certain requirements of the acid rain program.

1. A petition under this section shall be submitted on or before:
 - a. The deadline for submitting an acid rain permit application for Phase II; or
 - b. If the unit has a Phase II acid rain permit, the deadline for reapplying for such permit.
2. The petition under this section shall be submitted on a form approved by the board which includes the following elements:
 - a. Identification of the unit;

b. The applicable deadline under subdivision 1 of this subsection;

c. The actual or expected date of retirement of the unit;

d. The following statement: "I certify that this unit 'is' or 'will be,' as applicable, permanently retired on the date specified in this petition and will not emit any sulfur dioxide or nitrogen oxides after such date";

e. A description of any actions that have been or will be taken and provide the basis for the certification in subdivision 2 d of this subsection; and

f. The special provisions in subsection D of this section.

C. The board shall issue, for any unit meeting the requirements of subsections A and B of this section, a written exemption from the requirements of this rule and 40 CFR Part 72 except for the requirements specified in this section and 40 CFR 72.1 through 72.6, 40 CFR 72.8, and 40 CFR 72.10 through 72.13.

1. The exemption shall take effect on January 1 of the year following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subdivision 2 of this subsection; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of this rule and 40 CFR Part 72 concerning all years for which the unit was not exempted, even if such requirements arise or must be complied with after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

2. In considering and issuing or denying a written exemption under subdivision 1 of this subsection, the board shall apply the procedures in 9 VAC 5-80-510 C by:

a. Treating the petition as an acid rain permit application under such provisions;

b. Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and

c. Issuing or denying a proposed written exemption that is treated as a proposed permit under such provisions, provided that no provision under 9 VAC 5-80-510 C concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.

3. A written exemption issued under this section shall have a term of five years, except as provided in subdivision D 3 of this section.

D. The following provisions apply to units exempted under this section:

1. A unit exempted under this section shall not emit any sulfur dioxide and nitrogen dioxide starting on the date it is exempted.

2. The owners and operators of a unit exempted under this section shall comply with monitoring requirements in accordance with 40 CFR Part 75 and shall be allocated allowances in accordance with 40 CFR Part 73.

3. A unit exempted under this section shall not resume operation unless the designated representative of the source that includes the unit submits an acid rain permit application for the unit not less than 24 months prior to the later of January 1, 2000, or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an acid rain permit application is submitted or is required to be submitted under this paragraph, the unit shall no longer be exempted under this section and shall be subject to all requirements of this rule and 40 CFR Part 72.

9 VAC 5-80-410. General.

A. No permit may be issued pursuant to this rule until the rule has been approved by the administrator, whether full, interim, partial or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this rule, the board may combine the requirements of and the permit for a source subject to 9 VAC 5-80-40 with the requirements of and the permit for a source subject to this rule provided the application contains the necessary information required for a permit under 9 VAC 5-80-40.

C. For the purpose of this rule, the phrase "these regulations" means the entire Regulations for the Control and Abatement of Air Pollution (9 VAC 5-10-10 et seq. through 9 VAC 5-80-10 et seq.). For purposes of applicable federal requirements, the phrase "these regulations" means only those provisions of 9 VAC 5-10-10 et seq. through 9 VAC 5-80-10 et seq. that have been approved by EPA as part of the State Implementation Plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this rule, terms and conditions relating to applicable federal requirements shall be derived only from provisions of 9 VAC 5-10-10 et seq. through 9 VAC 5-80-10 et seq. that qualify as applicable federal requirements.

9 VAC 5-80-420. Standard requirements.

A. The following requirements apply to affected sources and affected units subject to this rule:

1. The designated representative of each affected source and each affected unit at the source shall:

a. Submit a complete acid rain permit application under this rule in accordance with the deadlines specified in 9 VAC 5-80-430 C; and

b. Submit in a timely manner any supplemental information that the board determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

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2. The owners and operators of each affected source and each affected unit at the source shall:
 - a. Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the board; and
 - b. Have an acid rain permit.
- B. The following monitoring requirements apply to affected sources and affected units subject to this rule:
1. The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR Part 75 and § 407 of the federal Clean Air Act.
 2. The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and § 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.
 3. The requirements of 40 CFR Parts 75 and 76 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the federal Clean Air Act and other provisions of the operating permit for the source.
- C. The following requirements regarding sulfur dioxide limitations and allowances apply to affected sources and affected units subject to this rule:
1. The owners and operators of each source and each affected unit at the source shall:
 - a. Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount after deductions under 40 CFR 73.34(c) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and
 - b. Comply with the applicable acid rain emissions limitation for sulfur dioxide.
 2. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.
 3. An affected unit shall be subject to the requirements under subdivision 1 of this subsection as follows:
 - a. Starting January 1, 2000, an affected unit under 9 VAC 5-80-380 A 2; or
 - b. Starting on the later of January 1, 2000, or the deadline for monitor certification under 40 CFR Part 75, an affected unit under 9 VAC 5-80-380 A 3.
 4. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.
5. An allowance shall not be deducted, in order to comply with the requirements under subdivision 1 a of this subsection, prior to the calendar year for which the allowance was allocated.
 6. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under 9 VAC 5-80-390 and 9 VAC 5-80-400 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.
 7. An allowance allocated by the administrator under the acid rain program does not constitute a property right.
- D. The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emissions limitation for nitrogen oxides.
- E. The following excess emissions requirements apply to affected sources and affected units subject to this rule:
1. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and to the board.
 2. The owners and operators of an affected unit that has excess emissions in any calendar year shall:
 - a. Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and
 - b. Comply with the terms of an approved offset plan as required by 40 CFR Part 77.
- F. The following recordkeeping and reporting requirements apply to affected sources and affected units subject to this rule:
1. Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or board.
 - a. The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation in accordance with 40 CFR 72.24, provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.
 - b. All emissions monitoring information in accordance with 40 CFR Part 75.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

d. Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

2. The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under 9 VAC 5-80-470 and 9 VAC 5-80-490 P and 40 CFR Part 75.

G. The following requirements concerning liability apply to affected sources and affected units subject to this rule:

1. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under 9 VAC 5-80-390 or 9 VAC 5-80-400, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and by the board pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.

2. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and 18 USC § 1001 and by the board pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.

3. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

4. Each affected source and each affected unit shall meet the requirements of the acid rain program.

5. Any provision of the acid rain program that applies to an affected source including a provision applicable to the designated representative of an affected source shall also apply to the owners and operators of such source and of the affected units at the source.

6. Any provision of the acid rain program that applies to an affected unit including a provision applicable to the designated representative of an affected unit shall also apply to the owners and operators of such unit. Except as provided under 9 VAC 5-80-460 Phase II repowering extension plans, 40 CFR Part 76, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 including 40 CFR 75.16, 75.17, and 75.18, the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

7. Each violation of a provision of the acid rain program regulations by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the federal Clean Air Act.

H. No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under 9 VAC 5-80-390 or 9 VAC 5-80-400 shall be construed as:

1. Except as expressly provided in Title IV of the federal Clean Air Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;

2. Limiting the number of allowances a unit can hold, provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the federal Clean Air Act;

3. Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or limiting such state regulation, including any prudence review requirements under such state law;

4. Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

5. Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

9 VAC 5-80-430. Applications.

A. A single application is required identifying each emission unit subject to this rule. The application shall be submitted according to the requirements of this section, 9 VAC 5-80-440 and procedures approved by the board. Where several emissions units are included in one affected source, a single application covering all units in the source shall be submitted. A separate application is required for each affected source subject to this rule.

B. For each source subject to this rule, the responsible official shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. The following requirements concerning timely applications apply to affected sources and affected units subject to this rule:

1. No owner or operator of any affected source shall operate the source or affected unit without a permit that states its acid rain program requirements.

2. The designated representative of any affected source shall submit a complete acid rain permit application by the following applicable deadlines:

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a. For any affected source with an existing unit described under 9 VAC 5-80-380 A 2, the designated representative shall submit a complete acid rain permit application governing such unit to the board as follows:

- (1) For sulfur dioxide, on or before January 1, 1996; and
- (2) For nitrogen oxides, on or before January 1, 1998.

b. For any affected source with a new unit described under 9 VAC 5-80-380 A 3 a, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

c. For any affected source with a unit described under 9 VAC 5-80-380 A 3 b, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any affected source with a unit described under 9 VAC 5-80-380 A 3 c, the designated representative shall submit a complete acid rain permit application governing such unit to the board at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any affected source with a unit described under 9 VAC 5-80-380 A 3 d, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any affected source with a unit described under 9 VAC 5-80-380 A 3 e, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any affected source with a unit described under 9 VAC 5-80-380 A 3 f, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any affected source with a unit described under 9 VAC 5-80-380 A 3 g, the designated representative shall submit a complete acid rain permit application governing such unit to the board before the later of January 1, 1998, or March 1 of the year following the

three-calendar-year period in which the incinerator consumed 20% or more fossil fuel (on a Btu basis).

3. The responsible official for an affected source applying for a permit under this rule for the first time shall submit a complete application pertaining to all applicable requirements other than the acid rain program requirements on a schedule to be determined by the department but no later than 12 months following the effective date of approval of Rule 8-5 (9 VAC 5-80-50 et seq.) by the administrator.

4. The owner of a source subject to the requirements of § 112(g)(2) (construction, reconstruction or modification of sources of hazardous air pollutants) of the federal Clean Air Act or to the provisions of 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this rule would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this rule on the same date the permit application is submitted under the requirements of § 112(g)(2) of the federal Clean Air Act or under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30.

5. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than 18 months prior to the date of permit expiration.

D. The following requirements concerning the completeness of the permit application apply to affected sources and affected units subject to this rule:

1. To be determined complete, an application shall contain all information required pursuant to 9 VAC 5-80-440.

2. Applications for permit revision or for permit reopening shall supply information required under 9 VAC 5-80-440 only if the information is related to the proposed change.

3. Within 60 days of receipt of the application, the board shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the board shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the board does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications under 9 VAC 5-80-570, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the board finds that additional information is necessary to evaluate or take final action on that application, it may request such

information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30.

8. Upon notification by the board that the application is complete or after 60 days following receipt of the application by the board, the applicant shall submit three additional copies of the complete application to the board.

9. The board shall submit a written notice of application completeness to the administrator within 10 working days following a determination by the board that the acid rain permit application is complete.

E. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. The following requirements concerning the application shield apply to affected sources and affected units subject to this rule:

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this rule until the board takes final action on the application under 9 VAC 5-80-510.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this rule.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9 VAC 5-80-570 F or 9 VAC 5-80-580 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this rule until the board takes final action on the application under 9 VAC 5-80-510.

4. If the source notifies the board that it wants to make an operational flexibility permit change under 9 VAC 5-80-680 B, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this rule unless the board notifies the source that the change is not a permit change as specified in 9 VAC 5-80-680 B 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but

the board fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9 VAC 5-80-500, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subdivisions 1 and 5 (ii) of this subsection shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the board any additional information identified as being needed to process the application.

7. Permit application shield and binding effect of acid rain permit application for the affected source.

a. Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under 9 VAC 5-80-420 A 2 and subsection C of this section.

b. The protection provided under subdivision 7 a of this subsection shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the designated representative fails to submit by the deadline specified in writing by the board any supplemental information identified as being needed to process the application.

c. Prior to the earlier of the date on which an acid rain permit is issued subject to administrative appeal under 40 CFR Part 78 or is issued as a final permit, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

d. A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

G. The responsibilities of the designated representative shall be as follows:

1. The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72 and, concurrently, shall submit a copy to the board.

2. Each submission under the acid rain program shall be submitted, signed, and certified by the designated

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representative for all sources on behalf of which the submission is made.

3. In each submission under the acid rain program, the designated representative shall certify, by his signature:

a. The following statement, which shall be included verbatim in such submission: "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

b. The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

4. The board shall accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subdivisions 2 and 3 of this subsection.

5. The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

a. By the date of submission of any acid rain program submissions by the designated representative;

b. Within 10 business days of receipt of a determination of any written determination by the administrator or the board; and

c. Provided that the submission or determination covers the source or the unit.

6. The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subdivision 5 of this subsection, unless the owner or operator expressly waives the right to receive such a copy.

H. Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the board concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the board, under the acid rain program. In the event of such communication, the board is not required to stay any submission or the effect of any action or inaction under the acid rain program. The board shall not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including

private legal disputes concerning the proceeds of allowance transfers.

I. The responsibilities of the responsible official shall be as follows:

1. Any application form, report, compliance certification, or other document required to be submitted to the board under this rule that concerns applicable requirements other than the acid rain program requirements may be signed by a responsible official other than the designated representative.

2. Any responsible official signing a document required to be submitted to the board under this rule shall make the following certification:

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

9 VAC 5-80-440. Application information required.

A. The board shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information as follows shall be included:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

3. Identification of each affected unit at the source for which the permit application is submitted.

4. If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

D. Emissions related information as follows shall be included:

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions.

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9 VAC 5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9 VAC 5-80-720 A.

(2) Regardless of the emissions units designated in 9 VAC 5-80-720 A or C or the emissions levels listed in 9 VAC 5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination or imposition of any applicable requirement or the calculation of permit fees.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent that the emissions are quantifiable.

2. Additional information related to the emissions of air pollutants sufficient for the board to verify which requirements are applicable to the source, and other information necessary to determine and collect any permit fees owed under Rule 8-6 (9 VAC 5-80-310 et seq.). Identification and description of all points of emissions described in subdivision 1 of this subsection in sufficient detail to establish the basis for fees and applicability of requirements of these regulations and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under 9 VAC 5-40-20 I or 9 VAC 5-50-20 H).

8. Calculations on which the information in subdivisions 1 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirement information as follows shall be included:

1. Citation and description of all applicable requirements.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information that may be necessary to implement and enforce other requirements of these regulations and the federal Clean Air Act or to determine the applicability of such requirements.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the board to define alternative operating scenarios identified by the source pursuant to 9 VAC 5-80-490 J or to define permit terms and conditions implementing operational flexibility under 9 VAC 5-80-680.

I. Compliance plan information as follows shall be included:

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A complete acid rain compliance plan for each affected unit in accordance with 9 VAC 5-80-450.

4. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the board if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent

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decree or board order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

5. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

6. The requirements of subsection I of this section shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.

J. Compliance certification information as follows shall be included:

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the board.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Rule 8-6.

M. The use of nationally standardized forms for acid rain portions of permit applications and compliance plans as required by 40 CFR 72.72(b)(4).

N. The applicant shall meet the requirements of 9 VAC 5-80-420 concerning permit applications, operation of the affected source, monitoring, sulfur dioxide, nitrogen dioxide, excess emissions, recordkeeping and reporting, liability, and effect on other authorities.

9 VAC 5-80-450. Acid rain compliance plan and compliance options.

A. For each affected unit included in an acid rain permit application, a complete acid rain compliance plan shall include:

1. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with this section and 9 VAC 5-80-460, one or more of the acid rain compliance options.

2. For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by 40 CFR Part 76 or shall specify one or more acid rain compliance options in accordance with the requirements of § 407 of the federal Clean Air Act and 40 CFR Part 76.

B. The acid rain compliance plan may include a multi-unit compliance option under 9 VAC 5-80-460 or § 407 of the federal Clean Air Act or 40 CFR Part 76.

1. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

a. Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

b. A complete permit application is submitted covering each unit governed by such plan.

2. The board's approval of a plan under subdivision 1 of this subsection that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

C. In the compliance plan, the designated representative of an affected unit may propose, in accordance with this section and 9 VAC 5-80-460, any acid rain compliance option for conditional approval, provided that an acid rain compliance option under § 407 of the federal Clean Air Act may be conditionally proposed only to the extent provided in 40 CFR Part 76.

1. To activate a conditionally approved acid rain compliance option, the designated representative shall notify the board in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. Such notification shall be subject to the limitations on activation under 9 VAC 5-80-460 and 40 CFR Part 76. If the conditionally approved compliance option includes a plan described in subdivision B 1 of this section, the designated representative of each source governed by the plan shall sign and certify the notification.

2. The notification under subdivision 1 of this subsection shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally

approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

3. Upon submission of a notification meeting the requirements of subdivisions 1 and 2 of this subsection, the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

4. A notification meeting the requirements of subdivisions 1 and 2 of this subsection will revise the unit's permit in accordance with 9 VAC 5-80-620.

D. The following requirements concerning terminations of compliance options apply to affected sources and affected units subject to this rule:

1. The designated representative for a unit may terminate an acid rain compliance option by notifying the board in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under 9 VAC 5-80-460 and 40 CFR Part 76. If the compliance option includes a plan described in subdivision B 1 of this section, the designated representative for each source governed by the plan shall sign and certify the notification.

2. The notification under subdivision 1 of this subsection shall specify the calendar year for which the termination will take effect.

3. Upon submission of a notification meeting the requirements of subdivisions 1 and 2 of this subsection, the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

4. A notification meeting the requirements of subdivisions 1 and 2 of this subsection will revise the unit's permit in accordance with 9 VAC 5-80-620.

9 VAC 5-80-460. Repowering extensions.

A. This section shall apply to the designated representative of:

1. Any existing affected unit that is a coal-fired unit and has a 1985 actual sulfur dioxide emissions rate equal to or greater than 1.2 lbs/mmBtu; or

2. Any new unit that will be a replacement unit, as provided in subdivision B 2 of this section, for a unit meeting the requirements of subdivision 1 of this subsection; or

3. Any oil- or gas-fired unit or both that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Secretary of Energy.

A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's acid rain emissions limitations for sulfur dioxide.

B. The designated representative of any unit meeting the requirements of subdivision A 1 of this section may include in the unit's acid rain permit application a repowering extension plan that includes a demonstration that:

1. The unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide; or

2. The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

C. In order to apply for a repowering extension, the designated representative of a unit under subsection A of this section shall:

1. Submit to the board, by January 1, 1996, a complete repowering extension plan;

2. Submit to the administrator before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR 72.44(d) and submit a copy to the board; and

3. If the repowering extension plan is submitted for conditional approval, submit to the board by December 31, 1997, a notification to activate the plan in accordance with 9 VAC 5-80-450 C.

D. A complete repowering extension plan shall include the following elements:

1. Identification of the existing unit governed by the plan.

2. The unit's State Implementation Plan sulfur dioxide emissions limitation.

3. The unit's 1995 actual sulfur dioxide emissions rate, or best estimate of the actual emissions rate, provided that the actual emissions rate is submitted to the board by January 30, 1996.

4. A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR 72.44(d) with dates for the following milestones:

a. Completion of design engineering;

b. For a plan under subdivision B 1 of this section, removal of the existing unit from operation to install the qualified repowering technology;

c. Commencement of construction;

d. Completion of construction;

e. Start-up testing;

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f. For a plan under subdivision B 2 of this section, shutdown of the existing unit; and

g. Commencement of commercial operation of the repowering technology.

5. For a plan under subdivision B 2 of this section:

a. Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.

b. Certification that the new unit will replace the existing unit.

c. Certification that the new unit has the same designated representative as the existing unit.

d. Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

6. The special provisions of subsection G of this section.

E. The board shall not approve a repowering extension plan until the administrator makes a conditional determination that the technology is a qualified repowering technology, unless the board approves such plan subject to the conditional determination of the administrator.

1. Permit issuance shall be as follows:

a. Upon a conditional determination by the administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the board that such plan meets the requirements of this section, the board shall issue the acid rain portion of the operating permit including:

(1) The approved repowering extension plan; and

(2) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.

b. Except as otherwise provided in subsection F of this section, the repowering extension shall be in effect starting January 1, 2000, and ending on the day before the date (specified in the acid rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology, provided that the repowering extension shall end no later than December 31, 2003.

c. The portion of the operating permit specifying the repowering extension and other requirements under subdivision 1 a of this subsection shall be subject to the administrator's final determination, under 40 CFR 72.44(d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

3. Allowances shall be allocated in accordance with 40 CFR 72.44(f)(3) and (g).

F. The following provisions apply with respect to failed repowering projects:

1. If, at any time before the end of the repowering extension under subdivision E 1 b of this section, the designated representative of a unit governed by an approved repowering extension plan submits the notification under 9 VAC 5-80-470 D that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing, the designated representative may submit to the board a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the administrator, the unit shall not be deemed in violation of the federal Clean Air Act because of such a termination and the board shall revise the operating permit in accordance with subdivision 2 of this subsection.

2. Regardless of whether notification under subdivision 1 of this subsection is given, the repowering extension shall end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under 9 VAC 5-80-470 D.

3. The designated representative of a unit governed by an approved repowering extension plan may submit to the board a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction of the administrator, the following shall occur:

a. The unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations;

b. The board shall revise the acid rain portion of the operating permit in accordance with subdivisions 3 b and 3 c of this subsection;

c. The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

d. The repowering extension shall continue in effect until the earlier of the date the existing unit

commences commercial operation with such control technology or December 31, 2003.

G. The following special provisions apply with respect to repowering extensions:

1. The following requirements concerning emissions limitations apply:

a. Allowances allocated during the repowering extension under subdivision E 2 and subsection F of this section to a unit governed by an approved repowering extension plan shall not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.

b. Any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with § 407 of the federal Clean Air Act and 40 CFR Part 76 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

c. No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under § 111(j) of the federal Clean Air Act.

d. No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under § 111 of the federal Clean Air Act.

2. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of 9 VAC 5-80-470.

3. The following requirements concerning liability apply:

a. The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan.

b. The units governed by the plan under subdivision B 2 of this section shall continue to have a common designated representative until the existing unit is permanently retired under the plan.

4. Except as provided in subsection F of this section, a repowering extension plan shall not be terminated after December 31, 1999.

9 VAC 5-80-470. Units with repowering extension plans.

A. No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the administrator and the board:

1. Satisfactory documentation of a preliminary design and engineering effort.

2. A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the administrator under 40 CFR 72.44(d)(3).

3. The letter agreement under subdivision A 2 of this subsection shall be signed and dated by each party and specify:

a. The parties to the contract;

b. The date each party executed the contract;

c. The unit to which the contract applies;

d. A brief list identifying each provision of the contract;

e. Any dates to which the parties agree, including construction completion date;

f. The total dollar amount of the contract; and

g. A statement that a copy of the contract is on site at the source and will be submitted upon written request of the administrator or the board.

B. The designated representative of a unit governed by an approved repowering plan shall notify the administrator and the board in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

C. Not later than 60 days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the administrator and the board comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR Part 75.

D. If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the administrator and the board by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

9 VAC 5-80-480. Emission caps.

A. The board may establish an emission cap for sources or emissions units applicable under this rule when the applicant requests that a cap be established.

B. The criteria in this subsection shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in these regulations prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this rule.

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2. A permit issued under this rule may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in these regulations prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. Using the significant modification procedures of 9 VAC 5-80-590, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subdivisions B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30, as appropriate.

9 VAC 5-80-490. Permit content.

A. The following requirements apply to permit content:

1. The board shall include in the permit all applicable requirements for all emissions units except those deemed insignificant in Article 4 (9 VAC 5-80-710 et seq.) of Part II of this chapter.

2. The board shall include in the permit applicable requirements that apply to fugitive emissions.

3. Each permit issued under this rule shall include the elements listed in subsections B through P of this section.

4. Each acid rain permit (including any draft or proposed acid rain permit) shall contain the following elements:

a. All elements required for a complete acid rain permit application under 9 VAC 5-80-440, as approved or adjusted by the board:

b. The applicable acid rain emissions limitation for sulfur dioxide; and

c. The applicable acid rain emissions limitation for nitrogen oxides.

5. Each acid rain permit is deemed to incorporate the definitions of terms under 9 VAC 5-80-370.

B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

3. If applicable requirements contained in these regulations allow a determination of an alternative emission limit at a source, equivalent to that contained in these regulations, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:

1. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

2. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

3. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved.

D. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to §§ 504(b) or 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subdivision F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subdivision.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. The following requirements concerning recordkeeping and reporting apply:

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

- (1) The date, place as defined in the permit, and time of sampling or measurements.
- (2) The date or dates analyses were performed.
- (3) The company or entity that performed the analyses.
- (4) The analytical techniques or methods used.
- (5) The results of such analyses.
- (6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9 VAC 5-80-430 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The board shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair

the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in 9 VAC 5-80-490 L, 9 VAC 5-80-640 and 9 VAC 5-80-660. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the board, within a reasonable time, any information that the board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the board along with a claim of confidentiality.

H. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with Rule 8-6 (9 VAC 5-80-310 et seq.).

I. The following requirements concerning emissions trading apply:

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any federally approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that these regulations provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N shall be included to determine compliance.

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b. The permit shield described in 9 VAC 5-80-500 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this rule.

J. Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the board. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.

2. The permit shield described in 9 VAC 5-80-500 shall extend to all terms and conditions under each such operating scenario.

3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this rule.

K. Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the board shall contain a certification by a responsible official that meets the requirements of 9 VAC 5-80-430 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the board to perform the following:

a. Enter upon the premises where the source is located or emissions related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9 VAC 5-80-440 I.

4. Progress reports consistent with an applicable schedule of compliance and 9 VAC 5-80-440 I to be submitted at least semiannually, or at a more frequent

period if specified in the applicable requirement or by the board. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the board) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following:

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The compliance status.

(3) Whether compliance was continuous or intermittent.

(4) Consistent with subsection E of this section, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period.

(5) Such other facts as the board may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the board.

e. Such additional requirements as may be specified pursuant to §§ 114(a)(3) and 504(b) of the federal Clean Air Act.

6. Such other provisions as the board may require.

L. Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened by the board if additional applicable federal requirements become applicable to an affected source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless

the original permit or any of its terms and conditions has been extended pursuant to 9 VAC 5-80-430 F.

2. The permit shall be reopened if the board or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the board determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall be reopened if additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

5. The permit shall not be reopened by the board if additional applicable state requirements become applicable to an affected source prior to the expiration date established under subsection D of this section.

M. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with these regulations, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. The following requirements concerning federal enforceability apply:

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subdivision 2 of this subsection.

2. The board shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9 VAC 5-80-690 concerning review of proposed permits by EPA and draft permits by affected states.

3. The board shall specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the State Implementation Plan and that has not yet been approved. The permit shall specify that the provision will become federally enforceable upon approval of the provision by the administrator and through an administrative permit amendment.

O. Each permit shall include requirements with respect to allowances held by the source under Title IV of the federal Clean Air Act or 40 CFR Part 73. Such requirements shall include the following:

1. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the federal Clean Air Act or 40 CFR Part 73.

2. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program provided that such increases do not require a permit revision under any other applicable federal requirement.

3. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

4. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 73.

P. The following requirements concerning annual compliance certification reports apply:

1. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and to the board, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

2. The submission of complete compliance certifications in accordance with subsection A of this section and 40 CFR Part 75 shall be deemed to satisfy the requirement to submit compliance certifications under 9 VAC 5-80-490 K 5 c with regard to the acid rain portion of the source's operating permit.

9 VAC 5-80-500. Permit shield.

A. The board shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.

2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the federal Clean Air Act, as provided in the acid rain program regulations shall be deemed to be operating in compliance with the acid rain program, except as provided in 9 VAC 5-80-420 G 6.

D. Nothing in this section or in any permit issued under this rule shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability to obtain information from a source by the (i) administrator pursuant to § 114 of the federal Clean

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Air Act (inspections, monitoring, and entry); (ii) board pursuant to § 10.1-1314 or 10.1-1315 of the Virginia Air Pollution Control Law or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law.

4. The applicable federal requirements of the acid rain program consistent with § 408(a) of the federal Clean Air Act.

9 VAC 5-80-510. Action on permit application.

A. The board shall take final action on each permit application (including a request for permit modification or renewal) as follows:

1. The board shall issue or deny all permits in accordance with the requirements of this rule and this section, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 9 VAC 5-80-660 C.

2. For permit revisions, as required by the provisions of 9 VAC 5-80-500 through 9 VAC 5-80-630.

B. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The board has received a complete application for a permit, permit modification, or permit renewal.

2. Except for modifications qualifying for minor permit modification procedures under 9 VAC 5-80-570 or 9 VAC 5-80-580, the board has complied with the requirements for public participation under 9 VAC 5-80-670.

3. The board has complied with the requirements for notifying and responding to affected states under 9 VAC 5-80-690.

4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Rule 8-6, and the requirements of this rule.

5. The administrator has received a copy of the proposed permit and any notices required under 9 VAC 5-80-690 A and B and has not objected to issuance of the permit under 9 VAC 5-80-690 C within the time period specified therein.

C. The issuance of the acid rain portion of the operating permit shall be as follows:

1. After the close of the public comment period, the board shall incorporate all necessary changes and issue or deny a proposed acid rain permit.

2. The board shall submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with 9 VAC 5-80-690, the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

3. Action by the administrator shall be as follows:

a. Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the board or, under 9 VAC 5-80-690 C, the

administrator shall incorporate any required changes and issue or deny the acid rain permit in accordance with 9 VAC 5-80-490 and 9 VAC 5-80-500.

b. No acid rain permit (including a draft or proposed permit) shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

4. Permit issuance deadlines and effective dates shall be as follows:

a. The board shall issue an acid rain permit to each affected source whose designated representative submitted in accordance with 9 VAC 5-80-430 G a timely and complete acid rain permit application by January 1, 1996 that meets the requirements of this rule. The permit shall be issued by the effective date specified in subdivision 4 c of this subsection.

b. Not later than January 1, 1999, the board shall reopen the acid rain permit to add the acid rain program nitrogen oxides requirements, provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with 9 VAC 5-80-430 G. Such reopening shall not affect the term of the acid rain portion of an operating permit.

c. Each acid rain permit issued in accordance with subsection 4 a of this section shall take effect by the later of January 1, 1998, or, where the permit governs a unit under 9 VAC 5-80-380 A 3, the deadline for monitor certification under 40 CFR Part 75.

d. Both the acid rain draft and final permit shall state that the permit applies on and after January 1, 2000. The draft and final permit shall also specify which applicable requirements are effective prior to January 1, 2000 and the effective date of those applicable requirements.

e. Each acid rain permit shall have a term of five years commencing on its effective date.

f. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

5. Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

6. Invalidation of the acid rain portion of an operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the acid rain portion of the permit.

D. The board shall take final action on each permit application (including a request for a permit modification or renewal) no later than 18 months after a complete application is received by the board, except for initial permits. The initial

permits issued under this rule shall be issued by the effective date specified in subdivision C 4 c of this section.

E. Issuance of permits under this rule shall not take precedence over or interfere with the issuance of preconstruction permits under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30.

F. The board shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) as follows. The board shall send this statement to the administrator and to any other person who requests it.

1. The statement of basis shall briefly set forth significant factual, legal, and policy considerations on which the board relied in issuing or denying the draft permit.

2. The statement of basis shall include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

3. The board shall submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the operating permit that may affect the draft acid rain permit.

G. Within five days after receipt of the issued 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 board upon request.

9 VAC 5-80-520. Transfer of permits.

A. No person shall transfer a permit from one location to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9 VAC 5-80-560.

C. In the case of a name change of an affected source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change and shall comply with the requirements of 9 VAC 5-80-560.

9 VAC 5-80-530. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this rule.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9 VAC 5-80-430.

C. If the board fails to act in a timely way on a permit renewal, the administrator may invoke his authority under

§ 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

9 VAC 5-80-540. Permanent shutdown for emissions trading.

A. The shutdown of an emissions unit is not creditable for purposes of emissions trading or exempt under 9 VAC 5-80-360 C 3 unless a decision concerning shutdown has been made pursuant to the pertinent provisions of this chapter, including subsections B through D of this section.

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

C. The final decision shall be rendered as follows:

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

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

D. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that an emissions unit is shutdown permanently prior to any final decision rendered under subsection C of this section.

9 VAC 5-80-550. Changes to permits.

A. Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this rule shall be made as specified under subsections B and C of this section. Changes may be initiated by the permittee as specified in subsection B of this section or by the board or the administrator as specified in subsection C of this section. Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this rule shall be made as specified under subsection E of this section.

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B. The following requirements apply with respect to changes initiated by the permittee:

1. With regard to emissions units other than affected units, the permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9 VAC 5-80-560 through 9 VAC 5-80-590.

2. With regard to affected units, the permittee may initiate a change to a permit by requesting a permit modification, fast-track modification, administrative permit amendment or automatic permit amendment. The requirements for these permit revisions can be found in 9 VAC 5-80-600 through 9 VAC 5-80-630.

3. A request for a change by a permittee shall include a statement of the reason for the proposed change.

4. A permit revision may be submitted for approval at any time.

5. No permit revision shall affect the term of the acid rain permit to be revised.

6. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

7. The terms of the acid rain permit shall apply while the permit revision is pending.

8. Any determination or interpretation by the state (including the board or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 9 VAC 5-80-690 C as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 9 VAC 5-80-620.

9. The standard requirements of 9 VAC 5-80-420 shall not be modified or voided by a permit revision.

10. Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 9 VAC 5-80-460, § 407 of the federal Clean Air Act and 40 CFR Part 76.

11. For permit revisions not described in 9 VAC 5-80-600 and 9 VAC 5-80-610, the board may, in its discretion, determine which of these sections is applicable.

C. The administrator or the board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-640.

D. Changes to permits shall not be used to extend the term of the permit.

E. The following requirements apply with respect to changes at a source and applicable state requirements:

1. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9 VAC 5-80-560 through 9 VAC 5-80-630.

2. The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 have been met.

3. Incorporation of permit terms and conditions into a permit issued under this rule shall be as follows:

a. Permit terms and conditions pertaining only to applicable state requirements and issued under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 shall be incorporated into a permit issued under this rule at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units subject only to applicable state requirements and exempt from the requirements of 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 shall be incorporated into a permit issued under this rule at the time of permit renewal or at an earlier time, if the applicant requests it.

4. The source shall provide contemporaneous written notice to the board of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. The change shall not qualify for the permit shield under 9 VAC 5-80-500.

9 VAC 5-80-560. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-520 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under 9 VAC 5-80-10, 9 VAC 5-80-20, and 9 VAC 5-80-30 when 9 VAC 5-80-10, 9 VAC 5-80-20, and 9 VAC 5-80-30 meet (i) procedural requirements

substantially equivalent to the requirements of 9 VAC 5-80-670 and 9 VAC 5-80-690 that would be applicable to the change if it were subject to review as a permit modification, and (ii) compliance requirements substantially equivalent to those contained in 9 VAC 5-80-490.

6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provision that have been approved through rulemaking by the administrator to be a part of the State Implementation Plan.

B. Administrative permit amendments shall be made according to the following procedures:

1. The board shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public or affected states under 9 VAC 5-80-670 and 9 VAC 5-80-690. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The board shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The board shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9 VAC 5-80-500 for amendments made pursuant to subdivision A 5 of this section.

9 VAC 5-80-570. Minor permit modifications.

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a modification under 9 VAC 5-

80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 or § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 or under § 112 of the federal Clean Air Act; and

6. Are not required to be processed as a significant modification under 9 VAC 5-80-590 or as an administrative permit amendment under 9 VAC 5-80-560.

B. Notwithstanding subsection A of this section and 9 VAC 5-80-580 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in these regulations or a federally-approved program.

C. An application requesting the use of minor permit modification procedures shall meet the requirements of 9 VAC 5-80-440 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9 VAC 5-80-430 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the board shall meet its obligation under 9 VAC 5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The board shall promptly send any notice required under 9 VAC 5-80-690 B 2 to the administrator. The public participation requirements of 9 VAC 5-80-670 shall not extend to minor permit modifications.

E. The timetable for issuance of permit modifications shall be as follows:

1. The board may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the board that he will not object to issuance of the permit modification, whichever occurs first, although the board can approve the permit modification prior to that time.

2. Within 90 days of receipt by the board of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9 VAC 5-80-600 C, whichever is later, the board shall do one of the following:

a. Issue the permit modification as proposed.

b. Deny the permit modification application.

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c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9 VAC 5-80-690 A.

F. The following requirements apply with respect to the ability of an owner to make minor permit modification changes:

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. The permit shield under 9 VAC 5-80-500 shall not extend to minor permit modifications.

9 VAC 5-80-580. Group processing of minor permit modifications.

A. Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9 VAC 5-80-570 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9 VAC 5-80-370, or five tons per year, whichever is least.

B. An application requesting the use of group processing procedures shall meet the requirements of 9 VAC 5-80-440 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9 VAC 5-80-430 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision A 2 of this section.

5. Certification, consistent with 9 VAC 5-80-430 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the board to use to notify the administrator and affected states as required under 9 VAC 5-80-690.

C. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subdivision A 2 of this section, whichever is earlier, the board promptly shall meet its obligation under 9 VAC 5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The board shall send any notice required under 9 VAC 5-80-690 B 2 to the administrator. The public participation requirements of 9 VAC 5-80-670 shall not extend to group processing of minor permit modifications.

D. The provisions of 9 VAC 5-80-570 E shall apply to modifications eligible for group processing, except that the board shall take one of the actions specified in 9 VAC 5-80-570 E 1 through E 4 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9 VAC 5-80-690 C, whichever is later.

E. The provisions of 9 VAC 5-80-570 F shall apply to modifications eligible for group processing.

F. The permit shield under 9 VAC 5-80-500 shall not extend to minor permit modifications.

9 VAC 5-80-590. Significant modification procedures.

A. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9 VAC 5-80-570 or 9 VAC 5-80-580 or as administrative amendments under 9 VAC 5-80-560. Significant modification procedures shall be used for those permit modifications that:

1. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

2. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9 VAC 5-40-10 et seq., 9 VAC 5-50-10 et seq., or 9 VAC 5-60-10 et seq., or a visibility or increment analysis carried out under this chapter.

3. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to

which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a modification under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 or § 112 of the federal Clean Air Act.

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. An application for a significant permit modification shall meet the requirements of 9 VAC 5-80-430 and 9 VAC 5-80-440 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Completed forms for the board to use to notify the administrator and affected states as required under 9 VAC 5-80-690.

C. The provisions of 9 VAC 5-80-690 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9 VAC 5-80-670 shall apply to applications made under this section.

E. The board shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. The owner shall not make the change applied for in the significant modification application until the modification is approved by the board under subsection E of this section.

G. The provisions of 9 VAC 5-80-500 shall apply to changes made under this section.

9 VAC 5-80-600. Permit modifications for affected units.

A. The following are permit modifications for affected units:

1. Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator.

2. Incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period.

3. Determinations concerning failed repowering projects under 9 VAC 5-80-460 F 1 and F 3.

4. At the option of the designated representative submitting the permit revision, the permit revisions listed in 9 VAC 5-80-610 A.

B. An application for a permit modification for an affected unit shall meet the requirements of 9 VAC 5-80-430 and 9 VAC 5-80-440 for permit issuance and renewal for the modification proposed.

C. The provisions of 9 VAC 5-80-690 shall be carried out for permit modifications for affected units in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9 VAC 5-80-670 shall apply to applications made under this section.

E. The board shall take final action on permit modifications for affected units within nine months after receipt of a complete application.

F. The owner shall not make the change applied for under this section until the modification is approved by the board under subsection E of this section.

9 VAC 5-80-610. Fast-track modifications for affected units.

A. The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications for affected units under 9 VAC 5-80-600:

1. Incorporation of a compliance option under 9 VAC 5-80-450 that the designated representative did not submit for approval and comment during the permit issuance process.

2. Addition of a nitrogen oxides averaging plan to a permit.

3. Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

B. The following requirements apply with respect to service, notification, and public participation:

1. The designated representative shall serve a copy of the fast-track modification on the following at least five days prior to the public comment period specified in subdivisions 2 and 3 of this subsection:

a. The administrator,

b. The board,

c. Affected states,

d. Persons on a permit mailing list who have requested information on the opportunity for public comment, and

e. The chief elected official, chief administrative officer, and the planning district commission for the locality particularly affected.

2. Within five business days of serving copies of the fast-track modification under subdivision 1 of this subsection, the designated representative shall give public notice of the fast-track modification by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The notice shall contain the information listed in 9 VAC 5-80-670 C 1 a through C 1 h. The notice shall also state that a copy of the fast-track modification is available (i) from the designated representative and (ii) for public inspection during the entire public comment period at the regional office.

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3. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the board and to the designated representative.

C. The timetable for issuance shall be as follows:

1. Within 30 days of the close of the public comment period, the board shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification.

2. A fast-track modification shall be effective immediately upon approval and issuance, in accordance with 9 VAC 5-80-510 B 5.

9 VAC 5-80-620. Administrative permit amendments for affected units.

A. The following permit revisions are administrative permit amendments for affected units:

1. Activation of a compliance option conditionally approved by the board, provided that all requirements for activation under 9 VAC 5-80-450 C and 9 VAC 5-80-460 are met.

2. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72.

3. Correction of typographical errors.

4. Changes in names, addresses, or telephone or facsimile numbers.

5. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the administrator in accordance with Subpart B of 40 CFR Part 72.

6. Termination of a compliance option in the permit, provided that all requirements for termination under 9 VAC 5-80-450 D shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999.

7. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with 9 VAC 5-80-420.

8. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of the 40 CFR Part 76 are met.

9. Incorporation of changes that the administrator has determined to be similar to those in subdivisions 1 through 8 of this subsection.

B. Administrative permit amendments for affected units shall follow the procedures set forth at 9 VAC 5-80-560 B. The board shall submit the revised portion of the permit to the

administrator within 10 working days after the date of final action on the request for an administrative amendment.

9 VAC 5-80-630. Automatic permit amendments for affected units.

The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

1. Upon recordation by the administrator under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account.

2. Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.

9 VAC 5-80-640. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in 9 VAC 5-80-490 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

D. In reopening an acid rain permit, the board shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.

E. The following requirements apply with respect to reopenings for cause by EPA:

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the board and the permittee of such finding in writing.

2. The board shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the board must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the board within 90 days of receipt.

4. The board shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the board fails to submit a proposed determination pursuant to subdivision 2 of this subsection or fails to resolve any objection pursuant to subdivision 4 of this

subsection, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

- a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subdivisions 1 through 4 of this subsection.
- b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

9 VAC 5-80-650. Malfunction.

A. A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection B of this section are met.

B. The affirmative defense of malfunction shall be demonstrated by the permittee through properly signed, contemporaneous operating logs, or other relevant evidence that show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.
2. The permitted facility was at the time being properly operated.
3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.
4. For malfunctions that occurred for one hour or more, the permittee submitted to the board by the deadlines established in subdivisions 4 a and 4 b of this subsection a notice and written statement containing a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notice fulfills the requirement of 9 VAC 5-80-490 F 2 b to report promptly deviations from permit requirements.

a. A notice of the malfunction by facsimile transmission, telephone or telegraph as soon as practicable but no later than four daytime business hours of the time when the emission limitations were exceeded due to the malfunction.

b. A written statement describing the malfunction no later than two weeks following the day the malfunction occurred.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

9 VAC 5-80-660. Enforcement.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any condition of a permit shall be

considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

- a. Knowingly makes material misstatements in the permit application or any amendments thereto.
- b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this rule.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation or termination contained in subdivision 2 of this subsection or for any other violations of these regulations.

B. The following requirements apply with respect to penalties:

1. An owner who violates, fails, neglects or refuses to obey any provision of this rule or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this rule or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. The following requirements apply with respect to appeals:

1. The board shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Appeal from any decision of the board under subdivision 1 of this subsection may be taken pursuant to 9 VAC 5-20-90, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

3. Appeals of the acid rain portion of an operating permit issued by the board that do not challenge or involve decisions or actions of the administrator under §§ 407 and 410 of the federal Clean Air Act and the acid rain program regulations shall be conducted according to the procedures in the Administrative Process Act. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and § 307 of the federal Clean Air Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative

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monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

4. No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than 90 days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

5. The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

6. No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under 9 VAC 5-80-420;

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75;

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

7. The board shall serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within 30 days of the filing of the appeal.

8. The board shall serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator shall have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 9 VAC 5-80-690.

D. The existence of a permit under this rule shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the permit shield as specified in 9 VAC 5-80-500 and if the requirements of 9 VAC 5-80-500 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this rule shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. The following requirements apply with respect to inspections and right of entry:

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9 VAC 5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this rule.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the board or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the board shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. The board may enforce permits issued under this rule through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9 VAC 5-20-20 and 9 VAC 5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

9 VAC 5-80-670. Public participation.

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The board shall notify the public using the procedures in subsection B of this section.

B. The board shall notify the public of the draft permit or draft permit modification (i) by advertisement in a local newspaper of general circulation in the locality particularly affected and in a newspaper of general circulation in the affected air quality control region and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section. For sources subject to this rule, the notice shall be mailed to the chief elected official and chief administrative officer and the

planning district commission for the locality particularly affected.

C. The following requirements apply with respect to content of the public notice and availability of information:

1. The notice shall include but not be limited to the following:

- a. The source name, address and description of specific location.
- b. The name and address of the permittee.
- c. The name and address of the regional office processing the permit.
- d. The activity or activities for which the permit action is sought.
- e. The emissions change that would result from the permit issuance or modification.
- f. A statement of estimated local impact of the activity for which the permit is sought, including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used.
- g. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, air quality impact information if an ambient air dispersion analysis was performed and all relevant supporting materials, including the compliance plan.
- h. A brief description of the comment procedures required by this section.
- i. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subdivision E 3 of this section.

2. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The board shall provide such notice and opportunity for participation by affected states as is provided for by 9 VAC 5-80-690.

E. The following requirements apply with respect to opportunity for public hearing:

1. The board shall provide an opportunity for a public hearing as described in subdivisions 2 through 6 of this subsection.
2. Following the initial publication of notice of a public comment period, the board shall receive written requests for a public hearing to consider the draft permit or draft permit modification. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

a. The name, mailing address and telephone number of the requester.

b. The names and addresses of all persons for whom the requester is acting as a representative.

c. The reason why a hearing is requested, including the air quality concern that forms the basis for the request.

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including information on how the operation of the facility under consideration affects the requester.

3. The board shall review all requests for public hearing filed as required under subsection E 2 of this section and, within 30 calendar days following the expiration of the public comment period, shall grant a public hearing if it finds both of the following:

- a. There is significant public interest in the air quality issues raised by the permit application in question.
- b. There are substantial, disputed air quality issues relevant to the permit application in question.

4. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain the basis for the decision to grant or deny a public hearing. If the public hearing is granted, the notice shall contain a description of procedures for the public hearing.

5. If the board decides to hold a public hearing, the hearing shall be scheduled at least 30 and no later than 60 days after mailing the notification required in subdivision 4 of this subsection.

6. The procedures for notification to the public and availability of information used for the public comment period as provided in subsection C of this section shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

7. As an alternative to the requirements of subdivisions 1 through 6 of this subsection, the board may hold a public hearing if an applicant requests that a public hearing be held or if, prior to the public comment period, the board determines that the conditions in subdivisions 3 a and b of this subsection pertain to the permit application in question.

8. The board may hold a public hearing for more than one draft permit or draft permit modification if the location for the public hearing is appropriate for the sources under consideration and if the public hearing time expected for each draft permit or draft permit modification will provide sufficient time for public concerns to be heard.

9. Written comments shall be accepted by the board for at least 15 days after the hearing.

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F. The board shall keep (i) a record of the commenters and (ii) a record of the issues raised during the public participation process so that the administrator may fulfill his obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

9 VAC 5-80-680. Operational flexibility.

A. The board shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term, or (ii) those that are not addressed or prohibited by the permit. The conditions under which the board shall allow these changes to be made are specified in subsections B and C of this section, respectively.

B. The following requirements apply with respect to changes that contravene an express permit term:

1. The following general requirements apply:

a. The board shall allow a change at an affected source that changes a permit condition with the exception of the following:

(1) A modification under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30.

(2) A modification under the provisions of or regulations promulgated pursuant to § 112 of the federal Clean Air Act.

(3) A change that would exceed the emissions allowable under the permit.

(4) A change that would violate applicable requirements.

(5) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, compliance schedule dates or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, board and the administrator shall attach the notice described in subdivision 1 b of this subsection to their copy of the relevant permit.

d. The permit shield under 9 VAC 5-80-500 shall not extend to any change made pursuant to subdivision 1 of this subsection.

2. The following requirements apply with respect to emission trades within permitted facilities provided for in these regulations:

a. With the exception of the changes listed in subdivision 1 a of this subsection, the board shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where these regulations provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in these regulations authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of these regulations, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in these regulations and which provide for the emissions trade.

c. The permit shield described in 9 VAC 5-80-500 shall not extend to any change made under this subdivision. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of these regulations.

3. The following requirements apply with respect to emission trades within affected sources to comply with an emissions cap in the permit:

a. If a permit applicant requests it, the board shall issue permits that contain terms and conditions, including all terms required under 9 VAC 5-80-490 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The board shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The board shall not allow a change to be made under subdivision 3 of this subsection if it is a change listed in subdivision 1 of this subsection.

c. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result

and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9 VAC 5-80-500 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. The following requirements apply with respect to changes that are not addressed or prohibited by the permit:

1. The board shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are subject to the following requirements:

a. Modifications under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30.

b. Modifications under § 112 of the federal Clean Air Act or the regulations promulgated under § 112.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

3. Sources shall provide contemporaneous written notice to the board and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9 VAC 5-80-720 A. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under 9 VAC 5-80-500.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

9 VAC 5-80-690. Permit review by EPA and affected states.

A. The following requirements apply with respect to transmission of information to the administrator:

1. The board shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this rule.

2. The board shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. The following requirements apply with respect to review by affected states:

1. The board shall give notice of each draft permit to any affected state on or before the time that the board provides this notice to the public under 9 VAC 5-80-670, except to the extent that 9 VAC 5-80-570 or 9 VAC 5-80-580 requires the timing of the notice to be different.

2. The board, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9 VAC 5-80-570 or 9 VAC 5-80-580), shall notify the administrator and any affected state in writing of any refusal by the board to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons why the board will not accept a recommendation. The board shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this rule.

C. The following requirements apply with respect to objections by EPA:

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subdivision 1 of this subsection shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the board to do any of the following also shall constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in 9 VAC 5-80-670 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subdivision 1 of this subsection, the board fails to revise and submit a proposed permit in response to the objection, the administrator shall issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. The following requirements apply with respect to public petitions to the administrator:

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9 VAC 5-80-670, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

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3. If the administrator objects to the permit as a result of a petition filed under subdivision 1 of this subsection, the board shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the board has issued a permit prior to receipt of an objection by the administrator under subdivision 1 of this subsection, the administrator shall modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9 VAC 5-80-640 E 4 or E 5 a and b except in unusual circumstances, and the board may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

E. No permit (including a permit renewal or modification) shall be issued by the board until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

9 VAC 5-80-700. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.

A. Upon the request of an applicant, any requirement of these regulations not included in the definition of applicable requirement may be included as an applicable state requirement in a permit issued under this rule.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this rule pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this rule in the permit application submitted to the board under 9 VAC 5-80-440 E.

NOTICE: The forms used in administering 9 VAC 5-80-360 et seq., Article 3, Acid Rain Operating Permits (Rule 8-7) are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Air Pollution Control Board, 629 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Forms

Air Operating Permit Application, DEQ Form 805 (2/15/96)

EPA Acid Rain Program -- New Unit Exemption Form (40 CFR 72.7) with instructions, EPA Form 7610-19 (rev. 12-94)

EPA Acid Rain Program -- Retired Unit Exemption Form (40 CFR 72.8) with instructions, EPA Form 7610-20 (rev. 12-94)

EPA Acid Rain Program -- Certificate of Representation (40 CFR 72.24) with instructions, EPA Form 7610-1 (rev. 12-94)

EPA Acid Rain Program -- Phase II Permit Application (40 CFR 72.30-72.31) with instructions, EPA Form 7610-16 (rev. 12-94)

EPA Acid Rain Program -- Repowering Extension Plan (40 CFR 72.44) with instructions, EPA Form 7610-17 (rev. 12-94)

Documents Incorporated by Reference

D 1265-92, Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method), American Society for Testing and Materials, 1992.

D 1072-90, Standard Test Method for Total Sulfur in Fuel Gases, American Society for Testing and Materials, 1990, reapproved 1994.

D 975-94, Standard Specification for Diesel Fuel Oils, American Society for Testing and Materials, 1994.

D 396-92, Standard Specification for Fuel Oils, American Society for Testing and Materials, 1992.

D 388-95, Standard Classification of Coals by Rank, American Society for Testing and Materials, 1995.

D 129-91, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), American Society for Testing and Materials, 1991.

D 4294-90, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, American Society for Testing and Materials, 1990.

D 4057-88, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, American Society for Testing and Materials, 1988.

D 2622-94, Standard Test Method for Sulfur in Petroleum Products by X-ray Spectrometry, American Society for Testing and Materials, 1994.

VA R. Doc. No. R96-297; Filed April 9, 1996, 3:01 p.m.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Title of Regulation: 12 VAC 25-20-10 et seq. Rules and Regulations of the Virginia Health Services Cost Review Council (amending 12 VAC 25-20-10, 12 VAC 25-20-130, 12 VAC 25-20-160, 12 VAC 25-20-170, 12 VAC 25-20-180, 12 VAC 25-20-190, 12 VAC 25-20-230, 12 VAC 25-20-240, 12 VAC 25-20-250, 12 VAC 25-20-270, 12 VAC 25-20-280, 12 VAC 25-20-290, 12 VAC 25-20-350, and 12 VAC 25-20-390; repealing 12 VAC 25-20-140, 12 VAC 25-20-150, 12 VAC 25-20-200, 12 VAC 25-20-210, 12 VAC 25-20-220, 12 VAC 25-20-300, 12 VAC 25-20-310, 12 VAC 25-20-320, 12 VAC 25-20-330, 12 VAC 25-20-340, 12 VAC 25-20-360, and 12 VAC 25-20-370).

Statutory Authority: §§ 9-158 and 9-160 of the Code of Virginia.

Public Hearing Date: May 21, 1996 - 10:30 a.m.

Public comments may be submitted until June 28, 1996.
(See Calendar of Events section
for additional information)

Basis: The Virginia Health Services Cost Review Council has the authority to promulgate these regulations pursuant to §§ 9-158 and 9-160 of the Code of Virginia. The proposed regulation is mandated by state law and legislative requirements of the 1995 Session of the General Assembly, 1995 Acts of Assembly, Chapter 765.

Purpose: The Virginia Health Services Cost Review Council is the only agency that collects, analyzes and disseminates hospital and nursing home financial and statistical information to promote cost containment within the health care industry. The council is supported entirely from Special Dedicated Revenues (fees assessed health care institutions at the time budget and historical filings are submitted.) The proposed regulation is necessary because House Bill 2294, passed by the 1995 Session of the General Assembly, eliminated the requirement for nursing homes to file a budget and a Commercial Diversification Survey with the council. Also, the Interagency Task Force to Eliminate Duplicative and Unnecessary Reporting, formed in compliance with Chapter 765, 1995 Acts, further determined hospital budget and quarterly filings to be unnecessary. Consequently, the rules and regulations must reflect the change in filing requirements as well as a method for assessing fees that is not related to a budget filing. Without a provision for fee collection, a serious shortfall of revenues will occur.

Substance: This regulation eliminates the requirement for nursing homes and hospitals to submit budget filings, for nursing homes to submit Commercial Diversification Surveys and for hospitals to submit quarterly filings with the council. The regulation also provides a method for assessing fees that is not related to a budget filing. These changes are permissible and, in the case of nursing homes, required within the current status of the law.

Issues: If these regulations are adopted, hospitals and nursing homes will be relieved of burdensome, unnecessary and, in the case of nursing homes, statutorily prohibited reporting requirements. There are no disadvantages for hospitals, nursing homes or the general public. The state will not suffer a shortfall of revenues which would impede its ability to carry out the Virginia Health Services Cost Review Council's mandated functions under the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private

property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation

The proposed regulation does three things:

- 1) makes some administrative changes in the way fees are collected,
- 2) implements the requirement in HB2294 (1995) that nursing facilities not be required to make budget filings, and
- 3) implements the recommendations of the Interagency Task Force to Eliminate Duplicative and Unnecessary Reporting that hospitals no longer be required to submit budgets and quarterly filings to the Council.

Estimated Economic Impact

The Virginia Health Services Cost Review Council (hereinafter, the Council) collects, analyzes and disseminates information about hospitals and nursing homes in order to promote cost containment within the health care industry. The Council is self-supporting through fees paid by health care facilities. Before this time, fees were assessed alongside facility budget filings. Budget filings have been eliminated for nursing facilities by HB2294 (1995) and for hospitals by this regulation on the recommendation of the Interagency Task Force to Eliminate Duplicative and Unnecessary Reporting (hereinafter, Task Force). Since fee collections were tied to budget submission in the Council regulations, the regulations must be changed to arrange for the collection of fees in the absence of budget submissions. The change in the way fees are collected is a purely administrative adjustment that has no associated economic costs.

The reduced reporting requirements for nursing homes is specifically required by HB2294 (1995). Since striking nursing homes from the coverage of these rules is a direct legislative mandate, the economic consequences do not arise from regulatory action and, hence, are not included in this analysis.

This analysis will focus on the elimination of hospital budget and quarterly filings on the recommendation of the Task Force. There will be some direct savings associated with this change. The Virginia Hospitals and Health Care Association calculated the cost of the budget and quarterly filings.¹ These estimates are given in the Table 1.

These regulations impose another kind of cost on hospitals as well. Since hospitals are required to provide the buyers of their services with detailed proprietary information, it places them at a strategic disadvantage in negotiating a contract with insurers. This may result in the transfer of some profits from the owners of hospitals to the owners of insurance companies.

While a transfer of profits from one firm to another does not itself change total economic value in the short run, it does

¹ This information was provided by David Moore of the Virginia Hospital and Health Care Association, 1/96.

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raise the philosophical issue of the fairness of using the power of the government to effect this transfer. In the longer run, this shift in profits could reduce somewhat the amount of investment made in the health care industry. The magnitude of this unintended consequence of cost information rules is not known at this time.

In attempting to measure the economic impact of eliminating these reporting requirements, we need first to evaluate the intended function of providing the information. The easier it is to observe the quality and quantity of goods in a market, the easier it is to negotiate a transaction between a buyer and a seller. The more difficult it is to observe the actual output of a seller, the more effort the potential buyers and sellers must put into negotiating a contract because the contract will regulate levels of effort of the seller rather than actual output of goods or services.² In the case of hospitals, the output that buyers care about is healing patients whose state of health on admission is not directly observable, at least not by the buyers of the service. Thus, the actual output of hospitals is not something one can buy directly.

Table 1: Virginia Hospital & Healthcare Association Cost Estimates for Completing VHSCRC Forms³

Hospital Annual Budget Filing:	
66 data elements, requires approximately 5.5 hours @ \$19.27	\$106.
times 116 hospitals	\$12,296.
Hospital Quarterly Filing:	
66 data elements, requires approximately 4.25 hours @ \$20.08	\$85.
times four submissions per year	\$340.
times 116 hospitals	\$39,440.
Hospital Annual Historical Filing:	
380 data elements, requires approximately 30 hours @ \$20.70	\$621.
253 data elements being eliminated, approx. 20 hours @ \$20.70	\$414.
the difference of these times 116 hospitals	\$24,012.
Total Annual Cost to 116 Virginia Hospitals	\$75,748.

An analogy may be instructive. When you go to buy a tube of toothpaste, you don't need to inquire about the costs of producing the product. You know what you are getting and the value you receive is either worth the cost to you or it is

not. The presence of competition in the industry reassures us that the price of the toothpaste will not be too far from the cost of production and marketing plus some normal rate of return (profit) for the manufacturer. On the other hand, when you take your car into the shop because it is making a mysterious engine noise, the mechanic charges by the hour plus parts because the condition of the car is not known, hence it is not known in advance what level of service will be necessary to achieve the desired outcome, a working engine. Notice that this contract does give the mechanic some incentive to increase costs. Fortunately, the market for these services is quite competitive so the costs of this imperfect contract are kept within reasonable bounds.

As a consequence of the difficulty of observing the actual output of a hospital, insurers and hospitals must bargain over the level of effort exerted by the hospital and payments are in terms of effort rather than output. So an insurance company will pay for a day of treatment (per diem) rather than an amount of healing. For this reason, the negotiation of contract terms between hospitals and insurers can be quite costly and the resulting contract can give hospitals incentives that are inconsistent with providing the maximum amount of healing at the lowest cost.

The difficulty of contracting for performance in the health care arena has been thought to be largely responsible for much of the recent inflation in the costs of medical care. In response, many jurisdictions have either directly regulated hospital prices or have, as in the case of Virginia, forced hospitals to reveal information that allowed purchasers of information independently to evaluate the costs hospitals face in providing services. Armed with this information, insurers could make comparisons of performance across hospitals and use that information to more readily negotiate contracts that did not contribute to medical care cost inflation. The information provided also has a value to the hospitals because they are in a better position to judge how their performance compares to other providers. This can be of value in improving performance.

One way to eliminate the information problems in the health care market without requiring the disclosure of proprietary information would be to develop standardized units of service that sellers could offer in the market. The object would be to create a standardized commodity in the market for health care services. If that can be done, then negotiations between buyers and sellers can be carried out in terms of the actual output. Efforts are now under way at the Council and elsewhere to define marketable units of health care services.

The standardized commodity mentioned earlier is called the severity-adjusted Diagnosis Related Group (DRG). For a given diagnosis, we wish to know what bundle of services, equipment and medications are necessary to achieve the desired result, a healthy patient. This is a commodity that can be purchased from the sellers (hospitals) by the buyers (insurance companies). Its price and quality can be compared in conceptually the same way as different brands of toothpaste. The definition and use of this health care

² This difficulty is often called the principle-agent problem.

³ These figures assume 116 hospitals. The Council indicated that they receive filings from 136 hospitals. Assuming that the per hospital costs are close to those given in the table, then the total costs for 136 hospitals would be \$88,944.

commodity could reduce the need for the mandatory reporting of proprietary information.⁴

This change could be harmful to some of the firms that used the information because they will lose access to some useful proprietary information. However, this loss is offset by the gain to other firms. There should be a substantial aggregate net gain in economic efficiency.

If the DRG system could be implemented effectively at a reasonable cost, then we would expect a gain in economic efficiency from eliminating the mandatory filings and replacing them with DRGs. The problem, of course, is that it is very difficult to put a system of DRGs in place because it is hard to standardize this commodity that comes in such infinite variety; and the greater the variety of DRGs, the more expensive the system will be to administer. In addition, payments based on DRGs give providers incentive to minimize the costs associated with a DRG. Since the actual condition of the patient is not observable at discharge, this means that there is incentive to cut treatment costs in a way that could have an effect the health of the patient at discharge.

Thus, we are left with the original problem of controlling health care costs without compromising patient care. Previously, this was accomplished by providing information about provider rates of return based on mandatory reporting of financial information. The Council has chosen to replace the rate of return analysis with a system of efficiency scoring based on a number of factors:

- Charges for certain admissions
- Productivity and utilization
- Financial performance
- Support from the community and from Medicaid

Since these factors are more closely related to the cost structure of the provider than the earlier rate-of-return evaluation, it should provide a better basis for negotiating agreements between providers and insurers that do not contribute as much to increased health care costs. Differences in efficiency scores will be useful information to insurers in determining how much to pay for various services and will be useful to providers in assessing the relative efficiency of their own operations.

Since this scoring system is based on annual historical filings, the budget and quarterly filings are not necessary for this purpose. That said, it is not clear whether the elimination of the budget and quarterly information will have a net economic benefit or not. The total costs to Virginia hospitals of this filing is between \$12,000 and \$15,000 per year. For quarterly filings the cost is between \$39,000 and \$45,000. This information is used by both insurers and by other hospitals. By the same token, the information is not specific enough to be of great advantage to competitors in learning about the specific operations of reporting hospitals. It is supplemental information that allows insurers to compare the expected and actual performance across hospitals.

⁴ To continue with the auto repair analogy, it is as if we could classify the various noises in the car according to what the underlying problem is and what is required to repair that problem. In that case, consumers would demand that auto mechanics prices for a repair procedure rather than charge by the hour.

One possible approach to these budget and quarterly filings dilemma would be to charge users for their use of the information and use the proceeds to compensate (at least partially) hospitals for their costs of providing it. If the price users are willing to pay for the information does not equal or exceed the cost of providing it, then a stronger argument can be made that the information is not worth collecting in the first place. As things stand, there is no way of making a meaningful estimate of the economic value of the information. It could be greater or smaller than the cost of providing it. The Council's efficiency scoring approach has probably reduced somewhat the value of the budget and quarterly information from what it was when only rate-of-return information was provided.

Businesses and entities affected

Hospitals and health insurance providers are the businesses primarily affected by this regulation. The savings will accrue principally to hospitals and, in competitive markets, to their customers. If health costs do rise as a result of the elimination of budget and quarterly filings, then all individuals, businesses and municipalities would be affected to some degree.

Localities particularly affected

No localities in Virginia will be particularly affected by this regulation.

Projected impact on employment

This proposal will not have any significant affect on employment in Virginia.

Effects on the use and value of private property

This regulation is not expected to have any significant effect on the value of real property in Virginia.

Summary

For the reasons described above, we cannot state with any assurance whether the elimination of the budget and quarterly filings from hospitals will have a positive or a negative economic impact in Virginia. Such a conclusion would require that we know what change in health care prices in the coming years is due to the reduction in access to this information and, further, what part of that change was a shift in profits between firms and what part was an actual increase in costs. Reliable measurement of these things is not possible at this time.

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

The agency concurs with the Department of Planning and Budget's summary statement. It is difficult to determine if the elimination of hospital budget and quarterly filings will have a positive or negative economic impact in Virginia. However, in light of the fact that quarterly filings are currently little used by buyers and sellers in the market for health care services, any impact from their elimination should be minimal. The only remaining question is related to the elimination of hospital budget filings. Any repercussions can be monitored and a re-evaluation can take place within one year after the proposed regulation takes effect.

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Summary:

This proposed regulation incorporates changes to an existing regulation. This regulation eliminates the requirement for nursing homes and hospitals to submit budget filings, for nursing homes to submit Commercial Diversification Surveys and for hospitals to submit quarterly filings with the council. The regulation also provides a method for assessing fees that is not related to a budget filing.

12 VAC 25-20-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings:

"Adjusted patient days" means inpatient days divided by the percentage of inpatient revenues to total patient revenues.

"Aggregate cost" means the total financial requirements of an institution which shall be equal to the sum of:

~~1. The institution's current operating costs, including expenses for operating and maintenance of approved services and facilities, direct and indirect expenses for patient care services, working capital needs and taxes, if any;~~

~~2. Financial requirements for allowable capital purposes, including price level depreciation for depreciable assets and accumulation of funds for approved capital projects;~~

~~3. For investor-owned institutions, after tax return on equity at the percentage equal to two times the average of the rates of interest on special issues of public debt obligations issued to the Federal Hospital Insurance Trust Fund for the months in a provider's reporting period, but not less, after taxes, than the rate or weighted average of rates of interest borne by the individual institution's outstanding capital indebtedness. The base to which the rate of return determined shall be applied is the total net assets, adjusted by paragraph 2 of this section, without deduction of outstanding capital indebtedness of the individual institution for assets required in providing institutional health care services;~~

~~4. For investor-owned institutions organized as proprietorships, partnerships, or S corporations an imputed income tax, for fiscal years ending July 1, 1989, or later, at a combined federal and state income tax rate equal to the maximum tax rates for federal and state income taxes. The combined rate for 1989 is equal to 34% for individuals and 40% for corporations. Such tax computation shall be exclusive of net operating loss carry forwards prior to July 1, 1989. Operating losses incurred after July 1, 1989, may be carried forward no more than five years but may not be carried back prior years. The schedule of imputed income taxes shall be reported as a note to the financial statements or as a supplemental schedule of the certified audited financial statements submitted to the Virginia Health Services Cost Review Council by the institution.~~

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding

or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

"Council" means the Virginia Health Services Cost Review Council.

"Consumer" means any person (i) whose occupation is other than the administration of health activities or the provision of health services, (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

"Health care institution" means (i) a general hospital, ordinary hospital, or outpatient surgical hospital, nursing home or certified nursing facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, (ii) a mental or psychiatric hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia and or (iii) a hospital operated by the University of Virginia or Virginia Commonwealth University. In no event shall such term be construed to include *continuing care retirement communities which file annual financial reports with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia*, any physician's office, nursing care facility of a religious body which depends upon prayer alone for healing, independent laboratory or outpatient clinic.

"Hospital" means any facility licensed pursuant to § 32.1-123 et seq. or § 37.1-179 et seq. of the Code of Virginia.

"Late charge" means a fee that is assessed a health care institution that files its budget, annual report, or charge schedule with the council ~~submits any of the council's filings~~ past the due date.

"Nursing home" means any facility or any identifiable component of any facility licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.

"Patient day" means a unit of measure denoting lodging facilities provided and services rendered to one inpatient, between census-taking-hour on two successive days. The day of admission but not the day of discharge or death is counted a patient day. If both admission and discharge or death occur on the same day, the day is considered a day of admission and counts as one patient day. For purposes of filing fees to the council, newborn patient days would be added. For a medical facility, such as an ambulatory surgery center, which does not provide inpatient services, each patient undergoing surgery during any one 24-hour period will be equivalent to one patient day.

12 VAC 25-20-130. Annual historical report.

Each individual health care institution shall ~~file~~ *submit* an annual historical report *filing* of revenues, expenses, other income, other outlays, assets and liabilities, units of service, and related statistics as prescribed in § 9-158 of the Code of Virginia on forms provided by the council together with unconsolidated certified audited financial statements (or equivalents) as prescribed in § 9-159 of the Code of Virginia. *If the health care institution is part of a publicly held company, the individual institution may submit unconsolidated unaudited financial statements. Investor-owned institutions organized as proprietorships, partnerships, or S-corporations that impute income tax on the annual historical filing report an imputed income tax based on the maximum tax rates for federal and state income. The combined rate for 1989 is equal to 34% for individuals and 40% for corporations. Operating losses may be carried forward no more than five years but may not be carried back to prior years. The schedule of imputed income taxes shall be reported as a note to the financial statements or as a supplemental schedule of the certified audited financial statements submitted to the Virginia Health Services Cost Review Council by the institution.* The annual historical report *filing* and the unconsolidated certified audited financial statement shall be received by the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. The requirement for the *filing submission* of an annual historical report *filing* and an unconsolidated certified audited financial statement may be waived if a health care institution can show that an extenuating circumstance exists. Requests for a waiver must be submitted in writing prior to the due date. Examples of an extenuating circumstance include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, change of ownership of the institution, or the institution is a new facility that has recently opened.

Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with ~~home for adult~~ *adult care residence* beds in the annual report filed with the council. For those health care institutions that participate in either the Medicare or Medicaid program, the cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare for cost reports submitted to it shall be utilized for filings submitted to the council. Any health care institution that does not participate in the Medicare or Medicaid program may develop and utilize an alternative methodology to determine the nursing home portion of its costs if it chooses not to utilize the cost allocation methodology used by the Department of Medical Assistance Services and Medicare. That methodology shall then be approved by the council and the health care institution must continue to utilize that methodology for all subsequent filings unless a subsequent change is approved by the council.

12 VAC 25-20-140. Budget. (Repealed.)

Each individual health care institution shall ~~file annually a projection (budget) of annual revenues and expenditures as~~

~~prescribed in § 9-160 B of the Code of Virginia on forms provided by the council. The institution's projection (budget) shall be received by the council no later than 30 days before the beginning of its respective applicable fiscal year. An institution's budget for a given fiscal year will not be accepted unless the institution has already filed its annual report and certified audited financial statement for the previous fiscal year. This regulation shall be applicable to nursing homes or certified nursing facilities for each fiscal year starting on or after June 30, 1990. Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with home for adult beds in the budget filed with the council. For those health care institutions that participate in either the Medicare or Medicaid program, the cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare for cost reports submitted to it shall be utilized for filings submitted to the council. Any health care institution that does not participate in the Medicare or Medicaid program may develop and utilize an alternative methodology to determine the nursing home portion of its costs if it chooses not to utilize the cost allocation methodology used by the Department of Medical Assistance Services and Medicare. That methodology shall then be approved by the council and the health care institution must continue to utilize that methodology for all subsequent filings unless a subsequent change is approved by the council.~~

12 VAC 25-20-150. Quarterly historical report. (Repealed.)

~~Each individual hospital shall file a quarterly historical report of revenue, expenses, and related statistics. The hospital quarterly file shall be received by the council no later than 45 days after the end of the respective applicable hospital's quarter-end.~~

12 VAC 25-20-160. Schedule of charges.

Each health care institution shall file annually a schedule of charges to be in effect on the first day of such fiscal year, as prescribed in § 9-159 A 4 3 of the Code of Virginia. The institution's schedule of charges shall be received by the council within 10 days after the beginning of its respective applicable fiscal year.

Any subsequent amendment or modification to the annually filed schedule of charges shall be filed within 10 days of the effective date of the revised annual projection. ~~An institution's proposed amendment or modification to its annually filed schedule of charges shall not be accepted unless the institution has complied with all prior filing requirements contained in 12 VAC 25-20-130 and 12 VAC 25-20-140 for previous fiscal years.~~

In addition to the requirement above, a new schedule of charges must be submitted if any of the following conditions exist: (i) the creation or revision of a markup or pricing methodology, or (ii) the creation or revision of charges for new services or products. Amendments or modifications to a schedule of charges that are due only to cost adjustments resulting from the pass through of a markup or pricing methodology that had been implemented since the beginning

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of the fiscal year are considered minimal as described in 12 VAC 25-20-140 and need not be reported.

12 VAC 25-20-170. Survey of rates.

Each health care institution shall file annually a survey of rates charged. For hospitals, the survey shall consist of up to 30 select charges, including semi-private and private room rates. The survey shall also consist of charges of the most frequently occurring diagnoses or procedures for inpatient and outpatient treatment. The charges shall be calculated by taking an average for one month of all patient bills where the requested CPT or ICD-9 code numbers are indicated as the principal diagnosis or procedure. *For hospitals* this information shall be received by the council from each hospital no later than April 30 of each year.

The annual charge survey for nursing homes shall include up to 30 select charges, including semi-private and private room rates. The select charges shall reflect the rates in effect as of the first day of a sample month to be chosen by the council. *For nursing homes* this information shall be provided to received by the council no later than March 31 of each year.

12 VAC 25-20-180. Commercial diversification survey.

Each health care institution *hospital* or any corporation that controls a health care institution *hospital* shall respond to a survey conducted by the council to determine the extent of commercial diversification by such health care institutions *hospitals* in the Commonwealth. The survey shall be in a form and manner prescribed by the council and shall request the information specified in subdivisions a through j below for each affiliate of such health care institution *hospital* or corporation, if any:

- a. The name and principal activity;
- b. The date of the affiliation;
- c. The nature of the affiliation;
- d. The method by which each affiliate was acquired or created;
- e. The tax status of each affiliate and, if tax-exempt, its Internal Revenue tax exemption code number;
- f. The total assets;
- g. The total revenues;
- h. The net profit after taxes, or if not-for-profit, its excess revenues;
- i. The net equity, or, if not-for-profit, its fund balance; and
- j. Information regarding related party transactions.

12 VAC 25-20-190. Affiliates.

The information specified in 12 VAC 25-20-180 shall relate to any legal controls that exist as of the 1st of July of each calendar year in which the survey is required to be submitted *hospital's fiscal year end*. The response to the survey shall include the required information for all affiliates in which the health care institution *hospital* or any corporation which controls a health care institution *hospital* has a 25% or

greater interest. Information regarding affiliates or organizations that do not have corporate headquarters in Virginia and that do no business in Virginia need not be provided.

12 VAC 25-20-200. Time table for survey. (Repealed.)

~~For fiscal years ending on or before June 30, 1992, each health care institution or any corporation that controls a health care institution and that is required to respond to the survey specified in 12 VAC 25-20-180 shall complete and return the survey to the council by the 31st day of August of 1992.~~

12 VAC 25-20-210. Financial statement (hospital). (Repealed.)

~~For fiscal years ending on or before June 30, 1992, each hospital that reports to the council or any corporation which controls a hospital that reports to the council shall submit an audited consolidated financial statement to the council which includes a balance sheet detailing its total assets, liabilities and net worth and a statement of income and expenses and includes information on all such corporation's affiliates.~~

12 VAC 25-20-220. Financial statement (nursing home). (Repealed.)

~~For fiscal years ending on or before June 30, 1992, each nursing home that reports to the council or any corporation which controls a nursing home that reports to the council shall submit either a certified audited financial statement or an audited consolidated financial statement to the council which includes a balance sheet detailing its total assets, liabilities and net worth and a statement of income and expenses and includes information on all such corporation's affiliates.~~

The filings required by this section shall be submitted to the council by the 31st day of August of 1992 or 120 days after the health care institution's fiscal year end, whichever is later.

12 VAC 25-20-230. Financial statement (healthcare institution).

~~For fiscal years ending on or after July 1, 1992, each health care institution *Each hospital* that reports to the council or any corporation which controls a health care institution *hospital* that reports to the council shall submit audited consolidated financial statements and consolidating financial schedules to the council which include its total assets, liabilities, revenues, expenses, and net worth.~~

12 VAC 25-20-240. Deadline.

~~For fiscal years beginning on or after July 1, 1992, The information required by 12 VAC 25-20-180, 12 VAC 25-20-190, and 12 VAC 25-20-230 shall be due 120 days after the end of the health care institution's *hospital's* fiscal year end.~~

12 VAC 25-20-250. IRS Forms.

Each health care institution that reports to the council, any corporation controlling any such health care institution a *hospital*, and each affiliate of the health care institution *hospital* or corporation that controls a *hospital* shall submit, if the health care institution, corporation, or affiliate is an

organization exempt from taxes pursuant to § 501(C)(3) of the Internal Revenue Code, a copy of the most recent federal information return (Form 990) which was filed on behalf of the institution, corporation, or affiliate together with all accompanying schedules that are required to be made available to the public by the Internal Revenue Service. Information regarding not-for-profit affiliates which do no business in Virginia need not be submitted.

For fiscal years beginning on or after July 1, 1992, The information required by this section shall be due to the council 120 days after the completion of the health care institution's fiscal year end. If the information return (Form 990) has not been filed with the Internal Revenue Service, the due date will be extended to no later than the normal due date to the IRS or any extensions granted.

12 VAC 25-20-270. Fees.

A filing fee based on an adjusted patient days rate shall be set by the council, based on the needs to meet annual council expenses. The fee shall be established and reviewed at least annually and reviewed for its sufficiency at least annually by the council. All fees shall be paid directly to the council. The filing fee shall be no more than 11 cents per adjusted patient day for each health care institution filing. Prior to the beginning of each new fiscal year, the council shall determine a filing fee for hospitals and a filing fee for nursing homes based upon the council's proportionate costs of operation for review of hospital and nursing home filings in the current fiscal year, as well as the anticipated costs for such review in the upcoming year.

12 VAC 25-20-280. Schedule.

Fifty percent of the filing fee shall be paid to the council at the same time that the health care institution files its budget under the provisions of 12 VAC 25-20-140 of this chapter. The balance of the filing fee shall be paid to the council at the same time the health care institution files its annual report under the provisions of 12 VAC 25-20-130 of this chapter. Fifty percent of the fee shall be paid to the council no later than 30 days before the beginning of the health care institution's fiscal year. The fee shall be based on the health care institution's most recently submitted annual historical adjusted patient days. If there have been no previous annual historical filings, the health care institution's fee shall be based on its projected adjusted patient days for the fiscal year. The balance of the fee shall be paid to the council at the same time the health care institution submits its annual historical filing under the provisions of 12 VAC 25-20-130.

12 VAC 25-20-290. Late fee -- reports and fees Late fees.

A. A late charge shall be paid to the council by a health care institution that files reports or fees past the due date. The late charge may be waived if such a waiver is requested prior to the due date and the health care institution can show that an extenuating circumstance exists. Examples of extenuating circumstances include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, change of ownership of the institution, or the institution is a new facility that has recently opened.

~~12 VAC 25-20-300. Late fee -- budget, historical report, financial statements and fees.~~

B. A late charge of \$10 per working day shall be paid to the council by a health care institution that files its ~~annual projection (budget), quarterly historical report,~~ annual historical report filing, unconsolidated audited financial statements (or extracted equivalent) or fees past the due date.

~~12 VAC 25-20-310. Late fee -- charge schedule.~~

C. A late charge of \$50 shall be paid to the council by the health care institution that files the charge schedule past the due date.

~~12 VAC 25-20-320. Late fee -- survey and financial statement.~~

D. A late charge of \$25 per working day shall be paid to the council by the reporting entity required to complete the survey required by 12 VAC 25-20-180 including the audited consolidated financial statement required by 12 VAC 25-20-230, or both.

~~12 VAC 25-20-330. Late fee -- survey.~~

E. A late charge of \$25 per working day shall be paid to the council by the reporting entity required to complete the survey required by 12 VAC 25-20-170.

~~12 VAC 25-20-340. Late fee -- IRS Forms.~~

F. A late charge of \$25 per working day shall be paid to the council by the reporting entity required to submit the Form 990s as provided by 12 VAC 25-20-250.

12 VAC 25-20-350. Analysis of historical report filing data and schedule of charges.

A. The annual historical report filing data filed submitted by health care institutions as prescribed in 12 VAC 25-20-130 of this chapter shall be analyzed as directed by the council.

12 VAC 25-20-360. Analysis of budget.

B. The annual schedule of charges and projections (budget) of revenues and expenditures filed by health care institutions as prescribed by 12 VAC 25-20-140 of this chapter shall be analyzed as directed by the council.

12 VAC 25-20-370. Inspection. (Repealed).

The staff findings and recommendations and related council decisions on individual health care institutions' annual historical data findings will be kept on file at the council office for public inspection.

12 VAC 25-20-390. Annual report publication.

Periodically, but at least annually, the council will publish an annual report which will include, but not be limited to the following: cost per admission comparison, cost per patient day comparison, percentage increase in cost per patient day, budget and historical reports reviewed, interim rate changes, excess operating expenses, revenue reduction recommendations, operating profits and losses, deductions from revenue (contractuals, bad debts, and charity care) and hospital utilization.

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NOTICE: The forms used in administering 12 VAC 25-20-10 et seq., Rules and Regulations of the Virginia Health Services Cost Review Council, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Virginia Health Services Cost Review Council, 805 East Broad Street, 6th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Hospital Annual Historical Filing Form (~~eff. 3/22/94~~), 03-01, revised 4/30/96.

Ambulatory Surgery Surgical Hospital Annual Historical Filing Form (~~eff. 3/22/94~~), 03-02, revised 4/30/96.

Nursing Home Annual Historical Filing Form (~~eff. 3/22/94~~), 03-03, revised 4/30/96.

~~Hospital and Nursing Home~~ Income Statement Reconciliation Worksheet (~~eff. 3/22/94~~), 04-04, revised 4/30/96.

Psychiatric Hospital Annual Historical Filing Form (~~eff. 3/22/94~~), 03-05, revised 4/30/96.

Rehabilitation Hospital Annual Historical Filing Form (~~eff. 3/22/94~~), 03-06, revised 4/30/96.

VA.R. Doc. No. R96-306; Filed April 10, 1996, 10:21 a.m.

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture (amending 18 VAC 85-20-90).

Statutory Authority: §§ 54.1-2400 and 54.1-2900 et seq. of the Code of Virginia.

Basis: Chapters 24 (§ 54.1-2400 et seq.) and 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia provide the basis for this regulation. Chapter 24 establishes the general powers and duties of the health regulatory boards including the power to establish qualifications for licensure and the responsibility to promulgate regulations. Chapter 29 establishes the Board of Medicine and sets forth statutory standards for the practice of the healing arts.

Purpose: The purpose for the proposed amendment is to respond to comments, requests, and recent studies indicating that subsection B of 18 VAC 85-20-90 may be unnecessarily burdensome in its restriction on the use of amphetamine-like drugs, Schedule III and IV, in the treatment of obesity, except as a short-term adjunct. The intent of the amended regulation is to permit the prescribing of such drugs under conditions which protect the patient and deter drug diversion.

Substance: The proposed amendments to 18 VAC 85-20-90 would allow the prescribing of amphetamine-like drugs, Schedule III and IV, in the treatment of obesity provided the following conditions are met:

1. A comprehensive history and physical examination is performed and recorded at the time of initiation of treatment for obesity by the prescribing physician;
2. A diet and exercise program for weight loss is prescribed and recorded;
3. The patient is weighed at least once a month, at which time a recording shall be made of blood pressure, pulse, and the result of a cardiac-pulmonary evaluation;
4. No more than a 30-day supply of such drugs shall be prescribed or dispensed at any one time;
5. No such drugs shall be prescribed or dispensed for more than 90 days unless the patient:
 - a. Has a recorded weight loss of at least 12 pounds in the first 90 days;
 - b. Has continued progress toward a target weight; and
 - c. Has no adverse effects from the prescribed program.

Issues: Over the past year, the board has received a number of requests, both in writing and during public comment at board meetings, to amend or eliminate the restriction on prescribing Schedule III and IV drugs in the treatment of obesity.

Current regulations prohibit the use of those drugs for the purpose of weight reduction or control in the treatment of obesity, except as a short-term adjunct to a therapeutic regimen or weight reduction. Some of the comments requested clarification of "short term," and others requested elimination of the restriction. In addition, articles from medical journals and other publications were provided and reviewed by the board in support of the use of certain drugs as a conjunctive modality with behavior modification and other treatments.

The board has considered all comment and written material and discussed the issue at meetings on September 9, 1994, October 13, 1994, December 9, 1994, and February 9, 1995. As a result of its consideration of the issue, the board published a Notice of Intended Regulatory Action on June 26, 1995. No additional comment was received, so the board has proceeded with adoption of proposed amendments to its regulations.

Alternatives considered:

The board considered four alternatives: (1) retention of current regulation; (2) further definition and clarification of "short term" defined as a specific period of time; (3) elimination of subsection B of the regulation, which would permit the prescription of amphetamine-like drugs, Schedule III and IV, for weight reduction; or (4) relaxation of the current regulation by permitted use of such drugs with specific precautions against adverse effects and diversion.

- 1) The board rejected alternative 1 as too burdensome and lacking in clarity for compliance by practicing physicians and osteopaths.
- 2) The board considered alternative 2 and investigated appropriate definitions for "short term" in the context of

the regulation. To determine a definition that would be both reasonable and medically sound, the board reviewed language from other state regulations, from the American Medical Association, from the Physician's Desk Reference, individual physicians, and other literature. The board found a lack of consistency and uniformity in determining what constituted "short term" in the prescribing of drugs as an adjunct treatment.

During its consideration of amending subsection B, the board was presented with information indicating that the current regulation and prohibition was unnecessary for Schedule III and IV drugs. Evidence was presented indicating that such drug therapy, under close supervision, may have positive long-term results with relatively little concern about addiction, abuse, or other negative effects.

3) The board considered alternative 3 as the least restrictive regulatory action. However, the board determined that elimination of 18 VAC 85-20-90 B was not consistent with its responsibility to protect the public.

4) Therefore, in order to serve the best interests of physicians and their patients who may find the use of amphetamine-like drugs efficacious in the treatment of obesity, the board proposes alternative 4, which is to amend the more restrictive regulation and to allow longer term use of such drugs under certain conditions. Those conditions were specifically worded to ensure that a physician would be directly involved in the evaluation and treatment regimen, that there would be a regular monitoring of any adverse effects, that there would be steady progress toward a target weight, and that the supply of drugs would be limited to discourage diversion.

Advantages:

The advantages of alternative 4 are the availability of a potentially effective modality in the medical treatment of obese patients and the elimination of a regulatory restriction on the length of time the treatment is available to physicians and osteopaths.

The advantage to the patient is the assurance that the drugs will be prescribed only if they prove to be efficacious and not resulting in any harmful side effects. Through amended regulations the patient also has more assurance that the physician will determine through prescreening whether there is potential for harm.

The advantage to the public is that the limit of 30 days for a supply of the drugs and other controlling conditions will provide some assurance the drug is not prescribed for the purpose of diversion.

Disadvantage:

The possible disadvantage of the proposed regulatory action would be the potential for abuse by practitioners in their prescribing or by patients in their use of controlled substances. The board does not believe those risks are significant or unique enough to warrant the current regulatory prohibition on their use for weight control treatment.

Estimated Impact:

A. Projected number of persons affected and their cost of compliance: The 14,384 licensed physicians practicing in Virginia would be most affected by the amendment. There are an additional 9,652 physicians who hold Virginia licensure who may or may not be affected depending on statutory requirements of their resident state.

The 284 persons practicing osteopathic medicine in Virginia also have authority to prescribe and would be affected by the amendment. There are an additional 266 persons who hold Virginia licensure in osteopathic medicine who may or may not be affected depending on statutory requirements of their resident state.

There will be no cost for compliance. Those practitioners who treat patients with obesity may have a financial benefit in that they will have another modality for treatment, which may increase their number of patients.

B. Cost to the agency for implementation: The board will incur approximately \$2,500 in cost for printing and mailing amended regulations to licensees and other interested parties. There will be no additional cost for conducting a public hearing, which will be held in conjunction with a scheduled committee or board meeting.

The board does not anticipate any additional costs for investigations or administrative proceedings against physicians for violations of 18 VAC 85-20-90 B. Current regulations prohibit the use of amphetamine-like drugs, Schedule III and IV, for treatment of obesity except for "short term" use--a term that has raised a number of questions and made it difficult for physicians to comply. Proposed amendments clarify the regulation and provide guidelines for appropriate prescribing. Physicians who seek to comply with regulations will have clarification and will not find it necessary to call the board office about the meaning of "short term." Physicians or weight loss clinics that do not prescribe appropriately or who allow the drugs to be abused are currently being investigated and prosecuted under laws regarding standards of care.

C. Cost to local governments: These regulations will have no impact on local government.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected; the projected number of persons and employment positions to be affected; and the projected costs to affected businesses or entities to implement or comply with the regulation. The analysis presented below represents DPB's best estimate of these economic impacts.

Proposed Regulations

Summary of the Proposed Regulation

The current regulation prohibits the use of Schedule III and IV amphetamine-like drugs in the treatment of obesity, except "as a short term adjunct to a therapeutic regimen or weight reduction." The proposed amendment modifies this language to permit the use of such drugs for long-term treatment of obesity, contingent on certain conditions. These conditions include: 1) an initial physical examination; 2) a multi-modal treatment regimen that includes diet and exercise; 3) monthly evaluation; 4) restrictions on the supply of drugs that can be prescribed at any one time; and 5) continued progress toward a target weight.

Estimated Economic Impact

In essence, the proposed amendment to the current regulation increases the latitude available to physicians in the long-term treatment of obesity. This amendment will not increase regulatory compliance costs for physicians or their patients. As a result, the economic impact of the amendment is restricted to the expected value of its potential positive and negative health effects.

Positive Effects

Obesity has been shown to increase the risk of adult on-set diabetes, coronary disease, hypertension, hyperlipidemia, osteoarthritis, and a host of other maladies (see Bray ed., Obesity in America, U.S. Government Printing Office, 1979). Recent estimates place the direct and indirect health care costs associated with obesity in the billions of dollars (see Colditz, "Economic Cost of Obesity," American Journal of Clinical Nutrition, vol. 55, 1992). Short-term treatment of obesity has proved largely ineffective however. Most patients begin to regain weight shortly after therapy ends (see Goodrick and Foreyt, "Why Treatments for Obesity Don't Last," Journal of the American Dietary Association, vol. 91, 1991). This has led many in the medical community to view obesity as a chronic disease that must be treated on a long-term basis.

As with other chronic diseases, pharmacological therapy is one potential avenue for the long-term treatment of obesity. Recent clinical studies (most notably a four-year study by Dr. Weintraub at the University of Rochester) indicate that certain Class III and IV appetite suppressant medications, when used in conjunction with diet, exercise, and behavior modification, can be effective in the long-term treatment of obesity. Reported side effects have included dry mouth, fatigue, diarrhea, nausea, and memory loss. In general however, the side effects were described as mild and did not severely affect the clinical tolerance of the drugs (see Atkinson and Hubbard, "Report on the NIH Workshop on Pharmacological Treatment of Obesity," American Journal of Clinical Nutrition, vol. 60, 1994).

Based on such studies and requests from member physicians, the American Society of Bariatric Physicians published in 1990 guidelines for the use of Class III and IV appetite suppressant medications in the treatment of obesity. These guidelines share many points of similarity, and are not divergent from, the proposed amendment to the current regulation.

In sum, it appears that there is ample evidence to indicate that long-term pharmacological treatment of obesity is likely to be effective, and, therefore, likely to reduce the current health care costs associated with obesity.

Negative Effects

There are two possible negative health effects associated with the use of pharmacological therapy in the long-term treatment of obesity. The first has to do with the potential for drug abuse. There are several reasons, however, to believe that this is an unlikely consequence of the proposed regulatory amendment. First, unlike Class II appetite suppressant medications, Class III and IV appetite suppressant medications are unlikely to induce drug addiction (see for example Gotestam and Dahl, "Fenfluramine and Drug Addiction," in Bender and Brookes eds., Body Weight Control: The Physiology, Clinical Treatment and Prevention of Obesity, 1979). Second, the proposed amendment contains provisions which are specifically designed to mitigate the potential for this problem.

The second possible negative health effect has to do with our lack of knowledge regarding the consequences of long-term continuous use of these medications. Critics of this therapy have pointed out that the current one and four year studies do not provide complete assurance that there are no adverse outcomes associated with prescribing Class III and IV appetite suppressant medications to patients for the rest of their lives. In the absence of additional information, however, it is not feasible to assess the magnitude, or even the likelihood, of such possible negative health effects.

Projected Number of Businesses or Other Entities to Whom the Regulation will Apply

The proposed regulation will apply to the 14,384 licensed physicians currently practicing in Virginia.

Localities and Types of Businesses Particularly Affected

No localities are particularly affected. The proposed regulation does particularly affect physicians.

Projected Employment Effects

The regulation is not anticipated to have a measurable effect on employment.

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

The board concurs with the fiscal impact prepared by the Department of Planning and Budget.

Summary:

The current regulation prohibits the use of Schedule III and IV amphetamine-like drugs in the treatment of obesity, except "as a short term adjunct to a therapeutic regimen of weight reduction." The proposed amendment modifies this language to permit the use of such drugs for long-term treatment of obesity, contingent of certain conditions. These conditions include: (i) an initial physical examination; (ii) a multi-modal treatment regimen that includes diet and exercise; (iii) monthly evaluation; (iv) restriction on the supply of drugs that can

be prescribed at any one time; and (v) continued progress toward a target weight.

18 VAC 85-20-90. Pharmacotherapy for weight loss.

A. It shall be unprofessional conduct for a physician to prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. It shall ~~also~~ be unprofessional conduct for a physician to prescribe amphetamine-like drugs, Schedules III and IV, for the purpose of weight reduction or control in the treatment of obesity, ~~except as a short-term adjunct to a therapeutic regimen of weight reduction.~~ *unless the following conditions are met:*

1. *A comprehensive history and physical examination is performed and recorded at the time of initiation of treatment for obesity by the prescribing physician;*

2. *A diet and exercise program for weight loss is prescribed and recorded;*

3. *The patient is weighed at least once a month, at which time a recording shall be made of blood pressure, pulse, and the result of a cardiac-pulmonary evaluation;*

4. *No more than a 30-day supply of such drugs shall be prescribed or dispensed at any one time;*

5. *No such drugs shall be prescribed or dispensed for more than 90 days unless the patient:*

a. *Has a recorded weight loss of at least 12 pounds in the first 90 days;*

b. *Has continued progress toward a target weight; and*

c. *Has no adverse effects from the prescribed program.*

C. It shall be unprofessional conduct for a physician to prescribe amphetamine-like substances for use as an anorectic agent in children under 12 years of age.

VA.R. Doc. No. R96-304; Filed April 10, 1995, 11:25 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

STATE AIR POLLUTION 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(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of 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: 9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution (adding 9 VAC 5-20-204 and 9 VAC 5-20-205).

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

Effective Date: June 1, 1996.

Summary:

The amendments (i) revise the geographic delineation of the nonattainment areas to correspond to the recent federal promulgation (9 VAC 5-20-204); and (ii) revise the geographic delineation of the prevention of significant deterioration areas to correspond to the recent federal promulgation (9 VAC 5-20-205).

Agency Contact: Copies of the regulation may be obtained from Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426.

APPENDIX K: NONATTAINMENT AREAS.

9 VAC 5-20-204. Nonattainment areas.

Nonattainment areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each nonattainment area, in parentheses, is the classification assigned pursuant to Section 181 (a) for ozone and Section 186 (a) for carbon monoxide of the Federal Clean Air Act.

A. 1. Ozone.

4. a. Northern Virginia Ozone Nonattainment Area (serious).

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

2. b. Richmond Ozone Nonattainment Area (moderate).

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

*Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County Line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.

3. c. Hampton Roads Ozone Nonattainment Area (marginal).

James City County	Poquoson City
York County	Portsmouth City
Chesapeake City	Suffolk City
Hampton City	Virginia Beach City
Newport News City	Williamsburg City
Norfolk City	

4. d. White Top Mountain Ozone Nonattainment Area (marginal - rural transport area).

The portion above 4,500 feet elevation in Smyth County (located within the Jefferson National forest).

B. Carbon monoxide.

~~Northern Virginia Carbon Monoxide Nonattainment Area (moderate).~~

~~Arlington County — Alexandria City~~

2. All other pollutants.

None.

APPENDIX L: PREVENTION OF SIGNIFICANT DETERIORATION AREAS.

9 VAC 5-20-205. Prevention of significant deterioration areas.

I. A. Prevention of significant deterioration areas are geographically defined below by locality for the following criteria pollutants:

A. 1. Particulate matter.

AQCR 1 through 7	All areas
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B. 2. Sulfur dioxide.

AQCR 1 through 7	All areas
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~~G.~~ 3. Carbon monoxide.

- 1. AQCR 1 through 6 7 All areas
- 2. ~~AQCR 7~~ All areas except
Alexandria City
Arlington County

~~D.~~ 4. Ozone (volatile organic compounds):

- 1. a. AQCR 1 All areas except
the portion of White Top
Mountain above 4,500
feet elevation located in
Smyth County
- 2. b. AQCR 2 All areas
- 3. c. AQCR 3 All areas
- 4. d. AQCR 4 All areas except Stafford
County
- 5. e. AQCR 5 All areas except
Charles City County*
Chesterfield County
Hanover County
Henrico County
Colonial Heights City
Hopewell City
Richmond City

*Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County Line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.

- 6. f. AQCR 6 All areas except
James City County
York County
Chesapeake City
Hampton City
Newport News City
Norfolk City
Poquoson City
Portsmouth City
Suffolk City
Virginia Beach City
Williamsburg City

- 7. g. AQCR 7 No area

~~E.~~ 5. Nitrogen oxides.

- AQCR 1 through 7 All areas

~~F.~~ 6. Lead.

- AQCR 1 through 7 All areas

~~II.~~ B. All areas of the state are geographically defined as Prevention of Significant Deterioration Areas for the following pollutants:

Mercury
Beryllium
Asbestos
Fluorides
Sulfuric acid mist
Vinyl chloride

Total reduced sulfur:

Hydrogen sulfide
Methyl mercaptan
Dimethyl sulfide
Dimethyl disulfide

Reduced sulfur compounds:

Hydrogen sulfide
Carbon disulfide
Carbonyl sulfide

Municipal waste combustor organics (measured as total tetra-chlorinated through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)

Municipal waste combustor metals (measured as particulate matter)

Municipal waste combustor acid gases (measured as the sum of SO₂ and HC1)

~~III.~~ C. The classification of prevention of significant deterioration areas is as follows:

A. 1. Class I.

- 1. a. Federal - James River Face Wilderness Area (located in AQCR 2) and Shenandoah National Park (located in AQCR 2 and AQCR 4).

- 2. b. State - None.

B. 2. Class II - All areas of the state not designated in Class I.

~~C.~~ 3. Class III - None.

~~IV.~~ D. The area classification prescribed in Section ~~III~~ subsection C of this section may be redesignated in accordance with 40 CFR 52.21(e), (g), (u) and (t).



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

April 15, 1996

Peter W. Schmidt, Director
Department of Environmental Quality
State Air Pollution Control Board
P.O. Box 10009
Richmond, Virginia 23240

Dear Mr. Schmidt:

This letter acknowledges receipt of 9 VAC 5-20-204, Nonattainment Areas, and 9 VAC 5-20-205, Prevention of Significant Deterioration Areas, from the State Air Pollution Control Board.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "E. M. Miller, Jr." followed by a flourish.

E. M. Miller, Jr.
Acting Registrar of Regulations

Title of Regulation: [~~VR 120-99-05~~ 9 VAC 5-120-10 through 9 VAC 5-120-340.] Regulation for the Control of Emissions from Fleet Vehicles.

Statutory Authority: §§ 10.1-1308 and 46.2-1179.1 of the Code of Virginia.

Effective Date: June 1, 1996.

Summary:

The regulation requires that owners or operators of fleets with 10 or more vehicles make a percentage of annual vehicle purchases clean-fuel fleet vehicles and applies to fleets which operate in the following localities in the program areas: (i) the Northern Virginia area: 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; (ii) the Richmond area: Caroline County, Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond; and (iii) the Hampton Roads area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg. The program requires that a specific percentage of new purchases of covered fleet vehicles by covered fleet owners be phased in over three years according to a specific schedule which begins in model year 1995 for federal covered fleets, 1998 for covered fleets in the Northern Virginia area, and 2007 for covered fleets in the Richmond and Hampton Roads areas.

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 Alma Jenkins, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070.

[CHAPTER 120.

REGULATION FOR THE CONTROL OF EMISSIONS FROM FLEET VEHICLES.]

PART I.
DEFINITIONS.

[§ 4.4. 9 VAC 5-120-10.] General.

A. For the purpose of this [regulation chapter] and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in [§ 4.2 9 VAC 5-120-20].

B. Unless specifically defined in the Virginia Clean-Fuel Fleets Law or in this [regulation chapter], terms used shall

have the meanings commonly ascribed to them by recognized authorities.

[§ 4.2. 9 VAC 5-120-20.] Terms defined.

"Adjusted loaded vehicle weight (ALVW)" means the numerical average of the vehicle curb weight and the gross vehicle weight rating (GVWR).

"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 or an authorized representative.

["Available commercially" means that vehicles are available for sale in quantities and appropriate classifications sufficient to meet a fleet operator's program requirements.]

"Base of operations" means the area in which a fleet vehicle is primarily garaged.

"Bi-fuel" or "dual-fuel vehicle" means any motor vehicle capable of operating on two different fuels, but not a mixture of the fuels. A bi-fuel or dual-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified as meeting the standards prescribed in Part IV [(9 VAC 5-120-140 et seq.)] for both fuels and (ii) is eligible to earn credits as provided in Part V [(9 VAC 5-120-160 et seq.)] when the above requirements are met.

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

"Capable of being centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that could be refueled 100% of the time at a location that is owned, operated, or controlled by the covered fleet owner, or is under contract with the covered fleet owner. The fact that one or more vehicles in a fleet is not capable of being centrally fueled does not exempt an entire fleet from this regulation. For purposes of this definition, "location" means any building, structure, facility, or installation (i) which is owned or operated by the same person, (ii) which is located on one or more contiguous properties, (iii) which is under the control of the same person, and (iv) which contains a fueling pump or pumps for the use of the vehicles owned or controlled by that person. The determination of "capable of being centrally fueled" shall be in accordance with the procedures in Section III 4 of the preamble to 40 CFR Part 88 (58 FR 64679, December 9, 1993) or other procedures approved by the department.

The term "capable of being centrally fueled" does not include vehicles which are under normal circumstances garaged at a personal residence while not in use and are not centrally fueled.

"Centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that are fueled 100% of the time at a location that is owned, operated or controlled by the covered fleet owner, or is under contract with the covered fleet owner. Any vehicle that is under normal circumstances garaged at a personal residence at night but that is, in fact, centrally fueled 100% of the time shall be considered to be centrally fueled for the purpose of this definition. The fact that one or more

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vehicles in a fleet is not centrally fueled does not exempt an entire fleet from this regulation. The fact that a vehicle is not centrally fueled does not mean it could not be centrally fueled in accordance with the definition of "capable of being centrally fueled." For purposes of this definition, "location" means any building, structure, facility, or installation (i) which is owned or operated by the same person, (ii) which is located on one or more contiguous properties, (iii) which is under the control of the same person, and (iv) which contains a fueling pump or pumps for the use of the vehicles owned or controlled by that person.

"Clean alternative fuel" means any fuel, including methanol, ethanol, other alcohols, reformulated gasoline, diesel, natural gases, liquefied petroleum gas, hydrogen, and electricity or other power source used in a clean-fuel vehicle that complies with the standards applicable to such vehicle under the federal Clean Air Act when using such fuel or other power source. In case of a flexible-fuel vehicle or dual-fuel vehicle, "clean alternative fuel" means only a fuel for which the vehicle was certified when operating on clean alternative fuel.

"Clean-fuel fleet vehicle" means a vehicle for which one of the following vehicle emission standards apply:

1. Low-emission vehicle standards.
2. Ultra low-emission vehicle standards.
3. Zero-emission vehicle standards.

For the above standards three weight classes are included: light-duty vehicles and trucks (LDV-LDT) under 6,000 pounds Gross Vehicle Weight Rating (GVWR); LDTs between 6,000 pounds and 8,500 pounds GVWR; and heavy-duty vehicles (HDVs) over 8,500 pounds GVWR but up to and including 26,000 GVWR. The standards apply to dedicated, dual or flexible fuel conversions of LDVs, LDTs and HDVs. Vehicle conversions shall meet the emissions standards of 40 CFR Part 88 and shall also meet the applicable emission standards and provisions of 40 CFR Part 86 to the extent they are not consistent with the requirements of 40 CFR Part 88 in addition to any other requirements imposed on such vehicles by the U.S. Environmental Protection Agency pursuant to the federal Clean Air Act.

"Clean-fuel vehicle aftermarket conversion certifier" means the business or entity that obtains a certificate of conformity with the clean-fuel vehicle standards and requirements for a vehicle or engine conversion configuration pursuant to the requirements of 40 CFR Parts 86 and 88.

["Commerce" means commerce between any place in the Commonwealth of Virginia and any place outside thereof.]

"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 clean-fuel fleet program against state or federal requirements.

"Confidential information" means a secret formulae, secret process, secret methods or other trade secrets which are proprietary information certified by the signature of the

responsible person for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality; (ii) information that has not been and is not presently reasonably obtainable without the owner's consent 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; (iii) information which is not publicly available from sources other than the owner; and (iv) information the disclosure of which would cause substantial harm to the owner.

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

"Control" means:

1. When used to join all entities under common management, means any one or a combination of the following:
 - a. A third person or firm has equity ownership of 51% or more in each of two or more firms.
 - b. Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies.
 - c. One firm leases, operates, supervises, or in 51% or greater part owns equipment, facilities or both used by another person or firm, or has equity ownership of 51% or more of another firm.
2. When used to refer to the management of vehicles, means a person has the authority to decide who may operate a particular vehicle, and the purposes for which the vehicle may be operated.
3. When used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in the precise situation, such as the work place.

"Conventional fuel" or "conventional gasoline" means any gasoline which has not been certified under 40 CFR 80.40.

"Conversion configuration" means any combination of vehicle or engine conversion hardware and a base vehicle of a specific engine family.

"Covered fleet" means any fleet of 10 or more motor vehicles which are owned or operated, leased or otherwise controlled by a single person and which can be centrally fueled. For purposes of this definition the term "can be centrally fueled" means the sum of those vehicles that are centrally fueled and those vehicles that are capable of being centrally fueled. All motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person under common

control with such person, and by any person under common control with such person shall be treated as owned by such person. Vehicle types described below as exempt from the program shall not be counted toward the 10-vehicle criterion.

The term "covered fleet" does not include:

1. Motor vehicles under normal circumstances garaged at a personal residence at night unless the vehicles are centrally fueled;
2. Motor vehicles held for lease or rental to the general public;
3. Motor vehicles held for sale by motor vehicle dealers (including dealer demonstration vehicles);
4. Vehicles used for motor vehicle manufacturer product evaluations or tests;
5. Law-enforcement and other emergency vehicles; or
6. Nonroad vehicles including farm and construction vehicles.

"Covered fleet owner" means a person who owns or operates a fleet of at least 10 covered fleet vehicles and that fleet is operated in a single region of the program area (even if the covered fleet vehicles are garaged outside of the region). For the purpose of determining the 10-vehicle criterion, the program region shall include the geographic area of the entire nonattainment area in areas where the program region is part of a multistate nonattainment area.

"Covered fleet vehicle" means only a motor vehicle which is:

1. In a vehicle class for which emission standards prescribed in Part IV [(9 VAC 5-120-140 et seq.)] are applicable;
2. In a covered fleet which is centrally fueled or capable of being centrally fueled; and
3. Operated in a single region of the program area.

For the purposes of this definition, the program region shall include the geographic area of the entire nonattainment area in areas where the program region is part of a multistate nonattainment area.

"Dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

"Dealer demonstration vehicle" means any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicles sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for prepurchase or prelease evaluation.

The term "dealer demonstration vehicle" does not include vehicles held by dealers for their own business purposes, such as shuttle buses, loaner vehicles, or other repair or business-related vehicles.

"Dedicated-fuel vehicle" means a vehicle which operates on one specific fuel other than gasoline, diesel, or fuel mixtures containing more than 15% by volume of gasoline.

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

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

"Dual-fuel" or "bi-fuel vehicle" means any motor vehicle capable of operating on two different fuels, but not a mixture of the fuels. A dual-fuel or bi-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified as meeting the standards prescribed in Part IV [(9 VAC 5-120-140 et seq.)] for both fuels and (ii) is eligible to earn credits as provided in Part V [(9 VAC 5-120-160 et seq.)] when the above requirements are met.

"Emergency vehicle" means any of the following:

1. Law-enforcement vehicles operated by or under the direction of a federal, state, or local law-enforcement officer (i) in the chase or apprehension of violators of the law or persons charged with or suspected of any such violation; or (ii) in response to an emergency call.
2. Regional detention center vehicles operated by or under the direction of a correctional officer responding to an emergency call or operating in an emergency situation.
3. Vehicles used to fight fire, including publicly-owned state forest warden vehicles, when traveling in response to a fire alarm or emergency call.
4. Ambulances, rescue or life-saving vehicles designed or used for the principal purpose of supplying resuscitation or emergency relief where human life is endangered.

The term "emergency vehicle" does not include tow trucks or other utility vehicles that may be authorized to exceed the speed limit in special circumstances.

"Emission standard" means any provision of Part IV which prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

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

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

"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.

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"Federal tier I" or "tier I" means new gaseous and particulate tail pipe emission standards for use in certifying new light duty vehicles and light duty trucks, beginning with the 1994 model year and are completely phased-in by the 1996 model year, as promulgated by the U.S. Environmental Protection Agency.

["Financial hardship" means (i) the cost of a clean-fuel fleet vehicle of a type or model that meets the normal requirements and practices of the principal business of the fleet operator exceeds 25% of a nonclean-fuel fleet vehicle or (ii) the covered fleet operator's annual budget to own and operate that portion of the fleet covered by the requirements of this [regulation chapter] increases by more than 1.0% in a budget year.]

"Flexible-fuel vehicle" means any motor vehicle capable of operating on any mixture of two or more different fuels. A flexible-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified on any blend of two fuels as meeting the standards prescribed in Part IV [(9 VAC 5-120-140 et seq.)] and (ii) is eligible to earn credits as provided in Part V [(9 VAC 5-120-160 et seq.)] when the above requirements are met. Credits shall be allocated based on the less stringent certification standard.

"Formal hearing" means administrative proceedings 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.

"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 (HDV)" 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.

"Light HDV" means any affected motor vehicle weighing more than 8,500 pounds and less than or equal to 19,500 pounds GVWR.

"Medium HDV" means any affected motor vehicle weighing more than 19,500 pounds and less than or equal to 26,000 pounds GVWR.

"Heavy HDV" means any affected motor vehicle weighing more than 26,000 pounds.

"Held for lease or rental to the general public" means, in reference to a motor vehicle, that it is owned or controlled primarily for the purpose of short-term rental or extended-term leasing (with or without maintenance), without a driver, pursuant to a contract.

"Implementation plan" means the plan, including any revision thereof, which has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Inherently low emissions vehicle (ILEV)" means a LEV meeting ULEV NO_x standards and having negligible evaporative emissions, as defined in 40 CFR 88.311-93. No dual-fuel or flexible-fuel vehicle shall be considered an ILEV unless it is certified to the applicable standard on all fuel types for which it is designed to operate.

"Law-enforcement vehicle" means any vehicle (i) which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the federal government, or by state highway patrols, or other similar law-enforcement agencies, and (ii) which is used for the purpose of law-enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. For federal law-enforcement vehicles, the definition contained in Executive Order 12759, Section 11: Alternative Fueled Vehicle for the Federal Fleet, Guidance Document for Federal Agencies, shall apply.

The term "law-enforcement vehicle" does not include law-enforcement agency vehicles used primarily for administrative or staff purposes.

"Light-duty truck (LDT)" 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 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 (LDV)" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"Loaded vehicle weight (LVW)" 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.

"Low emission vehicle (LEV)" means a motor vehicle as defined in 42 USC § 7583.

["Majority of travel" means that more than 50% of the annual miles traveled by the vehicle are in one or more

localities in a region of the program area. This can be determined by (i) record keeping, by vehicle, for all miles traveled inside and outside of the region which demonstrates that more than half of the annual miles traveled are within the region, or (ii) records of total customer base which show that more than 50% of the customers have a location inside of the region. Other methods may be accepted based on case-by-case determinations. For vehicles garaged within a region having the majority of travel outside the region boundaries, the above methods shall be used to determine whether such vehicles shall be subject to the program requirements.]

"Mobile Emission Reduction Credit" or "MERC" means an air quality credit which is generated according to Part X [(9 VAC 5-120-280 et seq.)].

"Model year (MY)" means, for purposes of fleet purchase requirements, September 1 through August 31.

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

"New covered fleet vehicle" means a vehicle that has not been previously controlled by the current purchaser, regardless of the model year. All vehicles leased or purchased for a fleet are considered in determining the number of new covered fleet vehicles to be purchased by a covered fleet owner for purposes of calculating percentage purchase requirements.

The term "new covered fleet vehicle" does not include any:

1. Motor vehicle manufactured before the effective date of this regulation; and
2. Motor vehicle transferred (i) due to the purchase of a company not previously controlled by the purchaser, (ii) as part of an employee transfer, or (iii) for seasonal requirements not to exceed 120 days.

["New motor vehicle" means, except with respect to vehicles or engines imported or offered for importation, a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle and engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under § 202 of the federal Clean Air Act which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).]

"NMHC" means nonmethane hydrocarbons contained in a gas sample, including all oxygenated organic gases containing five or fewer carbon atoms; aldehydes, ketones, alcohols, ethers, and all known alkanes, alkenes, alkynes and aromatics containing 12 or fewer carbon atoms.

"NMOG" means the total mass of nonmethane organic gas in the emissions of a vehicle including oxygenated and nonoxygenated hydrocarbon emissions.

"Nonattainment area" means, for any air pollutant, an area which is designated "nonattainment" with respect to that

pollutant under the provisions of § 107(d) of the federal Clean Air Act.

"Noncovered fleet" means nine or less 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.

"Noncovered vehicle" means any vehicle that is exempt from this regulation.

"Nonexempt fleet vehicle" means and motor vehicle which is not specifically exempt under § 241(5) of the federal Clean Air Act.

"Nonmethane hydrocarbon equivalent" means the sum of the carbon mass emissions of nonoxygenated nonmethane hydrocarbons plus the carbon mass emissions of alcohols, aldehydes, or other organic compounds which are separately measured in accordance with the applicable test procedures of 40 CFR Part 86, expressed as gasoline-fueled vehicle nonmethane hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1 respectively.

["OEM" means original equipment manufacturer. "Original equipment manufacturer (OEM)" means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce. "Original equipment manufacturer" shall also include any business, individual, or entity that obtains a certificate of conformity with the clean-fuel vehicle standards and requirements for a vehicle or engine configuration pursuant to the requirements of 40 CFR Parts 86 and 88 prior to placing a vehicle into service.]

"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 purposes 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, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a covered fleet.

"Owned or operated, leased, or otherwise controlled by such person" means either of the following:

1. Such person holds the beneficial title to the vehicle.
2. Such person uses the vehicle for transportation purposes pursuant to a contract or similar arrangement, the term of such contract or similar arrangement is for a

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period of 120 days or more, and such person has control over the vehicle pursuant to the definition of control.

"Partially covered fleet" means a vehicle fleet that contains 10 or more covered fleet vehicles and includes noncovered vehicles.

"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, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

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

"Program area" means the territorial area encompassed by the boundaries of localities in the following designated regions:

1. The Northern Virginia region: 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.
2. The Richmond region: Caroline County, Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.
3. The Hampton Roads region: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.

"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.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association or cooperative:
 - a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision making functions for the business entity, or
 - b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more operating facilities and has authority to sign documents and such authority has been assigned or delegated to such representative in accordance with procedures of the business entity and

the delegation of authority is approved in advance by the board;

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

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

"Test weight (TW)" means the vehicle curb weight added to the gross vehicle weight rating and divided by two.

"Transitional low emission vehicle (TLEV)" means a motor vehicle which has been certified as not exceeding the applicable standards prescribed in Part IV [(9 VAC 5-120-140 et seq.)].

"Transportation control measures (TCMs)" means those air pollution control measures which are directed at limiting the location and use of motor vehicles, including, but not limited to, the following: carpools, special bus lanes, rapid transit systems, commuter park and ride lots, bicycle lanes, signal system improvements, and employer commute options. TCMs do not include those control measures which are directed at limiting emissions directly from mobile sources, such as the following: federal motor vehicle emission standards [(40 CFR Part 86)], fuel volatility limits, air pollution control anti-tampering programs, clean-fuel fleet programs, and motor vehicle emissions inspection programs.

["Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.]

"Ultra-low emissions vehicle (ULEV)" means a motor vehicle as defined in 42 USC § 7583.

"Under normal circumstances garaged at personal residence" means, in reference to a motor vehicle, that, when not in use, it is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, or business location or any combination thereof.

"Used for motor vehicle manufacturer product evaluations and tests" means, in reference to a motor vehicle, that it is (i) owned and operated by a motor vehicle manufacturer or a motor vehicle component manufacturer, or (ii) owned or held by a university research department, independent testing laboratory or other such evaluation facility solely for the purpose of evaluating the performance of such vehicle for engineering, research and development, or quality control reasons.

The term "used for motor vehicle manufacturer product evaluations and tests" does not include any vehicles that are held by manufacturers for their own business purposes, such as:

1. Vehicles allocated to sales people for their business use,

2. Delivery vehicles, and
3. Other business related vehicles.

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

"Vehicle conversion" or "conversion" means a nonoriginal equipment manufacturer produced vehicle that is certified by the U.S. Environmental Protection Agency as meeting clean-fuel fleet vehicle standards.

"Vehicle curb weight" means actual manufacturer's estimated weight of the vehicle in operational status with all standard equipment and weight of fuel at normal tank capacity, and the weight of optional equipment computed in accordance with 40 CFR 86.082-24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Vehicle miles traveled " means the total miles traveled in one year as supported by records and documentation. Where no such documentation exists, the vehicle miles traveled shall be assumed to be 10,000 miles per year.

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

"Virginia Clean-Fuel Fleets Law" means §§ 46.2-1176, 46.2-1179.1, 46.2-1180 A, 46.2-1187, and 46.2-1187.1 of Title 46.2 of the Code of Virginia.

"Virginia Clean-Fuel Fleet Program" means the program for the regulation and purchase of clean-fuel fleet vehicles to reduce vehicle emissions as established by the Virginia Clean-Fuel Fleets Law.

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

"Virginia Voluntary Mobile Emission Credit Program" means the program in Part X [(9 VAC 5-120-280 et seq.)] for the generation of voluntary mobile emissions credits to receive early or additional air quality credits.

"Zero emissions vehicle (ZEV)" means a motor vehicle as defined in 42 USC § 7583.

PART II.
GENERAL PROVISIONS.

[~~§ 2.4~~, 9 VAC 5-120-30.] Applicability and authority of the department.

A. The provisions of this [~~regulation chapter~~], unless specified otherwise, apply to any owner of a covered fleet vehicle specified in subsection B of this section.

B. The provisions of this [~~regulation chapter~~], unless specified otherwise, apply to the following covered fleet vehicles:

1. Any covered fleet vehicle registered by the Virginia Department of Motor Vehicles and garaged within the program area.
2. Any covered fleet vehicle registered by the Virginia Department of Motor Vehicles and garaged outside of

the program area which has (i) a base of operations in the program area or (ii) a majority of [~~its annual~~] travel in the program area.

3. Any covered fleet 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 or a majority of [~~its annual~~] travel in the program area.

4. Any covered fleet 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 or a majority of [~~its annual~~] travel 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 [(9 VAC 5-120-140 et seq.)].

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

F. This regulation is established to implement the provisions of the Virginia Clean-Fuel Fleets Law and the federal Clean Air Act.

G. 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, and in some cases they have been cross-referenced.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.

[~~§ 2.2~~, 9 VAC 5-120-40.] Hearings and proceedings.

A. The primary hearings and proceedings associated with this regulation are as follows:

1. 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 [~~§ 2.4~~ 9 VAC 5-120-60.].
2. 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.
3. 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.

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B. 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.

C. 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.

[§-2-3. 9 VAC 5-120-50.] Appeal of case decisions.

A. Any fleet 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. In cases where the board fails to make a case decision, the fleet owner or other party significantly affected, may provide written notice to the board that a decision is due in accordance with §§ 9-6.14:11 and 9-6.14:12 of the Administrative Process Act. Appeals thereafter shall be in accordance with the Administrative Process Act.

C. 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.

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

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

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

G. 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.

[§-2-4. 9 VAC 5-120-60.] 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 for the reasons specified in the order.

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 15 days after the hearing for the purpose of receiving additional public comment.

[§-2-5.9 VAC 5-120-70.] 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 Clean-Fuel Fleets Law.

[§-2-6. 9 VAC 5-120-80.] Conditions on approvals.

A. The board or director may impose conditions upon an approval issued pursuant to this regulation, (i) which may be necessary to carry out the policy of the Virginia Clean-Fuel Fleets 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 board or department in this regard.

B. A fleet owner may consider any condition imposed by the board or director as a denial of the approval, which shall entitle the applicant to appeal the decision pursuant to [§-2-3 9 VAC 5-120-50.]

[§-2-7. 9 VAC 5-120-90.] 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 fleet 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.

[§ 2.8. 9 VAC 5-120-100.] 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.

[§ 2.9. 9 VAC 5-120-110.] Delegation of authority.

In accordance with the Virginia Clean-Fuel Fleets Law, the director, or a designee, may perform any act of the board provided under this [regulation chapter].

[§ 2.10. 9 VAC 5-120-120.] Availability of information.

A. Fleet vehicle 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 fleet 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 Virginia Clean-Fuel Fleets 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 shall satisfy the following criteria:

1. Information for which the fleet 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 fleet 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 fleet owner; and

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

PART III.
CLEAN-FUEL FLEET [VEHICLE] PURCHASE
REQUIREMENTS.

[§ 3.1. 9 VAC 5-120-130.] Clean-fuel fleet vehicle purchase requirements for covered fleet owners.

A. [For the Northern Virginia region of the program area,] covered fleet owners shall make purchases of clean-fuel fleet vehicles beginning with model year 1998 vehicles. [This subsection shall apply to fleet vehicles or in the case of multi-regional fleets that portion of the fleet vehicles (i) registered, (ii) having a base of operations, or (iii) having a majority of travel in one or more localities in the Northern Virginia region.

B. For the Richmond and Hampton Roads regions of the program area, covered fleet owners shall make purchases of clean-fuel fleet vehicles beginning with model year 2007 vehicles. For the purposes of the vehicle purchase phase-in rate in Table III-A, the phase-in schedule shall begin in model year 2007 and proceed thereon. This subsection shall apply to fleet vehicles or in the case of multi-regional fleets that portion of the fleet vehicles (i) registered, (ii) having a base of operations, or (iii) having a majority of travel in one or more localities in the Richmond or Hampton Roads regions.]

[B. C.] Covered fleet owners shall register with the department prior to making any clean-fuel fleet vehicles purchases.

[C. D.] Purchase requirements shall be in terms of a percentage of the total number of new covered fleet vehicles of each class purchased each year by a covered fleet owner.

[D. E.] The purchase requirements may be extended [by up to three years if the appropriate vehicles are not available for sale in the State of California as provided in 9 VAC 5-120-140 B and 9 VAC 5-120-150 C].

[E. F.] The purchase requirements shall be phased in over three years according to the schedule in Table III-A.

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TABLE III-A
VEHICLE PURCHASE REQUIREMENT PHASE IN RATE

Vehicle Class	Model Year 1998	Model Year 1999	Model Year 2000+
LDV/LDT	30%	50%	70%
HDV	50%	50%	50%

[F. G.] The purchase requirements of this program may be met by (i) purchasing new vehicles which meet the clean-fuel fleet vehicle LEV, ULEV, or ZEV standards, (ii) by converting conventional vehicles to clean-fuel fleet vehicles which meet the applicable standards, or (iii) by redeeming credits.

[H. Purchase requirements may be waived for one year at a time for covered fleet owners that demonstrate financial hardship. Purchase requirements may be waived only for that portion of the required clean-fuel fleet vehicle purchases that would cause the covered fleet owner to exceed the criteria for financial hardship.]

PART IV.
EMISSION STANDARDS FOR CLEAN-FUEL FLEET VEHICLES.

[§ 4.1. 9 VAC 5-120-140.] Light-duty vehicle exhaust emission standards.

A. No light-duty clean-fuel fleet vehicle shall discharge nonmethane organic gases (NMOG), carbon monoxide (CO), nitrogen oxides (NO_x), formaldehyde (HCHO), and particulate matter (PM), if applicable, in its exhaust emissions in excess of the limits set forth in Tables IV-A, IV-B, IV-C, IV-D, IV-E, IV-F IV-G, IV-H, IV-I and IV-J.

TABLE IV-A
INTERMEDIATE USEFUL LIFE STANDARDS (grams/mile) FOR LIGHT-DUTY VEHICLES FOR HCs, CO, NO_x, HCHO, AND PM

Vehicle emission category	NMOG	CO	NO _x	HCHO	PM ¹
TLEV	0.125	3.4	0.4	0.015	
LEV	0.075 ²	3.4 ²	0.2	0.015 ²	
ULEV	0.040	1.7	0.2 ²	0.008	

1 - Applies to diesel vehicles only.

2 - Applies to ILEVs.

TABLE IV-B
FULL USEFUL LIFE STANDARDS (grams/mile) FOR LIGHT-DUTY VEHICLES FOR HCs, CO, NO_x, HCHO, AND PM

Vehicle emission category	NMOG	CO	NO _x	HCHO	PM ¹
TLEV	0.156	4.2	0.6	0.018	0.08
LEV	0.090 ²	4.2 ²	0.3	0.018 ²	0.08 ²
ULEV	0.055	2.1	0.3 ²	0.011	0.04

1 - Applies to diesel vehicles only

2 - Applies to ILEVs.

TABLE IV-C
INTERMEDIATE USEFUL LIFE STANDARDS (grams/mile) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO, NO_x, HCHO, AND PM

LVW (pounds)	Vehicle emission category	NMOG	CO	NO _x	HCHO	PM ¹
0-3750	TLEV	0.125	3.4	0.4	0.015	
	LEV	0.075 ²	3.4 ²	0.2	0.015 ²	
	ULEV	0.040	1.7	0.2 ²	0.008	
3751-5750	TLEV	0.160	4.4	0.7	0.018	
	LEV	0.100 ²	4.4 ²	0.4	0.018 ²	
	ULEV	0.050	2.2	0.4 ²	0.009	

1 - Applies to diesel vehicles only.

2 - Applies to ILEVs.

TABLE IV-D
FULL USEFUL LIFE STANDARDS (grams/mile) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO, NO_x, HCHO, AND PM

LVW (pounds)	Vehicle emission category	NMOG	CO	NO _x	HCHO	PM ¹
0-3750	TLEV	0.156	4.2	0.6	0.018	0.08
	LEV	0.090 ²	4.2	0.3	0.018 ²	0.08 ²
	ULEV	0.055	2.1 ²	0.3 ²	0.011	0.04
3751-5750	TLEV	0.200	5.5	0.9	0.023	0.08
	LEV	0.130 ²	5.5 ²	0.5	0.023 ²	0.08 ²
	ULEV	0.070	2.8	0.5 ²	0.013	0.04

1 - Applies to diesel vehicles only.

2 - Applies to ILEVs.

TABLE IV-E
INTERMEDIATE USEFUL LIFE STANDARDS (grams/mile)
FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO, NO_x,
HCHO, AND PM

ALVW (pounds)	Vehicle emission category	NMOG	CO	NO _x ²	HCHO	PM ¹
0-3750	LEV	0.125 ³	3.4 ³	0.4	0.015 ³	
	ULEV	0.075	1.7	0.2 ³	0.008	
3751-5750	LEV	0.160 ³	4.4 ³	0.7	0.018 ³	
	ULEV	0.100	2.2	0.4 ³	0.009	
5751-8500	LEV	0.195 ³	5.0 ³	1.1	0.022 ³	
	ULEV	0.117	2.5	0.6 ³	0.011	

- 1 - Applies to diesel vehicles only.
- 2 - Does not apply to diesel vehicles.
- 3 - Applies to ILEVs.

TABLE IV-F
FULL USEFUL LIFE STANDARDS (grams/mile) FOR HEAVY
LIGHT-DUTY TRUCKS FOR HCs, CO, NO_x, HCHO, AND PM

ALVW (pounds)	Vehicle emission category	NMOG	CO	NO _x	HCHO	PM ¹
0-3750	LEV	0.180 ²	5.0 ²	0.6	0.022 ²	0.08 ²
	ULEV	0.107	2.5	0.3 ²	0.012	0.04
3751-5750	LEV	0.230 ²	6.4 ²	1.0	0.027 ²	0.10 ²
	ULEV	0.143	3.2	0.5 ²	0.013	0.05
5751-8500	LEV	0.280 ²	7.3 ²	1.5	0.032 ²	0.12 ²
	ULEV	0.167	3.7	0.8 ²	0.016	0.06

- 1 - Applies to diesel vehicles only.
- 2 - Applies to ILEVs.

TABLE IV-G
NMOG STANDARDS (grams/mile) FOR FLEXIBLE- AND
DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN
ALTERNATIVE FUEL FOR LIGHT LIGHT-DUTY TRUCKS
AND LIGHT-DUTY VEHICLES

Vehicle Type	50,000 Mile NMOG Standard	100,000 Mile NMOG Standard
MY 1996 and later:		
LDTs (0-3,750 pounds LVW and LDVs)	0.125	0.156
LDTs (3,751-5,750 pounds LVW)	0.160	0.200
Beginning MY 2001:		
LDTs (0-3,750 pounds LVW) and LDVs	0.075	0.090
LDTs (3,751-5,750 pounds LVW)	0.100	0.130

TABLE IV-H
NMOG STANDARDS (grams/mile) FOR FLEXIBLE- AND
DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN
ALTERNATIVE FUEL FOR HEAVY LIGHT-DUTY TRUCKS

Vehicle Type	50,000 Mile NMOG Standard	120,000 Mile NMOG Standard
Beginning MY 1998:		
LDTs (0-3,750 pounds ALVW)	0.125	0.180
LDTs (3,751-5,750 pounds ALVW)	0.160	0.230
LDTs (5,751-8,500 pounds ALVW)	0.195	0.280

TABLE IV-I
NMOG STANDARDS (grams/mile) FOR FLEXIBLE- AND
DUAL-FUELED VEHICLES WHEN OPERATING ON
CONVENTIONAL FUEL FOR LIGHT LIGHT-DUTY TRUCKS
AND LIGHT-DUTY VEHICLES

Vehicle Type	50,000 Mile NMOG Standard	100,000 Mile NMOG Standard
Beginning MY 1996:		
LDTs (0-3,750 pounds LVW) and LDVs	0.25	0.31
LDTs (3,751-5,570 pounds LVW)	0.32	0.40
Beginning MY 2001		
LDTs (0-3,750 pounds LVW) and LDVs	0.125	0.156
LDTs (3,751-5,570 pounds LVW)	0.160	0.200

TABLE IV-J
NMOG STANDARDS (grams/mile) FOR FLEXIBLE- AND
DUAL-FUELED VEHICLES WHEN OPERATING ON
CONVENTIONAL FUEL FOR HEAVY LIGHT-DUTY TRUCKS

Vehicle Type	50,000 Mile NMOG Standard	120,000 Mile NMOG Standard
Beginning MY 1998:		
LDTs (0-3,750 pounds ALVW)	0.25	0.36
LDTs (3,751-5,750 pounds ALVW)	0.32	0.46
LDTs (5,751-8,500 pounds ALVW)	0.39	0.56

B. If vehicles meeting the [above emission] standards [set forth in subsection A of this section] are not offered for sale in the State of California [and sold or otherwise available commercially in the Commonwealth of Virginia] as of model year 1998, then the beginning of the [fleet program purchase requirements set forth in 9 VAC 5-120-130 F] shall

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be delayed until the first model year in which such vehicles are offered for sale in the State of California [~~or until model year 2001, whichever is earlier~~ and sold or otherwise available commercially in the Commonwealth of Virginia].

C. For purposes of credit calculations, the emission standards listed in Tables IV-K shall be used.

TABLE IV-K
EMISSION STANDARDS FOR DETERMINING CREDIT WEIGHTINGS
Light-Duty Vehicle and Light-Duty Truck Emission Levels for Credit Calculations

Vehicle Category	LDVs and LDTs ≤ 6000 gvwr and ≤ 3750 lvw (grams/mile)	LDTs ≤ 6000 gvwr and > 3750 lvw but ≤ 5750 lvw (grams/mile)	LDTs > 6000 gvwr and ≤ 3750 tw (grams/mile)	LDTs > 6000 gvwr and > 3750 tw (grams/mile)	LDTs > 6000 gvwr and > 5750 tw but ≤ P500 gvwr (grams/mile)
Tier 1 Gasoline Vehicle:					
NMHC ¹	0.25	0.32	0.25	0.32	0.39
CO	3.4	4.4	3.4	4.4	5.0
NO _x	0.4	0.7	0.4	0.7	1.1
LEV:					
NMOG .	0.075	0.1	0.125	0.16	0.195
CO	3.4	4.4	3.4	4.4	5.0
NO _x	0.2	0.4	0.4	0.7	1.1
ULEV:					
NMOG .	0.04	0.05	0.075	0.1	0.117
CO	1.7	2.2	1.7	2.2	2.5
NO _x	0.2	0.4	0.2	0.4	0.6
ZEV:					
NMOG .	0.0	0.0	0.0	0.0	0.0
CO	0.0	0.0	0.0	0.0	0.0
NO _x	0.0	0.0	0.0	0.0	0.0

1 - For purpose of credit calculations, NMHC is assumed to be equal to NMOG.

[§ 4.2. 9 VAC 5-120-150.] Heavy-duty [clean-fuel fleet] vehicle [exhaust emission] standards.

A. No heavy-duty clean-fuel fleet vehicle shall discharge nonmethane hydrocarbon gases (NMHG), carbon monoxide (CO), nitrogen oxides (NO_x), formaldehyde (HCHO), and particulate matter (PM), if applicable, in its exhaust emissions in excess of the limits set forth in Table IV-L.

TABLE IV-L
EMISSION STANDARDS FOR HEAVY-DUTY TRUCKS

Vehicle Category	HDV > 8500 ≤ 26,000 gvwr (grams/brake horse-power per hour)
LEV:	
NMHC + NO _x	3.8

CO	15.50
PM	0.10
ULEV:	
NMHC + NO _x	2.50
CO	7.20
PM	0.05
HCHO	0.05
ILEV:	
NMHC + NO _x	2.50
CO	14.40
PM	0.10
HCHO	0.05
ZEV:	
NMHC + NO _x	0.0
CO	0.0
PM	0.0
HCHO	0.0

B. The standards set forth in Table IV-L refer to the exhaust emitted while the vehicle is being tested in accordance with the applicable test procedures set forth in 40 CFR Part 86, Subpart N.

C. If vehicles meeting the standards set forth in Table IV-L are not offered for sale in the State of California [and sold or otherwise available commercially in the Commonwealth of Virginia] as of model year 1998, then the beginning of the purchase requirements [set forth in 9 VAC 5-120-130 F] shall be delayed until the first model year in which such vehicles are offered for sale in the State of California [~~or until model year 2001, whichever is earlier~~ and sold or otherwise available commercially in the Commonwealth of Virginia].

D. Exhaust emissions from engines used in heavy-duty low emission vehicles shall meet conventional vehicle standards set forth in 40 CFR Part 86 for total hydrocarbon, carbon monoxide, particulate, and organic material hydrocarbon equivalent.

E. A heavy-duty vehicle shall be certified as a ZEV if it is determined by engineering analysis that the vehicle satisfies the following conditions:

1. The vehicle fuel system shall not contain either carbon or nitrogen compounds (including air) which, when burned, form nonmethane hydrocarbons, oxides of nitrogen, carbon monoxide formaldehyde, or particulates as exhaust emissions.
2. All primary and auxiliary equipment and engines must have no emissions of nonmethane hydrocarbons, oxides of nitrogen carbon monoxide formaldehyde and particulates.
3. The vehicle fuel system and any auxiliary engine shall have no evaporative emissions.
4. Any auxiliary heater must not operate at ambient temperatures above 40°F.

F. For purposes of credit calculations, the emission standards set forth in Table IV-M shall be used.

TABLE IV-M
EMISSION STANDARDS FOR DETERMINING CREDIT
WEIGHTINGS

Heavy-Duty Engine Emission Levels for Credit Calculations

Vehicle Category	HDV 8,501-26,000 gvwr (grams/brake horse-power per hour)
Conventional Vehicles:	
HC+NO _x ^{1,2}	5.3
CO.....	15.5
LEV:	
NMHC+NO _x	3.8
CO.....	15.5
ULEV:	
NMHC+NO _x	2.5
CO.....	7.2
ZEV:	
NMHC+NO _x	0.0
CO.....	0.0

1 - For the purposes of credit calculation, HC is assumed to be equal to NMHC.

2 - The conventional heavy duty emissions standard is not a combined standard.

PART V.
CLEAN-FUEL FLEET [VEHICLE] CREDIT
REQUIREMENTS.

[§ 5-1. 9 VAC 5-120-160.] Clean-fuel fleet vehicle credit requirements.

All credit-generating vehicles shall meet the applicable emission standards in Part IV [(9 VAC 5-120-140 et seq.)] and other requirements of this regulation.

[§ 5-2. 9 VAC 5-120-170.] Credit generation.

A. Credits may be granted to a covered fleet owner for any of the following:

1. Purchase of a clean-fuel fleet vehicle during any period subsequent to the approval of this regulation by the U.S. Environmental Protection Agency but prior to the effective date of the commencement of the clean-fuel fleet vehicle purchase requirement if the purchase meets all other clean-fuel fleet vehicle requirements applicable to such purchase, including the requirement to use only the fuel on which the vehicle was certified as a clean-fuel fleet vehicle.
2. Purchase of a greater number of clean-fuel fleet vehicles than required in Part III [(9 VAC 5-120-130)] which meet clean-fuel fleet vehicle emission standards specified in Part IV [(9 VAC 5-120-140 et seq.)].
3. Purchase of a clean-fuel fleet vehicle which meets more stringent emission standards than the LEV standards in Part IV.

4. Purchase of a clean-fuel fleet vehicle in an exempt or noncovered vehicle category by the owner of a covered or partially covered fleet.

B. Credits may be granted to a fleet owner for the purchase of a clean-fuel fleet vehicle prior to the approval of this regulation by the U.S. Environmental Protection Agency if the purchase meets all clean-fuel fleet vehicle credit program requirements in this regulation, including the following:

1. The vehicle purchase is certified to meet emission standards in Part IV.
2. The vehicle purchased, if not a dedicated-fuel vehicle, meets the standards in Part IV on any fuel that the vehicle operates on.

C. A bi-fuel or flexible-fuel vehicle which is purchased by a fleet owner to comply with this regulation shall only be operated in the program area region on the fuels on which it was certified as a clean-fuel fleet vehicle.

D. A noncovered or covered fleet owner who purchases or leases a clean-fuel fleet vehicle only to generate a clean-fuel fleet vehicle credit shall be subject to the same requirements of this regulation as a covered fleet owner who purchases or leases a clean-fuel fleet vehicle to demonstrate compliance with purchase requirements in Part III.

[§ 5-3. 9 VAC 5-120-180.] Credit values.

A. Credit values for LDVs and LDTs shall be rounded to two decimal places and determined in accordance with Table V-A:

TABLE V-A
Credits Based on Reduction in NMOG

Vehicle Category	LDVs and LDTs ≤ 6000 gvwr and ≤ 3750 lvw	LDTs ≤ 6000 gvwr and > 3750 lvw and ≤ 5750 lvw	LDTs > 6000 gvwr and ≤ 3750 alvw	LDTs > 6000 gvwr and > 3750 alvw but ≤ 5750 alvw	LDTs > 6000 gvwr and > 5750 alvw but ≤ 8500 alvw
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

B. Credits generated by the purchase or lease of a qualifying LDV or a LDT clean-fuel fleet vehicle shall be designated at the time of issuance as light-duty clean-fuel fleet vehicle credits.

C. Credit values for HDVs shall be determined in accordance with Table V-B:

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TABLE V-B
Credits Based on Reduction in NMOG + NO_x

Vehicle Category	Light HDV	Medium HDV	Heavy HDV
LEV	1.00	1.00	1.00
ULEV	1.87	1.87	1.87
ZEV	3.53	3.53	3.53

D. Credits generated by the purchase of a qualifying light, medium or heavy HDV clean-fuel fleet vehicle shall be designated at the time of issuance as light, medium or heavy HDV clean-fuel fleet vehicle credits.

[§ 5.4. 9 VAC 5-120-190.] Credit use.

A. All credits generated in accordance with this regulation may be sold, traded or held for later use without discount or depreciation of such credits to meet the requirements of this regulation.

B. Covered fleet owners may use credits to meet the purchase requirements specified in Part III (i) by trading credits for vehicle purchases, or (ii) by redeeming credits that have been held for later use.

C. A covered fleet owner desiring to demonstrate full or partial compliance with covered fleet purchase requirements by the redemption of credits shall surrender sufficient credits as determined by this regulation. In lieu of purchasing a clean-fuel fleet vehicle, a fleet owner shall surrender credits equal to the credit value for the corresponding vehicle class and credit calculation as defined in Table V-A or V-B.

D. Credits earned within the boundaries of an interstate nonattainment area may be traded within the boundaries of that nonattainment area.

E. Credits may be traded according to the specifications established in this section and in [§ 5.5. 9 VAC 5-120-200].

F. Credits earned as a result of clean-fuel fleet vehicle purchase requirements in one program area region shall not be used to demonstrate compliance in another program area region, even if a state contains more than one program area region.

G. Owners of noncovered fleets and covered fleets may generate credits and be eligible for TCM exemptions provided that requirements of this [regulation chapter] are met.

[§ 5.5. 9 VAC 5-120-200.] Credit allocation.

A. Credits generated by the purchase of LDVs and LDTs of 8,500 pounds GVWR or less may be used to demonstrate compliance with covered fleet purchase requirements applicable to LDVs or LDTs of 8,500 pounds GVWR or less.

B. Credits generated by the purchase of vehicles of more than 8,500 pounds GVWR shall not be used to demonstrate compliance with the covered fleet purchase requirements for vehicles weighing 8,500 pounds GVWR or less.

C. Credits generated by the purchase of vehicles of 8,500 pounds GVWR or less shall not be used to demonstrate

compliance with requirements for vehicles of more than 8,500 pounds GVWR.

D. Credits generated by the purchase of a HDV of a particular weight subclass may be used to demonstrate compliance with required HDV purchases for the same or lighter weight subclass. These credits shall not be used to demonstrate compliance with required HDV purchases for vehicles of heavier weight subclass than the weight subclass of the vehicle which generated the credits.

[~~§ 5.6. 9 VAC 5-120-210.~~] Credit generation for noncovered fleets.

A. Noncovered fleet owners have no purchase requirements but may be eligible to generate credits and Transportation Control Measures (TCM) exemptions if they purchase credit-generating vehicles which meet the emissions standards in Part IV [(9 VAC 5-120-140 et seq.)].

B. Notwithstanding Part III [(9 VAC 5-120-130)], noncovered fleet owners who want to generate credits shall be subject to all provisions of this regulation.

PART VI. EXEMPTIONS FROM TRANSPORTATION CONTROL MEASURES.

[~~§ 6.1. 9 VAC 5-120-220.~~] Clean-fuel fleet vehicle transportation control measure (TCM) exemptions.

A. Eligible clean-fuel fleet vehicles shall be exempt from time-of-day, day-of-week and other similar temporal-based TCMs which are established wholly or partially for air quality reasons and have an air quality element, as accounted for in the Implementation Plan except where such exemptions create a clear safety hazard.

B. Vehicles certified as clean-fuel fleet vehicles, except for ILEVs, shall not be exempt from TCMs where the temporal element is secondary to some other control element.

C. Vehicles certified as clean-fuel fleet vehicles shall be exempt from temporal TCMs commencing with the effective date of this regulation subject to the following:

1. The subject vehicle shall remain in compliance with applicable clean-fuel fleet vehicle emission standards in Part IV and other clean-fuel fleet vehicle credit program requirements.
2. Temporal clean-fuel fleet vehicle TCM exemptions are not effective outside program areas.
3. Clean-fuel fleet vehicle TCM exemptions are not transferrable between vehicles within the same fleet.
4. Clean-fuel fleet vehicle TCM exemptions shall not be sold or traded.

D. Clean-fuel fleet vehicles making use of the TCM exemptions shall be clearly identified as such by a special license plate issued by the Department of Motor Vehicles if the vehicle is to be eligible for TCM exemptions specified in subsection A of this section.

PART VII.
REQUIREMENTS FOR VEHICLE CONVERSIONS TO
QUALIFY AS A CLEAN-FUEL FLEET VEHICLE.

[~~§ 7.1.~~ 9 VAC 5-120-230.] General.

A. Conversions of engines or vehicles which satisfy the requirements of [~~§ 88.306-94 of 40 CFR Part 88~~ 40 CFR 88.306-94] shall be treated as a clean-fuel vehicle under 40 CFR Part 88, Subpart C.

B. The engine or vehicle shall be converted using a conversion configuration which has been certified according to the provisions of 40 CFR Part 86 using applicable emission standards and other provisions from 40 CFR Part 88 for clean-fuel engines and vehicles.

C. The clean-fuel vehicle aftermarket conversion certifier (i) shall be considered a manufacturer for purposes of §§ 206 and 207 of the federal Clean Air Act and related enforcement provisions and (ii) shall be liable for in-use performance of all the vehicles produced under the certificate of conformity as outlined in 40 CFR Part 85.

D. The installation of the certified conversion configuration may be performed by the aftermarket conversion certifier.

1. The aftermarket conversion certifier shall submit a list of additional installers to the administrator within five working days if the installation of the certified conversion configuration is performed by an entity other than the aftermarket conversion certifier.

2. The aftermarket conversion certifier shall provide instructions for installation of the aftermarket conversion configuration to installers listed on the certificate and ensure that the configurations are properly installed.

E. The useful life period for the purpose of determining the in-use liability of the clean-fuel vehicle aftermarket conversion certifier shall be the original useful life of the vehicle prior to conversion.

F. The conversion from an engine or vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel engine or vehicle shall not be considered a violation of the tampering provisions of § 203(a)(3) of the federal Clean Air Act if such conversion is done pursuant to a conversion configuration certificate by the aftermarket conversion certifier or by an installer listed on the certificate.

PART VIII.
CERTIFICATION REQUIREMENTS FOR COVERED AND
NONCOVERED FLEET OWNERS.

[~~§ 8.1.~~ 9 VAC 5-120-240.] Covered fleet owner certification requirements.

A. A covered fleet owner shall certify as specified below that vehicle purchases and credits sold or traded for each model year meet the purchase requirements for compliance according to Part III [(9 VAC 5-120-130)].

1. Certification shall be provided annually within 30 days of the end of the model year.
2. Certification shall indicate reporting period, reporting person, program area region, number of covered fleet

vehicles by weight classes, number of new covered fleet vehicles by weight class, number of new clean-fuel fleet vehicles purchased by weight class and emission standard (LEV, ULEV, ZEV), current model year credit balance, and cumulative credit balance.

B. The department shall verify the existence of credits prior to any transactions pertaining to selling or trading of credits.

C. All credit transactions shall be approved by the department.

D. Falsification of certification of compliance or credit generation shall constitute a violation of this regulation and the fleet owner shall be subject to enforcement procedures in Part IX [(9 VAC 5-120-260 et seq.)].

[~~§ 8.2.~~ 9 VAC 5-120-250.] Noncovered fleet owner certification requirements.

Noncovered fleet owners who wish to generate credits and participate in the program as defined by this [regulation chapter] shall comply with all certification requirements in this section.

PART IX.
ENFORCEMENT PROCEDURES.

[~~§ 9.1.~~ 9 VAC 5-120-260.] Enforcement of regulations and orders.

A. Whenever the department has reason to believe that a violation of any provision of this [regulation chapter] or any order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of this [regulation chapter] or the order 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 either of the following enforcement proceedings:

1. Administrative proceedings. The department may negotiate to obtain compliance through administrative means. Such means may be a consent agreement or any other mechanism that ensures or obtains compliance, including but not limited to those means prescribed in [~~§ 9.2~~ 9 VAC 5-120-270.] In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement. Unless specified otherwise in this regulation, the administrative means shall be approved by the board.

2. Judicial proceedings. The department may obtain compliance through legal means pursuant to §§ 10.1-1316 and 46.2-1187 of the Code of Virginia.

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

C. Orders and consent orders are considered administrative means and the board reserves the right to use such means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or

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approved by the department under subsection A of this section.

D. Any enforcement proceeding under this section may be used as a mechanism to ensure that the compliance with this regulation is reasonably maintained by the owner or other person.

E. Case decisions regarding the enforcement of regulations and orders shall be made by the director. These decisions (i) may be regarded by the aggrieved party as a final decision of the board and appealed pursuant to subsection C of [~~§-2-3~~ 9 VAC 5-120-50] or (ii) may be appealed to the board pursuant to subsection A of [~~§-2-3~~ 9 VAC 5-120-50].

[~~§-9-2~~ 9 VAC 5-120-270.] Civil charges: basis for civil charges; multiple violations.

A. Compliance with this regulation by a covered fleet facility shall be the responsibility of the owner. Failure to comply with the appropriate provisions of the Virginia Clean-Fuel Fleets Law or this regulation may be considered sufficient cause for enforcement action, including negotiated civil charges. In addition thereto, violators are also subject to criminal prosecution. The department shall develop a schedule of civil charges that sets forth the type of civil charges that are appropriate for the different types of violations. This schedule shall be used in negotiating consent agreements with fleet owners. Each day of violation shall be a separate offense, and each motor vehicle shall be treated separately in assessing violations.

B. In the case of multiple violations considered at one time, the department may by consent of the fleet owner provide by order for separate civil charges for each violation.

PART X.

VOLUNTARY MOBILE EMISSION REDUCTION CREDIT PROGRAM.

[~~§-10-1~~ 9 VAC 5-120-280.] General.

A. The Virginia Voluntary Mobile Emission Reduction Credit Program, herein known as "MERC Program," is established to encourage the creation and trading of air quality credits generated by reductions in vehicle emissions.

B. To the extent that this part conflicts with any regulation of the board promulgated to carry out the requirements of § 10.1-1322.3 of the Code of Virginia, the regulation promulgated to carry out § 10.1-1322.3 shall apply.

C. The MERC Program applies in the program area.

D. The creation and use of air quality credits under the MERC Program shall not be used to satisfy purchase requirements in Part IV in such a way that may result in the double counting of credits.

E. Covered and noncovered fleet owners may participate in the MERC Program.

F. Only vehicles which meet applicable standards of Part IV and vehicles which meet the standards of a TLEV may generate MERCs in accordance with the provisions in [~~§-10-2~~ 9 VAC 5-120-290].

G. Where this part does not fully address a particular issue, the provisions of applicable U.S. Environmental Protection Agency policy and guidance documents shall govern. These include, but are not limited to, the following:

1. Economic Incentive Program Rules (58 FR 11110, February 23, 1993).

2. Interim Guidance on the Generation of Mobile Source Emission Reduction Credits (58 FR 11134, February 23, 1993).

3. Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits; Final Policy Statement and Accompanying Technical Issues Document (51 FR 43814, December 4, 1986).

H. To the extent that this part conflicts with any U.S. Environmental Protection Agency policy and guidance documents cited in subsection G of this section, the documents cited in subsection G of this section shall apply.

[~~§-10-2~~ 9 VAC 5-120-290.] MERC generation and values.

A. All MERCs generated shall be (i) quantifiable, (ii) enforceable at both the federal and state levels, (iii) consistent with the implementation plan attainment and reasonable further progress demonstrations, (iv) surplus to reductions required by other federal and state regulations or relied upon in any relevant attainment plan or demonstration, and (v) permanent within the timeframe specified by the MERC program.

1. MERCs may be generated by the purchases of or by entering into a legal binding agreement according to [~~§-10-5~~ 9 VAC 5-120-320] to purchase clean-fuel fleet vehicles or TLEVs.

2. MERCs shall not be generated if the credits generated by the purchases of clean-fuel fleet vehicles or TLEVs are otherwise required by federal or state law, permits or approvals, agreements, administrative or judicial orders, or other enforcement actions or regulations.

B. Federal Tier I emission standards shall be the baseline used to determine the amount of emission reductions attributable to a vehicle purchase for the creation of a MERC credit prior to 1998. After 1998 the baseline shall be LEV emission standards.

C. The emission standards listed in Tables X-A or X-B shall be used, depending upon vehicle weight class, for purposes of MERC calculations. Calculations shall be made for each pollutant listed in the following tables:

TABLE X-A
EMISSION STANDARDS FOR DETERMINING CREDIT
WEIGHTINGS FOR MERCS
 Light-Duty Vehicle and Light-Duty Truck Emission Levels for
 Credit Calculations

Vehicle Category	LDVs and LDTs ≤ 6000 gvwr and ≤ 3750 lvw (grams/mile)	LDTs ≤ 6000 gvwr and > 3750 lvw but ≤ 5750 lvw (grams/mile)	LDTs > 6000 gvwr and ≤ 3750 tw (grams/mile)	LDTs > 6000 gvwr and > 3750 tw but ≤ 5750 tw (grams/mile)	LDTs > 6000 gvwr and > 5750 tw but ≤ 8500 tw (grams/mile)
Tier 1 Gasoline Vehicle:					
NMHC ¹	0.25	0.32	0.25	0.32	0.39
CO	3.4	4.4	3.4	4.4	5.0
NO _x	0.4	0.7	0.4	0.7	1.1
TLEV:					
NMOG .	0.125	N/A	N/A	N/A	N/A
CO	3.4	N/A	N/A	N/A	N/A
NO _x	0.4	N/A	N/A	N/A	N/A
LEV:					
NMOG .	0.075	0.1	0.125	0.16	0.195
CO	3.4	4.4	3.4	4.4	5.0
NO _x	0.2	0.4	0.4	0.7	1.1
ULEV:					
NMOG .	0.04	0.05	0.075	0.1	0.117
CO	1.7	2.2	1.7	2.2	2.5
NO _x	0.2	0.4	0.2	0.4	0.6
ZEV:					
NMOG .	0.0	0.0	0.0	0.0	0.0
CO	0.0	0.0	0.0	0.0	0.0
NO _x	0.0	0.0	0.0	0.0	0.0

1 - For purpose of credit calculations, NMHC is assumed to be equal to NMOG.

TABLE X-B
EMISSION STANDARDS FOR DETERMINING CREDIT
WEIGHTINGS
 Heavy-Duty Engine Emission Levels for Credit Calculations

Vehicle Category	HDV 8,501-26,000 gvwr (grams/brake horse-power per hour)
Conventional Vehicles:	
HC+NO _x ^{1,2}	5.3
CO.....	15.5
TLEV:	
NMHC+NO _x	N/A
CO.....	N/A

LEV:	
NMHC+NO _x	3.5
CO.....	15.5
ULEV:	
NMHC+NO _x	2.5
CO.....	7.2
ZEV:	
NMHC+NO _x	0.0
CO.....	0.0

1 - For the purposes of credit calculation, HC is assumed to be equal to NMHC.

2 - The conventional heavy-duty emissions standard is not a combined standard.

D. MERC generation shall be determined by multiplying the annual vehicle miles traveled per vehicle by the difference between the federal Tier I values in Table X-A or X-B and values for the appropriate certification by weight class of the vehicle purchased. MERC credits shall be calculated in accordance with the following formula:

$$\text{MERC} = (A - B) \text{VMT}$$

where:

MERC = Mobile emission reduction credit, expressed in grams per year.

A = Tier I credit weighting value (LEV standard after 1998), expressed in grams per mile.

B = Credit weighting value of vehicle purchased, expressed in grams per mile.

VMT = Vehicle miles traveled, expressed in miles per year.

E. MERCs shall be assigned based on the emission credit for the least stringent vehicle certification of either a bi-fuel or dual-fuel vehicle.

[§ 10.3.9 VAC 5-120-300.] MERC use and verification.

A. MERC use may include, but not be limited to, the following:

1. In situations involving delayed compliance or noncompliance penalties.
2. To satisfy emission reduction requirements beyond the reasonably available control technology requirements.
3. To satisfy reasonable available control technology requirements for existing sources.
4. To meet new source emissions offset requirements at the offset ratios specified in the federal Clean Air Act.

B. MERCs shall not be used to satisfy the requirements of (i) best available control technology, (ii) lowest achievable emission rate, (iii) new source performance standards, (iv) federal inspection and maintenance programs, and (v) employer trip reduction programs.

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C. MERCs may be generated if they are based on controls which are surplus to any required controls or any trading activities which are allowed for within the guidance specific to the mobile source programs in subsection B of this section.

D. All MERCs generated in accordance with this program may be sold, traded, or held for later use without discount or depreciation of such credits.

E. MERCs generated in a program region (i) may be used in the same program region or (ii) may be used in another program region with an equal or higher air quality nonattainment classification than the area in which the source is located and emissions from such other area contribute to a violation of the national ambient air quality standard in the area in which the source is located.

F. All MERC uses and transactions shall be approved by the department on a case-by-case basis.

G. The department shall verify the existence of MERCs prior to any transactions pertaining to selling or trading of credits.

H. Falsification of certification of compliance or MERC generation shall constitute a violation of this regulation and the fleet owner shall be subject to enforcement procedures in Part IX [(9 VAC 5-120-260 et seq.)].

[§ 10.4. 9 VAC 5-120-310.] Reporting requirements.

A. All MERC Program participants shall file an annual report recording vehicle purchase and credit transactions for each model year in which they participate in the program.

B. The report shall be in a format acceptable to the department and shall include, but not be limited to, the following information:

1. Name of program participant.
2. Address of program participant.
3. Registration number provided by the department to the program participant.
4. Address and phone number of all fleet facilities or other sources of air pollution under the control of the program participant and subject to MERC credits.
5. Designated contact person for each fleet facility and source of air pollution subject to MERC credits.
6. Number of TLEV purchases, conversions and leased vehicles that meet TLEV standards.
7. Number of LDV purchases, conversions and leased vehicles that meet LEV standards.
8. Number of HDV purchases, conversions and leased vehicles that meet LEV standards.
9. MERC calculations for each vehicle and pollutant.

C. The report shall be submitted to the department within 30 days of the end of the calendar year.

[§ 10.5. 9 VAC 5-120-320.] Legal binding agreements.

The department may use one or more of the following as a mechanism to make MERCs legally enforceable:

1. Consent agreement.
2. Consent order.

[§ 10.6. 9 VAC 5-120-330.] Enforcement.

A. Any program participant that fails to carry-out any provisions of a legally-binding agreement entered into with the department may be subject to enforcement provisions in Part IX.

B. Failure to comply with the reporting requirements in [§ 10.4. 9 VAC 5-120-310] may result in MERCs being invalid or other enforcement actions provided in Part IX [(9 VAC 5-120-260 et seq.)].

PART XI.

REQUIREMENTS FOR FEDERAL FLEETS.

[§ 11.1. 9 VAC 5-120-340.] Compliance by federal fleets.

A. Fleets owned or operated by any agency, department, or instrumentality of the United States shall comply with this regulation and shall be treated in the same manner as private or other government fleets [except as provided in subsection C of this section].

B. Federal agencies shall obtain clean-fuel fleet vehicles from original equipment manufacturers, to the extent possible, as required under § 248 of the federal Clean Air Act.

[C. In accordance with § 46.2-1179 B of the Code of Virginia, federal covered fleet owners shall make purchases of clean-fuel fleet vehicles beginning with model year 1995 vehicles according to the conditions and phase-in purchase rate set forth in Part III [(9 VAC 5-120-130)], provided the phase-in schedule begins in 1995 and proceeds thereon. This subsection shall apply to fleet vehicles or in the case of multi-regional fleets that portion of the fleet vehicles (i) registered, (ii) having a base of operations, or (iii) having a majority of travel in one or more localities in the Northern Virginia region.]

DOCUMENTS INCORPORATED BY REFERENCE

Executive Order 12759, Section 11, Alternative Fueled Vehicle for the Federal Fleet, Guidance Document for Federal Agencies.

VA.R. Doc. No. R96-300; Filed April 1, 1996, 2:57 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: State Plan for Medical Assistance Relating to Home Health Services.

12 VAC 30-50-160. Narrative for the Amount, Duration and Scope of Services: Home Health Services.

[VR 460-02-2-1300 12 VAC 30-60-10 through 12 VAC 30-60-160]. Standards Established and Methods Used to Assure High Quality of Care.

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 396 E 5 of the 1995 Appropriations Act.

Effective Date: July 1, 1996.

Summary:

The amendments eliminate the requirement that recipients meet home bound criteria in order to receive durable medical equipment by expanding the coverage of medically necessary durable medical equipment and supplies (DME) to the entire Medicaid population. This change was mandated by § 396 E 5 of the 1995 Appropriations Act. This final regulation varies from the previous emergency regulation in two respects: it requires that DME providers be appropriately licensed before they can become Medicaid providers and it delineates criteria for coverage of specific pieces of durable medical equipment.

Durable medical equipment and supplies is a federally required service under home health services (42 CFR 440.70). 42 CFR 441.15 defines that home health services include, at a minimum, nursing services, home health aide services, and medical supplies, equipment, and appliances. The State Plan is required to indicate that these are covered services for the categorically needy recipients and medically needy recipients to whom skilled nursing facility services are provided under the Plan.

The Department of Medical Assistance Services (DMAS) has been providing home health services, and the concomitant DME since 1969. Prior to the current emergency regulation, the entire Medicaid population was limited to: ostomy, respiratory, and dialysis equipment and supplies.

Durable medical equipment and supplies still must be ordered by a physician and be medically necessary to treat a health care condition. A Certificate of Medical Necessity (CMN) is required and must be in place within 21 days from the time that the ordered supplies are rendered. A CMN must be based on an assessment of the patient's medical needs. The CMN must contain all medical documentation that is required by DMAS' DME policies, procedures, regulations, and laws. Supporting documentation may be attached to the CMN; however, the physician's order, in its entirety, must be recorded on the CMN. It is the responsibility of the DME provider to maintain a copy of the CMN on file for DMAS' post payment audit reviews.

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 Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-50-160. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts. Home health services shall be provided in accordance with guidelines found in the Virginia Medicaid Home Health Manual.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a registered nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. ~~Durable medical supplies, equipment, and appliances (DME) and supplies~~ suitable for use in the home.

1. *General requirements and conditions.*

a. ~~All medically necessary supplies, and equipment, and appliances are shall be covered for Medicaid recipients who meet home health criteria. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. All medical supplies, equipment, and appliances shall be provided in accordance with guidelines found in the Virginia Medicaid DME and Supplies Manual.~~

b. *DME providers shall adhere to all applicable DMAS policies, laws, and regulations for durable medical equipment and supplies. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for durable medical equipment or supplies which are regulated by such licensing agency or agencies.*

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- c. DME and supplies must be furnished pursuant to a Certificate of Medical Necessity (CMN) (DMAS-352).
- d. A CMN shall contain a physician's diagnosis of a recipient's medical condition and an order for the durable medical equipment and supplies that are medically necessary to treat the diagnosed condition and the recipient's functional limitation. The order for DME or supplies must be justified in the written documentation either on the CMN or attached thereto. The CMN shall be valid for a maximum period of six months for Medicaid recipients 21 years of age and younger. The maximum valid time period for Medicaid recipients older than 21 years of age is 12 months. The validity of the CMN shall terminate when the recipient's medical need for the prescribed DME or supplies ends.
- e. DME must be furnished exactly as ordered by the attending physician on the CMN. The CMN and any supporting verifiable documentation must be complete (signed and dated by the physician) and in the provider's possession within [24 30] days from the time the ordered DME and supplies are initially furnished by the DME provider. Each component of the DME must be specifically ordered on the CMN by the physician. For example, the order must specify IV pole, pump, and tubing. A general order for IV supplies shall not be acceptable.
- f. The CMN shall not be changed, altered, or amended after the attending physician has signed it. If changes are necessary, as indicated by the recipient's condition, in the ordered DME or supplies, the DME provider must obtain a new CMN. New CMNs must be signed and dated by the attending physician within [24 30] days from the time the ordered supplies are furnished by the DME provider.
- g. DMAS shall have the authority to determine a different (from those specified above) length of time a CMN may be valid based on medical documentation submitted on the CMN. The CMN may be completed by the DME provider or other health care professionals, but it must be signed and dated by the attending physician. Supporting documentation may be attached to the CMN but the attending physician's entire order must be on the CMN.
- h. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment audit review purposes. DME providers shall not create nor revise CMNs or supporting documentation for this service after the initiation of the post payment review audit process. [Attending physicians shall not complete, nor sign and date, CMNs once the post payment audit review has begun.]
2. ~~Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency. Reserved.~~
3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:
- Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners.
 - Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office.
 - Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).
 - Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface); mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes.
 - Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).
 - Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs).
 - Orthotics, including braces, splints, and supports.
 - Home or vehicle modifications.
 - Items not suitable for or *not* used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.).
 - Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).
4. For coverage of blood glucose meters for pregnant women, refer to 12 VAC 30-50-500.
5. ~~Durable medical equipment, supplies, and appliances must be ordered by a physician and be medically necessary to treat a health care condition. The physician shall complete a written certificate of medical necessity for all durable medical equipment, supplies, and appliances based on an assessment of the patient's needs. The medical and supply provider shall keep a copy of the certificate of medical necessity. The certificate of medical necessity shall be signed and dated by the physician. Reserved.~~

6. The medical equipment and supply vendor must provide the equipment and supplies as prescribed by the physician on the certificate of medical necessity. Orders shall not be changed unless the vendor obtains a new certificate of medical necessity prior to ordering or providing the equipment or supplies to the patient.

7. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the physician or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the medical equipment and supply vendor may not bill the Medicaid recipient for the service that was provided.

~~8. Only supplies, equipment, and appliances that are considered medically necessary shall be covered. All of the following must be met to be considered medically necessary. The supplies, equipment, or appliance must be:~~

- ~~a. A reasonable and necessary part of the recipient's treatment plan;~~
- ~~b. Consistent with the symptoms, diagnosis, or medical condition of the illness or injury under treatment;~~
- ~~c. Not furnished for the convenience of the recipient, the family, the attending practitioner, or other practitioner or supplier;~~
- ~~d. Necessary and consistent with generally accepted professional medical standards (i.e., not experimental or investigational);~~
- ~~e. Established as safe and effective for the recipient's treatment; and~~
- ~~f. Furnished at the most appropriate level which is suitable for use in the recipient's home environment.~~

8. *The following criteria must be satisfied through the submission of adequate and verifiable documentation satisfactory to the department. Medically necessary DME and supplies shall be:*

- a. Ordered by the physician on the CMN;*
- b. A reasonable and necessary part of the recipient's treatment plan;*
- c. Consistent with the recipient's diagnosis and medical condition particularly the functional limitations and symptoms exhibited by the recipient;*
- d. Not furnished solely for the convenience, safety, or restraint of the recipient, the family, attending physician, or other practitioner or supplier;*
- e. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and*
- f. Furnished at a safe, effective, and cost effective level suitable for use in the recipient's home environment.*

9. Coverage of enteral nutrition (EN) and total parenteral nutrition (TPN) which do not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN and TPN shall not include the provision of routine infant formulae. [*A nutritional assessment shall be required for all recipients receiving nutritional supplements.*]

E. Physical therapy, occupational therapy, or speech/language pathology services and audiology services provided by a home health agency or physical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.
2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually without authorization. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;
2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;
3. Community food service delivery arrangements;
4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;
5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and
6. Services related to cosmetic surgery.

12 VAC 30-60-10 through 12 VAC 30-60-160. Standards Established and Methods Used to Assure High Quality of Care.

~~§ 1. 12 VAC 30-60-10. Institutional care.~~

Institutional care will be provided by facilities qualified to participate in Title XVIII and/or Title XIX.

~~§ 2. 12 VAC 30-60-20. Utilization control: general acute care hospitals.~~

~~A. General acute care hospitals.~~

4. A. The Commonwealth of Virginia is required by state law to take affirmative action on all hospital stays that approach 15 days. It is a requirement that the hospitals submit to the Department of Medical Assistance Services complete information on all hospital stays where there is a

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need to exceed 15 days. The various documents which are submitted are reviewed by professional program staff, including a physician who determines if additional hospitalization is indicated. This review not only serves as a mechanism for approving additional days, but allows physicians on the Department of Medical Assistance Services' staff to evaluate patient documents and give the Program an insight into the quality of care by individual patient. In addition, hospital representatives of the Medical Assistance Program visit hospitals, review the minutes of the Utilization Review Committee, discuss patient care, and discharge planning.

2- B. In each case for which payment for inpatient hospital services, or inpatient mental hospital services is made under the State Plan:

- a- 1. A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care.
- b- 2. The physician, or physician assistant under the supervision of a physician, must recertify, at least every 60 days, that patients continue to require inpatient hospital or mental hospital care.
- c- 3. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services.

B. 12 VAC 30-60-30. *Utilization control:* long-stay acute care hospitals (nonmental hospitals).

4- A. Services for adults in long-stay acute care hospitals. The population to be served includes individuals requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, comprehensive rehabilitative therapy services and individuals with communicable diseases requiring universal or respiratory precautions.

- a- 1. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Physician certification must accompany the request. Periods of care not authorized by DMAS shall not be approved for payment.
- b- 2. These individuals must have long-term health conditions requiring close medical supervision, the need for 24-hour licensed nursing care, and the need for specialized services or equipment needs.
- c- 3. At a minimum, these individuals must require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit 24 hours a day on which the resident resides), and coordinated multidisciplinary team approach to meet needs that must include daily therapeutic leisure activities.
- d- 4. In addition, the individual must meet at least one of the following requirements:

(1) a. Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

(3) c. The individual must require at least one of the following special services:

(a) (1) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) (2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(c) (3) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

(d) (4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) (5) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(f) (6) Ongoing management of multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).

e- 5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the individuals' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

f- 6. When the individual no longer meets long-stay acute care hospital criteria or requires services that the facility is unable to provide, then the individual must be discharged.

2- B. Services to pediatric/adolescent patients in long-stay acute care hospitals. The population to be served shall include children requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), comprehensive rehabilitative therapy services, and those children having communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as

chicken pox, measles, strep throat, etc.) and with terminal illnesses.

a. 1. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care, and any additional information that justifies the need for intensive services. Periods of care not authorized by DMAS shall not be approved for payment.

b. 2. The child must have ongoing health conditions requiring close medical supervision, the need for 24-hour licensed nursing supervision, and the need for specialized services or equipment. The recipient must be age 21 or under.

c. 3. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit 24 hours a day on which the child is residing), and a coordinated multidisciplinary team approach to meet needs.

d. 4. In addition, the child must meet one of the following requirements:

(1) a. Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc.; or

(3) c. Must require at least one of the following special services:

(a) (1) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) (2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

(c) (3) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(d) (4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) (5) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(f) (6) Ostomy care requiring services by a licensed nurse;

(g) (7) Services required for terminal care.

e. 5. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

f. 6. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

g. 7. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

G. 12 VAC 30-60-40. Utilization control: nursing facilities.

4. A. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements. All nursing facility services, including specialized care, shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

2. B. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. C. The Department of Medical Assistance Services shall periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

4. D. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes

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another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

5. E. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in Supplement 1 to Attachment 3.1-C, Part 4 12 VAC 30-60-300 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in Supplement 1 to Attachment 3.1-C, Part 2 12 VAC 30-60-320 (Adult Specialized Care Criteria) or Part 3 12 VAC 30-60-340 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission or, if later, the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

6. F. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

7. G. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

8. H. Specialized care services.

a. 1. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

b. 2. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

- (1) a. Physician visits at least once weekly (after initial physician visit, subsequent visits may alternate between physician and physician assistant or nurse practitioner);
- (2) b. Skilled nursing services by a registered nurse available 24 hours a day;
- (3) c. Coordinated multidisciplinary team approach to meet the needs of the resident;
- (4) d. Infection control;

(5) e. For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of 90 minutes each day, five days per week;

(6) f. For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of two hours per day, five days a week;

(7) g. Ancillary services related to a plan of care;

(8) h. Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

(9) i. Psychology services by a board-certified psychologist or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical related to a plan of care;

(10) j. Necessary durable medical equipment and supplies as required by the plan of care;

(11) k. Nutritional elements as required;

(12) l. A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

(13) m. Nonemergency transportation;

(14) n. Discharge planning; and

(15) o. Family or caregiver training.

e. 3. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are under the age of 21.

D. 12 VAC 30-60-50. *Utilization control:* Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and Institutions for Mental Disease (IMD).

4. A. With respect to each Medicaid-eligible resident in an ICF/MR or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. B. With respect to each ICF/MR or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or

registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. C. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in ~~Supplement 1, Part 4, to Attachment 3.1-G~~ 12 VAC 30-60-360 and the facility must provide active treatment for mental retardation.

4. D. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the State Plan:

a. 1. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

b. 2. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for mental disease.

5. E. When a resident no longer meets criteria for facilities for the mentally retarded or an institution for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

6. F. All services provided in an IMD and in an ICF/MR shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

E. 12 VAC 30-60-60. *Utilization control:* psychiatric services resulting from an EPSDT screening.

Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403 and ~~§ 4b to Attachment 3.1 A & B Supplement 1~~ 12 VAC 30-50-140 D 2, psychiatric services shall be covered, based on their prior authorization of medical need, for individuals younger than 21 years of age when the need for such services has been identified in a screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. The following utilization control requirements shall be met before preauthorization of payment for services can occur.

1. Definitions. The following words and terms, when used in the context of this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Admission" means the provision of services that are medically necessary and appropriate, and there is a

reasonable expectation the patient will remain at least overnight and occupy a bed.

"CFR" means the Code of Federal Regulations.

"Psychiatric services resulting from an EPSDT screening" means services rendered upon admission to a psychiatric hospital.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMAS" means the Department of Medical Assistance Services.

"JCAHO" means Joint Commission on Accreditation of Hospitals.

"Medical necessity" means that the use of the hospital setting under the direction of a physician has been demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient's condition or to prevent further regression so that the services will no longer be needed.

"VDH" means the Virginia Department of Health.

2. It shall be documented that treatment is medically necessary and that the necessity was identified as a result of an EPSDT screening. Required patient documentation shall include, but not be limited to, the following:

a. Copy of the screening report showing the identification of the need for further psychiatric diagnosis and possible treatment.

b. Copy of supporting diagnostic medical documentation showing the diagnosis that supports the treatment recommended.

c. For admission to a psychiatric hospital, for psychiatric services resulting from an EPSDT screening, certification of the need for services by an interdisciplinary team meeting the requirements of 42 CFR §§ 441.153 or 441.156 that:

(1) Ambulatory care resources available in the community do not meet the recipient's treatment needs;

(2) Proper treatment of the recipient's psychiatric condition requires admission to a psychiatric hospital under the direction of a physician; and

(3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, consistent with 42 CFR § 441.152.

3. The absence of any of the above required documentation shall result in DMAS' denial of the requested preauthorization.

4. Providers of psychiatric services resulting from an EPSDT screening must:

a. Be a psychiatric hospital accredited by JCAHO;

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b. Assure that services are provided under the direction of a physician;

c. Meet the requirements in 42 CFR Part 441 Subpart D;

d. Be enrolled in the Commonwealth's Medicaid program for the specific purpose of providing psychiatric services resulting from an EPSDT screening.

F. 12 VAC 30-60-70. *Utilization control:* home health services.

1. A. Home health services which meet the standards prescribed for participation under Title XVIII will be supplied.

2. B. Home health services shall be provided by a licensed home health agency on a part-time or intermittent basis to a homebound recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care utilizing the Home Health Certification and Plan of Treatment forms which the physician shall review at least every 62 days. *For receipt of durable medical equipment and supplies (DME)-only services, refer to subsection 1 of this section.*

3. C. Except in limited circumstances described in subdivision 4 below, to be eligible for home health services, the patient must be essentially homebound. The patient does not have to be bedridden. Essentially homebound shall mean:

a. 1. The patient is unable to leave home without the assistance of others who are required to provide medically necessary health care interventions or the use of special medical equipment;

b. 2. The patient has a mental or emotional problem which is manifested in part by refusal to leave the home environment or is of such a nature that it would not be considered safe for him to leave home unattended;

c. 3. The patient is ordered by the physician to restrict activity due to a weakened condition following surgery or heart disease of such severity that stress and physical activity must be avoided;

d. 4. The patient has an active communicable disease and the physician quarantines the patient.

4. D. Under the following conditions, Medicaid will reimburse for home health services when a patient is not essentially homebound. When home health services are provided because of one of the following reasons, an explanation must be included on the Home Health Certification and Plan of Treatment forms:

a. 1. When the combined cost of transportation and medical treatment exceeds the cost of a home health services visit;

b. 2. When the patient cannot be depended upon to go to a physician or clinic for required treatment, and, as a result, the patient would in all probability have to be admitted to a hospital or nursing facility because of complications arising from the lack of treatment;

c. 3. When the visits are for a type of instruction to the patient which can better be accomplished in the home setting;

d. 4. When the duration of the treatment is such that rendering it outside the home is not practical.

5. E. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

a. 1. Nursing services,

b. 2. Home health aide services,

c. 3. Physical therapy services,

d. 4. Occupational therapy services,

e. 5. Speech-language pathology services, or

f. 6. Medical supplies, equipment, and appliances suitable for use in the home.

6. F. General conditions. The following general conditions apply to skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.

a. 1. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

b. 2. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The written plan of care shall appear on the Home Health Certification and Plan of Treatment forms. *The initial plan of care must be reviewed, signed, and dated by the attending physician, or physician designee, no later than 21 days after the implementation of the plan of care.*

c. 3. A physician recertification shall be required at intervals of at least once every 62 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. Recertifications must appear on the Home Health Certification and Plan of Treatment forms.

d. 4. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

e. 5. The physician orders *DMAS-352 Certificate of Medical Necessity (CMN)* for durable medical equipment and supplies shall include the specific item identification

including all modifications ordered and each component must be individually identified. The CMN shall include a narrative clinical diagnosis which relates the diagnosis and equipment ordered to the recipient's specific need, the frequency of use, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. All durable medical equipment or and supplies requested ordered must be directly related to the physician's plan of care and to the patient's recipient's condition and medical treatment/need.

f. 6. A written physician's statement located in the medical record must certify that:

- (1) a. The home health services are required because the individual is confined to his home (except when receiving outpatient services);
- (2) b. The patient needs licensed nursing care, home health aide services, physical or occupational therapy, speech-language pathology services, or durable medical equipment and/or supplies;
- (3) c. A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and
- (4) d. These services were furnished while the individual was under the care of a physician.

g. 7. The plan of care shall contain at least the following information:

- (1) a. Diagnosis and prognosis,
- (2) b. Functional limitations,
- (3) c. Orders for nursing or other therapeutic services,
- (4) d. Orders for medical supplies and equipment, when applicable
- (5) e. Orders for home health aide services, when applicable,
- (6) f. Orders for medications and treatments, when applicable,
- (7) g. Orders for special dietary or nutritional needs, when applicable, and
- (8) h. Orders for medical tests, when applicable, including laboratory tests and x-rays.

7. G. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. *Such post payment review audits may be unannounced.* Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

8. H. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

a. 1. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. 2. Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

c. 3. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

(4) a. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(2) b. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services

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shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(3) c. Speech-language pathology services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology.

~~d. Durable medical equipment and supplies. Durable medical equipment, supplies, or appliances must be ordered by the physician, be related to the needs of the patient, and included on the plan of care for persons receiving home health services in addition to durable medical equipment and supplies. Treatment supplies used for treatment during the visit are included in the visit rate. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.~~

e. 4. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

I. Durable medical equipment (DME) and supplies.

1. *DME providers shall retain copies of the CMN and all applicable supporting documentation on file for post payment audit reviews. Durable medical equipment and supplies that are not ordered on the CMN for which reimbursement has been made by Medicaid will be retracted. Supporting documentation is allowed to justify the medical need for durable medical equipment and supplies. Supporting documentation does not replace the requirement for a properly completed CMN. The dates of the supporting documentation must coincide with the dates of service on the CMN and the medical practitioner providing the supporting documentation must be identified by name and title. DME providers shall not create or revise CMNs or supporting documentation for durable medical equipment and supplies provided after the post payment audit review has been initiated.*

2. *Persons needing only DME/supplies may obtain such services directly from the DME provider without having to consult or obtain services from a home health service or home health provider. DME/supplies must be ordered by the physician, be related to the medical treatment of the patient, and the complete order must be on the CMN for persons receiving DME/supplies. Supplies used for treatment during the visit are included in the visit rate of the home health provider. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.*

G. 12 VAC 30-60-80. *Utilization control: optometrists' services.*

Optometrists' services are limited to examinations (refractions) after preauthorization by the state agency except for eyeglasses as a result of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

H. 12 VAC 30-60-90. *Utilization control: special services.*

In the broad category of special services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

I. 12 VAC 30-60-100. *Utilization control: incorporation of specialized quality standards.*

Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

J. 12 VAC 30-60-110. *Utilization control: effect of geographic boundaries on provision of care.*

Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

PART I.

12 VAC 30-60-120. *Utilization control: intensive physical rehabilitative services.*

§ 1.4. A. A patient qualifies for intensive inpatient rehabilitation or comprehensive outpatient physical rehabilitation as provided in a comprehensive outpatient rehabilitation facility (CORF) if the following criteria are met:

A. 1. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of an interdisciplinary coordinated team approach to improve his ability to function as independently as possible; and

B. 2. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. B. In addition to the disability requirement, participants shall meet the following criteria:

A. 1. Require at least two of the listed therapies in addition to rehabilitative nursing:

4. a. Occupational Therapy

2. b. Physical Therapy

3. c. Cognitive Rehabilitation

4. d. Speech/Language Pathology Services

B. 2. Medical condition stable and compatible with an active rehabilitation program.

G. 3. For continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This is evidenced by regular attendance in planned activities and demonstrated progress toward the established goals.

D. 4. Intensive rehabilitation services are to be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

4. a. No further potential for improvement is demonstrated. The patient has reached his maximum progress and a safe and effective maintenance program has been developed.
2. b. There is limited motivation on the part of the individual or caregiver.
3. c. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.
4. d. Progress toward an established goal or goals cannot be achieved within a reasonable length of time.
5. e. The established goal serves no purpose to increase meaningful function or cognitive capabilities.
6. f. The service can be provided by someone other than a skilled rehabilitation professional.

PART II. INPATIENT ADMISSION AUTHORIZATION.

§ 3-4. C. Within 72 hours of a patient's admission to an intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

PART III. DOCUMENTATION REQUIREMENTS.

§ 3-4. D. Documentation of rehabilitation services shall, at a minimum:

- A. 1. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;
- B. 2. Describe any prior treatment and attempts to rehabilitate the patient;
- C. 3. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;
- D. 4. Document that an interdisciplinary coordinated treatment plan specifically designed for the patient has been developed;
- E. 5. Document in detail all treatment rendered to the patient in accordance with the interdisciplinary plan of

care with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;

- F. 6. Document change in the patient's conditions;
- G. 7. Describe responses to and the outcome of treatment; and
- H. 8. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

§ 3-2. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided. All intensive rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual.

PART IV. INPATIENT REHABILITATION EVALUATION.

§ 4-1. E. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

§ 4-2. If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a reevaluation.

§ 4-3. Admissions for evaluation and/or training, or both, for solely vocational or educational purposes or for developmental or behavioral assessments are not covered services.

PART V. CONTINUING EVALUATION.

§ 5-1. F. Interdisciplinary team conferences shall be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall assess the validity of the rehabilitation goals established at the time of the initial evaluation, determine if rehabilitation criteria continue to be met, and revise patient goals as needed. A review by the various team members of each others' notes does not constitute a team conference. Where practical, the patient or family or both shall participate in the team conferences. A summary of the conferences, noting the team members present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

§ 5-2. Rehabilitation care is to be considered for termination, regardless of the approved length of stay, when

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further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

§-5.3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate and that the patient continues to meet intensive rehabilitation criteria throughout the entire program. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

PART VI. THERAPEUTIC FURLOUGH DAYS.

§-6.4. G. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

PART VII. DISCHARGE PLANNING.

§-7.4. H. Discharge planning shall be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

PART VIII. REHABILITATION SERVICES TO PATIENTS.

§-8.4. I. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

A. 1. Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability. Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:

4. a. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation.

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation.

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

4. d. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.

B. 2. Physical therapy services are those services furnished a patient which meet all of the following conditions:

4. a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

C. 3. Occupational therapy services are those services furnished a patient which meet all of the following conditions:

4. a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by

the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

D. 4. Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

1. a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

E. 5. Cognitive rehabilitation services are those services furnished a patient which meet all of the following conditions:

1. a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and licensed by the Board of Medicine;

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by

a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;

3. c. Cognitive rehabilitation therapy services may be provided by occupational therapists, speech-language pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated by a physician or clinical psychologist licensed by the Board of Medicine;

4. d. The cognitive rehabilitation services shall be an integrated part of the interdisciplinary patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

5. e. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

6. f. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

F. 6. Psychology services are those services furnished a patient which meet all of the following conditions:

1. a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical;

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

G. 7. Social work services are those services furnished a patient which meet all of the following conditions:

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4. a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

H. 8. Recreational therapy are those services furnished a patient which meet all of the following conditions:

4. a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

I. 9. Prosthetic/orthotic services.

4. a. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. b. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design

the device, including measuring, fitting and instructing the patient in its use; and

3. c. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

4. d. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

5. e. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. f. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

PART IX. HOSPICE SERVICES.

12 VAC 30-60-130. *Hospice services.*

§ 9.1. A. Admission criteria. To be eligible for hospice coverage under Medicare or Medicaid, the recipient must be "terminally ill," defined as having a life expectancy of six months or less, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director must certify the life expectancy.

§ 9.2. B. Utilization review. Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided. All hospice services shall be provided in accordance with guidelines established in the Virginia Medicaid Hospice Manual.

§ 9.3. ~~Services provided.~~ C. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

1. Nursing care. Nursing care must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

2. Medical social services. Medical social services must be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

3. Physician services. Physician services must be performed by a professional who is licensed to practice, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team must be a licensed doctor of medicine or osteopathy.

4. Counseling services. Counseling services must be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care, and for the purpose of helping the individual and those caring for him to adjust to the individual's approaching death. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

5. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

6. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

7. Drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

8. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

9. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

PART X

COMMUNITY MENTAL HEALTH SERVICES

12 VAC 30-60-140. Community mental health services.

§ 10.1. A. Utilization review general requirements. A. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;
2. The admission to service and level of care was appropriate;
3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in Attachment 3-1 A and B, Supplement 1 § 13d Rehabilitative Services 12 VAC 30-50-220; and
4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

§ 10.2. C. Mental health services utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in VR 460-03-3-4400 12 VAC 30-50-100 through 12 VAC 30-50-310.

A. 1. Intensive in-home services for children and adolescents.

4. a. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.

2. b. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

3. c. Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

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4. d. Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.

5. e. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

6. f. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services, with the goal of keeping the child with the family.

7. g. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

8. h. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five-hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.

9. i. The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.

10. j. Emergency assistance shall be available 24 hours per day, seven days a week.

B. 2. Therapeutic day treatment for children and adolescents.

4. a. Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:

a. (1) Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

b. (2) Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(4) (a) This programming during the school day; or

(2) (b) This programming to supplement the school day or school year.

e. (3) Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. (4) Children and adolescents who have deficits in social skills, peer relations, dealing with authority; are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.

e. (5) Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. b. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

3. c. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

4. d. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e. before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled activities.

5. e. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

6. f. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP which

shall be fully completed within 30 days of initiation of the service.

~~C.~~ 3. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

1. a. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. b. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

3. c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

~~D.~~ 4. Psychosocial rehabilitation services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term or repeated psychiatric hospitalization, or who lack daily living skills and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term care is needed to maintain the individual in the community.

1. a. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

2. b. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

3. c. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or

more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

4. d. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

~~E.~~ 5. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress. Crisis intervention may be the initial contact with a client.

1. a. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSAS.

2. b. Client-related activities provided in association with a face-to-face contact are reimbursable.

3. c. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. d. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. e. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. f. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve the family or significant others.

~~F.~~ 6. Case management.

1. a. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact

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within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. b. The Medicaid eligible individual shall meet the DMHMRSAS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. c. There shall be no maximum service limits for case management services.

4. d. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. e. The ISP shall be updated at least annually.

§ 40-3. D. Mental retardation utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in VR 460-93-3.1100 12 VAC 30-50-100 through 12 VAC 30-50-310.

A. 1. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:

1. a. The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.

2. b. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:

a. (1) Managing personal care needs,

b. (2) Understanding verbal commands and communicating needs and wants,

c. (3) Earning wages without intensive, frequent and ongoing supervision or support,

d. (4) Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,

e. (5) Exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,

f. (6) Making decisions which require informed consent,

g. (7) Caring for other needs without the assistance or personnel trained to teach functional skills.

h. (8) Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

3. c. Services for the individual shall be preauthorized annually by DMHMRSAS:

4. d. Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.

5. e. The provider shall update the plan of care at least annually.

6. f. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.

7. g. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be at least four but less than seven hours on a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

8. h. The provider shall be licensed by DMHMRSAS.

B. 2. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:

1. a. The individual must require case management as documented on the consumer service plan of care which is developed based on appropriate assessment and supporting data. Authorization for case management services shall be obtained from DMHMRSAS Care Coordination Unit annually.

2. b. An active client shall be defined as an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and other entities including a minimum of one face-to-face contact within a 90-day period.

3. c. The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning and other relevant factors:

a. (1) The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of

the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

b. (2) The need for case management services shall be assessed and justified through the development of an annual consumer service plan.

4. d. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

**PART XI.
GENERAL OUTPATIENT PHYSICAL REHABILITATION
SERVICES.**

12 VAC 30-60-150. *General outpatient physical rehabilitation services.*

§ 11.1. A. Scope.

A. 1. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals, in school divisions, by home health agencies, and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. 2. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

C. 3. Outpatient rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual, with the exception of such services provided in school divisions which shall be provided in accordance with guidelines found in the Virginia Medicaid School Division Manual. Utilization review shall include determinations that providers meet all the requirements of Virginia state regulations found in ~~VR 460-04-3-1300~~ (12 VAC 30-130-10 through 12 VAC 30-130-80). Utilization review shall be performed to ensure that services are appropriately provided and that services provided to Medicaid recipients are medically necessary and appropriate.

§ 11.2. B. Covered outpatient rehabilitative services.

A. 1. Covered outpatient rehabilitative services for acute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service. Such services may be provided by outpatient settings of hospitals, rehabilitation agencies, and home health agencies.

B. 2. Covered outpatient rehabilitative services for long-term, chronic conditions shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent

upon the provision of another service. Such services may be provided by outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, and school divisions.

§ 11.3. C. Eligibility criteria for outpatient rehabilitative services. To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy. All rehabilitative services must be prescribed by a physician.

§ 11.4. D. Criteria for the provision of outpatient rehabilitative services. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered, and no coverage shall be provided.

**PART XII.
UTILIZATION REVIEW OF CASE MANAGEMENT FOR
RECIPIENTS OF AUXILIARY GRANTS.**

12 VAC 30-60-160. *Utilization review of case management for recipients of auxiliary grants.*

§ 12.1. A. Criteria of need for case management services. It shall be the responsibility of the assessor who identifies the individual's need for residential or assisted living in an adult care residence to assess the need for case management services. The case manager shall, at a minimum, update the assessment and make any necessary referrals for service as part of the case management annual visit. Case management services may be initiated at any time during the year that a need is identified.

§ 12.2. B. Coverage limits. DMAS shall reimburse for one case management visit per year for every individual who receives an auxiliary grant. For individuals meeting the following ongoing case management criteria, DMAS shall reimburse for one case management visit per calendar quarter:

1. The individual needs the coordination of multiple services and the individual does not currently have support available that is willing to assist in the coordination of and access to services, and a referral to a formal or informal support system will not meet the individual's needs; or

2. The individual has an identified need in his physical environment, support system, financial resources, emotional or physical health which must be addressed to ensure the individual's health and welfare and other formal or informal supports have either been unsuccessful in their efforts or are unavailable to assist the individual in resolving the need.

§ 12.3. C. Documentation requirements.

A. 1. The update to the assessment shall be required annually regardless of whether the individual is authorized for ongoing case management.

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B- 2. A care plan and documentation of contacts must be maintained by the case manager for persons authorized for ongoing case management.

4- a. The care plan must be a standardized written description of the needs which cannot be met by the adult care residence and the resident-specific goals, objectives and time frames for completion. This care plan must be updated annually at the time of reassessment, including signature by both the resident and case manager.

2- b. The case manager shall provide ongoing monitoring and arrangement of services according to the care plan and must maintain documentation recording all contacts made with or on behalf of the resident.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Medicaid Nursing Home Manual, Department of Medical Assistance Services.
Virginia Medicaid Rehabilitation Manual, Department of Medical Assistance Services.



VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
CERTIFICATE OF MEDICAL NECESSITY
DURABLE MEDICAL EQUIPMENT AND SUPPLIES

SECTION I RECIPIENT DATA

SERVICING PROVIDER: _____ CMN STATUS: _____

I.D. # _____ I.D. # _____
Name _____ Name _____
D.O.B. _____ Contact Person _____
Phone # () _____ Phone # () _____

INITIAL
 REVISED
 RENEWED

SECTION II RECIPIENT INFORMATION

ANSWER ALL QUESTIONS THAT ARE APPLICABLE TO DME SERVICE BEING REQUESTED. IF ANSWER IS YES, YOU MUST DESCRIBE EACH ADDITIONAL INFORMATION. (Additional space on reverse)

Does patient:	YES	NO
1. have impaired mobility?	<input type="checkbox"/>	<input type="checkbox"/>
2. have impaired endurance?	<input type="checkbox"/>	<input type="checkbox"/>
3. have restricted activity?	<input type="checkbox"/>	<input type="checkbox"/>
4. have skin breakdown? (Describe site, size, depth and drainage)	<input type="checkbox"/>	<input type="checkbox"/>
5. have impaired respiration? (Identify most recent PO ₂ _____ Saturation level _____ for patients on oxygen)	<input type="checkbox"/>	<input type="checkbox"/>
6. require assistance with ADL's?	<input type="checkbox"/>	<input type="checkbox"/>
7. have impaired speech?	<input type="checkbox"/>	<input type="checkbox"/>
8. require nutritional supplements? (Identify complete diet order)	<input type="checkbox"/>	<input type="checkbox"/>

DESCRIPTION/ADDITIONAL INFORMATION:

IS THE ITEM SUITABLE FOR USE IN HOME, AND DOES THE PATIENT/CAREGIVER DEMONSTRATE WILLINGNESS/ABILITY TO USE THE EQUIPMENT? YES ___ NO ___
DATE PATIENT LAST EXAMINED BY PHYSICIAN _____

ICD9 Code _____

Clinical Diagnoses _____

Less than 6 months _____
Greater than 6 months _____

SECTION III (ADDITIONAL SPACE ON REVERSE)

Begin Service Date	HCPCS Code	Item Ordered Description	Length of Time Needed	Quantity Ordered (1 Month)	Quantity/Frequency of Use Justification/Comments

SECTION IV PHYSICIAN CERTIFICATION (MUST BE SIGNED AND DATED BY PHYSICIAN)

I CERTIFY THAT THE ORDERED DME AND SUPPLIES ARE PART OF MY TREATMENT PLAN AND, IN MY OPINION, ARE MEDICALLY NECESSARY.

ORDERING PHYSICIAN'S NAME (print) _____ DATE _____ ID# _____ PHONE # _____
PHYSICIAN'S SIGNATURE _____

RECIPIENT NAME _____	VMAP # _____
SERVICING PROVIDER NAME _____	PROVIDER ID# _____

DESCRIPTION/ADDITIONAL INFORMATION

SECTION II (continued)

SECTION III (continued)

Begin Service Date	HCPCS Code	Item Ordered Description	Length of Time Needed	Quantity Ordered/ x1 Month	Quantity/Frequency of Use Justification/Comments

SECTION IV PHYSICIAN CERTIFICATION (MUST BE SIGNED AND DATED BY PHYSICIAN)
 I CERTIFY THAT THE ORDERED DME AND SUPPLIES ARE PART OF MY TREATMENT PLAN AND, IN MY OPINION, ARE MEDICALLY NECESSARY.

ORDERING PHYSICIAN'S NAME (print) _____ PHYSICIAN'S SIGNATURE _____ DATE _____ ID.# _____ PHONE # _____

- Section I RECIPIENT DATA**
- Complete 12-digit recipient identification number
 - Complete recipient full name (last name, first name)
 - Complete full date of birth (month, day, year)
 - Telephone # (include area code)
- SERVICING PROVIDER**
- Complete provider number (7-digits)
 - Complete provider name
 - Complete contact identifying person to call if DMS has questions
- CMN STATUS**
- Check appropriate box
- Section II RECIPIENT INFORMATION**
- Check ALL boxes that apply
 - Identify functional limitations related to recipient and need for DME service
 - If requesting oxygen, the results of PO₂ Saturation levels must be identified
 - Date last examined by physician
 - ICD9 Code (optional)
 - Clinical diagnoses - narrative must be identified. Diagnosis must be related to the item being requested
 - Check appropriate line for date of on-set

- Section III**
- Begin service date (month, day and year)
 - Item ordered description: must be narrative description of item ordered (DME vendor may identify by HCPC Code)
 - Length of Time Needed: length of time item will be needed for all durable equipment
 - Quantity ordered: identify quantity ordered; for expendable supplies, designate supplies needed for 1 month; if items are required greater than 1 month, note time frame in the Length of Time Needed column
 - Quantity/frequency of Use, Justification/Comments: physician's order for frequency of use must be identified
- Section IV PHYSICIAN CERTIFICATION**
- Physician full name (print)
 - Must be signed and fully dated by physician (NOTE: Attached physician prescription will not be accepted in lieu of physician signature date on this form). IF ORDERS FOR DME SERVICE ARE WRITTEN ON BOTH SIDES OF FORM, PHYSICIAN MUST SIGN/DATE BOTH SIDES OF FORM
 - Complete physician Medicaid provider number (optional)
 - Telephone number (include area code)

NUTRITIONAL STATUS EVALUATION FORM

(This form is required for the provision of enteral nutrition. Instructions for completion of this form are on the reverse side of this side.)

A. PATIENT INFORMATION

Name: _____ Date of Birth: _____
 Social Security Number: _____ Medicaid Number: _____

B. DATA ELEMENTS

Height: Please complete either a. or b. below.

a. _____	Height in inches	b. _____	Length in inches
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Weight: Please complete a., b., and c. below.

a. _____	Current weight in pounds OR		
mid-arm circumference	Mid-arm circumference (in centimeters) and triceps skinfold thickness (in millimeters). These measurements are to be used for patients who cannot be feasibly weighed. If known, add measurement for mid-arm muscle circumference (in centimeters): _____		
triceps skinfold			
b. _____	Ideal body weight	c. _____	Previous or initial weight (if available)

Formula Tolerance: Please check all that apply to the current condition of the patient.

a. _____	Hydrated?	e. _____	Increased gastric residuals?
b. _____	Nausea?	f. _____	Constipation?
c. _____	Vomiting?	g. _____	Diarrhea?
d. _____	Gastric reflux?	h. _____	Not currently receiving a formula

Tube or Stoma Site Assessment: Please check all that apply.

a. _____	Gastrostomy tube?	e. _____	Stoma site red or irritated?
b. _____	Nasogastric tube?	f. _____	Tube flushes easily?
c. _____	Other tube?	g. _____	Fibrous tissue growth?
d. _____	Leakage present?	h. _____	Patient complains?

Date of last tube change: _____

C. THIS NUTRITIONAL SUPPLEMENT IS THE _____ SOLE OR _____ PRIMARY SOURCE OF NUTRITION FOR THIS PATIENT. (Please check one.)

D. PROGRESS STATEMENT: Based on this evaluation and the plan of care, the patient is: (circle one)
 1. Stable 2. Progressing toward goal 3. In need of further evaluation

E. COMMENTS

F. PHYSICIAN'S ORDER FOR NUTRITIONAL SUPPLEMENT: Order must include all of the following information:

category or specific supplement ordered _____ route of administration _____
 caloric order per day _____ calories per can /pkg _____

G. ASSESSOR INFORMATION:

Name _____ Title _____ Date _____
 DMS-113 revised 5/19/95

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Title of Regulation: State Plan for Medical Assistance Relating to Legal Fees for Nursing Facility Appeals. [VR 460-03-4-1940; 12 VAC 30-90-20 through 12 VAC 30-90-260]. Part II, Nursing Home Payment System.

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

Effective Date: July 1, 1996.

Summary:

The purpose of this action is to adopt permanent regulations to supersede the existing emergency regulation providing for the same policy. The emergency regulation was developed in response to a mandate from the General Assembly in the 1995 Appropriations Act § 396(E)(9). DMAS is not proposing any changes in this final regulation over that which was proposed for public comment period.

The Social Security Act § 1902(a)(13)(A) (USC 1396a(a)) requires that the State Plan provide for payment for long-term care facility services through the use of rates that the state finds, and makes assurances satisfactory to the Secretary of the U.S. Department of Health and Human Services, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. At 42 CFR 447.253(e), DMAS is required to provide an appeal or exception procedure that allows individual providers an opportunity to submit additional evidence and receive prompt administrative review of payment rates with respect to such issues as the agency determines appropriate. DMAS complies with this requirement for long-term care providers in Part III of the Nursing Home Payment System.

In the Appropriations Act, the 1995 General Assembly required the department to adopt regulations eliminating the reimbursement of legal fees when the nursing facility (NF) has not substantially prevailed on the merit of the appeal. DMAS is, therefore, adopting the addition of 12 VAC 30-90-135 to Part III of the Nursing Home Payment System.

This new section provides that the department shall only reimburse NFs for legal fees related to informal and formal administrative appeals on which the NF has substantially prevailed on the merit. The term "substantially prevails" is defined as success on more than 50% of the issues appealed and on more than 50% of the amount under appeal in order to obtain reimbursement. This eliminates the incentive to indiscriminately file appeals and add to substantive appeals additional issues that are not substantive. The advantage to the public's welfare is that this regulation will permit the reimbursement of legal fees that are fair and equitable but will discourage the filing of appeals that are not reasonable. This action will free up health

care dollars for expenditure on services related to patient care. The regulation will not have an impact on the delivery of services.

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 Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

PART I.
INTRODUCTION.

PART II.
NURSING HOME PAYMENT SYSTEM.

Subpart I.
General.

§ 1.1. General. 12 VAC 30-90-20. Nursing home payment system; generally.

A. Effective October 1, 1990, the payment methodology for Nursing Facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in the following document *this part*. The formula provides for incentive payments to efficiently operated NFs and contains payment limitations for those NFs operating less efficiently. A cost efficiency incentive encourages cost containment by allowing the provider to retain a percentage of the difference between the prospectively determined operating cost rate and the ceiling.

§ 1.2. Cost components.

B. Three separate cost components are used: plant cost, operating cost and nurse aide training and competency evaluation program and competency evaluation program (NATCEPs) costs. The rates, which are determined on a facility-by-facility basis, shall be based on annual cost reports filed by each provider.

§ 1.3. Ceiling limitations.

C. In determining the ceiling limitations, there shall be direct patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA Metropolitan Statistical Area (MSA), the Richmond-Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be indirect patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA MSA, and in the rest of the state. The Washington DC-MD-VA MSA and the Richmond-Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Health Care Financing Administration (HCFA). A NF located in a jurisdiction which HCFA adds to or removes from the Washington DC-MD-VA MSA or the Richmond-Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.

§ 1.4. Exemptions.

D. Institutions for mental diseases providing nursing services for individuals age 65 and older shall be exempt from the prospective payment system as defined in §§ 2.6, 2.7, 2.8, 2.19, and 2.25, 12 VAC 30-90-40, 12 VAC 30-90-60, and 12 VAC 30-90-80, as are mental retardation facilities. All other sections of this payment system relating to reimbursable cost limitations shall apply. These facilities shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare and Medicaid principles of reimbursement. Reimbursement to Intermediate Care Facilities for the Mentally Retarded (ICF/MR) shall be limited to the highest rate paid to a state ICF/MR institution, approved each July 1 by DMAS.

§ 1.5. Medicare principles of reimbursement.

E. Except as specifically modified herein, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification 12 VAC 30-90-270) and must be identifiable and verified by contemporaneous documentation.

All matters of reimbursement which are part of the DMAS reimbursement system shall supersede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement, the DMAS reimbursement system shall take precedence. Appendices are a part of the DMAS reimbursement system.

PART II. Subpart II. Rate Determination Procedures

Article 1. Plant Cost Component.

§ 2.1. 12 VAC 30-90-30. Plant cost.

A. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

B. To calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the greater of actual patient days or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

C. For NFs of 30 beds or less, to calculate the reimbursement rate, the number of patient days will be computed as not less than 85% of the daily licensed bed complement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

§ 2.2. 12 VAC 30-90-31. New nursing facilities and bed additions.

A. 4. Providers shall be required to obtain three competitive bids when (i) constructing a new physical plant or renovating

a section of the plant when changing the licensed bed capacity, and (ii) purchasing fixed equipment or major movable equipment related to such projects.

2. All bids must be obtained in an open competitive market manner, and subject to disclosure to DMAS prior to initial rate setting. (Related parties see § 2.49 12 VAC 30-90-51.)

B. Reimbursable costs for building and fixed equipment shall be based upon the 3/4 (25% of the surveyed projects with costs above the median, 75% with costs below the median) square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the date the NF is licensed. Total cost shall be calculated by multiplying the above 3/4 square foot cost by 385 square feet (the average per bed square footage). Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF. Reasonable limits for renovations shall be determined by the appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data 3/4 square foot costs for nursing homes.

C. New NFs and bed additions to existing NFs must have prior approval under the state's Certificate of Public Need Law and Licensure regulations in order to receive Medicaid reimbursement.

D. However in no case shall allowable reimbursed costs exceed 110% of the amounts approved in the original COPN, or 100% of the amounts approved in the original COPN as modified by any "significant change" COPN, where a provider has satisfied the requirements of the State Department of Health with respect to obtaining prior written approval for a "significant change" to a COPN which has previously been issued (see 12 VAC 5-220-10 et seq.).

§ 2.3. 12 VAC 30-90-32. Major capital expenditures.

A. Major capital expenditures include, but are not limited to, major renovations (without bed increase), additions, modernization, other renovations, upgrading to new standards, and equipment purchases. Major capital expenditures shall be any capital expenditures costing \$100,000 or more each, in aggregate for like items, or in aggregate for a particular project. These include purchases of similar type equipment or like items within a one calendar year period (not necessarily the provider's reporting period).

B. Providers (including related organizations as defined in § 2.49 12 VAC 30-90-51) shall be required to obtain three competitive bids and if applicable, a Certificate of Public Need before initiating any major capital expenditures. All

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bids must be obtained in an open competitive manner, and subject to disclosure to the DMAS prior to initial rate setting. (Related parties see ~~§ 2-49~~ 12 VAC 30-90-51.)

C. Useful life shall be determined by the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (AHA). If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

D. Major capital additions, modernization, renovations, and costs associated with upgrading the NF to new standards shall be subject to cost limitations based upon the applicable components of the construction cost limits determined in accordance with ~~§ 2-2 B~~ 12 VAC 30-90-31 B.

§ 2-4. 12 VAC 30-90-33. Financing.

A. The DMAS shall continue its policy to disallow cost increases due to the refinancing of a mortgage debt, except when required by the mortgage holder to finance expansions or renovations. Refinancing shall also be permitted in cases where refinancing would produce a lower interest rate and result in a cost savings. The total net aggregate allowable costs incurred for all cost reporting periods related to the refinancing cannot exceed the total net aggregate costs that would have been allowable had the refinancing not occurred.

1. Refinancing incentive. Effective July 1, 1991, for mortgages refinanced on or after that date, the DMAS will pay a refinancing incentive to encourage nursing facilities to refinance fixed-rate, fixed-term mortgage debt when such arrangements would benefit both the Commonwealth and the providers. The refinancing incentive payments will be made for the 10-year period following an allowable refinancing action, or through the end of the refinancing period should the loan be less than 10 years, subject to a savings being realized by application of the refinancing calculation for each of these years. The refinancing incentive payment shall be computed on the net savings from such refinancing applicable to each provider cost reporting period. Interest expense and amortization of loan costs on mortgage debt applicable to the cost report period for mortgage debt which is refinanced shall be compared to the interest expense and amortization of loan costs on the new mortgage debt for the cost reporting period.

2. Calculation of refinancing incentive. The incentive shall be computed by calculating two index numbers, the old debt financing index and the new debt financing index. The old debt financing index shall be computed by multiplying the term (months) which would have been remaining on the old debt at the end of the provider's cost report period by the interest rate for the old debt. The new debt index shall be computed by multiplying the remaining term (months) of the new debt at the end of the cost reporting period by the new interest rate. The new debt index shall be divided by the old debt index to achieve a savings ratio for the period. The savings ratio shall be subtracted from a factor of 1 to determine the refinancing incentive factor.

3. Calculation of net savings. The gross savings for the period shall be computed by subtracting the allowable new debt interest for the period from the allowable old

debt interest for the period. The net savings for the period shall be computed by subtracting allowable new loan costs for the period from allowable gross savings applicable to the period. Any remaining unamortized old loan costs may be recovered in full to the extent of net savings produced for the period.

4. Calculation of incentive amount. The net savings for the period, after deduction of any unamortized old loan and debt cancellation costs, shall be multiplied by the refinancing incentive factor to determine the refinancing incentive amount. The result shall be the incentive payment for the cost reporting period, which shall be included in the cost report settlement, subject to per diem computations under ~~§ 2-1 B, 2-1 C, and 2-14 A~~ 12 VAC 30-90-30 B and C, and 12 VAC 30-90-55 A.

5. Where a savings is produced by a provider refinancing his old mortgage for a longer time period, the DMAS shall calculate the refinancing incentive and payment in accordance with ~~§§ 2-4 subdivisions A 1 through 2-4 A 4 of this section~~ for the incentive period. Should the calculation produce both positive and negative incentives, the provider's total incentive payments shall not exceed any net positive amount for the entire incentive period. Where a savings is produced by refinancing with either a principal balloon payment at the end of the refinancing period, or a variable interest rate, no incentive payment will be made, since the true savings to the Commonwealth cannot be accurately computed.

6. All refinancings must be supported by adequate and verifiable documentation and allowable under DMAS regulations to receive the refinancing savings incentive.

7. Balloon loan reimbursement. This subdivision applies to the construction and acquisition of nursing facilities (as defined in ~~§§ 2-2 and 2-5~~ 12 VAC 30-90-31 and 12 VAC 30-90-34) and major capital expenditures (as defined in ~~§ 2-3~~ 12 VAC 30-90-32) that are financed with balloon loans. A balloon loan requires periodic payments to be made that do not fully amortize the principal balance over the term of the loan; the remaining balance must be repaid at the end of a specified time period. Demand notes and loans with call provisions shall not be deemed to be balloon loans.

a. Incurred interest. Reimbursement for interest of a balloon loan and subsequent refinancings shall be considered a variable interest rate loan under ~~§ 2-4 B subsection B of this section~~.

(1) A standard amortization period of 27 years, from the inception date of the original balloon loan, must be computed by the provider and submitted to DMAS and used as the amortization period for loans for renovation, construction, or purchase of a nursing facility.

(2) A standard amortization period of 15 years, from the inception of the original balloon loan, must be used as the amortization period for loans on furniture, fixtures, and equipment.

(3) A loan which is used partially for the acquisition of buildings, land, and land improvements and partially for the purchase of furniture, fixtures, and equipment must be prorated for the purpose of determining the amortization period.

b. The allowable interest rate shall be limited to the interest rate upper limit in effect on the date of the original balloon loan, unless another rate is allowable under § 2.4-B subsection B of this section.

c. Financing costs. The limitations on financing costs set forth in § 2.4-B subsection B of this section shall apply to balloon loans. Financing costs exceeding the limitations set forth in these sections shall be allowed to the extent that such excess financing costs may be offset by any available interest savings.

(1) A 27-year amortization period must be used for deferred financing costs associated with the construction or purchase of a nursing facility.

(2) A 15-year amortization period must be used for deferred financing costs associated with financing of furniture, fixtures, and movable equipment.

(3) Financing costs associated with a loan used partially for the acquisition of buildings, land, and land improvements and partially for the purchase of furniture, fixtures, and equipment must be prorated for determination of the amortization period.

d. Cumulative credit computation. The computation of allowable interest and financing costs for balloon loans shall be calculated using the following procedures:

(1) A standard amortization schedule of allowable costs based upon the upper limits for interest and financing costs shall be computed by the provider and submitted to DMAS for the applicable 27-year or 15-year periods on the original balloon loan.

(2) For each cost reporting period, the provider shall be allowed the lesser of loan costs (interest and financing costs) computed in accordance with subdivision 7 a of this subsection, or the actual loan costs incurred during the period.

(3) To the extent that there is a "credit" created by the actual loan costs being less than the loan costs computed on the amortization schedule in some periods, the provider may recover any otherwise allowable costs which result from the refinancing, extension, or renewal of the balloon loan, and any loan costs which have been disallowed because the loan costs are over the limitation for some periods. However, the cumulative actual loan cost reimbursement may not exceed the cumulative allowable loan cost as computed on the amortization schedule to that date.

(4) In refinancing or refinancings of the original balloon loan which involve additional borrowings in excess of the balance due on the original balloon loan, the excess over the balance due on the balloon loan shall be treated as new debt subject to the DMAS financing policies and regulations. Any

interest and financing costs incurred on the refinancing shall be allocated pro rata between the refinancing of the balloon loan and the new debt.

(5) In the event of a sale of the facility, any unused balance of cumulative credit or cumulative provider excess costs would follow the balloon loan or the refinancing of the balloon loan if the balloon loan or its refinancing is paid by the buyer under the same terms as previously paid by the seller. Examples of this are (i) the buyer assumes the existing instrument containing the same rates and terms by the purchaser; or (ii) the balance of the balloon loan or its refinancings is financed by the seller to the buyer under the same rates and terms of the existing loan as part of the sale of the facility. If the loan is otherwise paid in full at any time and the facility is sold before the full 27-year or 15-year amortization period has expired, the balance of unused cumulative credit or cumulative provider excess costs shall expire and not be considered an allowable cost.

e. In accordance with § 2.4-A (5) subdivision A 5 of this section, no refinancing incentive shall be available for refinancings, extensions, or renewals of balloon loans.

f. The balloon loan and refinancing of the balloon loan shall be subject to all requirements for allowable borrowing, except as otherwise provided by this subsection.

B. Interest rate upper limit. Financing for all NFs and expansions which require a COPN and all renovations and purchases shall be subject to the following limitations:

1. Interest expenses for debt financing which is exempt from federal income taxes shall be limited to:

The average weekly rates for Baa municipal rated bonds as published in Cragie Incorporated Municipal Finance Newsletter as published weekly (Representative reoffering from general obligation bonds), plus one percentage point (100 basis points), during the week in which commitment for construction financing or closing for permanent financing takes place.

2. a. Effective on and after July 1, 1990, the interest rate upper limit for debt financing by NFs that are subject to prospective reimbursement shall be the average of the rate for 10-year and 30-year U.S. Treasury Constant Maturities, as published in the weekly Federal Reserve Statistical Release (H.15), plus two percentage points (200 basis points).

This limit (i) shall apply only to debt financing which is not exempt from federal income tax, and (ii) shall not be available to NF's which are eligible for such tax exempt financing unless and until a NF has demonstrated to the DMAS that the NF failed, in a good faith effort, to obtain any available debt financing which is exempt from federal income tax. For construction financing, the limit shall be determined as of the date on which commitment takes place. For permanent financing, the limit shall be determined as

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of the date of closing. The limit shall apply to allowable interest expenses during the term of the financing.

b. The new interest rate upper limit shall also apply, effective July 1, 1990, to construction financing committed to or permanent financing closed after December 31, 1986, but before July 1, 1990, which is not exempt from federal income tax. The limit shall be determined as of July 1, 1990, and shall apply to allowable interest expenses for the term of the financing remaining on or after July 1, 1990.

3. Variable interest rate upper limit.

a. The limitation set forth in ~~§§ 2.4 B-1 and 2.4 B-2 subdivisions 1 and 2 of this subsection~~ shall be applied to debt financing which bears a variable interest rate as follows. The interest rate upper limit shall be determined on the date on which commitment for construction financing or closing for permanent financing takes place, and shall apply to allowable interest expenses during the term of such financing as if a fixed interest rate for the financing period had been obtained. A "fixed rate loan amortization schedule" shall be created for the loan period, using the interest rate cap in effect on the date of commitment for construction financing or the date of closing for permanent financing.

b. If the interest rate for any cost reporting period is below the limit determined in subdivision 3 a above, no adjustment will be made to the provider's interest expense for that period, and a "carryover credit" to the extent of the amount allowable under the "fixed rate loan amortization schedule" will be created, but not paid. If the interest rate in a future cost reporting period is above the limit determined in subdivision 3 a above, the provider will be paid this "carryover credit" from prior period(s), not to exceed the cumulative carryover credit or his actual cost, whichever is less.

c. The provider shall be responsible for preparing a verifiable and auditable schedule to support cumulative computations of interest claimed under the "carryover credit," and shall submit such a schedule with each cost report.

4. The limitation set forth in ~~§ 2.4-B subdivisions 1, 2, and 3 of this subsection~~ shall be applicable to financing for land, buildings, fixed equipment, major movable equipment, working capital for construction and permanent financing.

5. Where bond issues are used as a source of financing, the date of sale shall be considered as the date of closing.

6. The aggregate of the following costs shall be limited to 5.0% of the total allowable project costs:

- a. Examination Fees
- b. Guarantee Fees
- c. Financing Expenses (service fees, placement fees, feasibility studies, etc.)

d. Underwriters Discounts

e. Loan Points

7. The aggregate of the following financing costs shall be limited to 2.0% of the total allowable project costs:

- a. Legal Fees
- b. Cost Certification Fees
- c. Title and Recording Costs
- d. Printing and Engraving Costs
- e. Rating Agency Fees

C. DMAS shall allow costs associated with mortgage life insurance premiums in accordance with § 2130 of the HCFA-Pub. 15, Provider Reimbursement Manual (PRM-15).

D. Interest expense on a debt service reserve fund is an allowable expense if required by the terms of the financing agreement. However, interest income resulting from such fund shall be used by DMAS to offset interest expense.

§ 2-5. 12 VAC 30-90-34. Purchases of nursing facilities (NF).

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider.

B. The following reimbursement principles shall apply to the purchase of a NF:

1. The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Part Subpart XVI - Revaluation of Assets (12 VAC 30-90-260 et seq.). Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.

2. Notwithstanding the provisions of ~~§ 2-10 12 VAC 30-90-51~~, where there is a sale between related parties (whether or not they were, are or will be providers of Medicaid services), the buyer's allowable cost basis for the nursing facility shall be the seller's allowable depreciated historical cost (net book value), as determined for Medicaid reimbursement.

3. For purposes of Medicaid reimbursement, a "bona fide" sale shall mean a transfer of title and possession for consideration between parties which are not related. Parties shall be deemed to be "related" if they are related by reasons of common ownership or control. If the parties are members of an immediate family, the sale shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control." See ~~§ 2-10 12 VAC 30-90-51 C~~ for definitions of "common ownership," "control," "immediate family," and "significant ownership or control."

4. The useful life of the fixed assets of the facility shall be determined by AHA guidelines.

5. The buyer's basis in the purchased assets shall be reduced by the value of the depreciation recapture due the state by the provider-seller, until arrangements for repayment have been agreed upon by DMAS.

6. In the event the NF is owned by the seller for less than five years, the reimbursable cost basis of the purchased NF to the buyer, shall be the seller's allowable historical cost as determined by DMAS.

C. An appraisal expert shall be defined as an individual or a firm that is experienced and specializes in multi-purpose appraisals of plant assets involving the establishing or reconstructing of the historical cost of such assets. Such an appraisal expert employs a specially trained and supervised staff with a complete range of appraisal and cost construction techniques; is experienced in appraisals of plant assets used by providers, and demonstrates a knowledge and understanding of the regulations involving applicable reimbursement principles, particularly those pertinent to depreciation; and is unrelated to either the buyer or seller.

D. At a minimum, appraisals must include a breakdown by cost category as follows:

1. Building; fixed equipment; movable equipment; land; land improvements.
2. The estimated useful life computed in accordance with AHA guidelines of the three categories, building, fixed equipment, and movable equipment must be included in the appraisal. This information shall be utilized to compute depreciation schedules.

E. Depreciation recapture.

1. The provider-seller of the facility shall make a retrospective settlement with DMAS in instances where a gain was made on disposition. The department shall recapture the depreciation paid to the provider by Medicaid for the period of participation in the Program to the extent there is gain realized on the sale of the depreciable assets. A final cost report and refund of depreciation expense, where applicable, shall be due within 30 days from the transfer of title (as defined below).
2. No depreciation adjustment shall be made in the event of a loss or abandonment.

F. Reimbursable depreciation.

1. For the purpose of this section, "sale or transfer" shall mean any agreement between the transferor and the transferee by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of the property.
2. Upon the sale or transfer of the real and tangible personal property comprising a licensed nursing facility certified to provide services to DMAS, the transferor or other person liable therein shall reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing such services and subject to recapture under the provisions of the State Plan for Medical Assistance. The amount of

reimbursable depreciation shall be paid to the Commonwealth within 30 days of the sale or transfer of the real property unless an alternative form of repayment, the term of which shall not exceed one year, is approved by the director.

3. Prior to the transfer, the transferor shall file a written request by certified or registered mail to the director for a letter of verification that he either does not owe the Commonwealth any amount for reimbursable depreciation or that he has repaid any amount owed the Commonwealth for reimbursable depreciation or that an alternative form of repayment has been approved by the director. The request for a letter of verification shall state:

- a. That a sale or transfer is about to be made;
- b. The location and general description of the property to be sold or transferred;
- c. The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years; and
- d. Whether or not there is a debt owing to the Commonwealth for the amount of depreciation charges previously allowed and reimbursed as a reasonable cost to the transferor under the Virginia Medical Assistance Program.

4. Within 90 days after receipt of the request, the director shall determine whether or not there is an amount due to the Commonwealth by the nursing facility by reason of depreciation charges previously allowed and reimbursed as a reasonable cost under DMAS and shall notify the transferor of such sum, if any.

5. The transferor shall provide a copy of this section and a copy of his request for a letter of verification to the prospective transferee via certified mail at least 30 days prior to the transfer. However, whether or not the transferor provides a copy of this section and his request for verification to the prospective transferee as required herein, the transferee shall be deemed to be notified of the requirements of this law.

6. After the transferor has made arrangements satisfactory to the director to repay the amount due or if there is no amount due, the director shall issue a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the term of any alternative repayment agreement. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to DMAS in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth.

7. Upon a finding by the director that such sale or transfer is ineffective as to the Commonwealth, DMAS may collect any sum owing by any means available by law, including devising a schedule for reducing the Medicaid reimbursement to the transferee up to the amount owed the Commonwealth for reimbursable

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depreciation by the transferor or other person liable therein. Medicaid reimbursement to the transferee shall continue to be so reduced until repayment is made in full or the terms of the repayment are agreed to by the transferor or person liable therein.

8. In the event the transferor or other person liable therein defaults on any such repayment agreement the reductions of Medicaid reimbursement to the transferee may resume.

An action brought or initiated to reduce the transferee's Medicaid reimbursement or an action for attachment or levy shall not be brought or initiated more than six months after the date on which the sale or transfer has taken place unless the sale or transfer has been concealed or a letter of verification has not been obtained by the transferor or the transferor defaults on a repayment agreement approved by the director.

Article 2.

Operating Cost Component.

~~§ 2.6.~~ 12 VAC 30-90-40. Operating cost.

A. Operating cost shall be the total allowable inpatient cost less plant cost and NATCEPs costs. See Part VII for rate determination procedures for NATCEPs costs. To calculate the reimbursement rate, operating cost shall be converted to a per diem amount by dividing it by the greater of actual patient days, or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

B. For NFs of 30 beds or less, to calculate the reimbursement rate the number of patient days will continue to be computed as not less than 85% of the daily licensed bed complement.

~~§ 2.7.~~ 12 VAC 30-90-41. Nursing facility reimbursement formula.

A. Effective on and after October 1, 1990, all NFs subject to the prospective payment system shall be reimbursed under a revised formula entitled "The Patient Intensity Rating System (PIRS)." PIRS is a patient based methodology which links NF's per diem rates to the intensity of services required by a NF's patient mix. Three classes were developed which group patients together based on similar functional characteristics and service needs.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. Direct and indirect group ceilings.

a. In accordance with ~~§ 4.3~~ 12 VAC 30-90-20 C, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in ~~VR 460-03-1494~~ 12 VAC 30-90-270.

b. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA and for the rest of the state. Indirect patient care operating costs shall include all other operating costs, not defined in ~~VR 460-03-4-1944~~ 12 VAC 30-90-270 as direct patient care operating costs and NATCEPs costs.

c. Effective July 1, 1995, existing indirect peer group ceilings of nursing facilities shall be adjusted according to the schedule below. These adjustments shall be added to the ceiling in effect for each facility on July 1, 1995, and shall apply from that day until the end of the facility's fiscal year in progress at that time. Peer group ceilings for the subsequent fiscal year shall be calculated by adding the adjustments below to the existing interim ceiling. The resulting adjusted interim ceiling shall be increased by 100% of historical inflation to the beginning of the facility's next fiscal year to obtain the new "interim" ceiling, and by 50% of the forecast inflation to the end of the facility's next fiscal year. This action increases the number of indirect patient care operating cost peer groups to a total of eight, four peer groups for the area within the Washington DC-MD-VA MSA, and four for the rest of the state.

Licensed Bed Size	Ceiling Adjustment
1 to 30	add \$1.89
31 to 60	add \$1.28
61 to 90	add \$0.62
Over 90	add \$0.00

3. Each NF's Service Intensity Index (SII) shall be calculated for each semiannual period of a NF's fiscal year based upon data reported by that NF and entered into DMAS' Long Term Care Information System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now DMAS-95) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NF's SII, derived from the assessment data, will be normalized by dividing it by the average for all NF's in the state.

See ~~VR 460-03-4-1944~~ 12 VAC 30-90-300 for the PIRS class structure, the relative resource cost assigned to each class, the method of computing each NF's facility score and the methodology of computing the NF's semiannual SII's.

4. The normalized SII shall be used to calculate the initial direct patient care operating cost peer group medians. It shall also be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NF's subsequent fiscal years.

a. The normalized SII, as determined during the quarter ended September 30, 1990, shall be used to calculate the initial direct patient care operating cost peer group medians.

b. A NF's direct patient care operating cost prospective ceiling shall be the product of the NF's

peer group direct patient care ceiling and the NF's normalized SII for the previous semiannual period. A NF's direct patient care operating cost prospective ceiling will be calculated semiannually.

c. An SSI rate adjustment, if any, shall be applied to a NF's prospective direct patient care operating cost base rate for each semiannual period of a NF's fiscal year. The SII determined in the second semiannual period of the previous fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the first semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate. The SII determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the second semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate.

d. See ~~VR-460-03-4-1944~~ 12 VAC 30-90-300 for an illustration of how the SII is used to adjust direct patient care operating ceilings and the semiannual rate adjustments to the prospective direct patient care operating cost base rate.

5. An adjustment factor shall be applied to both the direct patient care and indirect patient care peer group medians to determine the appropriate initial peer group ceilings.

a. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during fiscal year 1991 under the prospective payment system in effect through September 30, 1990, as modified to incorporate the estimated additional NF reimbursement mandated by the provisions of § 1902(a)(13)(A) of the Social Security Act as amended by § 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987.

b. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during FY 1991 under the PIRS prospective payment system.

c. The DMAS shall determine the differential between a and b above and shall adjust the peer group medians within the PIRS as appropriate to reduce the differential to zero.

d. The adjusted PIRS peer group medians shall become the initial peer group ceilings.

B. The allowance for inflation shall be based on the percentage of change in the moving average of the Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the NF's most recent fiscal year ended. NFs shall have their prospective operating cost ceilings and prospective operating cost rates established in accordance with the following methodology:

1. The initial peer group ceilings established under ~~§ 2-7 A subsection A of this section~~ shall be the final peer group ceilings for a NF's first full or partial fiscal year under PIRS and shall be considered as the initial "interim ceilings" for calculating the subsequent fiscal year's peer group ceilings. Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the initial "interim" ceilings by a "percentage factor" which shall eliminate any allowances for inflation after September 30, 1990, calculated in both ~~§§ 2-7 subdivisions A 5 a and 2-7 A 5 c of this section~~. The adjusted initial "interim" ceilings shall be considered as the final "interim ceiling." Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the final "interim" ceiling, as determined above, by 100% of historical inflation from October 1, 1990, to the beginning of the NF's next fiscal year to obtain new "interim" ceilings, and 50% of the forecasted inflation to the end of the NF's next fiscal year.

2. A NF's average allowable operating cost rates, as determined from its most recent fiscal year's cost report, shall be adjusted by 50% of historical inflation and 50% of the forecasted inflation to calculate its prospective operating cost base rates.

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs. ~~4. Allowable plant costs shall be reimbursed in accordance with Part II, Article 4 this article.~~ Plant costs shall not include the component of cost related to making or producing a supply or service.

~~2. NATCEPs cost shall be reimbursed in accordance with Part VII 12 VAC 30-90-170.~~

E. The prospective rate for each NF shall be based upon operating cost and plant cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. For those NFs whose operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable operating cost rates and the peer group ceilings under the PIRS.

1. The following table below presents four incentive examples under the PIRS:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
\$30.00	\$27.00	\$3.00	10%	\$.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

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2. Separate efficiency incentives shall be calculated for both the direct and indirect patient care operating ceilings and costs.

G. Quality of care requirement. A cost efficiency incentive shall not be paid to a NF for the prorated period of time that it is not in conformance with substantive, nonwaived life, safety, or quality of care standards.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

~~§ 2.8. 12 VAC 30-90-42. Phase-in period.~~

A. To assist NFs in converting to the PIRS methodology, a phase-in period shall be provided until June 30, 1992.

B. From October 1, 1990, through June 30, 1991, a NF's prospective operating cost rate shall be a blended rate calculated at 33% of the PIRS operating cost rates determined by ~~§ 2.7 above 12 VAC 30-90-41~~ and 67% of the "current" operating rate determined by subsection D below.

C. From July 1, 1991, through June 30, 1992, a NF's prospective operating cost rate shall be a blended rate calculated at 67% of the PIRS operating cost rates determined by ~~§ 2.7 above 12 VAC 30-90-41~~ and 33% of the "current" operating rate determined by subsection D below.

D. The following methodology shall be applied to calculate a NF's "current" operating rate:

1. Each NF shall receive as its base "current" operating rate, the weighted average prospective operating cost per diems and efficiency incentive per diems if applicable, calculated by DMAS to be effective September 30, 1990.

2. The base "current" operating rate established above shall be the "current" operating rate for the NF's first partial fiscal year under PIRS. The base "current" operating rate shall be adjusted by appropriate allowance for historical inflation and 50% of the forecasted inflation based on the methodology contained in ~~§ 2.7 12 VAC 30-90-41 B~~ at the beginning of each of the NF's fiscal years which starts during the phase-in period, October 1, 1990, through June 30, 1992, to determine the NF's prospective "current" operating rate. See ~~VR 460-03-4.1944 12 VAC 30-90-300~~ for example calculations.

~~§ 2.8.4. 12 VAC 30-90-43. Nursing facility rate change.~~

For the period beginning July 1, 1991, and ending June 30, 1992, the per diem operating rate for each NF shall be adjusted. This shall be accomplished by applying a uniform adjustment factor to the rate of each NF.

Article 3.

Allowable Cost Identification.

~~§ 2.9. 12 VAC 30-90-50. Allowable costs.~~

A. Costs which are included in rate determination procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see ~~VR 460-03-4.1944, Uniform Expense Classification 12 VAC 30-90-270~~).

~~A. B.~~ Certification. The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by state laws, or by federal legislation or regulations.

B. C. Operating costs.

1. Direct patient care operating costs shall be defined in ~~VR 460-03-4.1944 12 VAC 30-90-270~~.

2. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and nonlegend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed directly to DMAS through separate provider agreements and DMAS shall pay directly in accordance with ~~subsections e and f of Attachment 4.19 B of the State Plan for Medical Assistance (VR 460-02-4.1920) 12 VAC 30-80-10 et seq.~~

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in ~~VR 460-03-4.1944 12 VAC 30-90-270~~, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

~~G. D.~~ Allowances/goodwill. Bad debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

~~D. E.~~ Cost of protecting employees from blood borne pathogens. Effective July 1, 1994, reimbursement of allowable costs shall be adjusted in the following way to recognize the costs of complying with requirements of the Occupational Safety and Health Administration (OSHA) for protecting employees against exposure to blood borne pathogens.

1. Hepatitis B immunization. The statewide median of the reasonable acquisition cost per unit of immunization times the number of immunizations provided to eligible employees during facility fiscal years ending during SFY 1994, divided by Medicaid days in the same fiscal period, shall be added to the indirect peer group ceiling effective July 1, 1994. This increase to the ceilings shall not exceed \$.09 per day for SFY 1995.

2. Other OSHA compliance costs. The indirect peer group ceilings shall be increased by \$.07, effective July

1, 1994, to recognize continuing OSHA compliance costs other than immunization.

3. Data submission by nursing facilities. Nursing facilities shall provide for fiscal years ending during SFY 1994, on forms provided by DMAS, (i) the names, job titles and social security numbers of individuals immunized, the number of immunizations provided to each and the dates of immunization; and (ii) the acquisition cost of immunization.

§-2.10. 12 VAC 30-90-51. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of §-2.5 12 VAC 30-90-34 B 2.

Allowable cost applicable to management services furnished to the provider by organizations related to the provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (See VR-460-03-4-1943, Cost Reimbursement Limitations 12 VAC 30-90-290.)

B. Related to the provider shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent, step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes the same meaning as "open, competitive market" in subdivision b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in §-2.2 12 VAC 30-90-31. Reimbursement shall be in accordance with §-2.10 A subsection A of this section with the limitations stated in §-2.2 12 VAC 30-90-31 B.

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~~§ 2-11. 12 VAC 30-90-52. Administrator/owner compensation.~~

A. Administrators' compensation, whether administrators are owners or non-owners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the NF administrator (see ~~VR 460-03-4-1943, Cost Reimbursement Limitations 12 VAC 30-90-290~~).

B. Administrator compensation shall mean remuneration paid regardless of the form in which it is paid. This includes, but shall not be limited to, salaries, professional fees, insurance premiums (if the benefits accrue to the employer/owner or his beneficiary) director fees, personal use of automobiles, consultant fees, management fees, travel allowances, relocation expenses in excess of IRS guidelines, meal allowances, bonuses, pension plan costs, and deferred compensation plans. Management fees, consulting fees, and other services performed by owners shall be included in the total compensation if they are performing administrative duties regardless of how such services may be classified by the provider.

C. Compensation for all administrators (owner and nonowner) shall be based upon a 40-hour week to determine reasonableness of compensation.

D. Owner/administrator employment documentation:

1. Owners who perform services for a NF as an administrator and also perform additional duties must maintain adequate documentation to show that the additional duties were performed beyond the normal 40 hour week as an administrator. The additional duties must be necessary for the operation of the NF and related to patient care.
2. Services provided by owners, whether in employee capacity, through management contracts, or through home office relationships shall be compared to the cost and services provided in arms-length transactions.
3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length transactions or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

~~§ 2-12. 12 VAC 30-90-53. Depreciation.~~

The allowance for depreciation shall be restricted to the straight line method with a useful life in compliance with AHA guidelines. If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

~~§ 2-13. 12 VAC 30-90-54. Rent/Leases.~~

Rent or lease expenses shall be limited by the provisions of ~~VR 460-03-4-1942, Leasing of Facilities 12 VAC 30-90-280~~.

~~§ 2-14. 12 VAC 30-90-55. Provider payments.~~

A. Limitations.

1. Payments to providers, shall not exceed charges for covered services except for (i) public providers furnishing services free of charge or at a nominal charge (ii) nonpublic provider whose charges are 60% or less of the allowable reimbursement represented by the charges and that demonstrates its charges are less than allowable reimbursement because its customary practice is to charge patients based on their ability to pay. Nominal charge shall be defined as total charges that are 60% or less of the allowable reimbursement of services represented by these charges. Providers qualifying in this section shall receive allowable reimbursement as determined in this Plan.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. For cost reports filed on or after August 1, 1992, an interim settlement shall be made by DMAS within 180 days after receipt and review of the cost report. The 180-day time frame shall similarly apply to cost reports filed but not interim settled as of August 1, 1992. The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein.

However, an interim settlement shall not be made when one of the following conditions exists.

1. Cost report filed by a terminated provider;
2. Insolvency of the provider at the time the cost report is submitted;
3. Lack of a valid provider agreement and decertification;
4. Moneys owed to DMAS;
5. Errors or inconsistencies in the cost report; or
6. Incomplete/nonacceptable cost report.

~~§ 2.15. 12 VAC 30-90-56.~~ Legal fees/accounting.

A. Costs claimed for legal/accounting fees shall be limited to reasonable and customary fees for specific services rendered. Such costs must be related to patient care as defined by Medicare principles of reimbursement and subject to applicable regulations herein. Documentation for legal costs must be available at the time of audit.

B. Retainer fees shall be considered an allowable cost up to the limits established in ~~VR 460-03-4.1943, Cost Reimbursement Limitations~~ 12 VAC 30-90-290.

C. As mandated by the Omnibus Budget Reconciliation Act of 1990, effective November 5, 1990, reimbursement of legal expenses for frivolous litigation shall be denied if the action is initiated on or after November 5, 1990. Frivolous litigation is any action initiated by the nursing facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.

~~§ 2.16. 12 VAC 30-90-57.~~ Documentation.

Adequate documentation supporting cost claims must be provided at the time of interim settlement, cost settlement, audit, and final settlement.

~~§ 2.17. 12 VAC 30-90-58.~~ Fraud and abuse.

Previously disallowed costs which are under appeal and affect more than one cost reporting period shall be disclosed in subsequent cost reports if the provider wishes to reserve appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General.

Article 4.
New Nursing Facilities.

~~§ 2.18. 12 VAC 30-90-60.~~ Interim rate.

A. For all new or expanded NFs the 95% occupancy requirement shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 12 months from the date of the NF's certification.

B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate, or being treated as a new NF.

C. The 95% occupancy requirement shall be applied to the first and subsequent cost reporting periods' actual costs for establishing such NF's second and future cost reporting periods' prospective reimbursement rates. The 95% occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95% occupancy at any point in time during the first cost reporting period.

D. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and

accepted by the DMAS, or the appropriate operating ceilings or charges.

E. On the first day of its second cost reporting period, a new nursing facility's interim plant rate shall be converted to a per diem amount by dividing it by the number of patient days computed as 95% of the daily licensed bed complement during the first cost reporting period.

F. Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under ~~§ 2.8 12 VAC 30-90-42.~~

G. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment shall receive the SII calculated for its last semiannual period prior to obtaining new NF status.

~~§ 2.19. 12 VAC 30-90-65.~~ Final rate.

The DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined above in ~~§ 2.18 12 VAC 30-90-60~~ A, C, E, and F.

Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If costs are below those ceilings, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable operating cost and the peer group ceiling used to set the interim rate. (Refer to ~~§ 2.7 12 VAC 30-90-41~~ F.)

Article 5.
Cost Reports.

~~§ 2.20. 12 VAC 30-90-70.~~ Cost report submission.

A. Cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, it is considered delinquent. The cost report shall be deemed complete for the purpose of cost settlement when DMAS has received all of the following, with the exception that the audited financial statements required by subdivisions 3 a and 6 b of this subsection shall be considered timely filed if received not later than 120 days after the provider's fiscal year end:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. a. The provider's audited financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of cash flows, the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an

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opinion based on generally accepted auditing standards, footnotes to the financial statements, and the management report. Multi-facility providers shall be governed by ~~§ 2-20 subdivision A 6 of this section~~;

b. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

c. Schedule of investments by type (stock, bond, etc.), amount, and current market value;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule;

6. NFs which are part of a chain organization must also file:

a. Home office cost report;

b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report and footnotes to the financial statements;

c. The NFs financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;

d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

e. Schedule of investments by type (stock, bond, etc.), amount, and current market value; and

7. Such other analytical information or supporting documentation that may be required by DMAS.

B. When cost reports are delinquent, the provider's interim rate shall be reduced by 20% the first month and an additional 20% of the original interim rate for each subsequent month the report has not been submitted. DMAS shall notify the provider of the schedule of reductions which shall start on the first day of the following month. For example, for a September 30 fiscal year end, notification will be mailed in early January stating that payments will be reduced starting with the first payment in February.

C. After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

~~§ 2-24. 12 VAC 30-90-75. Reporting form; accounting method; cost report extensions; fiscal year changes.~~

A. All cost reports shall be submitted on uniform reporting forms provided by the DMAS, or by Medicare if applicable. Such cost reports, subsequent to the initial cost report period, shall cover a 12-month period. Any exceptions must be approved by the DMAS.

~~§ 2-22. Accounting method.~~

B. The accrual method of accounting and cost reporting is mandated for all providers.

~~§ 2-23. Cost report extensions.~~

A. C. Extension for submission of a cost report may be granted if the provider can document extraordinary circumstances beyond its control. B. Extraordinary circumstances do not include:

1. Absence or changes of chief finance officer, controller or bookkeeper;

2. Financial statements not completed;

3. Office or building renovations;

4. Home office cost report not completed;

5. Change of stock ownership;

6. Change of intermediary;

7. Conversion to computer; or

8. Use of reimbursement specialist.

~~§ 2-24. Fiscal year changes.~~

D. All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year.

Article 6.
Prospective Rates.

~~§ 2-25. 12 VAC 30-90-80. Time frames.~~

A. For cost reports filed on or after August 1, 1992, a prospective rate shall be determined by DMAS within 90 days of the receipt of a complete cost report. (See ~~§ 2-20 12 VAC 30-90-70 A.~~) The 180-day time frame shall similarly apply to cost reports filed but for which a prospective rate has not been set as of August 1, 1992. Rate adjustments shall be made retroactive to the first day of the provider's new cost reporting year. Where a field audit is necessary to set a prospective rate, the DMAS shall have an additional 90 days to determine any appropriate adjustments to the prospective rate as a result of such field audit. This time period shall be extended if delays are attributed to the provider.

B. Subsequent to establishing the prospective rate DMAS shall conclude the desk audit of a providers' cost report and determine if further field audit activity is necessary. The DMAS will seek repayment or make retroactive settlements when audit adjustments are made to costs claimed for reimbursement.

Article 7.
Retrospective Rates.

~~§ 2-26. 12 VAC 30-90-90. Retrospective rates.~~

The retrospective method of reimbursement shall be used for mental health/mental retardation facilities.

~~§ 2.27. 12 VAC 30-90-100.~~ (Reserved)

Article 8.
Record Retention.

~~§ 2.28. Time frames. 12 VAC 30-90-110. Record retention.~~

A. *Time frames.* All of the NF's accounting and related records, including the general ledger, books of original entry, and statistical data must be maintained for a minimum of five years, or until all affected cost reports are final settled.

B. Certain information must be maintained for the duration of the provider's participation in the DMAS and until such time as all cost reports are settled. Examples of such information are set forth in ~~§ 2.29 subsection B of this section.~~

~~§ 2.29. B.~~ Types of records to be maintained. Information which must be maintained for the duration of the provider's participation in the DMAS includes, but is not limited to:

1. Real and tangible property records, including leases and the underlying cost of ownership;
2. Itemized depreciation schedules;
3. Mortgage documents, loan agreements, and amortization schedules;
4. Copies of all cost reports filed with the DMAS together with supporting financial statements:

~~§ 2.30. C.~~ Record availability. The records must be available for audits by DMAS staff. Where such records are not available, costs shall be disallowed.

Article 9.
Audits.

~~§ 2.34. 12 VAC 30-90-120. Audit overview; scope of audit.~~

A. Desk audits shall be performed to verify the completeness and accuracy of the cost report, and reasonableness of costs claimed for reimbursement. Field audits, as determined necessary by the DMAS, shall be performed on the records of each participating provider to determine that costs included for reimbursement were accurately determined and reasonable, and do not exceed the ceilings or other reimbursement limitations established by the DMAS.

~~§ 2.32. Scope of audit.~~

B. The scope of the audit includes, but shall not be limited to: trial balance verification, analysis of fixed assets, indebtedness, selected revenues, leases and the underlying cost of ownership, rentals and other contractual obligations, and costs to related organizations. The audit scope may also include various other analyses and studies relating to issues and questions unique to the NF and identified by the DMAS. Census and related statistics, patient trust funds, and billing procedures are also subject to audit.

~~§ 2.33. 12 VAC 30-90-121. Field audit requirements.~~

Field audits shall be required as follows:

1. For the first cost report on all new NF's.

2. For the first cost report in which costs for bed additions or other expansions are included.

3. When a NF is sold, purchased, or leased.

4. As determined by DMAS desk audit.

~~§ 2.34. 12 VAC 30-90-122. Provider notification.~~

The provider shall be notified in writing of all adjustments to be made to a cost report resulting from desk or field audit with stated reasons and references to the appropriate principles of reimbursement or other appropriate regulatory cites.

~~§ 2.35. 12 VAC 30-90-123. Field audit exit conference.~~

A. The provider shall be offered an exit conference to be executed within 15 days following completion of the on-site audit activities, unless other time frames are mutually agreed to by the DMAS and provider. Where two or more providers are part of a chain organization or under common ownership, DMAS shall have up to 90 days after completion of all related on-site audit activities to offer an exit conference for all such NFs. The exit conference shall be conducted at the site of the audit or at a location mutually agreeable to the DMAS and the provider.

B. The purpose of the exit conference shall be to enable the DMAS auditor to discuss such matters as the auditor deems necessary, to review the proposed field audit adjustments, and to present supportive references. The provider will be given an opportunity during the exit conference to present additional documentation and agreement or disagreement with the audit adjustments.

C. All remaining adjustments, including those for which additional documentation is insufficient or not accepted by the DMAS, shall be applied to the applicable cost report(s) regardless of the provider's approval or disapproval.

D. The provider shall sign an exit conference form that acknowledges the review of proposed adjustments.

E. After the exit conference the DMAS shall perform a review of all remaining field audit adjustments. Within a reasonable time and after all documents have been submitted by the provider, the DMAS shall transmit in writing to the provider a final field audit adjustment report (FAAR), which will include all remaining adjustments not resolved during the exit conference. The provider shall have 15 days from the date of the letter which transmits the FAAR, to submit any additional documentation which may affect adjustments in the FAAR.

~~§ 2.36. 12 VAC 30-90-124. Audit delay.~~

In the event the provider delays or refuses to permit an audit to occur or to continue or otherwise interferes with the audit process, payments to the provider shall be reduced as stated in ~~§ 2.20 12 VAC 30-90-70 B.~~

~~§ 2.37. 12 VAC 30-90-125. Field audit time frames.~~

A. If a field audit is necessary after receipt of a complete cost report, such audit shall be initiated within three years following the date of the last notification of program reimbursement and the on site activities, including exit

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conferences, shall be concluded within 180 days from the date the field audit begins. Where audits are performed on cost reports for multiple years or providers, the time frames shall be reasonably extended for the benefit of the DMAS and subject to the provisions of ~~§ 2-35~~ 12 VAC 30-90-123.

B. Documented delays on the part of the provider will automatically extend the above time frames to the extent of the time delayed.

C. Extensions of the time frames shall be granted to the department for good cause shown.

D. Disputes relating to the timeliness established in ~~§§ 2-35 and 2-37~~ 12 VAC 30-90-123 and 12 VAC 30-90-124, or to the grant of extensions to the DMAS, shall be resolved by application to the Director of the DMAS or his designee.

PART Subpart III. Appeals.

~~§ 3-1.~~ 12 VAC 30-90-130. Dispute resolution for nonstate operated nursing facilities.

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § [~~9-6.14.1~~ 9-6.14.1] et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues are identified below:

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.
2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.
3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.
4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.
5. The establishment of separate ceilings for direct operating costs and indirect operating costs.
6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.
7. The development of Service Intensity Indexes based on:
 - a. Determination of resource indexes for each patient class that measures relative resource cost.
 - b. Determination of each NF's average relative resource cost index across all patients.
 - c. Standardizing the average relative resource cost indexes of each NF across all NF's.

8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

~~§ 3-2.~~ 12 VAC 30-90-131. Conditions for appeal.

An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.
2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by the Director of the Division of Cost Settlement and Audit.
3. All first level appeal requests shall be filed in writing with the DMAS within 90 business days following the date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

~~§ 3-3.~~ 12 VAC 30-90-132. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the ~~Appeals Division of Cost Settlement and Audit~~ after an informal fact finding conference is held. The decision of the Director of ~~Cost Settlement and Audit~~ the Appeals Division shall be sent in writing to the provider within 90 business days following conclusion of the informal fact finding conference.

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 business days of the date of the initial decision.

D. Within 30 business days of the date of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within ~~30 business days of the date of the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later.~~ the time frames set for disposition of appeals in this subpart and the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

F. The director's final written decision shall conclude the provider's administrative appeal.

~~§ 3-4.~~ Formal hearing procedures.

G. Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

~~§ 3-5.~~ 12 VAC 30-90-133. Appeals time frames.

Appeal time frames noted throughout this section may be extended for the following reasons:

- A. 1. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.
- B. 2. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.
- C. 3. Extensions of time frames shall be granted to the DMAS for good cause shown.
- D. 4. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.
- E. 5. Disputes relating to the time lines established in § 3.3 12 VAC 30-90-132 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

~~§ 3-6.~~ 12 VAC 30-90-134. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

- 1. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.
- 2. The appropriate DMAS division must receive the reconsideration request within 30 business days after the date of a DMAS Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review. The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought; the amount of the adjustment sought; and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action. The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review. A state-operated provider may, within 30 business days after the date of the informal review decision of the division director, request that the DMAS Director or his designee review the decision of the division director. The DMAS Director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review. If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 business days after the date of the decision of the DMAS Director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

12 VAC 30-90-135. Reimbursement of legal fees associated with appeals having substantial merit.

A. The Department of Medical Assistance Services shall reimburse a nursing facility for reasonable and necessary legal fees associated with an informal or formal appeal brought pursuant to the Administrative Process Act, only if the nursing facility substantially prevails on the merit of the appeal. The term "substantially prevails" is defined as being successful on more than 50% of the issue as appealed and on more than 50% of the amount under appeal. The reimbursement of legal fees remains subject to the State Plan for Medical Assistance and all existing ceilings. Any legal fees claimed must be supported by adequate, detailed, and verifiable documentation.

B. Subject to the requirements of subsection A of this section, the reimbursable legal fees will be included in the calculation of total allowable costs in the fiscal year the appeal process is concluded and Medicaid will reimburse the [NF nursing facility] for its Medicaid proportionate share.

PART Subpart IV.

Individual Expense Limitation.

12 VAC 30-90-140. Individual expense limitation.

In addition to operating costs being subject to peer group ceilings, costs are further subject to maximum limitations as defined in ~~VR 460-03-4.1943~~ 12 VAC 30-90-290, Cost Reimbursement Limitations.

PART Subpart V.

Cost Report Preparation Instructions.

12 VAC 30-90-150. Cost report preparation instructions.

Instructions for preparing NF cost reports will be provided by the DMAS.

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PART Subpart VI. Stock Transactions.

~~§ 6.1. 12 VAC 30-90-160.~~ Stock acquisition; merger of unrelated and related parties.

A. The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets. Any cost associated with such an acquisition shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.

~~§ 6.2. Merger of unrelated parties.~~

A. B. In the case of a merger which combines two or more unrelated corporations under the regulations of the Code of Virginia, there will be only one surviving corporation. If the surviving corporation, which will own the assets and liabilities of the merged corporation, is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

B. The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

~~§ 6.3. Merger of related parties.~~

C. The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

PART Subpart VII.

Nurse Aide Training and Competency Evaluation Program and Competency Evaluation Programs (NATCEPs).

~~§ 7.1. The Omnibus Budget Reconciliation Act of 1989. 12 VAC 30-90-170. NATCEPs costs.~~

A. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

~~§ 7.2. NATCEPs costs.~~

A. B. NATCEPs costs shall be as defined in ~~VR 460-03-4.4944~~ 12 VAC 30-90-270.

B. C. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

C. D. The NATCEPs interim reimbursement rate determined in ~~§ 7.2-B subsection C of this section~~ shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

D. E. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs which are properly

charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in ~~§ 7.2-B subsection C of this section~~ times the Medicaid patient days from the DMAS MMR-240.

~~E. F.~~ Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

~~F. G.~~ Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in ~~§ 2.14 12 VAC 30-90-55 A.~~

PART Subpart VIII.

Criminal Records Checks for Nursing Facility Employees.

~~§ 8.1. 12 VAC 30-90-180.~~ Criminal records checks.

A. This section implements the requirements of § 32.1-126.01 of the Code of Virginia and Chapter 994 of the Acts of Assembly of 1993 (Item 313 T).

B. A licensed nursing facility shall not hire for compensated employment persons who have been convicted of:

- 1, Murder;
- 2, Abduction for immoral purposes as set out in § 18.2-48 of the Code of Virginia;
- 3, Assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;
- 4, Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 of the Code of Virginia;
- 5, Pandering as set out in § 18.2-355 of the Code of Virginia;
- 6, Crimes against nature involving children as set out in § 18.2-361 of the Code of Virginia;
- 7, Taking indecent liberties with children as set out in §§ 18.2-370 or 18.2-370.1 of the Code of Virginia;
- 8, Abuse and neglect of children as set out in § 18.2-371, 1 of the Code of Virginia;
- 9, Failure to secure medical attention for an injured child as set out in § 18.2-314 of the Code of Virginia;
- 10, Obscenity offenses as set out in § 18.2-374.1 of the Code of Virginia; or
- 11, Abuse or neglect of an incapacitated adult as set out in § 18.2-369 of the Code of Virginia.

C. The provider shall obtain a sworn statement or affirmation from every applicant disclosing any criminal convictions or pending criminal charges for any of the offenses specified in subsection B of this section regardless of whether the conviction or charges occurred in the Commonwealth.

D. The provider shall obtain an original criminal record clearance or an original criminal record history from the Central Criminal Records Exchange for every person hired. This information shall be obtained within 30 days from the date of employment and maintained in the employees' files during the term of employment and for a minimum of five years after employment terminates for whatever reason.

E. The provider may hire an applicant whose misdemeanor conviction is more than five years old and whose conviction did not involve abuse or neglect or moral turpitude.

F. Reimbursement to the provider will be handled through the cost reporting form provided by the DMAS and will be limited to the actual charges made by the Central Criminal Records Exchange for the records requested. Such actual charges will be a pass-through cost which is not a part of the operating or plant cost components.

*PART Subpart IX.
Use of MMR-240.*

12 VAC 30-90-190. Use of MMR-240.

All providers must use the data from computer printout MMR-240 based upon a 60-day accrual period.

*PART Subpart X.
Commingled Investment Income.*

12 VAC 30-90-200. Commingled investment income.

DMAS shall treat funds commingled for investment purposes in accordance with PRM-15, § 202.6.

*PART Subpart XI.
Provider Notification.*

12 VAC 30-90-210. Provider notification.

DMAS shall notify providers of State Plan changes affecting reimbursement 30 days prior to the enactment of such changes.

*PART Subpart XII.
Start-up Costs and Organizational Costs.*

§ 12-1. 12 VAC 30-90-220. Start-up costs.

A. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, they shall be capitalized as deferred charges and amortized over a 60-month time frame.

B. Start-up costs may include, but are not limited to, administrative and nursing salaries; heat, gas, and electricity; taxes, insurance; employee training costs; repairs and maintenance; housekeeping; and any other allowable costs incident to the start-up period. However, any costs that are properly identifiable as operating costs must be appropriately classified as such and excluded from start-up costs.

C. Start-up costs that are incurred immediately before a provider enters the Program and that are determined by the provider, subject to the DMAS approval, to be immaterial

need not be capitalized but rather may be charged to operations in the first cost reporting period.

D. Where a provider incurs start-up costs while in the Program and these costs are determined by the provider, subject to the DMAS approval, to be immaterial, these costs shall not be capitalized but shall be charged to operations in the periods incurred.

~~§ 12-2. Applicability. 12 VAC 30-90-221. Time frames.~~

A. Start-up cost time frames.

1. Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first patient (whether Medicaid or non-Medicaid) is admitted for treatment, or where the start-up costs apply only to nonrevenue producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes.

2. If a provider intends to prepare all portions of its entire facility at the same time, start-up costs for all portions of the facility shall be accumulated in a single deferred charge account and shall be amortized when the first patient is admitted for treatment.

3. If a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs shall be capitalized and amortized separately for the portion or portions of the provider's facility prepared during different time periods.

4. Moreover, if a provider expands its NF by constructing or purchasing additional buildings or wings, start-up costs shall be capitalized and amortized separately for these areas.

B. Depreciation time frames.

1. Costs of the provider's facility and building equipment shall be depreciated using the straight line method over the lives of these assets starting with the month the first patient is admitted for treatment.

2. Where portions of the provider's NF are prepared for patient care services after the initial start-up period, those asset costs applicable to each portion shall be depreciated over the remaining lives of the applicable assets. If the portion of the NF is a nonrevenue-producing patient care area or nonallowable area, depreciation shall begin when the area is opened for its intended purpose. Costs of major movable equipment, however, shall be depreciated over the useful life of each item starting with the month the item is placed into operation.

~~§ 12-3. 12 VAC 30-90-222. Organizational costs.~~

A. Organizational costs are those costs directly incident to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges which have a value to the enterprise. The services inherent in organizational costs extend over more than one accounting period and thus affect the costs of future periods of operations.

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B. Allowable organizational costs shall include, but not be limited to, legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and by-laws, legal agreements, minutes of organizational meeting, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders and fees paid to states for incorporation.

C. The following types of costs shall not be considered allowable organizational costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as underwriters fees and commissions, accountant's or lawyer's fees, cost of qualifying the issues with the appropriate state or federal authorities, stamp taxes, etc.

D. Allowable organization costs shall generally be capitalized by the organization. However, if DMAS concludes that these costs are not material when compared to total allowable costs, they may be included in allowable indirect operating costs for the initial cost reporting period. In all other circumstances, allowable organization costs shall be amortized ratably over a period of 60 months starting with the month the first patient is admitted for treatment.

~~PART Subpart XIII.~~ DMAS Authorization.

~~§ 13.4. 12 VAC 30-90-230. Access to records.~~

A. DMAS shall be authorized to request and review, either through a desk or field audit, all information related to the provider's cost report that is necessary to ascertain the propriety and allocation of costs (in accordance with Medicare and Medicaid rules, regulations, and limitations) to patient care and nonpatient care activities.

B. Examples of such information shall include, but not be limited to, all accounting records, mortgages, deeds, contracts, meeting minutes, salary schedules, home office services, cost reports, and financial statements.

C. This access also applies to related organizations as defined in ~~§ 2.10 12 VAC 30-90-51~~ who provide assets and other goods and services to the provider.

~~PART Subpart XIV.~~ Home Office Costs.

~~§ 14.1. General. 12 VAC 30-90-240. Home office costs.~~

A. Home office costs shall be allowable to the extent they are reasonable, relate to patient care, and provide cost savings to the provider.

~~§ 14.2. Purchases.~~

B. Provider purchases from related organizations, whether for services, or supplies, shall be limited to the lower of the related organizations actual cost or the price of comparable purchases made elsewhere.

~~§ 14.3. Allocation of home office costs.~~

C. Home office costs shall be allocated in accordance with § 2150.3, PRM-15.

~~§ 14.4. Nonrelated management services.~~

D. Home office costs associated with providing management services to nonrelated entities shall not be recognized as allowable reimbursable cost.

~~§ 14.5. Allowable and nonallowable home office costs.~~

E. Allowable and nonallowable home office costs shall be recognized in accordance with § 2150.2, PRM-15.

~~§ 14.6. Equity capital.~~

F. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

~~PART Subpart XV.~~ Refund of Overpayments.

~~§ 15.1. 12 VAC 30-90-250. Lump sum payment.~~

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk audit, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS' determination of the overpayment.

~~§ 15.2. 12 VAC 30-90-251. Offset.~~

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall be used to reduce the balance of the overpayment.

~~§ 15.3. 12 VAC 30-90-252. Payment schedule.~~

A. If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request in writing an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request in writing an extended repayment schedule.

B. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of DMAS may approve a repayment schedule of up to 36 months.

C. A provider shall have no more than one extended repayment schedule in place at one time. If subsequent audits identify additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amounts.

D. If, during the time an extended repayment schedule is in effect, the provider ceases to be a participating provider or

fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

E. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered from interim payments to the provider or by lump sum payments.

§ 15.4. 12 VAC 30-90-253. Extension request documentation.

In the written request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

§ 15.5. 12 VAC 30-90-254. Interest charge on extended repayment.

A. Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

B. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

C. The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

PART Subpart XVI.
Revaluation of Assets.

§ 16.1. 12 VAC 30-90-260. Change of ownership.

A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index applied in the aggregate with respect to those

facilities that have undergone a change of ownership during the fiscal year, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year.

B. To comply with the provisions of COBRA 1985, effective October 1, 1986, the DMAS shall separately apply the following computations to the capital assets of each facility which has undergone a change of ownership:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index, or
2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U).

C. Change of ownership is deemed to have occurred only when there has been a bona fide sale of assets of a NF (See § 2.5 12 VAC 30-90-34 B 3 for the definition of "bona fide" sale).

D. Reimbursement for capital assets which have been revalued when a facility has undergone a change of ownership shall be limited to the lesser of:

1. The amounts computed in subsection B above;
2. Appraised replacement cost value; or
3. Purchase price.

E. Date of acquisition is deemed to have occurred on the date legal title passed to the seller. If a legal titling date is not determinable, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

NOTICE: The forms used in administering 12 VAC 30-90-20 et seq. are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Certificate of Medical Necessity -- Durable Medical Equipment and Supplies, DMAS-352, Revised August 1995.

Cost Reporting Forms (PIRS 1090 Series)
Effective 7-1-93

Facility Description and Statistical Data, Schedule A
Certification by Officer or Administrator of Provider, Schedule A-2

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Reclassification and Adjustment of Trial Balance of Expenses, Schedule B
Reclassifications, Schedule B-1
Analysis of Administrative and General - Other, Schedule B-2
Adjustment to Expenses, Schedule B-4
Cost Allocation - Employee Benefits, Schedule B-5, Part I
Cost Allocation - Employee Benefits Statistical Basis, Schedule B-5, Part II
Computation of Title XIX Direct Patient Care Ancillary Service Costs, Schedule C
Statement of Cost of Services from Related Organizations, Schedule D
Statement of Compensation of Owners, Schedule E
Statement of Compensation of Administrators and/or Assistant Administrators, Schedule F
Balance Sheet, Schedule G
Statement of Patient Revenues, Schedule G-1
Statement of Operations, Schedule G-2
Computation of Title XIX Base Costs and Prospective Reimbursement Rate, Schedule H, Part I
Computation of Prospective Direct and Indirect Patient Care Profit Incentive Rates, Schedule H-1
Calculation of Medical Service Reimbursement Settlement, Schedule J
Computation of Nursing Facility Medical Service Potential Prospective Reimbursement, Schedule J, Part II
Settlement Computations, Schedule J, Part III
Analysis of Nursing Facility Interim Payments for Title XIX Services, Schedule J, Part IV
Analysis of Quarterly Title XIX Patient Days, Schedule J, Part V
Accumulation of Title XIX Charges, Schedule J, Part VI
Calculation of NATCEPs Reimbursement Settlement, Schedule J-1
Calculation of Criminal Record Check Costs Reimbursement, Schedule J-2
Debt and Interest Expense, Schedule K
Limitation on Federal Participation for Capital Expenditures Questionnaire, Schedule L
Nurse Aide Training and Competency Evaluation Program Costs and Competency Evaluation Programs (NATCEPs) Schedule N

DOCUMENTS INCORPORATED BY REFERENCE

R.S. Means Building Construction Data, "Location Factor."
Estimated Useful Lives of Depreciable Assets, American Hospital Association.
Cragie Incorporated Municipal Finance Newsletter.
Federal Reserve Statistical Release (H. 15).
Provider Reimbursement Manual, HCFA-Pub. 15 (PRM-15), Health Care Financing Administration.
Skilled Nursing Facility Market Basket of Routine Service Costs, Data Resources.
Nursing Facility Reimbursement Report, MMR-240, Department of Medical Assistance Services

VA.R. Doc. No. R96-305; Filed April 10, 1996, 11:15 a.m.

Title of Regulation: ~~VR-460-04-8-14.~~ **12 VAC 30-120-260 through 12 VAC 30-120-350. Part V, MEDALLION.**

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 396 R of the 1995 Appropriations Act.

Effective Date: June 1, 1996.

Summary:

This regulation expands mandatory enrollment in the MEDALLION program. The 1995 Appropriations Act required DMAS to expand mandatory enrollment in the MEDALLION program to all Medicaid recipients, including aged, blind, and disabled recipients who did not receive Medicare or participate in community-based waiver programs. This final regulation makes permanent the changes reflected in the emergency regulation, which was effective July 1, 1995.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-120-260 through 12 VAC 30-120-350. Part V, MEDALLION.

§-1. 12 VAC 30-120-260. Definitions.

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

"ABD" means aged, blind and disabled recipients of public assistance programs as defined by the Virginia Department of Social Services.

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

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

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

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

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

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

"DMAS" means the Department of Medical Assistance Services.

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

1. Placing the client's health in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

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

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

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

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

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

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

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

"State" means the Commonwealth of Virginia.

§-2. 12 VAC 30-120-270. Program purpose.

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

§-3. 12 VAC 30-120-280. "MEDALLION" clients.

A. Clients of "MEDALLION" shall be individuals receiving Medicaid as ADG ABD, AFDC or ADG-related AFDC-related

categorically needy and medically needy (except those becoming eligible through spend-down) and except for foster care children, whether or not receiving cash assistance grants. The following exclusions shall apply:

4. B. Exclusions.

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

- a. Individuals who are inpatients in mental hospitals and skilled nursing facilities;
- b. Individuals who are receiving personal care services;
- c. Individuals who are participating in foster care or subsidized adoption programs, who are members of spend-down cases, or who are refugees; ;
- d. *Individuals receiving Medicare.*

d. 2. A client may be excluded from participating in "MEDALLION" if any of the following apply:

- (1) a. Client not accepted to the caseload of any participating PCP.
- (2) b. Client whose enrollment in the caseload of assigned PCP has been terminated and other PCPs have declined to enroll the client.

2. C. Client enrollment process.

a. 1. All ADG ABD, AFDC or ADG AFDC-related recipients excepting those meeting one of the exclusions of §-3 subsection B of this section shall be enrolled in "MEDALLION."

b. 2. Newly eligible individuals shall not participate in "MEDALLION" until completion of the Medicaid enrollment process. This shall include initial enrollment at the time of eligibility determination by Department of Social Services staff, or any subsequent reenrollment that may occur.

c. 3. Clients shall receive an interim Medicaid card from DMAS, and shall be provided authorized medical care in accordance with current procedures, after eligibility requirements are met.

d. 4. Once clients are fully registered as "MEDALLION" clients, they will receive a "MEDALLION" identification card to replace material in addition to the Medicaid card.

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

a. 1. Clients shall notify DMAS of their PCP selection within 30 days of receiving their "MEDALLION" enrollment notification letter. If notification is not received by DMAS within that timeframe, DMAS shall select a PCP for the client.

b. 2. Selected PCP shall be a "MEDALLION" enrolled provider.

c. 3. PCP will provide 24-hour access, which shall include as a minimum a 24-hour telephone number to be placed on each client's "MEDALLION" identifier.

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d. 4. DMAS shall review client requests in choosing a specific PCP for appropriateness and to ensure client accessibility to all required medical services.

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

a. 1. Clients shall be assigned to "MEDALLION" providers on a random basis. The age, gender, and any special medical needs shall be considered in assigning a provider with an appropriate specialty. Any prior patient-provider relationships shall be maintained if appropriate. Families will be grouped and assigned to the same provider when possible.

b. 2. Each site having two or more separately identifiable provider groups shall be divided into separate regions for client assignment. Clients shall initially be assigned to a PCP according to the region in which they reside. Should insufficient PCPs exist within the client's specific region, clients shall be assigned a PCP in an adjacent region.

c. 3. Each PCP shall be assigned a client, or family group if appropriate, until the maximum number of clients the PCP has elected to serve has been reached, or until there are no more clients suitable for assignment to that PCP, or all clients have been assigned.

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

a. 1. Requests for change of PCP "for cause" are not subject to the six-month limitation, but shall be reviewed and approved by DMAS staff on an individual basis. Examples of changing providers "for cause" may include but shall not be necessarily limited to:

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

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

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

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

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

b. 2. The existing PCP shall continue to retain the client in the caseload, and provide services to the client until a new PCP is assigned or selected.

c. 3. PCPs may elect to release "MEDALLION" clients from their caseloads for cause with review and approval by DMAS on a case-by-case basis. In such circumstances, §-3 subdivision F 2 of this section shall apply.

6. G. "MEDALLION" identification card *material*. Each client enrolled shall receive a "MEDALLION" card *identifier*, which shall replace and be distinct from the Medicaid card in appearance, and embossed with the "MEDALLION" logo [or shall contain information in magnetic or other form which allows identification of the client as a member of the "MEDALLION" program].

a. 1. The front of the card *identifier* shall include the client's name, Medicaid case identification number, birthdate, sex, PCP's name, address, 24-hour access telephone number, and the effective time period covered by the [card *identifier*].

b. 2. The "MEDALLION" Hot Line 800 number will be listed on the card *identifier*.

H. Prior authorization.

c. 1. Clients shall contact their assigned PCP or designated covering provider to obtain authorization prior to seeking nonemergency care.

d. 2. Emergency services shall be provided without delay or prior authorization. However, the emergency nature of the treatment shall be documented by the provider providing treatment and should be reported to the PCP after treatment is provided. Clients should inform the PCP of any emergency treatment received.

§-4. 12 VAC 30-120-290. Providers of services.

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

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

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

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

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

5. The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to

DMAS for admissions by a physician who does have admitting privileges.

~~§ 6.~~ 12 VAC 30-120-300. "MEDALLION" provider requirements.

A. PCPs must require their clients to present their currently effective "MEDALLION" [~~card identification material~~] upon presentation for services.

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

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

1. Providing patient management for the following services: physician, pharmacy, hospital inpatient and outpatient, laboratory, ambulatory surgical center, radiology, and durable medical equipment and supplies.
 2. Providing or arranging for physician coverage 24 hours per day, seven days per week.
 3. Determining the need for and authorizing when appropriate, all nonemergency care.
 4. Being an EPSDT provider, or having a referral relationship with one, and providing or arranging for preventive health services for children under the age of 21 in accordance with the periodicity schedule recommended in the Guidelines for Health Supervision of the American Academy of Pediatrics (AAP), 1991.
 5. Making referrals when appropriate, conforming to standard medical practices, to medical specialists or services as required. The referral duration shall be at the discretion of the PCP, and must be fully documented in the patient's medical record.
 6. Coordinating inpatient admissions either by personally ordering the admission, or by referring to a specialist who may order the admission. ~~The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to DMAS for admissions by a physician who does have admitting privileges.~~
 7. Maintaining a legibly written, comprehensive, and unified patient medical record for each client consistent with documentation requirements set forth in DMAS' Physician Manual.
 8. Documenting in each client's record all authorizations for referred services.
 9. Providing education and guidance to assigned clients for the purpose of teaching correct methods of accessing the medical treatment system and promoting good health practices.
10. [~~Track and document~~ Tracking and documenting] any emergency care provided to clients.

~~§ 6.~~ 12 VAC 30-120-310. Services exempted from "MEDALLION."

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

1. Obstetrical services (*pregnancy and pregnancy related*);
2. Psychiatric and psychological services, to include but not be limited to mental health, mental retardation services;
3. Family planning services;
4. Routine newborn services when billed under the mother's Medicaid number;
5. Annual or routine vision examinations (*under age 21*);
6. Dental services (*under age 21*); and
7. Emergency services;
8. *EPSDT well-child exams (health departments only and under age 21); and*
9. *Immunizations (health departments only).*

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

~~§ 7.~~ 12 VAC 30-120-320. PCP payments.

A. DMAS shall pay for services rendered to "MEDALLION" clients through the existing fee-for-service methodology and a case management fee.

B. "MEDALLION" providers shall receive a monthly case management fee of \$3.00 per client.

C. PCPs may serve a maximum of ~~4,000~~ 2,000 "MEDALLION" clients. Groups or clinics may serve a maximum of ~~4,000~~ 2,000 "MEDALLION" clients per authorized PCP in the group or clinic. Exceptions to this will be considered on a case-by-case basis predicated upon client needs.

~~§ 8.~~ 12 VAC 30-120-330. Utilization review.

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

1. Excessive or inappropriate services;
2. Unauthorized or excluded services; and
3. Analysis of possible trends in increases or reductions of services.

~~§ 9.~~ 12 VAC 30-120-340. Client and provider appeals.

A. Client appeals. Clients shall have the right of appeal of any adverse action taken by DMAS consistent with the provisions of ~~VR 460-04-8.7 Part 1~~ (12 VAC 30-110-10 et seq.) of 12 VAC 30-110.

B. Provider appeals. Providers shall have the right to appeal any adverse action taken by DMAS under these regulations ~~this~~ [~~chapter part~~] pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

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

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

12 VAC 30-120-350. PCP remedies for violation, breach, or nonperformance of provider agreement terms and addendum.

A. Termination. Either the PCP or DMAS may terminate the PCP's enrollment in the MEDALLION program at any time if either party determines that the other party has failed to perform any of its functions or duties under the addendum to the provider agreement (hereafter referred to as the addendum) between the department and the PCP. In such event, the party exercising this option shall notify the other party in writing of the intent to terminate the addendum and shall give the other party 30 days to correct the identified violation, breach or nonperformance of the addendum. If such violation, breach or nonperformance of the addendum is not satisfactorily addressed within this time period, the exercising party must notify the other party in writing of its intent to terminate the addendum at least 60 days prior to the proposed termination date. The termination date shall always be the last day of the month in which the 60th day falls. The addendum may be terminated by DMAS sooner than the time periods for notice specified in this subsection if DMAS determines that a recipient's health or welfare is jeopardized by continued enrollment under the care of the PCP.

B. Suspension of new enrollment.

1. Whenever DMAS determines that the PCP is out of compliance with the addendum, it may suspend the PCP's right to enroll new recipients. DMAS, when exercising this option, shall notify the PCP in writing of its intent to suspend new enrollment at least 30 days prior to the beginning of the suspension period. The suspension period may be for any length of time specified by DMAS, or may be indefinite. The suspension period may extend up to any expiration date of the addendum.

2. DMAS may also suspend new enrollment or disenroll recipients in anticipation of the PCP not being able to comply with federal or state laws at its current enrollment level. Such suspension shall not be subject to the 30-day notification requirement. DMAS may notify recipients of their PCP's noncompliance and provide an opportunity to enroll with another PCP.

C. Withholding of management or other payments and recovery of damage costs. DMAS may withhold portions of management or other fees or otherwise recover damages from the PCP as follows:

1. Whenever DMAS determines that the PCP has failed to perform an administrative function required under this contract, the department may withhold a portion of management or other fees to compensate for the damages which this failure has entailed. For the

purposes of this section, "administrative function" is defined as any contract obligation other than the actual provision of contract services.

2. In any case under this contract where DMAS has the authority to withhold management or other fees, DMAS also shall have the authority to use all other legal processes for the recovery of damages.

D. Department-initiated disenrollment. DMAS may reduce the maximum enrollment level or number of current enrollees whenever it determines that the PCP has failed to provide or arrange for the provision of one or more of the services required under the addendum to the provider agreement, or that the PCP has failed to maintain or make available any records or reports required under the addendum which DMAS requires to determine whether the PCP is providing services as required. The PCP shall be given at least 30 days notice prior to DMAS taking any action set forth in this subsection.

E. Inappropriate service delivery. PCPs demonstrating a pattern of inappropriate provision of services may be subject to suspension of new enrollments, withholding, in full or in part, of management fees, addendum termination, or refusal to be offered the opportunity to participate as a PCP in a future time period.

DOCUMENT INCORPORATED BY REFERENCE

Guidelines for Health Supervision: Periodicity Schedule, American Academy of Pediatrics, 1991.
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STATE OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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

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

_____, (the Provider)
Name of Physician
of _____, _____, _____, _____
Street Address City State Zip

on this _____ day of _____, 19 _____.

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

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

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

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

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

6. Providers will receive the usual Medicaid fees for services rendered plus a monthly three dollar (\$3) case management fee for each client assigned.

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

8. Provider Medicaid numbers will be used as the MEDALLION identification number.

9. This Addendum will expire concurrent with any termination or expiration of the Agreement. However, the Addendum may be terminated for any reason on thirty (30) days notice by either party without mandatory termination of the Agreement.

Entered into by:

Signature of Provider

Date

Specialty

Telephone Number

Board of Medicine License Number

Medicaid Provider I.D. Number

Thomas E. McGraw, Director
Alternative Health Care Division

Date

Mail completed forms to:

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

Rev: 7/93

MEDALLION PROVIDER ENROLLMENT FORM

Sections in gray must be completed for this form to be valid. PLEASE TYPE or PRINT

General Information (Mandatory):

Provider Name, Practice Name, Address, Provider Number, Practice Type, Contact Person, Telephone Numbers, FAX, After Hours, Other

Please indicate, with a check mark, the 24-hour access phone number you wish to appear on your patients' MEDALLION cards. YOU MAY ONLY CHOOSE ONE NUMBER as your 24-hour access number.

MEDALLION Panel Information (Mandatory):

Program Type, Panel Enrollment Type, Panel Enrollment Size, Initial caseload, Children only, Adults only, Women only

* Depending on staff size and hours of operation
** History Only panel means that only patients treated and billed to Medicaid within the last 12 months will be assigned to your panel.
*** Existing Clients Only panel means that only the clients that you have listed will be assigned to your panel.

Special Services

Multilingual: Spanish, Korean, Vietnamese, Other; Special Services: well-sick waiting rooms, m-office lab, m-office surgery, Other; Extended hours: Evenings until, Saturday, Sunday; Special Arrangements: Other

Service Locations

Please provide each location or site at which you practice, the associated Medicaid number and the 24 hour coverage number. This information will be printed on the clients' MEDALLION card; please note, however, that only one provider number and location can be assigned to each client.

Table with 3 columns: Medicaid Number, Location, Telephone Number

Affiliations

Your associated physicians in the practice can be affiliated for business and billing purposes. If you wish to affiliate physicians in your practice, please list the names and Medicaid numbers of other physicians in the practice:

Table with 2 columns: Name, Medicaid Number

Affiliations list is attached.

Additional Information:

Additional Information lines, (Print Name), (Physician Signature), (Date)

MEDALLION Representative Contact:

Mail completed form to: MEDALLION, ATTN: Kim Towns, Post Office Box 537, Richmond, Virginia 23204, (804) 371-2451 FAX: (804) 786-5799

EMERGENCY REGULATIONS

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: VR 480-03-19. Virginia Coal Surface Mining Reclamation Regulations.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Effective Dates: March 29, 1996, through March 28, 1997.

Why the Emergency Amendment Is Necessary:

The Department of Mines, Minerals and Energy is promulgating an emergency amendment to its Coal Surface Mining Reclamation Regulation to address the issue of blow-out protection at coal surface mines. The emergency amendment is necessary to avoid conditions that may lead to a blow-out of an outcrop where underground coal mine workings approach the surface. A failure of this type recently caused a fatality in Buchanan County.

On May 13, 1995, an outcrop failure at the Dominion Coal Company's #5 mine caused a sudden flow of water to engulf a house located approximately 200 feet below the elevation of the blow-out. The flowing water undermined the foundation of the house, caused the floor to collapse, and trapped a 25-year-old woman inside where she drowned. Flooding, uprooting of trees and shrubs, and sedimentation problems in nearby streams and roads also occurred due to the blow-out.

The Department of Mines, Minerals and Energy reviewed various states' coal surface mining reclamation regulations which have blow-out protection language in place when developing this emergency regulation. This amendment uses language from Kentucky with minor modifications to adjust it to conditions in Virginia.

Copies of the emergency amendment to the regulation may be obtained at no charge from:

Mr. Danny R. Brown, Division Director
Division of Mined Land Reclamation
Department of Mines, Minerals and Energy
P.O. Drawer 900
Big Stone Gap, Virginia 24219
(540) 523-8152

Copies may also be obtained from the Department's principal office located on the eighth floor of the Ninth Street Office Building, 202 North 9th Street, Richmond, Virginia 23219.

Approved:

/s/ O. Gene Dishner
Director
Department of Mines, Minerals and Energy
Date: December 5, 1995

/s/ Robert T. Skunda
Secretary of Commerce and Trade
Date: March 7, 1996

/s/ George Allen
Governor
Date: March 22, 1996

Filed with:

/s/ Jane D. Chaffin
Deputy Registrar of Regulations
Date: March 29, 1996

VR 480-03-19. Virginia Coal Surface Mining Reclamation Regulations.

§ 480-03-19.784.14 Hydrologic Information

(a) Sampling and analysis.

All water quality analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this Section shall be conducted according to either methodology listed above when feasible.

(b) Baseline information. The application shall include the following baseline hydrologic information, and any additional information required by the Division.

(1) Ground-water information.

The location and ownership for the permit and adjacent areas of existing wells, springs, and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and elevation of water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) Surface-water information.

The name, location, ownership and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) Supplemental information.

If the determination of the probable hydrologic consequences (PHC) required by Paragraph (e) of this Section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under Paragraph (b)(1) and (b)(2) of this

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Section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) Baseline cumulative impact area information.

(1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by Paragraph (f) of this Section shall be provided to the Division if available from appropriate Federal or State agencies.

(2) If this information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the Division.

(d) Modeling.

The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Division for each site even when such techniques are used.

(e) Probable hydrologic consequences determination.

(1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies; and

(iii) What impact the proposed operation will have on:

(A) sediment yield from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground-water and surface-water availability; and,

(E) other characteristics as required by the Division.

(4) An application for a permit revision shall be reviewed by the Division to determine whether a new or updated PHC determination shall be required.

(f) Cumulative hydrologic impact assessment.

(1) The Division shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the Division to determine whether a new or updated CHIA shall be required.

(g) Hydrologic reclamation plan.

The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 480-03-19.817, including §§ 480-03-19.817.41 to 480-03-19.817.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to meet applicable Federal and State water quality laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide and maintain water treatment facilities when needed; control drainage; *prevent the sudden release of accumulated water from the underground workings*; and restore approximate premining recharge capacity. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under Paragraph (e) of this Section and shall include preventive and remedial measures.

(h) Ground-water monitoring plan.

(1) The application shall include a ground-water monitoring plan based upon the PHC determination required under Paragraph (e) of this Section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses, to support the objectives for protection of the hydrologic balance set forth in Paragraph (g) of this Section, to determine the cause of diminution or contamination of usable ground waters, and to guard against off-site influences and provide representation of the effects of the proposed surface coal mining operation. It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance

corrected to 25° C, pH, total iron, total manganese, and water levels shall be monitored and data submitted quarterly or as otherwise specified by the Division for each monitoring location.

(2) If an applicant can demonstrate by use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Division.

(3) The monitoring plan shall be designed in accordance with the following Subparagraphs. The Division may require additional monitoring and the analysis or measurement of other parameters on a site-specific basis. During the mining or postmining phase of activity, the Division may require additional monitoring if it is determined that the established monitoring plan is ineffective.

(i) When pH or chemical analysis results indicate no immediate or potential acid-producing or toxic material within the proposed disturbed area, the applicant may submit a plan for representative monitoring. Appropriate monitoring which will indicate changes in subsurface water quality and quantity at sites which provide geological and hydrological representation of the entire proposed permit area shall be established.

(ii) When potential for adverse impacts to ground waters in use exists, then a representative monitoring plan utilizing wells or springs shall be provided.

(iii) When no potential to affect ground waters in use exists, then a plan utilizing piezometers or methods for representative monitoring in the unsaturated zone may be used.

(iv) When structural or stratigraphic variations are present within the proposed permit area, altering the ground water regime and indicating more than one representative area, the applicant shall include within the plan a minimum of one monitoring site for each representative area.

(v) The applicant shall include a plan to source monitor near isolated acid-producing or toxic material using piezometers or equipment for monitoring the unsaturated zone.

(vi) When any portion of a surface mine operation is proposed within a stream floodplain, the applicant shall include a plan for monitoring using wells in alluvial material both upstream and downstream of the proposed area to be disturbed. The plan shall also include adjacent upgradient and adjacent downgradient monitoring wells for any slurry pond with water having a pH of less than 6.0, coal stockpiles, and acid-producing or toxic-producing material disposal site.

(vii) In cases where the alluvium monitored has been determined to be consistently or seasonally unsaturated, the Division may require revision of the monitoring plan

to include appropriate monitoring of the unsaturated zone.

(viii) Where potential exists for adverse impacts to the hydrologic regime from a surface mining operation situated in an area of colluvium, the Division may require monitoring similar to that required in floodplain areas.

(ix) For each refuse or hollow fill without an underdrain, the applicant shall include a plan to monitor the fill using piezometers which are sufficient in number and design to permit a planar determination of a potential water table within the fill.

(x) When a refuse or hollow fill is designed to contain underdrains, then a plan for monitoring the underdrain may be used, provided that the underdrain discharge indicates changes in water quality resulting from the fill and not from other sources or outside influences. If the underdrain is not representative of the effects of the fill material, then piezometers shall be used.

(xi) The applicant may include a plan to use a spring in lieu of other monitoring methods if:

(A) The spring is located both stratigraphically and geographically so that data representing an area to be disturbed or an acid or toxic spoil isolation area will be obtained.

(B) The spring has been observed and documented satisfactorily to the Division to be a permanent spring.

(xii) For the adjacent area, the applicant shall submit a plan to individually monitor each significant aquifer identified with wells, springs, mine discharges or any combination of these. The plan shall include flow measurements for each point under seasonal conditions. The Division shall require quality analyses in addition to quantity measurements if it determines that such monitoring is necessary for protection of the hydrologic balance.

(i) Surface-water monitoring plan.

(1) The application shall include a surface-water monitoring plan based upon the PHC determination required under Paragraph (e) of this Section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in Paragraph (g) of this Section as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in surface water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected

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to 25° C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and as required by the National Pollutant Discharge Elimination System permit.

(3) The monitoring reports shall be submitted to the Division quarterly. The Division may require additional monitoring.

§ 480-03-19.817.41 Hydrologic-Balance Protection

(a) General.

All underground mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this Part. The Division may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) Ground-water protection.

In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under § 480-03-19.784.14(g) and the following:

(1) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater.

(2) Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground water system.

(c) Ground-water monitoring.

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under § 480-03-19.784.14(h). The Division may require additional monitoring when necessary.

(2) Representative monitoring.

(i) Representative monitoring points shall be established within one hundred (100) feet downgradient from the initial disturbance within each representative area. This distance may be modified by the Division if it is demonstrated in the permit application that the one hundred (100) feet distance is inappropriate for the monitoring point.

(ii) If degradation, contamination or diminution of water quality or quantity are evident through monitoring, then

additional monitoring and/or remedial action may be required by the Division.

(3) Source monitoring.

(i) Source monitoring shall be used near isolated acid-producing or toxic-producing material. Monitoring shall be by piezometers or other equipment suitable for monitoring in the unsaturated zone. Piezometers or alternate equipment shall be installed in backfilled material during or within 45 days after final grading of the area. Installation in fill or temporary storage areas shall be as soon as practicable. Monitoring points shall be of sufficient number and locations so that adverse impacts can be readily detected.

(ii) Representative monitoring may be required by the Division in addition to source monitoring when the operation may adversely impact usable ground waters.

(4) Well drilling, construction and completion.

(i) When wells are used, they shall be drilled either to the first water-producing zone or, if no water is encountered, to a depth of one hundred (100) feet below each coal seam to be mined. The Division may require deeper drilling if site conditions indicate the potential for adverse impacts to a known water-producing zone which is at greater depth.

(ii) Monitoring wells shall be drilled an additional twenty (20) feet into the water-producing zone to aid in pumping.

(iii) Monitoring wells shall:

(A) Accommodate a four inch (4") submersible pump for sample extraction and measurement of field parameters. Other diameters may be approved by the Division if sample extraction is allowed.

(B) Be constructed in a manner which isolates the water-producing zone to be monitored and prevents the mixing of ground waters.

(C) Be grouted from the surface to at least one foot into bedrock, with all leakage around the well casing prevented.

(D) Be capped, locked, and labeled with an identification number.

(E) Be properly developed and the final yield reported.

(F) Not be constructed or packed with materials which would adversely affect the monitoring results obtained.

(iv) Existing wells may be used for monitoring provided that:

(A) The well is located at a point where data representative of the permit or adjacent area will be obtained.

(B) The well penetrates the water-producing zone to be monitored.

(C) The well is constructed in a manner which effectively isolates the water-producing zone.

(D) The well meets the standards of Paragraph (c)(4) above.

(E) Filtering systems and water softeners are not present which may alter the quality of the water sample. Filters or softeners may be disconnected or bypassed during sampling.

(5) Ground-water monitoring data shall be submitted within 30 days after the end of the calendar quarter to the Division. More frequent reporting may be prescribed by the Division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the Division and immediately take the actions provided for in §§ 480-03-19.773.17(e) and 480-03-19.784.14(g).

(6) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of § 480-03-19.774.13, the Division may modify the monitoring requirements including the parameters covered and the sampling frequency if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that-

(i) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 480-03-19.784.14(h).

(7) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of groundwater onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the Division.

(d) Surface-water protection.

In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under § 480-03-19.784.14(g), and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this Section and § 480-03-19.817.42, the permittee shall use and maintain the necessary water-treatment facilities or water quality controls.

(2) Surface-water quantity and flow rates shall be protected by handling earth materials and runoff in

accordance with the steps outlined in the plan approved under § 480-03-19.784.14(g).

(e) Surface-water monitoring.

(1) Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under § 480-03-19.784.14(i). The Division may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every 3 months to the Division or more frequently as prescribed by the Division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the Division and immediately take the actions provided for in §§ 480-03-19.773.17(e) and 480-03-19.784.14(g). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with § 480-03-19.774.13, the Division may modify the monitoring requirements, in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that-

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 480-03-19.784.14(i).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the Division.

(f) Acid- and toxic-forming materials.

(1) Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water shall be avoided by -

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated, and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this Chapter.

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(g) Transfer of wells.

Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with §§ 480-03-19.817.13 and 480-03-19.817.15. With the prior approval of the Division, wells may be transferred to another party, or retained by the permittee for further use. However, at a minimum, the conditions of such transfer shall comply with State and local laws and the permittee shall remain responsible for the proper management of the well until bond release in accordance with §§ 480-03-19.817.13 to 480-03-19.817.15.

(h) Discharges into an underground mine.

(1) Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will-

(i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from underground mining activities;

(ii) Not result in a violation of applicable water quality standards or effluent limitations;

(iii) Be at a known rate and quality which shall meet the effluent limitations of § 480-03-19.817.42 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the Division; and

(iv) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(i) Water;

(ii) Coal-processing waste;

(iii) Fly ash from a coal-fired facility;

(iv) Sludge from an acid-mine drainage treatment facility;

(v) Flue-gas desulfurization sludge;

(vi) Inert materials used for stabilizing underground mines; and

(vii) Underground mine development wastes.

(3) Water from one underground mine may be diverted into other underground workings according to the requirements of this Section.

(i) Gravity discharges from underground mines.

(1) Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to Paragraph (i)(2) of this Section, may be allowed by the Division if it is demonstrated that the untreated or treated discharge complies with the performance standards of this Part and any additional NPDES permit requirements.

(2) Notwithstanding anything to the contrary in Paragraph (i)(1) of this Section, the surface entries and accesses of drift mines first used after December 15, 1981 or the implementation of a Federal Lands Program in accordance with Part 480-03-19.740, and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

(3) *Except where surface entries and accesses to underground workings are located pursuant to (i)(1) of this Section, an unmined barrier of coal shall be left in place where the coal seam dips toward the land surface. The unmined barrier and associated overburden shall be designed to prevent the sudden release of water that may accumulate in the underground workings.*

(i) *The applicant may demonstrate the appropriate barrier width and overburden height by either:*

(a) *providing a site specific design, certified by a licensed professional engineer, which considers the overburden and barrier characteristics; or*

(b) *providing the greater of an unmined horizontal barrier width necessary to leave a minimum of 100 feet of vertical overburden, or an unmined barrier width calculated by the formula: $W=50+H$, when W is the minimum width in feet and H is the calculated hydrostatic head in feet.*

(ii) *An exception to the barrier requirement may be approved provided the Division finds, based upon the geologic and hydrologic conditions, an accumulation of water in the underground workings cannot reasonably be expected to occur or other measures taken by the applicant are adequate to prevent the accumulation of water.*

Documents Incorporated by Reference

Standard Methods for the Examination of Water and Wastewater, 17th Edition, 1989, American Public Health Association.

VA.R. Doc. No. R96-288; Filed March 29, 1996, 2:49 p.m.

MARINE RESOURCES COMMISSION

FINAL REGULATION

NOTICE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: 4 VAC 20-530-10 et seq. Pertaining to American Shad (amending 4 VAC 20-530-20 and adding 4 VAC 20-530-35).

Effective Date: March 29, 1996.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Preamble:

This regulation establishes a total moratorium of the harvest of American Shad in Chesapeake Bay and its tributaries. This regulation also allows for a limited exception to this moratorium for those participants of the Virginia Marine Resources Commission and Virginia Department of Game and Inland Fisheries American Shad Restoration Project. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. This regulatory action amends 4 VAC 20-530-10 et seq., which was adopted on March 28, 1995, and became effective on April 7, 1995. The effective date of this regulation is March 29, 1996.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

4 VAC 20-530-20. Definition.

The following word and term, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

"Chesapeake Bay" means the areas west of the Colregs Demarcation Line, which runs from the Cape Henry Lighthouse in Virginia Beach to the Cape Charles Lighthouse on Smith Island.

4 VAC 20-530-35. Limited exception to the moratorium.

During the month of April, participants in the Virginia Marine Resources Commission and Virginia Department of Game and Inland Fisheries American Shad Restoration Project may retain or sell any American Shad which are caught for, but not utilized by, the American Shad Restoration Project.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R96-285; Filed March 29, 1996, 3:46 p.m.

EMERGENCY REGULATION

Title of Regulation: 4 VAC 20-380-10 et seq. Pertaining to Grey Trout.

Statutory Authority: § 28.2-210 of the Code of Virginia.

Effective Dates: April 1, 1996, to April 30, 1996.

Preamble:

This emergency regulation establishes limitations on the commercial and recreational harvest of grey trout in order to reduce the fishing mortality rate and to rebuild the severely depleted stock of grey trout. The limitations include minimum size limits, gear restrictions and season limits for the commercial fishery and minimum size and possession limits for the recreational fishery. This emergency regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-210 of the Code of Virginia. This emergency regulation amends 4 VAC 20-380-10 et seq. which was adopted by the Marine Resources Commission on September 26, 1995, and made effective September 27, 1995. The effective dates of this emergency regulation are April 1, 1996, to April 30, 1996.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

CHAPTER 380. PERTAINING TO GREY TROUT.

§-1. 4 VAC 20-380-10. Purpose.

The purpose of this regulation is to achieve at least a 33% reduction in the grey trout fishing mortality rate during the April 1, 1996 1996, through March 31, 1996 1997, period, thereby reducing the probability of recruitment failure and stock collapse and to allow allowing for a rebuilding of the spawning stock. This regulation is designed to be consistent with federal and interstate management measures.

§-2. 4 VAC 20-380-20. Definitions.

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

"Closed season" means an interval of time, in days, when it shall be unlawful for any fisherman licensed in accordance with the provisions of 4 VAC 20-610-10 et seq. and § 28.2-301 of the Code of Virginia to possess grey trout.

"Grey trout" means any fish of the species *Cynoscion regalis*.

§-3. 4 VAC 20-380-30. Minimum size limits.

A. For any person fishing with pound net or haul seine there shall be no minimum size limit on grey trout.

B. It shall be unlawful for any person fishing with gill nets to possess any grey trout less than 12 inches in length.

Marine Resources Commission

C. It shall be unlawful for any trawl boat to land any grey trout in Virginia that are less than 12 inches in length.

D. It shall be unlawful for any person fishing with hook-and-line, rod-and-reel, or hand line to possess any grey trout less than 12 inches in length.

E. It shall be unlawful for any person using any gear type not specified in subsection A, B, C or D of this section to possess any grey trout less than nine inches in length.

F. Length is measured in a straight line from the tip of the nose to the tip of the tail.

§-4. 4 VAC 20-380-40. Gear restrictions.

It shall be unlawful for any trawl boat to land grey trout in Virginia while possessing on board any trawl net having a cod-end mesh less than three inches, stretched measure.

§-5. 4 VAC 20-380-50. Commercial fishing season.

A. It shall be unlawful for any person fishing with pound net to possess any grey trout during the closed seasons of May 1 through May 22, 1995 1996, and September 13, 1995 1996, through March 31, 1996 1997, except as provided in subsections B and D subdivision 1 of this section subsection.

~~B. 1. Any pound net fisherman who held holds 2 or 3 pound net licenses as of August 5, 1994 in accordance with the provisions of 4 VAC 20-600-10 et seq., and forfeits may forfeit only one of those licenses shall to be eligible to possess grey trout during the closed season seasons as established in subsection A of this section. Any pound net fisherman who held holds 4, 5, or 6 pound net licenses as of August 5, 1994, and forfeits in accordance with the provisions of 4 VAC 20-600-10 et seq. may forfeit only two of those licenses shall to be eligible to possess grey trout during the closed season established in subsection A of this section. Any pound net fisherman who held holds 7, 8, or 9 pound net licenses as of August 5, 1994, and forfeits in accordance with the provisions of 4 VAC 20-600-10 et seq., may forfeit only three of those licenses shall to be eligible to possess grey trout during the closed season as established in subsection A of this section. Forfeiture shall be through March 31, 1996 1997, and shall occur prior to May 1, 1996.~~

~~C. 2. Any pound net licensee who forfeits a license pursuant to subsection B subdivision 1 of this section subsection shall retain his priority rights to such locations for future licensing until April 1, 1996 1997.~~

~~D. 3. Those pound net licensees who hold multiple gear licenses and satisfy the requirement of this subsection A or B of this section may transfer an unused license to a licensee who holds a single pound net license.~~

~~E. B. The closed seasons on grey trout harvested by gill net shall be May 14 through October 7, 1995 1996, and December 18, 1995 1996, through March 31, 1996 1997.~~

~~F. C. The closed seasons on grey trout harvested by haul seine shall be April 1 through April 15, 1995 1996; June 11 through August 20, 1995 1996; September 20 through~~

September 26, 1995 1996; and October 3, 1995 1996 through March 31, 1996 1997.

~~G. D. The closed season on landing grey trout harvested by trawl shall be September 26 through March 31, 1996 1997.~~

6. 4 VAC 20-380-60. Possession limit.

It shall be unlawful for any person fishing with hook-and-line, rod-and-reel, or hand line to possess more than four grey trout. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by four. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any grey trout taken after the possession limit has been reached shall be returned to the water immediately.

§-7. 4 VAC 20-380-70. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R96-286; Filed March 29, 1996, 3:46 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER SIXTY-TWO (96)

DECLARATION OF A STATE OF EMERGENCY THROUGHOUT THE COMMONWEALTH OF VIRGINIA ARISING FROM MAJOR WINTER STORM WITH EXTREME COLD CONDITIONS

On February 2, 1996, I verbally declared a state of emergency due to a major severe winter storm accompanied by a mixture of snow, sleet, freezing rain and life-threatening, below-freezing, bitter cold temperatures. This latest storm system, attributable to an extreme Arctic air mass from Canada moving through and across the state during the period of February 1-4, 1996, had the potential for extremely hazardous conditions resulting in widespread power outages, fuel and other resource shortages with devastating effects on public health and safety. In addition, this latest severe storm, which followed a series of related significant weather events, had the potential to cause severe economic losses to affected businesses, including the agricultural community and livestock operations.

The health and general welfare of the citizens of the affected jurisdictions required that state action be taken to help alleviate conditions that could be caused by extreme cold weather and freezing conditions. Potential emergencies included inability to provide rescue services to stranded persons, blockage of critical roadways, inadequate medical supplies, fuel, food, water and other essentials, including loss of power to residents and the business community. I found that these actual and predicted conditions and consequences constituted a disaster as contemplated by Section 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by Section 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Services, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by Section 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I do hereby confirm, ratify and memorialize in writing my verbal orders issued February 2, 1996, wherein I proclaimed that a state of emergency existed in the Commonwealth and directed that appropriate and practical assistance be rendered by agencies of both state and local governments to prepare for and alleviate any conditions arising from this major winter storm. Pursuant to Section 44-75.1 of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to assist in providing such aid as may be required by the Coordinator of Emergency Services, in consultation with the Secretary of Public Safety and the Adjutant General of Virginia.

In order to marshal all public resources and appropriate preparedness measures to meet this potential threat, and in accordance with my authority contained in Section 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective measures:

1. The full implementation by agencies of the state and local governments of Volume II, Virginia Emergency

Operations Plan (COVEOP) for Peacetime Disasters, September 1988, as amended;

2. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures, pursuant to Section 44-146.28(b) of the Emergency Services and Disaster Laws.

3. The full utilization of services, equipment, supplies, and facilities of existing departments, offices, and agencies of the Commonwealth and the political subdivisions thereof to the maximum extent practical, and to cooperate with and extend such services and facilities to the Governor and to the Department of Emergency Services upon request, pursuant to Section 44-146.24; and

4. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight/registration/license exemptions to carriers transporting essential emergency relief supplies into and within the Commonwealth in order to support the disaster response and recovery.

The axles and gross weights shown below are the maximum allowed, unless otherwise posted:

Axle Weights

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Three Axle Group	54,500 Pounds
Four Axle Group	64,500 Pounds

Gross Weights

Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	60,000 Pounds
Tractor-Semitrailer (4 Axles)	70,000 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
No more than 850 pounds per inch of tire width in contact with road surface.	

5. In addition to described overweight transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles (DMV). This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for truck size, weight, and legalization enforcement.

6. The foregoing overweight transportation privileges and the regulatory exemption provided by Section 52-8.4.A of the Code of Virginia, and implemented in Section 2.3.B of VR 545-01-1, "Motor Carrier Safety Regulations," shall remain in effect through February 29, 1996, or until emergency relief is no longer necessary, whichever is earlier.

Governor

The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Services, and with the approval of the Secretary of Public Safety, shall make available on state active duty such units and members of the Virginia National Guard and such equipment as may be desirable to assist in pre-storm preparations and in alleviating the human suffering and damage to property as a result of this major winter storm;

2. In all instances, members of the Virginia National Guard shall remain subject to military command as prescribed by Section 4-78.1 of the Code of Virginia and not subject to the civilian authorities of the state or local governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Department of State Police or local law enforcement authorities or receiving guidance from them in the performance of their duties;

3. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following 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 subject to the requirements and limitations thereof; 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, and subject to the availability of future appropriations which may be lawfully applied to this purpose, 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.

4. The following conditions apply to service by the Virginia Defense Force:

(a) Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and

years of service of the member, not to exceed 20 years of service;

(b) Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

(c) All privately owned equipment, including but not limited to vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with Section 44-54.12 of the Code of Virginia; and

(d) In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act.

5. The costs incurred by the Department of Military Affairs in performing these missions shall be paid out of the Sum Sufficient appropriation for Disaster Planning and Operations contained in Item 593 of Chapter 966 of the 1994 Acts of Assembly.

This Executive Order shall be retroactively effective to February 2, 1996, upon its signing, and shall remain in full force and effect until June 30, 1996, 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 19th day of March, 1996.

/s/ George Allen
Governor

VA.R. Doc. No. R96-287; Filed March 29, 1996, 9:37 a.m.

GENERAL NOTICES/ERRATA

Symbol Key

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

SECRETARY OF COMMERCE AND TRADE

Notice of Implementation of the Virginia Biotechnology Research Act

In accordance with the provisions of § 2.1-769 of the Code of Virginia, I have designated the Virginia Department of Agriculture and Consumer Services as the state agency to implement the Virginia Biotechnology Research Act.

/s/ Robert T. Skunda
Secretary of Commerce and Trade
March 14, 1996

For further information contact: Christopher D. Lloyd, Special Assistant, Office of the Secretary of Commerce and Trade, P.O. Box 1475, Richmond, VA 23212, or the Virginia Department of Agriculture and Consumer Services, Division of Policy and Planning, P.O. Box 1163, Richmond, VA 23209.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Notice of Application to Obtain Interim Funding

The Department of Criminal Justice Services has submitted an application to the Bureau of Justice Assistance, U.S. Department of Justice, to obtain interim FY 1996 funding available through the Edward Byrne Memorial Formula Grant Program. The application requests a total of \$3,834,000 in federal funds. The department and the Criminal Justice Services Board anticipate using these funds during the fiscal year starting on July 1, 1996, to support local and state agency projects in drug enforcement and prosecution, crime prevention, training and technical assistance and other criminal justice system improvements which have previously received funding through this grant program.

The application is available for public review at the department's offices at 805 East Broad Street, Richmond, Virginia 23219. Comments from the public are welcome. Inquiries should be directed to Joe Marshall, Grants Administrator.

For more information contact Joseph Marshall, Grants Administrator, Department of Criminal Justice Services, 805 East Broad Street, 10th Floor, Richmond, VA 23219, telephone (804) 786-1577 or FAX (804) 371-8981.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† Report of Permits Issued in Accomack County and Chincoteague During 1991 and 1992

The Statement of Basis, Purpose, Substance, Issues and Estimated Impact for the proposed Sewage Handling and Disposal Regulations (12 VAC 5-610-10 et seq.) published in

Volume 12, Issue 13 (March 18, 1996) of the Virginia Register on page 1719 referred to an appendix at the conclusion of the impact statement. That appendix, which was not published in the Virginia Register, follows.

APPENDIX

Report of Permits Issued in Accomack County and Chincoteague During 1991 and 1992

Allen L. Knapp, Enforcement Chief

On May 9, 1994, through May 11, 1994, the Accomack County Health Department, headquarters for the Eastern Shore Health District was visited to survey the onsite sewage system permit files. The purpose of the study was to assess the potential impact of proposed changes to the Sewage Handling and Disposal Regulations. These changes would increase the vertical separation distance required from a drainfield trench bottom to the seasonal water table (SWT) and would decrease the minimum trench installation depth from 18 inches to either 12 inches or 6 inches.

The intention was to sample 25% of the permits issued in the district from January 1, 1991, to the present. A first look at the permit logs indicated that more than 1,000 permits have been issued in Accomack County alone in most years. Many of those were for repairs and for well-only construction.

In order to reduce the size of the project to manageable proportions, it was decided to limit the survey to Accomack County and Chincoteague for the years 1991 and 1992 (soil conditions in these are more limiting with respect to seasonal water table than in Northampton County). The permit data base was sorted for new systems by calendar year of issuance, and grouped by tax map numbers. A sample set was derived from the sorted data by marking every 4th entry (1991) and every 10th entry (1992). The marked permits were retrieved from the files and the depth to seasonal water table, soil texture group and percolation rate were collected from the information recorded on the soil evaluation reports. Where a marked entry could not be retrieved from the files, or where the marked entry was for well-only construction, the next appropriate entry was selected. Well-only permits were eliminated from the data set to the greatest extent possible (with few exceptions well-only permits were indicated in the permit log by the absence of a system-type entry) and were not counted in the total number of permits issued.

Some of the files surveyed indicated that permits were issued under the grandfather clause, or under other situations where permits were issued but site and soil conditions did not comply with the current regulations (variances, appeal board decisions, etc.). These were eliminated from both the sample set, and from the set of all permits issued for new systems.

This sorting and sampling regime yielded the following information for Accomack County:

General Notices/Errata

Total permits issued in 1991 under current regs = 372
Total permits issued in 1992 under current regs = +480
Total 852
Permits sampled from 1991 112 (percent of total = 30.1%)
Permits sampled from 1992 +55 (percent of total = 11.5%)
Total 167 (percent of total = 19.6%)

Note: The sample for 1991 exceeds 25% because permit files were initially selected from a list that had not been sorted by tax map number. Once the permit log had been sorted, it was decided the information in the sample set would be retained, resulting in more than a 25% sample.

A similar procedure was used to examine the information regarding permits issued during 1991 and 1992 on Chincoteague yielding the following:

Total permits issued in 1991 under current regs = 40
Total permits issued in 1992 under current regs = +80
Total 120
Permits sampled from 1991 7 (17.5% of the total)
Permits sampled from 1992 +19 (23.7% of the total)
Total 26 (21.7% of the total)

Based on this survey, 71.9% of the permits issued in Accomack County would be essentially unaffected by the proposed increase in the separation distance with a corresponding decrease in the minimum trench installation depth to 12 inches. 9.6% of the permits would be issued for shallow installation (12 to 17 inches), and another 14.4% would require shallow installation and pretreatment. 4.2% of the permits would be denied.

If the minimum installation depth were decreased to 6 inches, 71.9% of the Accomack County permits would be unaffected, 24% would be for shallow installations (6 to 17 inches), denials would drop to 1.8% (all in Group I soils), and 2.4% would require pretreatment and shallow installation. All permits issued in Accomack County were in either Group I or Group II soils.

On Chincoteague, the increase in the separation distance with a 12-inch installation depth would not affect 11.5% of the permits issued. 23% of the permits would be issued for shallow installation (12 to 17 inches). 54% of the permits would be denied, while another 11.5% would require pretreatment and shallow installation.

With a 6-inch installation depth, 11.5% of the Chincoteague permits would be unaffected, 34.6% would be for shallow installation (6 to 17 inches), 7.7% would be denied and 46.1% would require pretreatment and shallow installation. All Chincoteague permits were in Group I soils.

A detailed analysis of the data follows.

ACCOMACK COUNTY

Total permits issued in 1991 under current regs = 372
Total permits issued in 1992 under current regs = +480
Total 852
Permits sampled from 1991 = 112 (percent of total = 30.1%)
Permits sampled from 1992 = 55 (percent of total = 11.5%)
Total permits sampled = 167 (percent of total = 19.6%)

29.3% (49) of the sampled permits were in Group I soils. This would translate to 249.6 of the total permits in Group I soils

70.7% (118) of the sampled permits were in Group II soils. This would translate to 602.3 of the total permits in Group II soils

1. Group I Soils (250 permits issued): Proposed separation distance = 24 inches

A. WITH A MINIMUM 12 INCH INSTALLATION DEPTH:

22.2% of the sample (189 of the 852 permits issued) were in Group I soils with a SWT \geq 42 inches. These would receive permits for gravity installation at a depth of 18 inches or greater. This amounts to 75.5% of the Group I permits.

3% of the sample (25.5 of the 852 permits issued) were in Group I soils and had SWT between 36 and 41 inches inclusive and would receive permits for installation between 12 and 17 inches without pretreatment. This is 10.2% of the Group I permits.

1.2% of the sample (10.2 of the 852 permits issued) were in Group I soils with a SWT between 35 and 30 inches inclusive and would receive permits for installation between 12 and 17 inches **with pretreatment**. This is 4% of the Group I permits.

3% of the sample (25.5 of the 852 permits issued) were in Group I soils with a SWT < 30 inches and would be **denied**. This is 10.2% of the Group I permits.

To summarize, about 250, or 29% of the 852 permits issued in Accomack Co in 91-92 were in Group I soils. If the minimum installation depth is reduced to 12 inches, 85.7% (214 permits) of those permits issued in Group I soils would be essentially unaffected by the change and could receive permits for installations at 12 inches or greater without pretreatment. 4% (10.2 permits), of the Group I permits would require **pretreatment** and a 12-to-17 inch installation. 10.2% (25.5 permits), of the Group I permits would be **denied** under the proposed regulations with the 12-inch installation.

B. WITH A MINIMUM 6-INCH INSTALLATION DEPTH:

22.2% of the sample (189 of the 852 permits issued) were in Group I soils with a SWT \geq 42 inches and would be unaffected by the change. These would receive permits for gravity installation at a depth of

18 inches or greater. This amounts to 75.5% of the Group I permits.

3% of the sample (25.5 of the 852 permits issued) were in Group I soils with a SWT 36-41" inclusive and would receive permits for installation between 12 and 17 inches without pretreatment. This is 10.2% of the Group I permits.

1.2% of the sample (10.2 of the 852 permits issued) were in Group I soils with a SWT between 35" and 30" inclusive and would receive permits for installation between 11 and 6 inches without pretreatment. This is 4% of the Group I permits.

1.2% of the sample (10.2 of the 852 permits issued) were in Group I soils with a SWT between 24" and 29" inclusive and would receive permits for installation between 11 and 6 inches **with pretreatment**. This is 4% of the Group I permits.

1.8% of the sample (15.3 of the 852 permits issued) were in Group I soils with a SWT <24 inches and would be **denied**. This is 6.1% of the Group I permits.

To summarize, about 250, or 29% of the 852 permits issued in Accomack Co in 91-92 were in Group I soils. If the installation depth is reduced to 6 inches, 85.7% (214 permits) of those Group I permits would be essentially unaffected and could receive permits for installations at 12 inches or greater without pretreatment. 4% (10.2 permits) of the Group I permits would be issued for installations between 6 and 11 inches without pretreatment. Another 4% (10.2 permits) of the Group I permits would require **pretreatment** and installation between 6 and 11 inches. 6.1% (15.3 permits) of the Group I permits would be **denied**.

2. Group II Soils (602 permits issued): Proposed separation distance = 18 inches

A. WITH A 12-INCH MINIMUM INSTALLATION DEPTH:

49.7% of the sample (423.4 of the 852 permits issued) were in Group II soils with a SWT \geq 36" and would receive permits for installation at a depth of 18 inches or greater without pretreatment. This is 70.3% of the Group II permits

6.6% of the sample (56.2 of the 852 permits issued) were in Group II soils with a SWT 30"-35" inclusive and would receive permits for installation between 12 and 17 inches without pretreatment. This is 9.3% of the Group II permits.

13.2% of the sample (112.5 of the 852 permits issued) were in Group II soils with a SWT 29"-24" inclusive, and would receive permits for installations between 12 and 17 inches **with pretreatment**. This is 18.6% of the Group II permits.

1.2% of the sample (10.2 of the 852 permits issued) were in Group II soils with a SWT <24" and would be **denied**. This is 1.7% of the Group II permits.

To summarize, about 602, or 71% of the 852 permits issued in Accomack Co in 91-92 were in Group II soils. If the installation depth is reduced to 12 inches, 79.6% (479.6 permits) of the Group II permits would be essentially unaffected by the change and could receive permits without pretreatment for installations at 12 inches or greater. 18.6% (112.5 permits) of the Group II permits would receive permits for installation at depths of 12 to 17 inches **with pretreatment**. 1.7% (10.2 permits) of the Group II permits would be **denied**.

B. WITH A 6-INCH MINIMUM INSTALLATION DEPTH:

49.7% of the sample (423.4 of the 852 permits issued) were in Group II soils with a SWT \geq 36" and would receive permits for installation at a depth of 18 inches or greater without pretreatment. This is 70.3% of the Group II permits.

6.6% of the sample (56.2 of the 852 permits issued) were in Group II soils with a SWT 30"-35" inclusive and would receive permits for installation between 12 and 17 inches without pretreatment. This is 9.3% of the Group II permits.

13.2% of the sample (112.5 of the 852 permits issued) were in Group II soils with a SWT 29"-24" inclusive and would receive permits for installation between 6 and 11 inches without pretreatment. This is 18.6% of the Group II permits

1.2% of the sample (10.2 of the 852 permits issued) were in Group II soils with a SWT 23"-18" inclusive and would receive permits for installation between 6 and 11 inches **with pretreatment**. This is 1.7% of the Group II permits.

0% of the sample was in Group II soils with a SWT <18". There would be no permit **denials**

To summarize, about 602, or 71% of the 852 permits issued in Accomack Co in 91-92 were in Group II soils. If the installation depth is reduced to 6 inches, 79.6% (479.6 permits) of the Group II permits would be essentially unaffected by the change and could receive permits for installations at 12 inches or greater without pretreatment. Another 18.6% (112.5 permits) of the Group II permits, would receive permits for installation between 6 and 11 inches without pretreatment. 1.7% (10.2 permits) of the Group II permits, would be issued for installation between 6 and 11 inches **with pretreatment**. There would be no additional permit **denials**.

CHINCOTEAGUE

Total permits issued in 1991 under current regs = 40

Total permits issued in 1992 under current regs = +80

Total 120

Permits sampled from 1991 = 7 (17.5% of the total)

Permits sampled from 1992 = 19 (23.7% of the total)

Total sampled = 26 (21.7% of the total)

General Notices/Errata

100% of the permits issued in both years on Chincoteague were in Group I soils. This means that under the proposed changes, all permits would be subject to the 24 inch separation from trench bottom.

1. WITH MINIMUM 12-INCH INSTALLATION DEPTH:

11.5% of the sample (14 of the 120 permits issued) had $SWT \geq 42"$ and would be unaffected by the change in regulations. These would receive permits for installation at a depth of 18 inches or greater without pretreatment.

23% of the sample (28 of the 120 permits issued) had $SWT 36"-41"$ inclusive and would receive permits for installation between 12 and 17 inches without pretreatment.

11.5% of the sample (14 of the 120 permits issued) had $SWT 30"-35"$ inclusive and would receive permits for installation between 12 and 17 inches with pretreatment.

54% of the sample (65 of the 120 permits issued) had $SWT < 30"$ and would be denied.

To summarize, all permits issued on Chincoteague in 1991 and 1992 were in Group I soils. With a 12-inch minimum installation depth, 34.5% of those permits would be issued under the proposed regulations without pretreatment-essentially unaffected by the change. 11.5% of the permits would require pretreatment, with installation depths ranging from 12 to 17 inches. 54% of the permits would be denied.

2. WITH A MINIMUM 6-INCH INSTALLATION DEPTH:

11.5% of the sample (14 of the 120 permits issued) had $SWT \geq 42"$ and would be unaffected by the change in regulations. These would receive permits for installations at a depth of 18 inches or greater without pretreatment.

34.6% of the sample (41.5 of the 120 permits issued) had $SWT 30"-41"$ inclusive, would receive permits for installation between 6 and 17 inches without pretreatment.

46.1% of the sample (55.3 of the 120 permits issued) had SWT between $24"-29"$ inclusive and would receive permits for installation between 6 and 11 inches with pretreatment.

7.7% of the sample (9 of the 120 permits issued) had $SWT < 24"$ and would be denied.

To summarize, all permits issued on Chincoteague in 1991 and 1992 were in Group I soils. With a 6-inch minimum installation depth, 46.1% of the permits could be issued without pretreatment at installation depths of 6 inches or greater. 46.1% would be issued for installations between 6 and 11 inches with pretreatment. 7.7% of the permits would be denied.

DEPARTMENT OF SOCIAL SERVICES

† Virginia Energy Assistance Program

Title of Regulation: 22 VAC 40-680-10 et seq. (VR 615.08-01). Virginia Energy Assistance Program.

The plan for administration of the Virginia Energy Assistance Program is available for review from 8 a.m. to 5 p.m., Monday through Friday, at the offices of the Virginia Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219, in the main lobby on the first floor.

Contact: Charlene H. Chapman, Department of Social Services, Energy and Emergency Assistance, 730 E. Broad St., Richmond, VA 23219.

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 FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

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 OBJECTIONS - RR08

ERRATA

MARINE RESOURCES COMMISSION

Title of Regulation: 4 VAC 20-880-10 et seq. Pertaining to Hard Crab and Peeler Pot License Sales.

Publication: 12:14 VA.R. 1934-1935 April 1, 1996.

Correction to Final Regulation:

Page 1934, column 2, 4 VAC 20-880-20, definition of "Tributaries of the Chesapeake Bay," line 3, change "4 VAC 20-42-10" to "4 VAC 20-90-10"

BOARD OF PHARMACY

Title of Regulation: 18 VAC 110-20-10 et seq. Regulations of the Board of Pharmacy.

Publication: 12:13 VA.R. 1773-1801 March 18, 1996.

Correction to Proposed Regulation:

Page 1787, 18 VAC 110-20-320, column 1, subsection B, line 1, change "IV" to "VI"

CALENDAR OF EVENTS

Symbol Key

- † Indicates entries since last publication of the *Virginia Register*
- ♿ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Board of Agriculture and Consumer Services

† May 16, 1996 - 9 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.♿

A regular meeting of the board to discuss regulations and fiscal matters and to receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of the other business, the board will review public comments for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD☎

Virginia Horse Industry Board

May 10, 1996 - 11 a.m. -- Open Meeting
Northern Virginia 4-H Educational Center, 600 4-H Center Drive, Library, Front Royal, Virginia.♿

The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD☎

Virginia Pork Industry Board

† May 3, 1996 - 3:30 p.m. -- Open Meeting
Piedmont Club, Central Fidelity Bank Building, 9th and Main Streets, Lynchburg, Virginia.♿

A meeting to discuss industry issues, hear industry and research reports, and appoint board committees. 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 accommodations in order to participate at the meeting should contact John Parker at least five days before the meeting date so that suitable arrangements can be made.

Contact: John H. Parker, Executive Director, Virginia Pork Industry Board, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-7092.

Virginia Sweet Potato Board

June 6, 1996 - 8 p.m. -- Open Meeting
Eastern Shore Agricultural and Extension Center, Research Drive, Painter, Virginia.♿

A meeting to include discussion of programs regarding promotion, research and education, the annual budget, and other business that may come before the board. 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 accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (804) 787-5867.

STATE AIR POLLUTION CONTROL BOARD

May 3, 1996 -- Public 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 Air Pollution Control Board intends to adopt regulations entitled: **9 VAC 5-150-10 et seq. Regulation for Transportation Conformity.** The regulation establishes criteria and procedures for the transportation planning organization to use when determining whether federally-funded transportation plans, programs, and projects are in conformance with air quality plans before they are adopted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration or the Federal Transit Administration must be found to conform before they are approved or funded by U.S. Department of Transportation or a Metropolitan Planning Organization. This will apply in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas. "Conformity" means that the activity will not (i) cause or contribute to any new violation of any standard in any area, (ii) will not increase the frequency or severity of any existing violation of any standard in any area, or (iii) will not delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

A transportation activity must not adversely affect implementation of the state implementation plan or the timely attainment and maintenance of the National Ambient Air Quality Standards. This integration of transportation activities and air quality planning is intended to ensure that emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

Request for Comments: 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.

Localities Affected: The localities affected by the proposed regulation are as follows:

1. The Northern Virginia Ozone Nonattainment Area: 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.
2. The Richmond Ozone Nonattainment Area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.
3. The Hampton Roads Ozone Nonattainment Area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.
4. Maintenance areas, i.e., the above areas when redesignated to attainment.

Location of Proposal: The proposal, an analysis conducted by the department (including: a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

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

Public comments may be submitted until 4:30 p.m., Friday, May 3, 1996 to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Mary E. Major, Policy Analyst Senior, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4423.

May 3, 1996 -- Public 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 Air Pollution Control Board intends to adopt regulations entitled: **9 VAC 5-160-10 et seq. Regulation for General Conformity.** The regulation establishes criteria and procedures for federal agencies to use when determining whether their nontransportation actions conform with air quality plans before they are adopted. It will apply in the Northern

Calendar of Events

Virginia, Richmond, and Hampton Roads nonattainment areas. "Conformity" means that the activity will not (i) cause or contribute to any new violation of any standard in any area, (ii) will not increase the frequency or severity of any existing violation of any standard in any area, or (iii) will not delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

A federal activity must not adversely affect implementation of the state implementation plan or the timely attainment and maintenance of the National Ambient Air Quality Standards. This integration of federal activities and air quality planning is intended to ensure that emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

Request for Comments: 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.

Localities Affected: The localities affected by the proposed regulation are as follows:

1. The Northern Virginia Ozone Nonattainment Area: 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.
2. The Richmond Ozone Nonattainment Area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.
3. The Hampton Roads Ozone Nonattainment Area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.
4. Maintenance areas, i.e., the above areas when redesignated to attainment.

Location of Proposal: The proposal, an analysis conducted by the department (including: a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (703) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

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

Public comments may be submitted until 4:30 p.m., Friday, May 3, 1996 to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 762-4426.

May 21, 1996 - 10 a.m. -- Public Hearing
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

June 14, 1996 -- Public 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 Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-80-50 et seq. Part II: Federal Operating Permits and Permit Program Fees for Stationary Sources (Rules 8-5 and 8-6.)**. The regulation amendments concern provisions covering federal operating permits for stationary sources and permit program fees for stationary sources and are summarized as follows: (1) source applicability has been cited directly to federal law; (2) a definition of "Title I modification" has been added; (3) the definition of state regulations considered federally enforceable has been clarified; (4) the fee calculation formula has been changed to specify a fee of \$25; and (5) certain provisions pertaining to insignificant activities have been modified.

Request for Comments: 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.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
355 Deadmore Street
Abingdon, Virginia
Ph: (540) 676-4800

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (540) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
116 North Main Street
Bridgewater, Virginia 22812
Ph: (540) 828-2595

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

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

Public comments may be submitted until 4:30 p.m. June 14, 1996, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413.

† **June 4, 1996 - 10 a.m.** -- Public Hearing
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

† **June 28, 1996** -- Public 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 Air Pollution Control Board intends to amend regulations entitled: **9 VAC 5-20-10 et seq. General Provisions; and 9 VAC 5-80-360 et seq. Article 3, Acid Rain Operating Permits (Rule 8-7).** The proposed regulation establishes an acid rain operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

Request for Comments: 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.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Office of Air Program Development, Department of Environmental Quality (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
355 Deadmore Street
Abingdon, Virginia
Ph: (540) 676-4800

Calendar of Events

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (540) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
116 North Main Street
Bridgewater, Virginia 22812
Ph: (540) 828-2595

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311
Statutory Authority: § 10.1-1308 of the Code of Virginia.

Contact: Robert A. Mann, Office Director, Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4419.

State Advisory Board on Air Pollution

† **May 8, 1996 - 9 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Richmond, Virginia.

A regular meeting of the board.

Contact: Kathy Frahm, Policy Analyst, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4376.

May 8, 1996 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Conference Room D, Richmond, Virginia. ☎

The board will meet three times to discuss air quality topics and develop recommendations for the State Air Pollution Control Board on (i) what could and should be considered by the board in making regulatory changes; (ii) guidelines for small businesses in conducting environmental audits; and (iii) electronic information sharing between DEQ and the public. These recommendations will be presented to the board in the fall.

Contact: Kathy Frahm, Policy Analyst, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4376 or FAX (804) 698-4346.

ALCOHOLIC BEVERAGE CONTROL BOARD

April 29, 1996 - 9:30 a.m. -- Open Meeting

May 13, 1996 - 9:30 a.m. -- Open Meeting

May 29, 1996 - 9:30 a.m. -- Open Meeting

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports from and activities of staff members. Other matters have not yet been determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Board for Architects

† **May 3, 1996 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Professional Engineers

† **May 23, 1996 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

May 16, 1996 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A general board meeting will follow the 9:30 a.m. public hearing regarding licensure fee reductions. Public comments will be received at the beginning of the meeting for 15 minutes.

Contact: Lisa Russell Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

May 16, 1996 - 9:30 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

June 1, 1996 -- Public 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 Audiology and Speech-Language Pathology intends to amend regulations entitled: **18 VAC 30-20-10 et seq. Regulations of the Board of Audiology and Speech-Language Pathology.** The board proposes to lower its fees for initial applications for licensure, verifications and renewal of licensure.

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

Contact: Lisa J. Russell Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

BOARD FOR BRANCH PILOTS

† May 1, 1996 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ☎

A meeting to conduct examinations. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so

that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

† May 2, 1996 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

CHILD DAY-CARE COUNCIL

May 2, 1996 - 9:30 a.m. -- Open Meeting
Department of Social Services, Theater Row Building, 730 East Broad Street, Lower Level Conference Room, Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment period will be at noon. Please call ahead of time for possible changes in meeting time.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1775.

STATE BOARD FOR COMMUNITY COLLEGES

May 15, 1996 - 2:30 p.m. -- Open Meeting
Southside Virginia Community College, Christanna Campus, 109 Campus Drive, Alberta, Virginia.

State board committee meetings. This is a tentative location.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

May 16, 1996 - 8:30 a.m. -- Open Meeting
Emporia-Holiday Inn Hotel, I-95 and U. S. 58, Emporia, Virginia.

A regularly scheduled board meeting. This is a tentative location.

Calendar of Events

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

† **May 3, 1996 - 11 a.m.** -- Open Meeting
Lake Anna State Park, Route 3, Visitor's Center, Spotsylvania, Virginia. ☎

A regular business meeting of the board to discuss (i) status on the proposed amendment to 4 VAC 3-20-10 et seq., Stormwater Management Regulations; (ii) status report on the Virginia Park and Recreational Facilities Bond Projects; (iii) recreational access road projects; (iv) Virginia Outdoor Fund Grant Program; (v) key 1996 legislation and budget issues; and (vi) development of department performance measures.

Contact: Leon E. App, Conservation and Development Program Supervisor, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

Falls of the James Scenic River Advisory Board

† **May 2, 1996 - Noon** -- Open Meeting
† **June 6, 1996 - Noon** -- Open Meeting
City Hall, Planning Commission Conference Room, 5th Floor, Richmond, Virginia.

A meeting to discuss river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

Recovery Fund Committee

† **June 11, 1996 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Holly Erickson. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

BOARD OF CORRECTIONAL EDUCATION

May 17, 1996 - 1 p.m. -- Open Meeting
Omni Hotel, 235 West Main Street, Charlottesville, Virginia.

A monthly meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Department of Correctional Education, 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

BOARD OF CORRECTIONS

† **May 8, 1996 - 10 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss matters which may be presented to the board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Administration Committee

† **May 8, 1996 - 8:30 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss administrative matters which may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Correctional Services Committee

† **May 4, 1996 - 10 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss correctional services matters which may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

CRIMINAL JUSTICE SERVICES BOARD

† **May 15, 1996 - 2 p.m.** -- Open Meeting
Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. ☎

A meeting to consider matters related 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: Sherri Stader, Assistant to the Director, Department of Criminal Justice Services, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8718 or FAX (804) 371-8981.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Advisory Board

May 1, 1996 - 10 a.m. -- Open Meeting
Department for the Deaf and Hard-of-Hearing, 1100 Bank Street, 11th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the advisory board. Public comment will be received with advance notice.

Contact: Gloria L. Cathcart, Human Services Program Specialist, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 11th Floor, Richmond, VA 23219, telephone (804) 371-7892 (V/TTY), toll-free 1-800-552-7917 (V/TTY), FAX (804) 371-7882, or (804) 225-2570/TDD

BOARD OF DENTISTRY

† May 9, 1996 - 9 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 meeting to conduct formal hearings. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD

† May 10, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A full meeting of the board to receive committee reports, and to discuss the budget, advertising, legislative/regulatory review, examination and continuing education, and regular board business. This is a public meeting and public comment will be taken from 9 a.m. until 9:20, and throughout the meeting.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD

VIRGINIA EMPLOYMENT COMMISSION

† May 6, 1996 - 9 a.m. -- Open Meeting
Virginia Employment Commission, 5060 Valley View Boulevard, Roanoke, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to receive reports from staff and discuss matters that may be presented.

Contact: Nancy L. Munnikhuisen, Director, Employer Relations and Customer Service, Virginia Employment Commission, 703 E. Main St., Richmond, VA 23219, telephone (804) 371-6406 or (804) 371-8050/TDD

DEPARTMENT OF ENVIRONMENTAL QUALITY

Work Group on Ammonia, Mercury, Lead and Copper with Respect to Water Quality Standards

May 2, 1996 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, 6th Floor Conference Room, Richmond, Virginia.

The department has established a work group on four topics with respect to the water quality standards program: mercury, ammonia, lead, and copper. The work group will, upon completion, advise the Director of Environmental Quality. Other meetings of the work group have been tentatively scheduled for June 6, July 11, August 8, and September 12, 1996. Persons interested in the meetings should confirm meeting date, time and location with Alan J. Anthony.

Contact: Alan J. Anthony, Chairman, Work Group on Ammonia, Mercury, Lead and Copper, 629 E. Main St., P.O. Box 10009, Room 205, Richmond, VA 23240-0009, telephone (804) 698-4114, FAX (804) 698-4522, or toll-free 1-800-592-5482.

Virginia Groundwater Protection Steering Committee


May 21, 1996 - 9 a.m. -- Open Meeting
State Corporation Commission, 1300 East Main Street, Richmond, Virginia.

A bimonthly meeting of the committee. For additional information or an agenda, contact Mary Ann Massie.


Contact: Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

Calendar of Events

Technical Advisory Committee for Solid Waste Management Regulations

May 31, 1996 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, First Floor Training Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss desirable amendments to the current Virginia Solid Waste Management Regulations (VR 672-20-10) [9 VAC 20-80-10 et seq.]

Contact: Dr. Wladimir Gulevich, Office of Technical Assistance, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4218, FAX (804) 698-4327 or (804) 698-4021/TDD 

STATE EXECUTIVE COUNCIL

† May 24, 1996 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Room 2, Richmond, Virginia.


The council provides interagency programmatic and fiscal policies, oversees the administration of funds appropriated under the Comprehensive Service Act, and advises the Governor.

Contact: Alan G. Saunders, Director, State Executive Council, 730 E. Broad St., Richmond, VA 23219, telephone (804) 786-5382.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS


April 30, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. 

A general board meeting to discuss board business. Public comments will be received at the beginning of the meeting for 15 minutes. Informal hearings will follow.

Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD 

BOARD OF GAME AND INLAND FISHERIES


Finance and Planning Committee

† May 13, 1996 - 10 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review the Department of Game and Inland Fisheries 1996-97 budget. If necessary, programmatic adjustments may be made.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

CHARITABLE GAMING COMMISSION


† May 2, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. 

A meeting to discuss ongoing promulgation of regulations.

Contact: Kari Walter, Policy Analyst, Charitable Gaming Commission, 200 N. 9th St., Room 1030, Richmond, VA 23219, telephone (804) 786-0238 or FAX (804) 786-1079.

GEORGE MASON UNIVERSITY


Student Affairs Committee

† May 14, 1996 - 6:30 p.m. -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. 

A regular meeting.

Contact: Ann Wingblade, Administrative Assistant, or Rita Lewis, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8701.


Board of Visitors

† May 15, 1996 - 3 p.m. -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. 

A regular meeting to hear reports of the standing committees, and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it.

Contact: Ann Wingblade, Administrative Assistant, or Rita Lewis, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8701.

STATE HAZARDOUS MATERIALS TRAINING ADVISORY COMMITTEE

† May 14, 1996 - 10 a.m. -- Open Meeting
Department of Emergency Services, 308 Turner Road, Training Room, Richmond, Virginia. 

A meeting to discuss curriculum course development and review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act, desiring to attend should contact the Department of Emergency Services at (804) 674-2489.

Calendar of Events

10 days prior to the meeting so appropriate accommodations can be provided.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 308 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† **May 9, 1996 - 10 a.m.** -- Open Meeting
Virginia Marine Science Museum, 717 General Booth Boulevard, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

A worksession of the board. A reception and informal dinner will be held at 6:30 p.m. at the Ramada Plaza Resort Oceanfront, Virginia Beach, Virginia.

Contact: Paul W. Matthias, Interim Staff to Board of Health, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 371-2909.

† **May 10, 1996 - 9 a.m.** -- Open Meeting
Ramada Plaza Resort Oceanfront, Oceanfront at 57th Street, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

A business meeting.

Contact: Paul W. Matthias, Interim Staff to Board of Health, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 371-2909.

May 20, 1996 - 7 p.m. -- Public Hearing
Loudoun County Government Center, Market Street, Leesburg, Virginia.
For more information contact: Larry Yates (703) 777-0234

May 20, 1996 - 7 p.m. -- Public Hearing
Franklin County Board of Supervisors Meeting Room, Main Street, Rocky Mount, Virginia.
For more information contact: Tim Baker (540) 638-2311

May 21, 1996 - 7 p.m. -- Public Hearing
Juvenile Court Building, 701 Princess Anne Street, Fredericksburg, Virginia.
For more information contact: Gary Switzer (540) 899-4797

May 21, 1996 - 7 p.m. -- Public Hearing
Eastern Shore Community College, Melfa, Virginia.
For more information contact: Artie Miles (804) 787-5886

May 22, 1996 - 7 p.m. -- Public Hearing
Newport News Health Department Auditorium, 416 J. Clyde Morris Boulevard, Newport News, Virginia.
For more information contact: Larry Nycum (804) 253-4813

May 22, 1996 - 7 p.m. -- Public Hearing
Lord Fairfax Community College Meeting Room, Woodstock, Virginia.
For more information contact: Kelly Vanover (540) 722-3480

May 23, 1996 - 7 p.m. -- Public Hearing
Central Library Auditorium, Virginia Beach, Virginia.

For more information contact: Frank "Skip" Scanlon (804) 491-5940

May 23, 1996 - 7 p.m. -- Public Hearing
Augusta County Government Center, Route 11, Verona, Virginia.
For more information contact: Allen Gutshall (540) 332-7830

May 28, 1996 - 7 p.m. -- Public Hearing
Board of Supervisors Room, Richmond, Virginia.
For more information contact: Mike Campbell (804) 672-4530

May 29, 1996 - 7 p.m. -- Public Hearing
Farmville Area Bus Station, Farmville, Virginia.
For more information contact: Wayne Lynhart (804) 392-3984

May 29, 1996 - 7 p.m. -- Public Hearing
Blacksburg Municipal Building, 300 South Main Street, Blacksburg, Virginia.
For more information contact: Bruce Hicks (540) 676-5520

May 30, 1996 - 7 p.m. -- Public Hearing
Washington County Library, Oak Hill and Valley Street, Abingdon, Virginia.
For more information contact: Bruce Hicks (540) 676-5520

May 31, 1996 -- Public 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 Health intends to amend regulations entitled: **12 VAC 5-610-10 et seq. Sewage Handling and Disposal Regulations.** The purpose of the proposed amendments is to (i) increase the separation distance to a water table below a drainfield from two to 20 inches to 18 or 24 inches; (ii) increase the separation distance to bedrock below a drainfield from 12 inches to 18 inches; (iii) encourage the use of new and innovative onsite wastewater technologies by granting provisional approval to promising new systems; (iv) increase ground water protection standards for large onsite systems (mass drainfields); (v) reduce the installation depth for conventional systems from 18 inches to six to 12 inches; (vi) add provisions that will make it easier for homeowners to know when to pump their septic tank; and (vii) make administrative changes designed to revise cumbersome portions of the regulations and make it easier for the public to comply with the regulations (i.e., reduced "red tape").

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Contact: Donald J. Alexander, Director, Division of Onsite Sewage and Water Services, P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750 or FAX (804) 225-4003.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† **May 21, 1996 - 9:30 a.m.** -- Open Meeting

Calendar of Events

Department of Social Services, 730 East Broad Street, Richmond, Virginia. ♿

A monthly meeting.

Contact: Richard L. Walker, Director of Administration, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371, FAX (804) 371-0284 or (804) 786-6371/TDD ☎

† **May 21, 1996 - 10:30 a.m.** -- Public Hearing
Department of Social Services, 730 East Broad Street, Richmond, Virginia.

† **June 28, 1996** -- Public 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 Virginia Health Services Cost Review Council intends to amend regulations entitled: **12 VAC 25-20-10 et seq. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed amendments is to eliminate requirements for nursing homes and hospitals to submit budget filings, for nursing homes to submit commercial diversification surveys, and for hospitals to submit quarterly filings to the Virginia Health Services Cost Review Council. A method for assessing fees, not related to budget filings, is provided.

Statutory Authority: §§ 9-158 and 9-160 of the Code of Virginia.

Public comments may be submitted until June 28, 1996, to Ann Y. McGee, Virginia Health Services Cost Review Council, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Marsha Mucha, Executive Secretary Senior, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371 or FAX (804) 371-0284.

BOARD FOR HEARING AID SPECIALISTS

May 13, 1996 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia. ♿

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507 or (804) 367-9753/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

May 7, 1996 - 9 a.m. -- Open Meeting

† **June 4, 1996 - 9 a.m.** -- Open Meeting
† **July 2, 1996 - 9 a.m.** -- Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ♿ (Interpreter for the deaf provided upon request)

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.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

May 3, 1996 -- Public 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 **repeal** regulations entitled: **13 VAC 5-110-10 et seq. Virginia Enterprise Zone Program Regulations** and **adopt** regulations entitled: **13 VAC 5-111-10 et seq. Virginia Enterprise Zone Program Regulations.** The purpose of the proposed regulation is to implement and administer new incentives and provisions of the Virginia Enterprise Zone Program provided in 1995 legislation. Amendments will also implement greater flexibility for businesses in qualifying for the use of these incentives. Amendments reflect an increase in number of zones statewide and greater flexibility for localities to have multiple zones.

Statutory Authority: § 59.1-278 of the Code of Virginia.

Contact: M. Shea Hollifield, Associate Director, Department of Housing and Community Development, The Jackson Center, 501 N. Second St., Richmond, VA 23219, telephone (804) 371-7030.

May 20, 1996 -- Public 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: **13 VAC 5-70-10 et seq. Virginia Uniform Statewide Building Code, Volume II, Building Maintenance Code/1993.** The purpose of the proposed amendments is to establish standards for automatic sprinkler systems in patient rooms and other areas customarily used for patient care in hospitals, regardless of when such facilities were constructed.

Statutory Authority: § 36-99.9:1 of the Code of Virginia.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, The Jackson Center, 501 N. Second St., Richmond, VA 23219-1321, telephone (804) 371-7170.

State Building Code Technical Review Board

† **May 17, 1996 - 10 a.m.** -- Open Meeting
The Jackson Center, 501 North Second Street, 1st Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board hears administrative appeals concerning building and fire codes and other regulations of the department. The board also issues interpretations and formalizes recommendations to the Board of Housing and Community Development concerning future changes to the regulations.

Contact: Vernon W. Hodge, Building Code Supervisor, State Building Office, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD

VIRGINIA INTERAGENCY COORDINATING COUNCIL

† **June 12, 1996 - 9:30 a.m.** -- Open Meeting
Henrico Area Mental Health and Mental Retardation Services, 10299 Woodman Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part H (of IDEA), Early Intervention for Infants and Toddlers with Disabilities and their families. Discussion focuses on issues related to Virginia's implementation of the Part H program.

Contact: Richard B. Corbett, Part H Program Support, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3710 or FAX (804) 371-7959.

LIBRARY BOARD

May 6, 1996 - 9:30 a.m. -- Open Meeting
Sheraton Inn Richmond Airport, 4700 South Laburnum Avenue, Richmond, Virginia.

A meeting to review and comment on the draft assessment of the Strategic Management Plan for January 1995 through December 1996, and the revision for the 1996-98 biennium.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

June 17, 1996 - Time to be announced -- Open Meeting

June 18, 1996 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss administrative matters of the library board.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

State Networking Users Advisory Board

† **June 26, 1996 - 10 a.m.** -- Open Meeting
Jefferson-Madison Regional Library, 201 East Market Street, Madison Room, 3rd Floor Conference Room, Charlottesville, Virginia.

A meeting to discuss administrative matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

LITTER CONTROL AND RECYCLING FUND ADVISORY BOARD

† **May 9, 1996 - 10 a.m.** -- Open Meeting
Plantation House, 1108 East Main Street, 2nd Floor Conference Center, Richmond, Virginia.

A meeting to (i) approve noncompetitive grant application package for fiscal year 1997; (ii) promote the control, prevention, and elimination of litter from the Commonwealth and encourage recycling; and (iii) advise the Director of the Department of Environmental Quality on other litter control and recycling matters.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488 or FAX (804) 698-4453.

STATE COUNCIL ON LOCAL DEBT

May 15, 1996 - 11 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 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 the meeting 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 1879, Richmond, VA 23215, telephone (804) 225-4928.

COMMISSION ON LOCAL GOVERNMENT

May 6, 1996 - 11 a.m. -- Open Meeting
City of Manassas; site to be determined.

Oral presentations regarding the City of Manassas - Prince William County Voluntary Settlement Agreement. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD

Calendar of Events

May 6, 1996 - 7 p.m. -- Public Hearing
City Hall, 9027 Center Street, Council Chambers, Manassas, Virginia.

A public hearing regarding the City of Manassas - Prince William County Voluntary Settlement Agreement. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

May 7, 1996 - 9 a.m. -- Open Meeting
City of Manassas; site to be determined.

A regular meeting of the commission to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

June 3, 1996 - 10:30 a.m. -- Open Meeting
Town of Bowling Green/Caroline County area; site to be determined.

Oral presentations regarding the Town of Bowling Green - Caroline County Voluntary Settlement Agreement. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

June 3, 1996 - 7 p.m. -- Public Hearing
Town of Bowling Green/Caroline County area; site to be determined.

A public hearing regarding the Town of Bowling Green - Caroline County Voluntary Settlement Agreement. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

STATE MANAGEMENT TEAM OF THE COMPREHENSIVE SERVICES ACT FOR AT RISK YOUTH AND THEIR FAMILIES

† **May 2, 1996 - 9 a.m.** -- Open Meeting
St. Joseph's Villa, 8000 Brook Road, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to establish policy and procedure. Please contact Pamela Fitzgerald Cooper to be placed on the agenda and for the time of public comment.

Contact: Pamela Fitzgerald Cooper, Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 109 Governor St., Richmond, VA 23219, telephone (804) 371-2177 or FAX (804) 371-0091.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

May 4, 1996 -- Public 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 Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-100, Inpatient Hospital Services; 12 VAC 30-50-140, Physician's Services; and 12 VAC 30-70-50, Hospital Reimbursement System.** The purpose of this proposal is to make permanent policies to reduce the lengths of inpatient and obstetric stays when medically appropriate in compliance with amendments to the budget. By reducing the average Medicaid length of stay in inpatient hospitals to levels similar to that of patients of private insurance, DMAS estimated that the Commonwealth could generate significant cost savings in Medicaid expenditures. These changes enhance the economical performance of Virginia's Medicaid Program by preventing reimbursement for services that are not medically necessary. DMAS completed an analysis of inpatient hospital claims which showed that the length of stay for inpatient services among Medicaid patients in Virginia, by admission diagnosis and procedure performed, is higher than the lengths of stay among patients covered by private insurance. Based on this analysis, the Governor included in his 1995 amendments to the 1994-96 Appropriations Act two amendments reducing the Medicaid budget by decreasing the average length of stay for inpatient hospital services from six days to five days and by decreasing the length of stay for obstetric services to one day.

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

Public comments may be submitted until May 4, 1996, to Margot Fritts, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

May 17, 1996 -- Public 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 Medical Assistance Services intends to adopt regulations entitled: **12 VAC 30-120-450 through 12 VAC 30-120-480. Part VII: Assisted Living Services for Individuals Receiving Auxiliary Grants Residing in Adult Care Residences.** The proposed regulation will allow the Department of Medical Assistance Services (DMAS) to establish coverage criteria for two types of assisted living to recipients of auxiliary grants residing in licensed adult care residences: (i) regular assisted living for those individuals who do not meet the criteria for waiver services but who require at least a moderate level of assistance with activities of daily living, and (ii) intensive assisted living for those individuals who meet the criteria for waiver services. This regulation was originally begun in 1994. It was delayed because the Department of Social Services (DSS) had to promulgate regulations prior to DMAS developing its program. These DMAS regulations have been revised to conform to the DSS regulations now in place.

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

Public comments may be submitted until May 17, 1996, to Cindi Bowling, LTC Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

Virginia Medicaid Drug Utilization Review Board

† **May 23, 1996 - 2 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia. ☎

A quarterly meeting to conduct routine business.

Contact: Marianne R. Rollings, DUR Program Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8057 or (804) 786-0414.

Virginia Medicaid Prior Authorization and VHOP Advisory Committee

† **May 23, 1996 - 10 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A quarterly meeting to conduct routine business.

Contact: David B. Shepherd, Pharmacy Supervisor, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2773 or (804) 786-0414.

BOARD OF MEDICINE

† **May 24, 1996 - 1 p.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

† **June 28, 1996** - Public 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: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.** The proposed amendment to 18 VAC 85-20-90 B permits the use of Schedule III and IV drugs in the treatment of obesity under specified conditions and a treatment plan.

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

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7423, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

Informal Conference Committee

† **May 2, 1996 - 10 a.m.** -- Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, Roanoke, Virginia.

May 16, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

May 17, 1996 - 9:30 a.m. -- Open Meeting
Fort Magruder Inn and Conference Center, Route 60, Williamsburg, Virginia.

May 21, 1996 - 9:30 a.m. -- Open Meeting
Department of Transportation, 86 Deacon Road, Falmouth, Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Occupational Therapy

May 2, 1996 - 9 a.m. -- CANCELLED
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Calendar of Events

The meeting to review public comments and make recommendations to the board regarding the regulatory review of VR 465-08-1 (18 VAC 85-80-10 et seq.), Regulations for Certification of Occupational Therapists, and such other issues which may be presented, has been cancelled.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

May 3, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of VR 465-03-1 (18 VAC 85-30-10 et seq.), Regulations Governing the Practice of Physical Therapy, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Physicians' Assistants

May 3, 1996 - 1 p.m. -- CANCELLED
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

The meeting to review public comments and make recommendations to the board regarding the regulatory review of VR 465-05-1 (18 VAC 85-50-10 et seq.) Regulations Governing the Practice of Physicians' Assistants, and such other issues which may be presented, has been cancelled.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Respiratory Therapy

May 2, 1996 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of VR 465-04-1 (18 VAC 85-40-10 et seq.), Regulations Governing the Practice of Respiratory Therapy Practitioners, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† May 19, 1996 - 4 p.m. -- Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, Conference Room, 13th Floor, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting to discuss Public Participation Guidelines for Developing and Promulgating Regulations; Rules and Regulations to Assure the Rights of Clients in Community Programs; Rules and Regulations to Assure the Rights of Residents of Hospitals and Other Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services; and Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Contact: Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23236, telephone (804) 786-6431 or FAX (804) 371-0091.

† May 20, 1996 - 9 a.m. -- Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, Conference Room, 13th Floor, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting to discuss Rules and Regulations for the Licensure of Facilities and Programs Serving Mentally Ill, Mentally Retarded, and Substance Abusing Persons; Regulations for the Certification of Case Management Services; Regulations Establishing Procedures for Voluntarily Admitting Persons who are Mentally Retarded to State Mental Retardation Facilities; and Regulations for Respite and Emergency Care Admissions to Mental Retardation Facilities.

Contact: Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23236, telephone (804) 786-6431 or FAX (804) 371-0091.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

† **June 7, 1996 - 9 a.m.** -- Open Meeting
Eastern State Hospital, Williamsburg, Virginia.

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

Contact: Theresa P. Evans, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988, FAX (804) 371-8977, toll-free 1-800-451-5544 or (804) 371-8977/TDD ☎

VIRGINIA MILITARY INSTITUTE

Board of Visitors

May 13, 1996 - 8:30 a.m. -- Open Meeting
Smith Hall Board Room, Virginia Military Institute, Lexington, Virginia. ☎

A regular meeting of the Board of Visitors to receive committee reports; discuss budget approval; approve awards, distinctions and diplomas; discuss personnel changes, and elect president pro tem. Public comment will not be received at this meeting.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (540) 464-7206.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Virginia Reclamation Fund Advisory Board

May 15, 1996 - 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 review and discuss the current status and administration of the reclamation fund.

Contact: Danny R. Brown, Division Director, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8152, FAX (540) 523-8163 or toll-free 1-800-828-1120 (VA Relay Center).

VIRGINIA MUSEUM OF FINE ARTS

† **May 7, 1996 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ☎

A review of ongoing and upcoming museum activities. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Collections Committee

† **May 9, 1996 - 11 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☎

A meeting to consider art acquisitions; gifts, purchases, and loans. This is the final meeting of the season. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Finance Committee

† **May 16, 1996 - 11 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☎

A meeting to conduct budget review, and a report from the Advisory Committee regarding Enterprise Operations. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Board of Trustees

† **May 16, 1996 - Noon** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☎

The annual meeting of the Board of Trustees to receive annual reports from the staff and trustee committees, conduct budgetary review, and approve art acquisitions. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

† **June 4, 1996 - 8 a.m.** -- Open Meeting
† **July 1, 1996 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ☎

A meeting of the officers of the board to review with the director current and upcoming museum activities. Public comment will not be received at the meeting.

Calendar of Events

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

BOARD OF NURSING

† **May 7, 1996 - 9 a.m.** -- Open Meeting
Scott County Administrative Offices, 112 Water Street, Board Room, Gate City, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings with certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

May 17, 1996 -- Public 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 adopt regulations entitled: **18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing.** The purpose of the proposed amendment is to replace an emergency regulation, which established a biennial renewal fee of \$20 for certified nurse aides.

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

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

Special Conference Committee

April 29, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A Special Conference Committee, comprised of two members of the Virginia Board of Nursing, will conduct informal conferences with licensees and certificate holders to determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

May 29, 1996 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.☎

A general board meeting to discuss board business. Public comments will be received at the beginning of the meeting for 15 minutes.

Contact: Lisa Russell Hahn, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

BOARDS OF NURSING AND MEDICINE

Joint Committee

† **June 5, 1996 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

The Board of Nursing will conduct a meeting to adopt final regulations beginning at 9 a.m. The Committee of the Joint Boards of Medicine and Nursing will conduct a regular meeting at 9:30 a.m. The Committee of the Joint Boards of Medicine and Nursing, the Board of Nursing, and the Board of Medicine will hold informal conferences at 10:30 a.m. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

BOARD OF OPTOMETRY

May 2, 1996 - 8 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 general board meeting and regulatory review regarding the transfer of TPA certification from the Board of Medicine to the Board of Optometry and other related issues will be conducted. Public comments will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

May 2, 1996 - 2:30 p.m. -- Open Meeting
May 13, 1996 - 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 Special Conference Committee, comprised of two members of the Board of Optometry, will conduct informal conferences with licensees to determine what, if any, actions should be recommended to the board. Public comments will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

May 13, 1996 - 1:30 p.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 formal hearing. Public comments will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

May 17, 1996 - Public 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 Pharmacy intends to amend regulations entitled: **18 VAC 110-20-10 et seq. Regulations of the Board of Pharmacy.** The purpose of the proposed amendments is to permit more flexibility in the use of technology for the transmittal and delivery of prescription drugs, to relax its requirements for continuing education, and to conform with state and federal law. The board also proposes requirements for the compounding of sterile products consistent with recognized industry standards.

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

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

May 10, 1996 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

Beginning at 8 a.m., there will be an Executive Committee meeting to review credentials. Public comments will not be heard. At 8:30 a.m. an informal conference will be held pursuant to § 9-6.14:11 of the Code of Virginia. Public comments will not be heard. At 10 a.m. there will be a regular meeting of the board to conduct general board business; consider committee reports, correspondence and any other matters under the jurisdiction of the board; and to conduct regulatory review. There will be a 30-minute general public comment period beginning at 10:15 a.m.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, Board of Professional Counselors and Marriage and Family Therapists, 6606 W.

Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

† May 22, 1996 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A formal administrative hearing will be held pursuant to § 9-6.14:12 of the Code of Virginia. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967.

† May 23, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿

An informal conference will be held pursuant to § 9-6.14:11 of the Code of Virginia. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

† June 17, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Debra S. Vought, Agency Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8519, or (804) 367-9753/TDD ☎

REAL ESTATE APPRAISER BOARD

May 21, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 2 weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad

Calendar of Events

St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

REAL ESTATE BOARD

May 3, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

Continuing Education Committee

May 3, 1996 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 2 weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Education Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

† May 7, 1996 - 9 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

A meeting to continue work on developing and monitoring a plan to strengthen Virginia's recycling infrastructure and markets; setting forth strategies primarily designed to improve the supply, quantity, and quality of recyclables; and providing strategies for increasing the demand for recycled products and expanding the capacity of collectors, processors, and manufacturers to handle and use specified recyclable materials. The annual report will be considered for approval. The meeting will be dependent on a quorum of 10. Subcommittee meetings may be held prior to or after the general council meeting. Call Paddy Katzen for details at (804) 698-4488 or e-mail, pmkatzen@deq.state.va.us.

Contact: Paddy Katzen, Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488 or FAX (804) 698-4453.

VIRGINIA RESOURCES AUTHORITY

May 14, 1996 - 9:30 a.m. -- Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the meeting of the prior month; to review the authority's operations for the prior months; and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

Loan Committee

NOTE: CHANGE IN MEETING DATE

† May 21, 1996 - 10 a.m. -- Open Meeting
Department of Economic Development, 901 East Byrd Street, 19th Floor, Main Board Room, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval.

Contact: Cathleen Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., Suite 1800, Richmond, VA 23219, telephone (804) 371-8256, FAX (804) 225-3384, or (804) 371-0327/TDD ☎

STATE BOARD OF SOCIAL SERVICES

June 14, 1996 -- Written comments may be submitted through this date.

Notice is hereby given in accordance with §§ 9-6.14:7.1 and 9-6.14:9.1 of the Code of Virginia that the State Board of Social Services has adopted as final the regulation entitled: **22 VAC 40-35-5 et seq. [VR 615-01-57]. Virginia Independence Program.** No substantial changes were made to the proposed regulation other than the addition of 22 VAC 40-35-20 A 6, which provides for the repeal of 22 VAC 40-35-20 A 5 upon receipt of appropriate federal authorization. The intent of 22 VAC 40-35-20 A 6 is to clarify the circumstances under which an Aid to Families with Dependent Children (AFDC) recipient is deemed to have cooperated in the establishment of paternity. Because the board believes

that this change may be considered substantial, it will accept additional public comment. Accordingly, additional written comment concerning 22 VAC 40-35-20 A 6 may be submitted until June 14, 1995, to Carolyn Ellis.

Contact: Carolyn Ellis, Department of Social Services, Division of Benefit Programs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1738.

COMMONWEALTH TRANSPORTATION BOARD

† **May 8, 1996 - 2 p.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **May 9, 1996 - 10 a.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TRANSPORTATION SAFETY BOARD

May 8, 1996 - 1:30 p.m. -- Open Meeting
Hyatt Richmond-Brookfield, 6624 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting of the board to review traffic safety issues in the Commonwealth.

Contact: Angelisa C. Jennings, Management Analyst, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-2026 or FAX (804) 367-6031.

TREASURY BOARD

May 15, 1996 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.

A regular meeting.

Contact: Gloria Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

BOARD OF VETERINARY MEDICINE

† **May 14, 1996 - 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 board meeting to conduct general board business and a formal hearing.

Contact: Terri H. Behr, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915 or (804) 662-7197/TDD

VIRGINIA RACING COMMISSION

May 15, 1996 - 9:30 a.m. -- Public Hearing
Tyler Building, 1300 East Main Street, Richmond, Virginia.

June 14, 1996 -- 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 Virginia Racing Commission intends to adopt regulations entitled: **11 VAC 10-180-10 et seq. Medication.** The purpose of the proposed regulation is to establish procedures regarding the medication of racehorses. The Virginia Racing Commission authorizes the use of one medication in racehorses on race day and establishes quantitative levels on two other medications.

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

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363 or FAX (804) 371-6127.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Vocational Rehabilitation Advisory Council

June 8, 1996 - 10 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting to advise the Department for the Visually Handicapped on matters related to vocational

Calendar of Events

rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD or toll-free 1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

June 27, 1996 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to review product data for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary Board, Monroe Bldg., 101 N. 14th St., S-45, Richmond, VA 23219, telephone (804) 786-4326.

STATE WATER CONTROL BOARD

April 30, 1996 - 7 p.m. -- Public Hearing
Marshall Middle School, 4048 Zulla Road, Marshall, Virginia.

A public hearing to receive comments from the public on the proposed reissuance of a Virginia Pollutant Discharge Elimination System (VPDES) permit for Marshall Wastewater Treatment Plant, Fauquier County Water and Sanitation Authority.

Contact: Tom Faha, Department of Environmental Quality, Northern Regional Office, 1549 Old Bridge Rd., Suite 108, Woodbridge, VA 22192, telephone (703) 490-8922.

May 2, 1996 - 7 p.m. -- Public Hearing
Hampton City Council Chambers, City Hall Building 22 Lincoln Street, 8th Floor, Hampton, Virginia.

A public hearing to receive comments from the public on the proposed reissuance of a Virginia Pollutant Discharge Elimination System (VPDES) permit for Newport News Shipbuilding, 4101 Washington Avenue, Newport News.

Contact: David A. Mashaw, Department of Environmental Quality, Tidewater Regional Office, 287 Pembroke Office Park, Pembroke No. 2, Suite 310, Virginia Beach, VA 23462, telephone (804) 552-1840.

May 22, 1996 - 9 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A regular meeting of the board.

Contact: Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

JUDICIAL

VIRGINIA CRIMINAL SENTENCING COMMISSION

June 24, 1996 - 10 a.m. -- Open Meeting
Supreme Court Building, 100 North 9th Street, 3rd Floor, Judicial Conference Room, Richmond, Virginia.

A regular quarterly meeting of the commission to review sentencing guidelines, compliance rates, and the work of commission subcommittees.

Contact: Dr. Richard Kern, Director, Virginia Criminal Sentencing Commission, 100 N. 9th St., 5th Floor, Richmond, VA 23219, telephone (804) 225-4565 or (804) 225-4398, or FAX (804) 786-3934.

LEGISLATIVE

ADMINISTRATIVE LAW ADVISORY COMMITTEE

May 21, 1996 - 11 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss the ongoing studies of the committee and for general purposes.

Contact: Lyn Hammond, Program Coordinator, Division of Legislative Services, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 371-0169.

VIRGINIA CODE COMMISSION

May 16, 1996 - 10 a.m. -- Open Meeting
June 19, 1996 - 10 a.m. -- Open Meeting
June 20, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, Speaker's Conference Room, 6th Floor, 910 Capitol Square, Richmond, Virginia.

A regularly scheduled meeting to continue the recodification of Title 15.1.

Contact: E. M. Miller, Director, or Jane Chaffin, Deputy Registrar of Regulations, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† May 13, 1996 - 9:30 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

An ongoing oversight of the Virginia Retirement System.

Contact: Philip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol

St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

DIVISION OF LEGISLATIVE SERVICES

† **May 22, 1996 - 9 a.m.**

General Assembly Building, Senate Room B, Richmond, Virginia.

† **May 23, 1996 - 9 a.m.**

Old Dominion University, Constant Hall Auditorium, Room 120, Norfolk, Virginia.

The Division of Legislative Services is presenting its second annual program on "Recent Developments: 1996 Legislative Session." This program is designed to provide attorneys, regulators and lobbyists with an overview of legislation considered during the 1996 Session of the Virginia General Assembly. Division staff will make a series of presentations on legislation considered by the standing committees of the General Assembly. Ample opportunity will be available for questions and answers. Registration begins at 8:30 a.m. The cost is \$50.00 in advance and \$60.00 at the door. The program has been approved for 6.0 Virginia Mandatory Continuing Legal Education credits (no ethics credits). Seating is limited, so register early. All participants will receive a copy of the 1996 *Session Summary*. Box lunches will be available on May 22 only for those who request them ahead. Coffee and pastries will be provided in the morning. A registration form may be obtained from the contact person listed below.

Contact: Ms. Sandra Levin, Division of Legislative Services, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

April 29

Alcoholic Beverage Control Board
Nursing, Board of

April 30

Funeral Directors and Embalmers, Board of
Water Control Board, State

May 1

† Branch Pilots, Board for
Deaf and Hard-of-Hearing, Department of
- Advisory Board

May 2

† Branch Pilots, Board for
Child Day-Care Council
† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board

Environmental Quality, Department of
- Work Group on Ammonia, Mercury, Lead and
Copper with respect to Water Quality Standards
† Gaming Commission, Charitable
† Management Team of the Comprehensive Services
Act for At Risk Youth and Their Families, State
Medicine, Board of
- Advisory Board on Respiratory Therapy
Optometry, Board of

May 3

† Agriculture and Consumer Services, Department of
- Virginia Pork Industry Board
† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for
- Board for Architects
† Conservation and Recreation, Board of
Medicine, Board of
- Advisory Board on Physical Therapy
Real Estate Board
- Continuing Education Committee

May 4

† Corrections, Board of
- Correctional Services Committee

May 6

† Employment Commission, Virginia
- State Advisory Board
Library Board
Local Government, Commission on

May 7

† Criminal Justice Services Board
- Committee on Training
Hopewell Industrial Safety Council
Local Government, Commission on
† Museum of Fine Arts, Virginia
† Nursing, Board of
† Recycling Markets Development Council, Virginia

May 8

† Air Pollution Control Board, State
- State Advisory Board on Air Pollution
† Corrections, Board of
- Administration Committee
† Transportation Board, Commonwealth
Transportation Safety Board

May 9

† Dentistry, Board of
† Health, State Board of
† Litter Control and Recycling Fund Advisory Board
† Museum of Fine Arts, Virginia
- Collections Committee
† Transportation Board, Commonwealth

May 10

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Dentistry, Board of
† Health, State Board of
Professional Counselors and Marriage and Family
Therapists, Board of

Calendar of Events

May 13

- Alcoholic Beverage Control Board
- † Game and Inland Fisheries, Board of
 - Finance and Planning Committee
- Hearing Aid Specialists, Board for
- † Legislative Audit and Review Commission, Joint Military Institute, Virginia
 - Board of Visitors
- Optometry, Board of

May 14

- † George Mason University
 - Board of Visitors
- † Hazardous Materials Training Advisory Committee, State Resources Authority, Virginia
- † Veterinary Medicine, Board of

May 15

- Community Colleges, State Board for
- † George Mason University
 - Board of Visitors
- Local Debt, State Council on
- Mines, Minerals and Energy, Department of
 - Virginia Reclamation Fund Advisory Board
- Treasury Board

May 16

- † Agriculture and Consumer Services, Board of
- Audiology and Speech-Language Pathology, Board of
- † Virginia Code Commission
- Community Colleges, State Board for
- Medicine, Board of
- † Museum of Fine Arts, Virginia
 - Finance Committee
 - Board of Trustees

May 17

- Correctional Education, Board of
- † Housing and Community Development, Department of
 - State Building Code Technical Review Board
- Medicine, Board of

May 19

- † Mental Health, Mental Retardation and Substance Abuse Services, State Board

May 20

- † Mental Health, Mental Retardation and Substance Abuse Services, State Board

May 21

- Administrative Law Advisory Committee
- Environmental Quality, Department of
 - Virginia Groundwater Protection Steering Committee
- † Health Services Cost Review Council, Virginia
- Medicine, Board of
- Real Estate Appraiser Board
- Small Business Financing Authority Loan Committee, Virginia

May 22

- † Legislative Services, Division of
- † Professional Counselors and Marriage and Family Therapists, Board of

Water Control Board, State

May 23

- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Professional Engineers
- † Legislative Services, Division of
- † Medical Assistance Services, Department of
 - Virginia Medicaid Drug Utilization Review Board
 - Virginia Medicaid Prior Authorization Advisory Committee/VHOP Advisory Committee
- † Professional Counselors and Marriage and Family Therapists, Board of

May 24

- † Executive Council, State

May 29

- Alcoholic Beverage Control Board
- Nursing Home Administrators, Board of

May 31

- Environmental Quality, Department of
 - Technical Advisory Committee for Solid Waste Management Regulations

June 3

- Local Government, Commission on

June 4

- † Hopewell Industrial Safety Council
- † Museum of Fine Arts, Virginia
 - Board of Trustees

June 5

- † Nursing and Medicine, Boards of
 - Joint Committee

June 6

- Agriculture and Consumer Services, Department of
 - Virginia Sweet Potato Board
- † Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board

June 7

- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - State Human Rights Committee

June 8

- Visually Handicapped, Department for the
 - Vocational Rehabilitation Advisory Council

June 11

- † Contractors, Board for
 - Recovery Fund Committee

June 12

- † Interagency Coordinating Council, Virginia

June 17

- Library Board
- † Professional and Occupational Regulation, Board for

June 18

- Library Board

June 19

† Virginia Code Commission

June 20

† Virginia Code Commission

June 24

Criminal Sentencing Commission, Virginia

June 26

† Library of Virginia
- State Networking Users Advisory Board

June 27

Voluntary Formulary Board, Virginia

July 1

† Museum of Fine Arts, Virginia
- Board of Trustees

July 2

† Hopewell Industrial Safety Council

PUBLIC HEARINGS

May 2

Water Control Board, State

May 6

Local Government, Commission on

May 15

Virginia Racing Commission

May 16

Audiology and Speech-Language Pathology, Board of

May 21

Air Pollution Control Board, State
† Health Services Cost Review Council, Virginia

May 24

† Medicine, Board of

June 3

Local Government, Commission on

June 4

† Air Pollution Control Board, State
