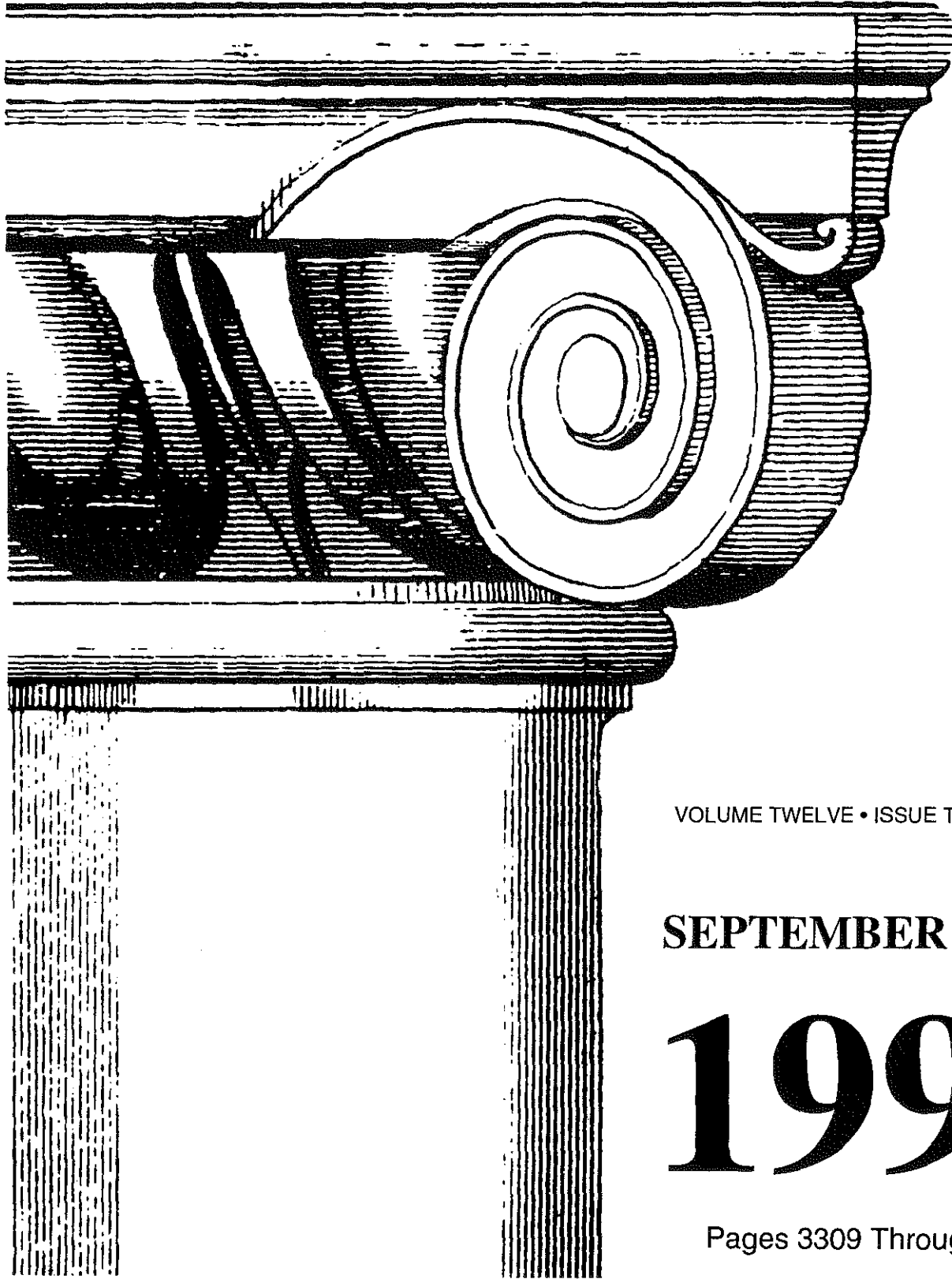


THE VIRGINIA REGISTER

OF REGULATIONS



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SEPTEMBER 2, 1996

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Pages 3309 Through 3516

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

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DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (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 Board of Agriculture and Consumer Services intends to consider promulgating regulations entitled: **2 VAC 5-205-10 et seq. Rules and Regulations Pertaining to Shooting Enclosures.** The purpose of the proposed regulation is to establish regulations pertaining to shooting enclosures pursuant to § 3.1-763.5:5 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication. The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination thereof.

Statutory Authority: § 3.1-763.5:5 of the Code of Virginia.

Public comments may be submitted until 8:30 a.m. on September 20, 1996, to Dr. W. M. Sims, Jr., Department of Agriculture and Consumer Services, Division of Animal Industry Services, P.O. Box 1163, Richmond, VA 23218-1163.

Contact: T. R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Office of Veterinary Services, P.O. Box 1163, Richmond, VA 23218-1163, telephone (804) 786-2483.

VA.R. Doc. No. R96-505; Filed July 23, 1996, 4:50 p.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

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 Audiology and Speech-Language Pathology intends to consider amending regulations entitled: **18 VAC 30-20-10 et seq. Regulations Governing Audiology and Speech-Language Pathology.** The purpose of the proposed action is to eliminate unnecessary or redundant regulations, clarify or simplify regulations according to recommendations of the board in its review pursuant to Executive Order 15(94), and consider regulations on the appropriate use of unlicensed support personnel. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2600 et seq. of the Code of Virginia.

Public comments may be submitted until September 18, 1996.

Contact: Elizabeth Kirksey, 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 ☎

VA.R. Doc. No. R96-507; Filed July 25, 1996, 12:31 p.m.

BOARD FOR COSMETOLOGY

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 for Cosmetology intends to consider amending regulations entitled: **18 VAC 55-20-10 et seq. Board for Cosmetology Regulations.** The purpose of the proposed action is to revise examination language to incorporate reference to the Public Procurement Act and to simplify provisions of current regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until September 5, 1996.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8509, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

VA.R. Doc. No. R96-479; Filed July 8, 1996, 11:58 a.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending regulations entitled: **6 VAC 20-20-10 et seq. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers.** The purpose of the proposed action is to amend the regulations relating to minimum training standards for law-enforcement officers to update these based on the 1995 job task analysis which identified the knowledge, skills, and abilities required to perform the duties of the position at a minimally acceptable level. Updated standards and training will be consistent with performance expectations for law-enforcement officers in the Commonwealth that best meet the goal of maintaining public safety. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 9-170 of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until September 5, 1996, to Lex Eckenrode, Deputy Director, Bureau of Operations, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Judy Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8003 or FAX (804) 371-8981.

VA.R. Doc. No. R96-494; Filed July 17, 1996, 10:02 a.m.

DEPARTMENT OF EDUCATION (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 Education intends to consider amending regulations entitled: **8 VAC 20-130-10 et seq., Regulations Establishing Standards for Accrediting Public Schools in Virginia.** The purpose of the proposed action is to ensure improved compliance with the Standards of Quality which require the Board of Education to promulgate regulations establishing standards for accrediting public schools in Virginia. The board seeks to amend the existing standards of accreditation to focus the accreditation and evaluation of schools more strongly on student academic achievement and school level progress toward meeting the academic objectives in the standards of learning recently adopted by the board. The Board of Education will hold preliminary public hearings in August to receive suggestions from the public for revisions to the accrediting standards. The specific dates, times, and location will be published in a future issue of the Virginia Register, as well as announced at the July 25 Board of Education meeting and advertised through the state media. Speakers are requested to provide their comments in writing, if possible, at the time they speak. Comments will also be received by mail at the Board of Education, P.O. Box 2120, Richmond, Virginia 23218-2120. In addition to these preliminary public hearings, the board will hold additional hearings following publication of the proposed revisions to the regulations.

Statutory Authority: §§ 22.1-16, 22.1-19 and 22.1-253.13:3 B of the Code of Virginia.

Public comments may be submitted until September 30, 1996.

Contact: Lin Corbin-Howerton, Policy Director, Department of Education, P.O. Box 2120, Richmond, VA, 23218-2120, telephone (804) 225-2543, toll free (800) 292-3820 or FAX (804) 225-2053.

DEPARTMENT OF FORESTRY

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 Forestry intends to consider repealing regulations entitled: **4 VAC 5-40-10 et seq. State Forests Regulations.** The purpose of the

proposed action is to repeal regulations that regulate uses, maintain order and preserve the conditions of all state forests including the roads, ponds, lakes, streams, rivers, beaches, food patches and recreational areas where the public may visit. The Department of Forestry believes that current laws provide sufficient protection over its varied interests and allows the full enjoyment without degradation to the state forest resources. The department also believes that a separate regulation to administer state forests is redundant with many public safety laws and is not necessary. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: § 10.1-1101 of the Code of Virginia.

Public comments may be submitted until September 9, 1996.

Contact: Ronald Jenkins, Administration Officer, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555, FAX (804) 293-2768, or (804) 977-6555/TDD ☎

VA.R. Doc. No. R96-492; Filed July 17, 1996, 9:44 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 Department of Forestry intends to consider repealing regulations entitled: **4 VAC 5-60-10 et seq. Reforestation of Timberlands.** The purpose of the proposed action is to repeal the regulations that provide for the administration of resources, i.e., personnel, equipment, materials and supplies. These regulations provide for the protection, preservation and perpetuation of the state's forest resources. The regulations were recommended for repeal after the Executive Order 15(94) review revealed that state law provides necessary guidance to administer the state reforestation program and protect the state's forest resources. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: § 10.1-1101 of the Code of Virginia.

Public comments may be submitted until September 9, 1996.

Contact: Ronald Jenkins, Administration Officer, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555, FAX (804) 293-2768, or (804) 977-6555/TDD ☎

VA.R. Doc. No. R96-493; Filed July 17, 1996, 9:44 a.m.

STATE BOARD OF JUVENILE JUSTICE

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 Juvenile Justice intends to consider amending regulations entitled: **6 VAC 35-110-10 et seq. Minimum Standards for Court Service in Juvenile and Domestic Relations District Courts.** The purpose of the proposed action is to update existing standards for court service units, and possibly incorporate

Notices of Intended Regulatory Action

into this regulation additional standards to be developed for community sanctions and services pursuant to the Virginia Juvenile Community Crime Control Act, as well as standards for outreach detention. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 16.1-233 through 16.1-235; 16.1-309.9 and 66-10 of the Code of Virginia.

Public comments may be submitted until September 6, 1996.

Contact: Donald R. Carignan, Policy Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA, 23208-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

VA.R. Doc. No. R96-481; Filed July 15, 1996, 1:06 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE 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 Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care**, and **12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care (Diagnosis Related Grouping)**. The purpose of the proposed action is to promulgate permanent regulations which are substantially the same as the currently effective emergency regulation. The amendments will change the current reimbursement system by basing payment on the case rather than the day. The agency does not intend to hold a public hearing on the proposed regulations after publication.

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

Public comments may be submitted until October 2, 1996, to Scott Crawford, Manager, Division of Financial Operations, 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 or FAX (804) 371-4981.

VA.R. Doc. No. R96-527; Filed August 13, 1996, 11:41 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 Department of Medical Assistance Services intends to consider promulgating regulations entitled: **12 VAC 30-100-250 et seq. Part III, HIV Premium Assistance Program**. The purpose of the proposed action is to promulgate a permanent regulation, which is substantially the same as the emergency regulation, to supersede the current emergency regulation. The program pays health insurance premiums for persons diagnosed as HIV-positive.

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

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

Public comments may be submitted until September 19, 1996, to Michael Lupien, Supervisor, PDS, 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 or FAX (804) 371-4981.

VA.R. Doc. No. R96-513; Filed July 31, 1996, 11:44 a.m.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Public Telecommunications Board intends to consider repealing regulations entitled: **VR 410-01-02, Master Plan for Public Telecommunications, 1973**. The purpose of the proposed action is to repeal the 1973 plan. The revised version adopted in 1991 is not a regulation. The agency intends to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: § 2.1-563.25 of the Code of Virginia.

Public comments may be submitted until September 30, 1996.

Contact: Suzanne J. Piland, Public Telecommunications Branch Manager, Department of Information Technology, 110 South 7th Street, Richmond, VA, 23219, telephone (804) 371-5544 or FAX (804) 371-5556.

REAL ESTATE APPRAISER BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Appraiser Board intends to consider amending regulations entitled: **18 VAC 130-20-10 et seq. Real Estate Appraiser Board Rules and Regulations**. The purpose of the proposed action is to provide for less burdensome alternatives than current regulations while still protecting the health, safety and welfare of the public and complying with state and federal mandates. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Public comments may be submitted until September 5, 1996.

Contact: Karen O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

VA.R. Doc. No. R96-480; Filed July 8, 1996, 11:58 a.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.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

October 11, 1996 - 2:30 p.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.

November 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 for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to amend regulations entitled: **18 VAC 10-20-10 et seq. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed amendments is to make the regulations clearer and easier to understand.

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

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514.

BOARD OF MEDICINE

~~June 28, 1996~~ **October 2, 1996** - Public comments may be submitted until this date. The public comment period has been extended.

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 ☎

MOTOR VEHICLE DEALER BOARD

September 30, 1996 - 2 p.m. -- Public Hearing
Wytheville Community College, 1000 East Main Street,
Grayson Hall, The Commons, Room 113, Wytheville,
Virginia.

October 1, 1996 - 1 p.m. -- Public Hearing
Vinton War Memorial, 814 East Washington Avenue, Dining
Room (on right), Vinton, Virginia.

October 2, 1996 - 10 a.m. -- Public Hearing
Virginia Army National Guard Armory, 340 South Willow
Street, Harrisonburg, Virginia.

October 7, 1996 - 10 a.m. -- Public Hearing
DMV Headquarters Building, 2300 West Broad Street,
Agecroft Room, Richmond, Virginia.

October 8, 1996 - 11 a.m. -- Public Hearing
Virginia Army National Guard Armory, 208 Marcella Road,
Hampton, Virginia.

October 9, 1996 - 2:30 p.m. -- Public Hearing
Northern Virginia Community College, 8333 Little River
Turnpike, Ernst Cultural Center, Annandale, Virginia.

November 2, 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 Motor Vehicle Dealer Board intends to adopt regulations entitled: **24 VAC 22-20-10 et seq. Motor Vehicle Dealer Fees.** The Motor Vehicle Dealer Board is a self-sustaining entity. All expenses for the board must be paid through fees assessed by the board. At the current fee level the board will not be able to meet its expenses. It is projected that the board will have a negative cash balance by the end of March 1997 if the fees are not adjusted. The proposed regulations will increase certain fees for motor vehicle dealers and

12 VAC 30-20-251. Enforcement of compliance for nursing facilities: termination of provider agreement.

A. **Mandatory termination.** As set forth by 42 CFR 488.408 (1995), the Commonwealth shall (i) impose temporary management on the nursing facility; (ii) terminate the nursing facility's provider agreement; or (iii) impose both of these remedies when there are one or more deficiencies that constitute immediate jeopardy to resident health or safety. In addition, the Commonwealth shall terminate the nursing facility's provider agreement when the nursing facility fails to relinquish control to the temporary manager, or in situations when a facility's deficiencies do not pose immediate jeopardy, if the nursing facility does not meet the eligibility criteria for continuation of payment set forth in 42 CFR 488.412(a) (1995).

B. The Commonwealth shall have the authority to terminate a nursing facility's provider agreement if such nursing facility:

1. Is not in substantial compliance with the requirements of participation, regardless of whether or not immediate jeopardy is present; or
2. Fails to submit an acceptable plan of correction within the timeframe specified by the Commonwealth. For purposes of this section, substantial compliance shall be defined as meaning a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

C. **Situations without immediate jeopardy.** If a nursing facility's deficiencies do not pose immediate jeopardy to residents' health or safety, and the facility is not in substantial compliance, the Commonwealth shall have the authority to terminate the nursing facility's provider agreement or allow the nursing facility to continue to participate for no longer than six months from the last day of the survey agency's survey if:

1. The survey agency finds that it is more appropriate to impose alternative remedies than to terminate the nursing facility's provider agreement;
2. The Commonwealth has submitted a plan and timetable for corrective action approved by HCFA; and
3. The facility in the case of a Medicare skilled nursing facility or Commonwealth in the case of a Medicaid nursing facility agrees to repay to the federal government payments received after the last day of the survey that first identified the deficiencies if corrective action is not taken in accordance with the approved plan of correction.

D. **Effect of termination.** Termination of the provider agreement shall end payment to the nursing facility.

E. **Patient transfer.** The Commonwealth shall provide for the safe and orderly transfer of residents when the facility's provider agreement is terminated.

F. **Continuation of payments to a facility with deficiencies.** As set forth by 42 CFR 488.450:

1. The Commonwealth shall have the authority to terminate the nursing facility's provider agreement before the end of the correction period if the following criteria are not met: (i) the survey agency finds that it is more appropriate to impose alternative remedies than to terminate the nursing facility's provider agreement; (ii) the Commonwealth has submitted a plan and timetable for corrective action which has been approved by HCFA; and (iii) the Commonwealth has agreed to repay the federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.

2. **Cessation of payments.** If termination is not sought, either by itself or with another remedy or remedies, or any of the criteria of subdivision 1 of this subsection are not met or agreed to by either the facility or the Commonwealth, the facility or the Commonwealth shall receive no federal Medicaid payments, as applicable, from the last day of the survey.

3. **Period of continued payments.** If the criteria of subdivision 1 of this subsection are met, HCFA may continue payments to the Commonwealth for a Medicaid facility with noncompliance that does not constitute immediate jeopardy for up to six months from the last day of the survey. If the facility does not achieve substantial compliance by the end of this six-month period, the Commonwealth shall have the authority to terminate its provider agreement.

12 VAC 30-20-252. Enforcement of compliance for nursing facilities: temporary management.

A. **Temporary management in cases of immediate jeopardy.** In accordance with 42 CFR 488.408 (1995) and 42 CFR 488.410 (1995), the Commonwealth shall (i) impose temporary management on the nursing facility; (ii) terminate the nursing facility's provider agreement; or (iii) impose both of these remedies when there are one or more deficiencies that constitute immediate jeopardy to resident health or safety. For purposes of this section, temporary management shall mean the temporary appointment by HCFA or the Commonwealth of a substitute facility manager or administrator with authority to hire, terminate, or reassign staff, obligate nursing facility funds, alter nursing facility procedures, and manage the nursing facility to correct deficiencies identified in the nursing facility's operation. The individual appointed as a temporary manager shall meet the qualifications of 42 CFR 488.415(b) (1995) and be compensated in accordance with the requirements of 42 CFR 488.415(c) (1995). The Commonwealth shall notify the facility that a temporary manager is being appointed. In situations of immediate jeopardy, the Commonwealth shall also have the authority to impose other remedies, as appropriate, in addition to termination of the provider agreement and temporary management. In a nursing facility or dually participating facility, if the Commonwealth finds that such nursing facility's or facility's noncompliance poses immediate jeopardy to resident health or safety, the Commonwealth shall notify HCFA of such finding.

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B. *Temporary management in situations of no immediate jeopardy.* When there are widespread deficiencies that constitute actual harm that is not immediate jeopardy, the Commonwealth shall have the authority to impose temporary management in addition to the remedies of denial of payment for new admissions or civil money penalties of \$50 to \$3,000 per day.

C. *Failure to relinquish authority to temporary management.*

1. *Termination of provider agreement.* If a nursing facility fails to relinquish authority to the temporary manager, the Commonwealth shall terminate the nursing facility's provider agreement within 23 calendar days of the last day of the survey if the immediate jeopardy is not removed. If the facility fails to relinquish control to the temporary manager, state monitoring may be imposed pending termination of the provider agreement. If the facility relinquishes control to the temporary manager, the Commonwealth must notify the facility that, unless it removes the immediate jeopardy, its provider agreement shall be terminated within 23 calendar days of the last day of the survey. A nursing facility's failure to pay the salary of the temporary manager shall be considered a failure to relinquish authority to temporary management.

2. *Duration of temporary management.* Temporary management shall end when the nursing facility meets any of the conditions specified in 42 CFR 488.454(c) (1995). If the nursing facility has not achieved substantial compliance to reassume management control, the Commonwealth shall have the authority to terminate this nursing facility's provider agreement and impose additional remedies. For purposes of this section, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

12 VAC 30-20-253. Enforcement of compliance for nursing facilities: denial of payment for new admissions.

A. *Denial of payment for new admissions.* The Commonwealth shall (i) deny payment for new admissions; (ii) impose civil money penalties of \$50 to \$3,000 per day; or (iii) impose both of these remedies when there are widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy, or one or more deficiencies that constitute actual harm that is not immediate jeopardy. As set forth by 42 CFR 488.417 (1995), the Commonwealth shall deny payment for new admissions when a nursing facility is not in substantial compliance three months after the last day of the survey identifying the noncompliance, or the survey agency has cited a nursing facility with substandard quality of care on the last three consecutive standard surveys. As set forth by 42 CFR 488.417, the Commonwealth shall have the authority to deny payment for all new admissions when a facility is not in substantial compliance. For the purposes of this section, a new admission shall be defined as a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been

discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment. Also for the purposes of this section, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

B. *Denial of payment for substandard quality of care on last three surveys.* As set forth by 42 CFR 488.414 and 42 CFR 488.417 (1995), if a facility is found to have provided substandard quality of care on the last three consecutive standard surveys, regardless of other remedies provided, the Commonwealth shall deny payment for all new admissions and shall impose state monitoring until such facility demonstrates to the satisfaction of the Commonwealth that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements.

C. *The Commonwealth shall have the authority to deny payment for new admissions for any deficiency except when the facility is in substantial compliance.*

12 VAC 30-20-254. Enforcement of compliance for nursing facilities: civil money penalty.

A. *Immediate jeopardy.* In situations of immediate jeopardy, the Commonwealth shall have the authority to impose (in accordance with 42 CFR 488.430 through 42 CFR 488.444) a civil money penalty in the range of \$3,050 to \$10,000 in addition to the remedies of imposing temporary management or terminating the nursing facility's provider agreement. In imposing civil money penalties, the Commonwealth shall comply with all provisions of 42 CFR 488.430 through 488.444 (1995).

B. *No immediate jeopardy.* In accordance with 42 CFR 488.430 through 42 CFR 488.444, the Commonwealth shall (i) deny payment for new admissions; (ii) impose civil money penalties of \$50 to \$3,000 per day; or (iii) impose both of these remedies when there are widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy, or one or more deficiencies that constitute actual harm that is not immediate jeopardy.

C. *Notice.* Either HCFA or the Commonwealth, as appropriate, shall send a prior written notice of the penalty to the facility as set forth by 42 CFR 488.434 (1995).

D. *The Commonwealth shall have the authority to impose civil money penalties of \$50 to \$3,000 per day to any deficiency except when the nursing facility is in substantial compliance.* If the Commonwealth imposes a civil money penalty for a deficiency that constitutes immediate jeopardy, the penalty must be in the range of \$3,050 to \$10,000 per day. For the purposes of this section, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

12 VAC 30-20-255. Enforcement of compliance for nursing facilities: state monitoring.

Proposed Regulations

18 VAC 10-20-460	Clarification of definition of "monitored experience" to include the deletion of the option for "monitored experience" to be gained under an individual eligible for certification as an interior designer. This is an unworkable requirement. In addition, this provision was originally included in the regulations when the program was initiated and there were not any interior designers certified by Virginia at that time.
18 VAC 10-20-490	Currently, the regulations do not contain the entry requirements as they are in the Code of Virginia. This is confusing to the applicants so we are placing the requirements that are contained in the Code of Virginia (effective starting July 1, 1995) in the regulations.
18 VAC 10-20-500	Clarification - deletion of the option for references to be from an individual eligible for certification as an interior designer. This is an unworkable requirement. In addition, this provision was originally included in the regulations when the program was initiated and there were not any interior designers certified by Virginia at that time.
18 VAC 10-20-505	Currently, the regulations do not contain the comity requirements as they are stated in the Code of Virginia. This is confusing to the applicants so we are referencing the Code of Virginia requirements in the regulations.
18 VAC 10-20-530	Clarification.
18 VAC 10-20-540	Clarification.
18 VAC 10-20-560	Grammatical change.
18 VAC 10-20-565	The regulations previously did not contain provisions for the renewal/reinstatement of branch office registrations of professional corporations - these provisions are being added.
18 VAC 10-20-570	Clarify the definition of "manager."
18 VAC 10-20-580 and 18 VAC 10-20-625	Add provisions for PLLC entities to have branch offices to be consistent with the other business entities regulated by the board.
18 VAC 10-20-600	Clarification.

18 VAC 10-20-665	The regulations previously did not contain provisions for the renewal/reinstatement of branch office registrations of business entities other than PC's and PLLC's - these provisions are being added.
18 VAC 10-20-670	Clarification (to include PLLC's expiring on 12/31 of odd years).
18 VAC 10-20-700	Clarification.
18 VAC 10-20-710	Grammatical change.
18 VAC 10-20-740 C	Clarification.
18 VAC 10-20-740 D-G	Further definition of "professional responsibility" regarding utilizing the work of others.
18 VAC 10-20-760 B	Clarification. In addition, subdivision 4 requires a regulant to seal their work even if the work was exempt from the licensing/certification laws.
18 VAC 10-20-780	Clarification.
18 VAC 10-20-790	Clarification.

Issues:

The Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects considered the specific needs of the regulated individuals/entities in this state along with the protection of the public who utilize these services. The advantage of these changes is that the regulations will be clearer and easier to understand and use thereby ensuring that regulants may comply with the regulations thereby protecting the public by allowing the regulants to comply with the board's regulations. The few disadvantages that these changes will have (the changes to 18 VAC 10-20-200, 18 VAC 10-20-460, and 18 VAC 10-20-500) are necessary and will only impact a very few number of applicants in total.

Estimated Impact: The board's regulations apply to 24,550 licensed/certified individuals and 1,948 registered entities and branch offices. There are no other localities, businesses, or other entities particularly affected by the proposed revisions. The proposed revisions are not expected to affect employment in any of the regulated professions, nor are they expected to impact the use and value of private property nor are they expected to add any additional costs to the regulated individuals and entities to implement or comply with the revisions. The only costs associated with revising the existing regulations is the cost of printing and mailing the revised regulations to all existing regulants; estimated to be approximately \$28,685 (printing costs = 30,000 X \$0.70 = \$21,000; mailing costs = 26,500 X \$0.29 = \$7,685).

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed

Proposed Regulations

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 makes several changes to the regulations of the Board of Architects, Professional Engineers, Land Surveyors, and Landscape Architects (APELSLA Board). The majority of these changes represent either clarifications of existing requirements, or the addition of requirements contained in the Code, but not previously stipulated in the regulation. None of these general housekeeping measures are expected to have economic effects.

It is the opinion of DPB that the only changes contained in the proposed regulation with potential to have an economic effect involve the manner in which examination fees are determined. Currently, examination fees are precisely specified in the regulation. The proposed changes would define various examination fees as "the administrative expenses of the department resulting from the board's examination procedures and contract charges," not to exceed certain specified limits. These limits have generally been set at approximately 25% above the current examination fees.

Estimated Economic Impact. The proposed changes in the manner in which examination fees are determined should have two economic effects:

- **Reduce administrative costs.** Currently, every time an outside examiner changes a fee, the APELSLA Board must re-promulgate the regulation to take into account the fee change. From an administrative perspective, this is an expensive and time-consuming process. By defining fees in a way that makes them flexible as long as they remain below certain limits, small changes in contract fees can be accommodated without having to resort to regulatory revision.
- **Possibly raise the frequency of fee increases.** One advantage to requiring that all fee changes be made through the regulatory process is that it provides an incentive for the APELSLA Board and for outside contractors to economize on fee increases. There are several reasons, however, to believe that the removal of this incentive will have no practical consequences. First, the proposed regulation requires that all exam service contracts be established through competitive negotiation, in compliance with the Virginia Public Procurement Act. Second, the fee ceilings established in the proposed regulation will preclude all but minor changes in the schedule of examination fees.

Businesses and Entities Particularly Affected. The proposed regulation particularly affects the approximately 5,100

architects, 17,500 professional engineers, 12,000 land surveyors, 390 landscape architects, 400 interior design architects, and 2,000 businesses currently licensed or certified by the APELSLA Board.

Localities Particularly Affected. No localities are particularly affected by the proposed regulation.

Projected Impact on Employment. The proposed regulation is not anticipated to have a measurable effect on employment.

Affects on the Use and Value of Private Property. The proposed regulation is not anticipated to have a measurable effect on the use and value of private property.

Summary of Analysis. The majority of the changes contained in the proposed regulation are simply clarifications and are not anticipated to have economic consequences. In addition, the proposed regulation also changes the manner in which examination fees are determined. It is anticipated that the primary economic effect of this change will be a reduction in the costs associated with regulatory administration.

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

Summary:

The proposed changes are intended to make the APELSLA Board's regulations clearer and easier to use by the regulants of the APELSLA Board. Some of the more significant changes are as follows:

1. *Deleting the option under EIT to substitute work experience for education;*
2. *Reducing minimum standards in performing a "building location survey";*
3. *Clarifying the definition of "monitored experience";*
4. *Deleting the option for references to be from an individual eligible for certification as an interior designer; and*
5. *Requiring a regulant to seal his work even if the work was exempt from the licensing/certification laws in 18 VAC 10-20-760 B 4.*

PART I. GENERAL DEFINITIONS.

18 VAC 10-20-10. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects.

"Department" means the Department of Professional and Occupational Regulation.

"Direct control and personal supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his supervision.

"Full time" means 60% or more of a licensee's *Virginia licensed or certified individual's* gainfully employed time.

"Good moral character" shall include, but shall not be limited to, compliance with the standards of practice and conduct as set forth in ~~these regulations~~ *this chapter*.

"Place of business" means any location which offers to practice or practices through licensed or certified professionals the services of architecture, professional engineering, land surveying and , landscape architecture and interior design. A temporary field office set up for ~~construction related or land surveying project specific~~ services is not a place of business.

"Professional" means licensed architect, licensed professional engineer, licensed land surveyor, certified landscape architect or certified interior designer.

"Regulant" means licensee, certificate holder or registrant.

"Responsible charge" means the direct control and personal supervision of the practice of architecture, professional engineering, land surveying and certified landscape architecture.

PART II. GENERAL ENTRY REQUIREMENTS.

18 VAC 10-20-20. Application requirements.

A. Fully documented applications with the noted exception shall be submitted by applicants seeking consideration for licensure, certification or registration with the appropriate fee(s) (check or money order only made payable to the Treasurer of Virginia) to be received in the board's office no later than 120 days prior to the scheduled examination. Applicants for the Fundamentals of Engineering examination enrolled in an ABET accredited curriculum who are within 12 months of completion of degree requirements may submit applications to be received in the board's office no later than 60 days prior to the scheduled examination. The date the completely documented application and fee are received in the board's office shall determine if an application has been received by the deadline set by the board. All applications should be completed according to the instructions contained herein. Applications are not considered complete until all required documents, including but not limited to references, employment verifications and verification of registration are received by the board. All applications, accompanying materials and references are the property of the board.

B. Applicants shall meet applicable entry requirements at the time application is made.

C. Applicants who have been found ineligible for any reason, may request further consideration by submitting in writing evidence of additional qualifications, training or experience. No additional fee will be required provided the requirements for licensure, certification or registration are met within a period of three years from the date the original application is received by the board. After such period, a new application shall be required.

D. The board may make further inquiries and investigations with respect to the qualifications of the applicant and all references, etc., to confirm or amplify information supplied.

The board may also require a personal interview with the applicant.

E. Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

F. Applicants shall be held to the same standards of practice and conduct as set forth in these regulations.

G. National council information.

1. ~~Architect~~ Applicants for architectural examination/license may obtain information concerning NCARB certification and the NCARB Intern Development Program (IDP) from:

National Council of Architectural Registration Boards (NCARB)
1735 New York Avenue, N.W., Suite 700
Washington, DC 20006
(202) 783-6500

2. Applicants for architectural license may obtain information concerning NAAB accreditation from:

National Architectural Accrediting Board, Inc. (NAAB)
1735 New York Avenue, NW
Washington, DC 20006
(202) 783-2007

~~2. Engineer and land surveyor applicants~~ 3. Applicants for professional engineering and land surveying examination/license may obtain information concerning NCEES certificates from:

National Council of Examiners for Engineering and Surveying (NCEES)
P.O. Box 1686
Clemson, South Carolina 29633-1686
(803) 654-6824

4. Applicants for professional engineer licensing may obtain information concerning ABET accreditation from:

Accreditation Board for Engineering and Technology, Inc. (ABET)
345 East 47th Street
New York, New York 10017-2397
(212) 705-7685

~~3. Landscape architect applicants~~ 5. Applicants for landscape architectural examination/certification may obtain information concerning CLARB registration from:

Council of Landscape Architectural Registration Boards (CLARB)
Suite 110, 12700 Fair Lakes Circle
Fairfax, Virginia 22033
(703) 818-1300

~~4. Interior design applicants~~ 6. Applicants for interior design examination/certification may obtain information concerning NCIDQ examination and certification from:

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National Council for Interior Design Qualification
(NCIDQ)
50 Main Street
White Plains, New York 10606-1920
(914) 948-9100

18 VAC 10-20-30. Determining qualifications of applicants.

In determining the qualifications of an applicant for a license as an architect, a majority vote of only the architect members of the board shall be required. In determining the qualifications of an applicant for a license as a professional engineer, a majority vote of only the professional engineer members of the board shall be required. In determining the qualifications of an applicant for a license as a land surveyor, a majority vote of only the land surveyor members of the board shall be required. In determining the qualifications of an applicant for certification as a landscape architect, a majority vote of only the certified landscape architect members of the board shall be required, and in determining the qualifications of an applicant for certification as an interior designer, a majority vote of only the certified interior designer members of the board shall be required.

18 VAC 10-20-70. Modifications to examination administration.

~~Requests for modifications to the examination administration to accommodate physical handicaps must be made in writing and received in the board office no less than 120 days prior to the first day of the examination. Such a request must be accompanied by a physician's report or a report by a diagnostic specialist, along with supporting data, confirming to the board's satisfaction the nature and extent of the handicap. After receipt of the request from the applicant, the board may require that the applicant supply further information or that the applicant appear personally before the board, or both. It shall be the responsibility of the applicant to timely supply all further information as the board may require. The board shall determine what, if any, modifications will be made. The board and the Department of Professional and Occupational Regulation support and fully comply with the provisions of the Americans with Disabilities Act (ADA), 42 USC § 12101 et seq. Contracts between the board, department and the vendors for examinations contain the necessary provisions for compliance with the ADA. Requests for accommodations must be in writing and received by the board within a reasonable time before the examination. The board may require a report from medical professionals along with supporting data confirming the nature and extent of the disability. It is the responsibility of the applicant to provide the required information in a timely manner and the costs for providing such information are the responsibility of the applicant. The board shall determine what, if any, accommodations will be made.~~

PART III.

QUALIFICATIONS FOR LICENSING OF ARCHITECTS.

18 VAC 10-20-90. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$60
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Renewal	80
Architect Registration Exam (ARE) (all divisions)	570
Division A	100
Division B written	100
Division B graphic	125
Division C	165
Division D/F	95
Division E	95
Division G	95
Division H	95
Division I	95
Out of state proctor	100
Dishonored checks	25

The examination fee shall consist of the administration expenses of the department resulting from the board's examination procedures and contract charges. Exam service contracts shall be established through competitive negotiation in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). The current examination shall not exceed a cost of \$700 for the entire Architect Registration Examination (ARE) or \$200 per division.

18 VAC 10-20-110. Education.

A. All applicants shall obtain five years of professional education or equivalent education credits. Education credits shall be calculated in accordance with Table I.

B. On or after January 1, 1998, all applicants shall hold a professional degree in architecture where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two years after termination of enrollment graduation.

18 VAC 10-20-120. Experience.

A. All applicants shall have three years of *diversified* training in the essential areas of architectural practice as described in this subsection. Evidence shall be in the form of official records of a structured internship or incorporated in the candidate's application and verified by employers. Experience shall include:

1. A minimum of 18 months in the area of design and construction documents directly related to the practice of architecture; and
2. A minimum of five months in the area of construction administration directly related to the practice of architecture; and
3. A minimum of three months in the area of office management directly related to the practice of architecture.

Training credits shall be calculated in accordance with Table I.

B. The Intern-Architect Development Program (IDP) shall be required of all applicants. An applicant shall be enrolled in IDP for a period of one year or more prior to submitting an application for examination in Virginia. IDP training requirements shall be in accordance with ~~Part II of Table I~~ the *National Council of Architectural Registration Boards Intern Development Program Guidelines, 1995-1996*, except that all applicants must have a minimum of 36 months training prior to submitting an application for examination.

18 VAC 10-20-140. Examination.

A. All applicants for original ~~licensing~~ licensure in Virginia are required to pass an Architect Registration Examination (NCARB-ARE) after meeting the education and training requirements as provided in these regulations.

B. The Virginia board is a member of the National Council of Architectural Registration Boards (NCARB) and as such is authorized to administer the NCARB-ARE examinations.

C. Grading of the examination shall be in accordance with the national grading procedure administered by NCARB. The board shall adopt the scoring procedures recommended by NCARB.

D. The Architect Registration Examination (NCARB-ARE) will be offered at least once a year at a time designated by the board.

E. The board may approve transfer credits for parts of the ~~examination taken prior to the 1983 ARE. Transfer of credits will be ARE taken~~ in accordance with national standards.

F. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

G. Examinees will be given specific instructions as to the conduct of each division of the exam at the exam site. Examinees are required to follow these instructions to assure

fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

H. Examinees will be advised only of passing or failing the examination. Only the board and its staff shall have access to examination papers, scores and answer sheets.

I. *The board, at its discretion, may schedule individual or group reviews of Division C - Building Design of NCARB-ARE to assist examinees in understanding the grading criteria for Division C.*

J. Should an applicant not pass an examination the ARE within three years after being approved, the applicant must reapply and meet all current entry requirements current at the time of reapplication.

18 VAC 10-20-150. License by comity.

A. Any person licensed in another state, jurisdiction or territory of the United States or province of Canada may be granted a license ~~without written examination~~, provided that:

1. The applicant meets all the requirements for licensing in Virginia *that were in effect at the time of the original licensure* or possesses an NCARB certificate; and

2. The applicant holds a currently active valid license in good standing in another state, jurisdiction or territory of the United States or province of Canada.

3. Applicants ~~who were registered in their jurisdiction of original licensure without IDP~~ must submit a verified record of experience in accordance with 18 VAC 10-20-120.

B. Applicants licensed in foreign countries other than a province of Canada may be granted a license in Virginia based on an NCARB certificate.

EXPLANATION OF REQUIREMENTS

TABLE I.
REQUIREMENTS FOR ARCHITECTURAL LICENSURE

**PART I.
EDUCATION AND TRAINING
REQUIREMENTS**

Education and training requirements released: January, 1990;
this edition supersedes all previous tables of equivalents.

Intern-architect Development Program (IDP) applicants refer to Part II NCARB for their training requirements. (Complete information may be obtained from NCARB.)

Education Credits			Training Credits	
First 2 Years	Succeeding Years	Max. Credit Allowed	Credit Allowed	Max. Credit Allowed

A-1
First professional degree in architecture, or credits toward the first professional degree, where the degree program has been approved by the board not later than two years after termination of enrollment graduation.

75%	100%	5 years	See B-1.2	7
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A-2	First professional degree in architecture, or credits toward that degree, where the degree program has not been approved by the board.	75%	75%	4 years	See B-1.2	
A-3	See B-1.2 Bachelor degree, or credits toward that degree, in architectural engineering, architectural technology, or in civil, mechanical, or electrical engineering, or in interior architecture, each of the above being approved by the board. <i>Bachelor of Arts or Science degree in architecture or in building technology; or in civil, structural, mechanical, or electrical engineering, or credits toward that degree, each of the above being approved by the board.</i>	50%	75%	3 years		
A-4	Any other bachelor degree.	0%	0%	2 years		
A-5	Diversified experience in architecture as an employee in the offices of licensed architects.	50%	50%	5 years	100%	no limit
A-6	Diversified experience in architecture as a principal practicing in the office of a licensed architect with a verified record of substantial practice.	50%	50%	5 years	100%	no limit
A-7	Diversified experience in architecture as an employee of an organization (other than offices of <i>registered licensed</i> architects) when the experience is under the direct supervision of a <i>registered licensed</i> architect.	50%	50%	4 years	100%	2 years
A-8	Experience directly related to architecture, when under the direct supervision of a licensed architect but not qualifying as diversified experience or when under the direct supervision of a professional engineer, landscape architect, interior designer, or planner.		0		50%	1 year
A-9	Experience, other than A-5, A-6, A-7 or A-8 experience, directly related to on-site building construction operations or experience involving physical analyses of existing buildings.		0		50%	6 months
A-10	Other education or training experience (see B-3.2).					

EXPLANATION OF REQUIREMENTS

- B-1. Education Credits. Education credits shall be subject to the following conditions:
- B-1 .1. No education credits may be earned prior to graduation from high school.

Proposed Regulations

- .2- Applicants with the degree specified in A-1 through A-4 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in A-1 or A-2 may not accumulate more than three years of education credits in the aggregate from all degree programs.
- .3- 32 semester credit hours or 48 quarter hours are considered to be one year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.
- .4- Foreign education credits will be granted only under classifications A-2 and A-4, *unless certified as equivalent to a NAAB accredited degree, by an organization accepted by the board, in which case credit under classification A-1 will be considered.* Any cost of translation and evaluation will be borne by the applicant.

B-2. Training Credits.

Training credits shall be subject to the following conditions:

B-2

- ~~.1- No training credits may be earned prior to accumulating 21/2 education credits.~~
2. .1 Every applicant must earn at least one year of training credit under A-5 or A-6 and must earn it after earning five years of education credits.
3. .2 No credit used as an education credit may be used as a training credit.
4. .3 Organizations will be considered to be "offices of registered licensed architects": (a) the architectural practice of the organization in which the applicant works is in the charge of a person practicing as a principal and the applicant works under the direct supervision of a registered licensed architect, and (b) the organization is not engaged in construction, and (c) the organization has no affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal.
5. .4 An organization (or an affiliate) is engaged in construction if it customarily engages in either of the following activities:
 - (a) Providing labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation.
 - (b) Agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.
6. .5 A person practices as a "principal" by being a registered licensed architect and the person in charge of the organization's architectural practice, either alone or with other registered licensed architects.
7. .6 In evaluating training credits the board may, prior to licensure, require the applicant to substantiate training experience by comparing this experience to the training requirements as indicated for the Intern-Architect Development Program (IDP). ~~See IDP Training Requirements below.~~

B-3. General Evaluation Criteria.

B-3

- .1- To earn full education or training credits under A-5, A-6, A-7, A-8 and A-9 an applicant must work at least 35 hours per week for a minimum period of ~~ten~~ 10 consecutive weeks under A-5 or six consecutive months under A-6, A-7, A-8 or A-9. An applicant may earn one-half of the credit specified under A-5 for work of at least 20 hours per week in periods of six or more consecutive months; no credit will be given for part-time work in any category other than A-5.
- .2- Other education and training may be substituted for the requirements outlined above, only insofar as the board considers them to be equivalent to the required qualifications.
- .3- In evaluating credits, the board may, prior to ~~registration~~ licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

~~TABLE I - PART II. TRAINING REQUIREMENTS FOR INTERN ARCHITECT DEVELOPMENT PROGRAM (IDP) APPLICANTS.~~

~~IDP-ApPLICANT DEFINED: An IDP applicant for registration is a person who has completed the IDP training requirements.~~

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~~Training: An IDP applicant must acquire a total of 700 value units (VU's) to satisfy the training requirements. One VU equals eight hours of acceptable activity. See Part I for acceptable experience descriptions.~~

~~For detailed descriptions of the IDP training categories and supplementary education requirements, see IDP Guidelines available through NCARB.~~

PART IV. QUALIFICATIONS FOR LICENSING OF PROFESSIONAL ENGINEERS.

18 VAC 10-20-170. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Fundamentals of Engineering Application	\$25
Principles of Engineering Application	100
Renewal	70
FE Examination	55
PE Examination	130
PE Exam rescore	50
FE/PE Out of State Proctor	50
Dishonored check	25

The examination fee shall consist of the administration expenses of the department resulting from the board's examination procedures and contract charges. Exam service contracts shall be established through competitive negotiation in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). The current examination shall not exceed a cost of \$70 for the Fundamentals of Engineering and \$160 for the Principles of Engineering to the candidate.

18 VAC 10-20-200. Requirements for engineer-in-training (EIT) designation.

The minimum education, experience and examination requirements for the engineer-in-training (EIT) designation are as follows:

1. An applicant who has graduated from an approved engineering or approved engineering technology curriculum of four years or more and has passed an eight-hour written examination in the Fundamentals of Engineering; or
2. An applicant who has graduated from a nonapproved engineering curriculum or a related science curriculum of four years or more, with a specific record of two or more years of approved professional experience and has passed the Fundamentals of Engineering examination; or
3. An applicant who has graduated from a nonapproved engineering technology curriculum or who has not graduated from an engineering or related science curriculum of four years or more but who, in the judgment of the board, has obtained the equivalent of such graduation as described, by self-study or otherwise, and has acquired six additional years of approved

~~professional experience and has passed the Fundamentals of Engineering examination. Experience used to determine educational equivalency shall not be used in satisfying professional experience.~~

In order to be approved to sit for the Fundamentals of Engineering examination which, when passed, allows the applicant to utilize the Engineer-In-Training (EIT) designation, an applicant must meet one of the following requirements:

EDUCATIONAL REQUIREMENTS	NUMBER OF REQUIRED YEARS OF PROGRESSIVE, APPROVED PROFESSIONAL EXPERIENCE
-----------------------------	--

- | | |
|---|---|
| 1. Graduated from an approved engineering or approved engineering technology curriculum of four years or more. | 0 |
| 2. Undergraduate engineering degree was obtained at an institution not located in the United States, but a graduate level engineering degree was obtained from an institution located in the United States that is ABET accredited at the undergraduate level. | 0 |
| 3. Graduated from a nonapproved engineering curriculum or a related science curriculum of four years or more. | 2 |
| 4. Graduated from a nonapproved engineering technology curriculum, or not graduated from an engineering or related science curriculum of four years or more but who, in the judgment of the board, has obtained the equivalent of such graduation as described by self-study. | 6 |

The engineer-in-training (EIT) designation shall remain valid indefinitely.

18 VAC 10-20-210. Requirements for professional engineering license.

The minimum education, experience and examination requirements for licensing as a professional engineer are as follows:

1. An applicant who has graduated from an approved engineering curriculum, has passed the Fundamentals of Engineering examination or an equivalent exam, has a specific record of at least four years of progressive approved professional experience, and has passed the Principles and Practice of Engineering examination, provided, however, any applicant who has been awarded both an ABET accredited undergraduate engineering degree and a doctorate degree in engineering from an engineering curriculum which is ABET accredited at the undergraduate level may have the Fundamentals of Engineering examination waived; or

2. An applicant who has graduated from a nonapproved engineering curriculum, a related science curriculum of four years or more, or an approved engineering technology curriculum, who has passed the Fundamentals of Engineering examination or an equivalent exam, has acquired a specific record of at least six years of progressive approved professional experience, and has passed the Principles and Practice of Engineering examination; or

3. An applicant who has not graduated from an approved engineering curriculum of four years or more but who has obtained the equivalent of such graduation by self-study or otherwise, has passed the Fundamentals of Engineering exam or an equivalent examination, has acquired 10 years of approved professional experience, and has passed the Principles and Practice of Engineering examination. Experience used to determine educational equivalency shall not be used in satisfying professional experience; or

4. An applicant who has graduated from an engineering, engineering technology or related science curriculum of four years or more, who has acquired a specific record of 20 years or more of approved progressive professional experience on engineering projects of a grade and character which the board judges to be pertinent to acquiring professional skills, such that the applicant may be competent to practice engineering, and has passed the examination in the Principles and Practice of Engineering.

In order to be approved to sit for the Principles and Practice of Engineering examination which, when passed, allows the applicant to become licensed as a Professional Engineer, an applicant must meet one of the following requirements:

EIT
DESIGNATION
REQUIRED?

EDUCATIONAL
REQUIREMENTS

NUMBER OF
REQUIRED
YEARS OF
PROGRESSIVE,
APPROVED
PROFESSIONAL
EXPERIENCE

1. YES

Graduated from an approved engineering curriculum of four years or more.

4

2. NO

Been awarded both an ABET accredited undergraduate engineering degree and a doctorate degree in engineering from an engineering curriculum which is ABET accredited at the undergraduate level.

4

3. YES

Graduated from a nonapproved engineering curriculum, a related science curriculum of four years or more, or an approved engineering technology curriculum.

6

4. YES

Graduated from a nonapproved engineering technology curriculum; or without graduation from an engineering or related science curriculum of four years or more. *

10

5. NO

Graduated from a nonapproved engineering, engineering technology or related science curriculum of four years or more.

20

* Any experience accepted by the board for educational equivalency shall not be used in satisfying the professional experience requirement.

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PART V.
QUALIFICATIONS FOR LICENSING AND STANDARDS OF
PROCEDURE FOR LAND SURVEYORS.

18 VAC 10-20-280. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Fundamentals of Surveying	\$105
Application for Principles of Surveying	130
Renewal	180
Fundamentals of Surveying Examination	120
Principles of Surveying Examination	125
Virginia State Examination	75
Application for Land Surveyor B	140
Examination for Land Surveyor B	45
Out of state proctor	50
Dishonored check	25

The examination fee shall consist of the administration expenses of the department resulting from the board's examination procedures and contract charges. Exam service contracts shall be established through competitive negotiation in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). The current examination shall not exceed a cost of \$150 for the Fundamentals of Land Surveying, \$150 for the Principles of Land Surveying, \$90 for the Virginia State Examination and \$55 for the Land Surveyor B examination to the candidate.

18 VAC 10-20-370. Minimum standards and procedures for land boundary surveying practice.

The following minimum standards and procedures are to be used for boundary surveys performed in the Commonwealth of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the boundary survey is correct to the best of the professional's knowledge and belief, and complies with the minimum standards and procedures.

A. Research procedure. The professional shall search the land records for the proper description of the land to be surveyed and obtain the description of adjoining land as it pertains to the common boundaries. The professional shall have the additional responsibility to utilize any other available data pertinent to the survey being performed from any other source that is known. Evidence found, from all sources, shall be carefully compared with that located and found in the field survey in order to aid in the establishment of the correct boundaries of the land being surveyed. The professional shall clearly note inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining land. It is not the intent of this regulation to require the professional to research the question of title or encumbrances on the land involved.

B. Minimum field procedures.

1. Angular measurement. Angle measurements made for traverse or boundary survey lines will be made by using a properly adjusted transit type instrument which allows a direct reading to a minimum accuracy of 30 seconds of arc or metric equivalent. The number of angles turned at a given station or corner will be the number which, in the judgment of the professional, can be used to substantiate the average true angle considering the condition of the instrument being used and the existing field conditions.

2. Linear measurement. Distance measurement for the lines of traverse or lines of the boundary survey shall be made with metal tapes which have been checked and are properly calibrated as to incremental distances, or with properly calibrated electronic distance measuring equipment following instructions and procedures established by the manufacturer of such equipment. All linear measurements shall be reduced to the horizontal plane and other necessary corrections performed before using for computing purposes.

3. Field traverse and boundary closure. The maximum permissible error of closure for a field traverse in connection with a boundary survey located in a rural area shall be one part in 10,000 (1/10,000). The attendant angular closure shall be that which will sustain the one part in 10,000 (1/10,000) maximum error of closure. The maximum permissible error of closure for a traverse in connection with a boundary survey located in an urban area shall be one part in 20,000 (1/20,000). The attendant angular closure shall be that which will sustain the one part in 20,000 (1/20,000) maximum error of closure.

4. Monumentation. As a requisite for completion of the work product, each boundary survey of a tract or parcel of land shall be monumented with objects made of permanent material at all corners and changes of direction on the boundary with the exceptions of meanders, such as meanders of streams, tidelands, lakes, swamps and prescriptive road rights-of-way; and each such monument, other than a natural monument, shall, when feasible, be identified by a temporary witness stake (which may be wooden). Where it is not feasible to set actual corners, appropriate reference monuments shall be set, preferably on line, and the location of each shall be shown on the plat or map of the boundary.

All boundaries, both exterior and interior, of the original survey for any division or partition of land shall be monumented in accordance with the provisions of this subdivision, when such monumentation is not regulated by the provisions of a local subdivision ordinance.

C. Office procedures.

1. Computations. The computation of field work data shall be accomplished by using the mathematical routines that produce closures and mathematical results that can be compared with descriptions and data of record. Such computations shall be used to determine the final boundary of the land involved.

2. Plats and maps. The following information shall be shown on all plats or maps, or both, used to depict the results of the boundary survey:

- a. The title of the boundary plat identifying the land surveyed and showing the district and county or city in which the land is located and scale of drawing.
- b. The name of owner of record and deed book referenced where the acquisition was recorded.
- c. Names of all adjoining owners of record with deed book references, or subdivision lot designations.
- d. Names of highways and roads with route number, and widths of right-of-way, or distance to the center of the physical pavement and pavement width, name of railroads, streams adjoining or running through the land, and other prominent or well-known objects or areas which are informative as to the location of the boundary survey including but not limited to a distance to the nearest road intersection, or prominent or well-known object. In cases of remote areas, a scaled position with the latitude and longitude must be provided.
- e. Bearings of all property lines and meanders to nearest 10 seconds of arc, or metric equivalent.
- f. Distances of all property lines and meanders to the nearest one hundredth (.01) of a foot or metric equivalent.
- g. Area to the nearest hundredth (.01) of an acre or metric equivalent for rural located surveys.
- h. Area to the nearest square foot or thousandth (0.001) of an acre or metric equivalent for urban located surveys.
- i. North arrow and source of meridian used for the survey.
- j. On interior surveys, a reference bearing and distance to a property corner of an adjoining owner or other prominent object including, but not limited to, intersecting streets or roads.
- k. Tax map designation of parcel number if available.
- l. Description of each monument found and each monument set by the professional.
- m. A statement that the boundary survey shown is based on a current field survey. The application of the land surveyor's seal, signature and date shall constitute compliance with all the current standards of a boundary survey as of the date of the application of signature unless otherwise clearly stated in the title of the plat that it *the plat* is to be construed otherwise.
- n. If the land boundaries shown on the plat are the result of a compilation from deed or plats, or both, or based on a survey by others, that fact will be clearly stated and the title of the plat shall clearly depict that the plat does not represent a current boundary survey.
- o. Name and address of the land surveyor.

3. Metes and bounds description. The professional shall prepare a metes and bounds description in narrative form, if requested by the client or their agent, for completion of any newly performed boundary survey. The description shall reflect all metes and bounds, the area of the property described, all pertinent monumentation, names of record owners or other appropriate identification of all adjoining, and any other data or information deemed as warranted to properly describe the property. Customarily, the metes and bounds shall be recited in a clockwise direction around the property. For subdivisions, the professional shall prepare a metes and bounds description in narrative form for only the exterior boundaries of the property.

No metes and bounds description shall be required for the verification or resetting of the corners of a lot or other parcel of land in accordance with a previously performed boundary survey, such as a lot in a subdivision where it is unnecessary to revise the record boundaries of the lot.

18 VAC 10-20-380. Minimum standards and procedures for surveys determining the location of physical improvements; field procedures; office procedures.

A. The following minimum standards and procedures are to be used for surveys determining the location of physical improvements on any parcel of land or lot containing less than five two acres or metric equivalent (sometimes also known as "building location survey," "house location surveys," "physical surveys," etc.) in the Commonwealth of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the survey determining the location of physical improvements is correct to the best of the professional's knowledge and belief, and complies with the minimum standards and procedures set forth in this section.

B. The professional shall determine the position of the lot or parcel of land in accordance with the intent of the original survey and shall set or verify permanent monumentation at each corner of the property, consistent with the monumentation provisions of subdivision B 4 of 18 VAC 10-20-370 of this chapter; all such monumentation other than natural monumentation, shall, when feasible, be identified by temporary witness markers (which may be wooden).

When the professional finds discrepancies of sufficient magnitude to warrant, in his opinion, the performance of a land boundary survey (pursuant to the provisions of 18 VAC 10-20-370), he shall so inform the client or the client's agent that such boundary survey is deemed warranted as a requisite to completion of the physical improvements survey.

The location of the following shall be determined in the field:

1. Fences in the near proximity to the boundary lines and other fences which may reflect lines of occupancy or possession.
2. Other physical improvements on the property and all man-made or installed structures, including buildings, stoops, porches, chimneys, visible evidence of underground features (such as manholes, catch basins,

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telephone pedestals, power transformers, etc.), power lines and poles, and telephone lines and poles.

3. Cemeteries, if known or disclosed in the process of performing the survey; roads or travelways crossing the property which serve other properties; and streams, creeks, and other defined drainage ways.

4. Other visible evidence of physical encroachment on the property.

C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

1. The bearings and distances for the boundaries and the area of the lot or parcel of land shall be shown in accordance with record data, unless a current, new boundary survey has been performed in conjunction with the physical improvements survey. If needed to produce a closed polygon, the meander lines necessary to verify locations of streams, tidelands, lakes and swamps shall be shown. All bearings shall be shown in a clockwise direction, unless otherwise indicated.

2. North arrow, in accordance with record data.

3. Fences in the near proximity to the boundary lines and other fences which may reflect lines of occupancy or possession.

4. Improvements and other pertinent features on the property as located in the field pursuant to subsection B of this section.

5. Physical encroachment, including fences, across a property line shall be identified and dimensioned with respect to the property line. ~~When monumentation is not required, the surveyor shall clearly note on the plat "no corner markers set" and the reason to include name of insurers.~~

6. On parcels where compliance with restriction is in question, provide the closest dimension (to the nearest 0.1 foot) or metric equivalent from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal building dimensions (to the nearest 0.1 foot) or metric equivalent.

7. Building street address numbers, as displayed on the premises, or so noted if no numbers are displayed.

8. Stoops, decks, porches, chimneys, balconies, floor projections, and other similar type features.

9. Street name(s), as posted or currently identified, and as per record data, if different from posted name.

10. Distance to nearest intersection, based upon record data. If not available from record data, distance to nearest intersection may be determined from best available data, and so qualified.

11. Building restriction line(s) per restrictive covenants, if shown on the record subdivision plat.

12. The caption or title of the plat shall include the type of survey performed; lot number, block number, section

number, and name of subdivision, as appropriate, or if not in a subdivision, the name(s) of the record owner; town or county, or city; date of survey; and scale of drawing.

13. Adjoining property identification.

14. Easements and other encumbrances set forth on the record subdivision plat, and those otherwise known to the professional.

15. A statement as to whether or not a current title report has been furnished to the professional.

16. Professional's seal, signature and date.

D. Notwithstanding the monumentation provisions of subsection B of this section or any other provision of these regulations, a professional, in performing a physical improvements survey, shall not be required to set corner monumentation on any property when corner monumentation is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.1-465 of the Code of Virginia, or by subdivision A 7 of § 15.1-466 of the Code of Virginia, or where the placing of such monumentation is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty. *When monumentation is not required, the surveyor shall clearly note on the plat "no corner markers set" and the reason to include name of guarantors.*

E. Moreover, notwithstanding the monumentation provisions of ~~subdivision subsection B of this section or any other provisions of these regulations this chapter,~~ a professional, in performing a physical improvements survey, shall not be required to set corner monumentation on any property (i) when corner monumentation has been set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.1-465 of the Code of Virginia, or by subdivision A 7 of § 15.1-466 of the Code of Virginia or (ii) when the owner or contract purchaser, or a legal agent therefore, agrees in writing when the survey is ordered that such corner monumentation shall not be provided in connection with such physical improvements survey. When corner monumentation is not provided, pursuant to such agreement, the land surveyor shall clearly reference on the plat the existing monumentation utilized to perform the physical improvements survey. The provisions of this subsection shall apply only to property located within the counties of Arlington, Fairfax, King George, Loudoun, Prince William, Spotsylvania, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park.

F. In no event may ~~these regulations this chapter~~ be interpreted or construed to require the professional to perform work of a lesser quality or quantity than that deemed by the professional to be prudent or warranted under the existing field conditions and circumstances.

PART VI.

QUALIFICATIONS FOR CERTIFICATION OF LANDSCAPE ARCHITECTS.

18 VAC 10-20-400. Fee schedule.

All fees are nonrefundable and shall not be prorated.

June 1994	
Application	\$200
Renewal	225
Examination	525
Landscape Architect Registration Exam	
Section 1	65
Section 2	70
Section 3	120
Section 4	115
Section 5	130
Section 6	120
Section 7	85
Out of state proctor	50
Dishonored checks	25

The examination fee shall consist of the administration expenses of the department resulting from the board's examination procedures and contract charges. Exam service contracts shall be established through competitive negotiation in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). The current examination shall not exceed a cost of \$630 for the entire Landscape Architect Registration Examination (LARE) or \$160 per division.

**PART VII.
QUALIFICATIONS FOR CERTIFICATION OF INTERIOR DESIGNERS.**

18 VAC 10-20-460. Definitions.

The following definitions shall apply in the regulations relating to the certification of interior designers:

"Diversified experience" includes the identification, research and creative solution of problems pertaining to the function and quality of the interior environment.

"Monitored experience" means diversified experience in interior design under the supervision of a ~~person eligible for certification as an interior designer,~~ a certified or licensed interior designer, an architect or a professional engineer.

18 VAC 10-20-490. Experience standard Requirements for certification.

The education, experience and examination requirements for certification as an interior designer are as follows:

1. The applicant shall hold a four-year degree from an institution accredited by the Foundation for Interior Design Education Research (FIDER), or an equivalent accrediting organization or a professional program approved by the board; have two years of monitored experience; and have passed the examination for certification as an interior designer.
2. Diversified experience shall be gained in accordance with these regulations this chapter. Monitored

experience gained under the supervision of a professional engineer shall be discounted at 50% with a maximum credit of six months. Periods of self-employment shall be verified with a list of projects, dates, scope of work and letters of verification by at least three clients.

18 VAC 10-20-500. References.

Applicants shall submit three references from persons who know of the applicant's work and have known the applicant for at least one year. Persons supplying references may ~~shall be persons eligible to be certified interior designers,~~ certified or licensed interior designers, architects or professional engineers.

18 VAC 10-20-505. Certification by comity.

The board, in lieu of all examinations, may accept satisfactory evidence of licensing or certification in another state or country or the District of Columbia where the qualifications required are equal, in the opinion of the board, to those required by the provisions of this chapter as of the date of application, and in which the applicant is the holder of a license or certificate in good standing. Upon receipt of such satisfactory evidence and provided all other requirements of this chapter are complied with, a certificate shall be issued to such applicant (§ 54.1-415 of the Code of Virginia).

**PART VIII.
QUALIFICATIONS FOR REGISTRATION AS A PROFESSIONAL CORPORATION.**

18 VAC 10-20-530. Application requirements.

A. All applicants shall have been incorporated in the Commonwealth of Virginia, or, if a foreign professional corporation, shall have obtained a certificate of authority to do business in Virginia from the State Corporation Commission, in accordance with § 13.1-544.2 of the Code of Virginia.

B. Each application shall include certified true copies of the articles of incorporation, bylaws and charter, and, if a foreign professional corporation, the certificate of authority issued by the State Corporation Commission.

C. Articles of incorporation and bylaws. The following statements are required:

1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.
2. The bylaws shall state that at least 2/3 of the capital stock must be held by persons duly licensed ~~or certified~~ to render the services of an architect, professional engineer, or land surveyor, or *duly certified to render the services of a landscape architect.* The remainder of the stock may be issued only to and held by individuals who are employees of the corporation.
3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise or considered professional practice, or both.

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D. Board of directors. A corporation may elect to its board of directors not more than 1/3 of its members who are employees of the corporation and are not authorized to render professional services.

At least 2/3 of the board of directors shall be licensed or certified to render the services of architecture, professional engineering, or land surveying, or be certified to render the services of landscape architecture, or any combination thereof.

At least one director currently licensed or certified in each profession offered or practiced shall devote substantially full time to the business of the corporation to provide effective supervision and control of the final professional product.

E. Joint ownership of stock. Any type of joint ownership of the stock of the corporation is prohibited. Ownership of stock by nonlicensed or noncertified employees shall not entitle those employees to vote in any matter affecting the practice of the professions herein regulated.

F. Branch offices. If professional services are offered or rendered in a branch office(s), a separate branch office designation form shall be completed for each branch office located in Virginia. Persons in responsible charge shall be designated in accordance with these regulations *this chapter*.

18 VAC 10-20-540. Certificates of authority.

~~Certificates of authority shall be issued in two categories, general or limited. A general certificate of authority will entitle the corporation to practice the professions of architecture, professional engineering, land surveying and landscape architecture. A limited by the board. The certificate of authority will permit a corporation to practice only the professions shown on its certificate of authority, architecture, professional engineering, land surveying, landscape architecture or any combination thereof.~~

18 VAC 10-20-560. Amendments and changes.

A. Amendments to charter, articles of incorporation or bylaws. A corporation holding a certificate of authority to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a certified true copy of any amendment to the articles of incorporation, bylaws or charter.

B. Change in directors or shareholders. In the event there is a change in corporate directors or shareholders, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the certificate of authority shall be automatically modified to be limited to that professional practice permitted by those pertinent licenses or certificates held by the remaining directors and shareholders of the corporation. Unless otherwise provided, in the event that such change results in noncompliance with these regulations and applicable statutes, the certificate of authority shall be automatically suspended until such time as the corporation comes into compliance with these regulations. The corporation shall notify the board within 30 days of any such change.

C. Change of name, address and place of business. Any change of name (including assumed names) address, place of business in Virginia, or person(s) in responsible charge of

the profession(s) practiced or offered at each place of business, shall be reported to the board within 30 days of such an occurrence.

18 VAC 10-20-565. Renewal of branch offices.

Branch office registrations expire the last day of February of each even-numbered year. If the renewal fee for a branch office is not received by the board within 30 days following the expiration date noted on the registration, a reinstatement fee of \$25 will be required in addition to the renewal fee.

PART IX.

QUALIFICATIONS FOR REGISTRATION AS A PROFESSIONAL LIMITED LIABILITY COMPANY.

18 VAC 10-20-570. Definitions.

The following words and terms, when used in this part, shall have the following meanings unless the context clearly indicates otherwise:

"Manager" is a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement, and who is duly licensed or otherwise legally authorized to render *one or more* of the professional services of architecture, professional engineering, land surveying and or landscape architecture in the Commonwealth of Virginia.

"Member" means an individual or professional business entity that owns an interest in a limited liability company, and who is duly licensed or otherwise legally authorized to render the professional services of architecture, professional engineering, land surveying and landscape architecture in the Commonwealth of Virginia.

"Professional limited liability company" means a limited liability company organized in accordance with Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1 of the Code of Virginia for the sole and specific purpose of rendering *one or more* of the professional services of architecture, professional engineering, land surveying and or landscape architecture.

18 VAC 10-20-580. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$125
Designation for branch office	50
Renewal	70
Renewal of branch office	25
Reinstatement of branch office	25
Dishonored check	25

18 VAC 10-20-600. Certificates of authority.

~~A certificate of authority shall be issued by the board in two categories, general or limited. A general certificate of authority will permit a professional limited liability company to practice the professions of architecture, professional engineering, land surveying and landscape architecture. A limited~~ The certificate of authority will permit a professional limited liability company to practice only the professions

shown on its certificate of authority, architecture, professional engineering, land surveying, landscape architecture, or any combination thereof.

18 VAC 10-20-625. Renewal of branch offices.

Branch office registrations expire the last day of February of each even-numbered year. If the renewal fee for a branch office is not received by the board within the 30 days following the expiration date noted on the registration, a reinstatement fee of \$25 will be required in addition to the renewal fee.

PART X.

QUALIFICATIONS FOR REGISTRATION AS A BUSINESS ENTITY OTHER THAN A PROFESSIONAL CORPORATION AND PROFESSIONAL LIMITED LIABILITY COMPANY.

18 VAC 10-20-665. Renewal of branch offices.

Branch office registrations expire the last day of February of each even-numbered year. If the renewal fee for a branch office is not received by the board within the 30 days following the expiration date noted on the registration, a reinstatement fee of \$25 will be required in addition to the renewal fee.

PART XI.

RENEWAL AND REINSTATEMENT.

18 VAC 10-20-670. Expiration and renewal.

A. Prior to the expiration date shown on the license, certificate or registration, licenses, certificates or registrations shall be renewed for a two-year period upon completion of a renewal application and payment of a fee established by the board. An applicant must certify that he continues to comply continued compliance with the Standards of Practice and Conduct as established by the board. Registrations for professional corporations, professional limited liability companies and business entities shall expire on December 31 of each odd-numbered year. Branch offices may not renew until the main office registration is properly renewed.

B. Failure to receive a renewal notice and application shall not relieve the regulant of the responsibility to renew. If the regulant fails to receive the renewal notice, a copy of the license, certificate or registration may be submitted with the required fee as an application for renewal, accompanied by a signed statement indicating that the applicant continues to comply with the Standards of Practice and Conduct of the board under whose authority the license, certificate or registration is issued.

C. Board discretion to deny renewal. The board may deny renewal of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant.

D. If the renewal fee is not received by the board within 30 days following the expiration date noted on the license, certificate or registration, a late renewal fee equal to the regular fee plus \$100 shall be required, unless a reinstatement fee is otherwise noted.

PART XII.

STANDARDS OF PRACTICE AND CONDUCT.

18 VAC 10-20-700. Public statements.

A. The professional shall be truthful in all professional matters.

B. When serving as an expert or technical witness, the professional shall express an opinion only when it is based on an adequate knowledge of the facts in the issue and on a background of technical competence in the subject matter. Except when appearing as an expert witness in court or an administrative proceeding when the parties are represented by counsel, the professional shall issue no statements, reports, criticisms, or arguments on matters relating to professional practice which are inspired or paid for by an interested party or parties, unless the regulant has prefaced the comment by disclosing the identities of the party or parties on whose behalf the professional is speaking, and by revealing any self-interest.

C. A professional shall not knowingly make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for licensure, certification, registration, renewal or reinstatement.

D. A professional shall not knowingly make a materially false statement or fail to deliberately disclose a material fact requested in connection with an application submitted to the board by any individual or business entity for licensure, certification, registration, renewal or reinstatement.

18 VAC 10-20-710. Conflicts of interest.

A. The professional shall promptly and fully inform an employer or client of any business association, interest, or circumstance or circumstances which may influence the professional's judgment or the quality of service.

B. The professional shall not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed in writing to all parties of current interest.

C. The professional shall neither solicit nor accept financial or other valuable consideration from suppliers for specifying their products or services.

D. The professional shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with a client or employer in connection with work for which the professional is responsible.

18 VAC 10-20-740. Professional responsibility.

A. The professional shall not knowingly associate in a business venture with, or permit the use of the professional's name or firm name by any person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating statutes or any of these regulations.

B. A professional who has direct knowledge that another individual or firm may be violating any of these provisions, or the provisions of Chapters 1 through 3 of Title 54.1, or Chapter 7 of Title 13.1 of the Code of Virginia, shall

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immediately inform the secretary of the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

C. The professional shall, upon request or demand, produce to the board, or any of its agents, any plan, document, book, record or copy thereof in his possession concerning a transaction covered by ~~these regulations~~ *this chapter*, and shall cooperate in the investigation of a complaint filed with the board against a licensee or *certificate holder*.

~~D. A professional shall not knowingly use the design, plans or work of another professional without the original professional's knowledge and consent and after consent, a thorough review to the extent that full responsibility may be assumed.~~

D. A professional shall not utilize the design, plans, plats or work of another professional prior to approval of the design, plans, plats or work by a jurisdiction of this Commonwealth for inclusion in that jurisdiction's public records without the knowledge and written consent of the professional, or organization of ownership, who originated the design, plans, plats or work. In the event that the professional who generated the original document is no longer employed by the firm retaining ownership of the original documents or is deceased, another professional who is a partner or officer in the firm retaining ownership of the original documents may authorize utilization of the original document by another professional or firm.

E. A professional who has received permission to modify or otherwise utilize the design, plans, plats or work of another professional pursuant to subsection D of this section may seal that work only after a thorough review of the design, plans, plats or work to the extent that full responsibility may be assumed for any changes or modifications to that work. Any changes or modifications to the original document must be noted on the design, plans, plats or work.

F. If a design, plans, plats or work document has been approved by a jurisdiction and is included in public record, the information contained in the document may be utilized by another professional with written notification to the professional of record, but without obtaining permission, provided that the professional utilizing the document has conducted a thorough review and verification of the work to the extent that full responsibility may be assumed for any changes or modifications to that work. Any changes or modifications must be noted on the designs, plans, plats or work.

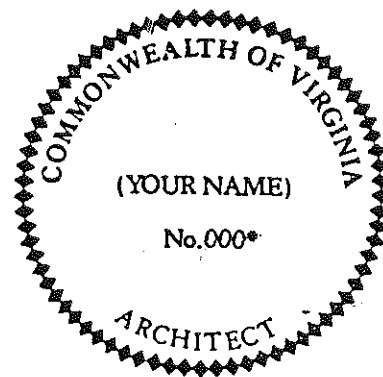
G. A professional may not utilize reproductions of another professional's original document without the knowledge and consent of the professional who prepared the original document except as provided in this chapter, unless the reproductions are included in a new work product for information purposes only, and then, only when the original document is of public record and when the reproductions have been labeled "FOR INFORMATION PURPOSES ONLY."

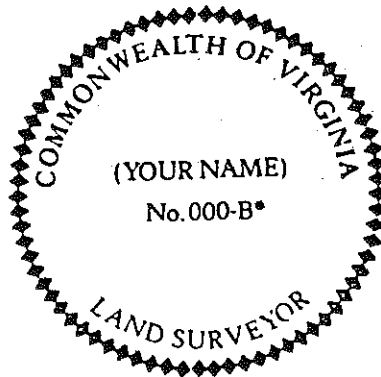
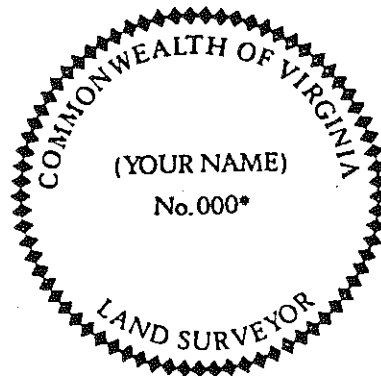
18 VAC 10-20-760. Use of seal.

A. The application of a professional seal shall indicate that the professional has exercised complete direction and control over the work to which it is affixed. Therefore, no regulant shall affix a name, seal or certification to a plat, design, specification or other work constituting the practice of the professions regulated which has been prepared by an unlicensed or uncertified person or firm unless such work was performed under the direction and supervision of the regulant while under the regulant's contract or while employed by the same firm as the regulant. If a regulant is unable to seal completed professional work, such work may be sealed by another regulant only after thorough review and verification of the work has been accomplished to the same extent that would have been exercised if the work had been done under the complete direction and control of the regulant affixing the professional seal.

B. A principal or authorized licensed or certified employee shall apply a stamp or preprinted seal to final and complete original cover sheets of plans, drawings, plats, technical reports and specifications and to each original sheet of plans, drawings or plats, prepared by the regulant or someone under his direct control and personal supervision.

1. All seal imprints on final documents shall bear an original signature and date.
2. Incomplete plans, documents and sketches, whether advance or preliminary copies, shall be so identified and need not be sealed or signed.
3. All plans, drawings or plats prepared by the regulant shall bear the regulant's name or firm name, address and project name.
4. The seal of each regulant responsible for each profession shall be used *and shall be on the originals, including the document cover sheet, for which that professional is responsible, including exempted work, for which licensure or certification is not required, prepared under the regulant's direction.*
5. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.
6. The seal shall conform in detail and size to the design illustrated below:





* The number referred to is the six digit number as shown on the license, or certificate of registration. The number is permanent.

18 VAC 10-20-780. Licensee required at each place of business.

A. Corporations, partnerships, firms or other legal entities maintaining a place of business in the Commonwealth of Virginia for the purpose of offering to provide architectural, professional engineering, land surveying or certified landscape architectural services practiced at another more than one location shall have an authorized full-time Virginia licensed or certified architect, professional engineer, land surveyor or certified landscape architect in that each place of business.

B. Corporations, partnerships, firms or other legal entities maintaining any place of business in the Commonwealth of Virginia for the purpose of practicing architecture, professional engineering, land surveying or certified landscape architecture at that location, shall have in responsible charge at each place of business a full-time resident Virginia licensed or certified architect, professional engineer, land surveyor or certified landscape architect exercising supervision and control of work in each profession being practiced.

18 VAC 10-20-790. Sanctions.

A. No license, certification certificate, or registration or regulant shall be fined, suspended or revoked, nor shall any regulant be fined unless a majority of the members of the entire board and a majority of the board members of the profession involved, who are eligible to vote, vote for the action. The board may fine, suspend or revoke any license, certification certificate, certificate of authority or registration, or fine any regulant, if the board finds that:

1. The license, certification or registration was obtained or renewed through fraud or misrepresentation; or
2. The regulant has been found guilty by the board, or by a court of competent jurisdiction, of any material misrepresentation in the course of professional practice, or has been convicted, pleaded guilty or found guilty, regardless of adjudication or deferred adjudication, of any felony or misdemeanor which, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline; or
3. The regulant is guilty of professional incompetence or negligence; or
4. The regulant has abused drugs or alcohol to the extent that professional competence is adversely affected; or
5. The regulant violates any standard of practice and conduct, as defined in these regulations this chapter; or
6. The regulant violates or induces others to violate any provision of Chapters 1 through 3 of Title 54.1, or Chapter 7 of Title 13.1 of the Code of Virginia, or any other statute applicable to the practice of the professions herein regulated or any provision of these rules and regulations this chapter.

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B. If evidence is furnished to the board which creates doubt as to the competency of a regulant to perform professional assignments in a technical field, the board may require the regulant to prove competence by interview, presentation or examination. Failure to appear before the board, pass an examination, or otherwise demonstrate competency to the board shall be basis *grounds* for revocation or suspension of the license, certification or registration.

NOTICE: The forms used in administering 18 VAC 10-20-10 et seq., Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

~~Application for Architect Licensure License, DPOR Form 308 (7/1/93) A-1 (Rev. 1/1/95).~~

~~Applicant Check-Off Form (7/1/93).~~

~~Instruction Sheet, DPOR Form A-1 (7/1/93).~~

~~State Architect Verification of Registration Form, DPOR Form A-2 (7/1/93) (Rev. 1/1/95).~~

~~Architect Experience Verification Form, DPOR Form A-3 (Rev. 1/1/95).~~

~~Architect Reference Form, DPOR Form A-4 (7/1/93) (Rev. 1/1/95).~~

~~Written Examination Schedule for 1993-1994.~~

~~Application for Licensing Licensure as a Professional Engineer, DPOR Form E-1 (7/1/93) (Rev. 9/15/95).~~

~~Professional Engineer Applicant Checklist (Rev. 9/15/95).~~

~~Reference Form, DPOR Form E-2 (7/1/93) (Rev. 9/15/95).~~

~~Verification of Degree Granted Form, DPOR Form E-3 (7/1/93) (Rev. 9/15/95).~~

~~Letter of Instruction Verification of Experience, DPOR Form E-4 (7/1/93) (Rev. 9/15/95).~~

~~DPOR Form E-4 Supplement (Rev. 9/15/95).~~

~~Verification of Registration Form, DPOR Form E-5 (7/1/93) (Rev. 9/15/95).~~

~~Written Examination Schedule for 1994-1995.~~

~~Application for Registration as an Engineer-in-Training Designation, DOC DPOR Form EIT-1 (8/15/94) (Rev. 6/15/96).~~

~~Reference Form, DOC DPOR Form EIT-2 (8/15/94) (Eff. 5/19/94).~~

~~Verification of Degree Granted, DOC DPOR Form EIT-3 (8/15/94) (Eff. 5/19/94).~~

~~Application for Engineer-in-Training Engineering or Related Employment, DOC DPOR Form EIT-4 (8/15/94) (Eff. 5/19/94).~~

~~Engineer Examination Schedule Scheduling Form, DOC DPOR Form EIT-5 (8/15/94).~~

~~Written Examination Schedule for 1992-1994.~~

~~Application for Licensing as a Land Surveyor, DOC Form L-2 (4/1/92).~~

~~Applicant Check-Off Form (4/1/92).~~

~~Instruction Sheet, DOC Form L-1 (4/1/92).~~

~~Verification of Registration, DOC Form L-3 (4/1/92).~~

~~Reference Form, DOC Form L-4 (4/1/92).~~

~~Experience Verification Form, DOC Form L-5 (4/1/92).~~

~~Written Examination Schedule for 1992-1994.~~

~~Application for Land Surveyor A, DPOR LSA Form 1 (Eff. 2/21/95).~~

~~Verification of Out-of-State Licensure Registration and/or Examination, DPOR LSA Form 2 (Eff. 2/21/95).~~

~~Report of Professional Experience (RPE), DPOR LSA Form 3 (Eff. 2/21/95).~~

~~Application for Land Surveyor-In-Training, DPOR LS In-Training Form 1 (Eff. 2/21/95).~~

~~Virginia Application for Certification as a Landscape Architect, DOC DPOR Form LA-1 (3/16/92) (Rev. 4/3/95).~~

~~Applicant Check-Off Form (3/16/92).~~

~~Instruction Sheet, DOC Form LA-2 (3/16/92).~~

~~Verification of Registration, DOC DPOR Form LA-3 (3/16/92) LA-2.~~

~~Verification of Degree Granted, DOC Form LA-4 (3/16/92).~~

~~Landscape Architect Reference Form, DOC DPOR Form LA-5 (3/16/92) LA-4 (Rev. 4/3/95).~~

~~Landscape Architect Experience Verification Form, DOC DPOR Form LA-6 (3/16/92) LA-3 (Rev. 4/3/95).~~

~~Written Examination Schedule for 1992-1993.~~

~~Application for a Certificate of Authority to Practice Architecture, Professional Engineering, Land Surveying and Landscape Architecture as a Professional Corporation (7/1/93) (Eff. 5/19/94).~~

~~Application for Registration to Provide Professional Services as a Business Entity (4/1/92) (Eff. 5/19/94).~~

~~Application for Interior Design Certification as an Interior Designer, DPOR Form ID-1 (7/1/93) (Rev. 3/1/96).~~

~~Interior Designer Applicant Check-Off Form (7/1/93) Checklist (Rev. 3/1/96).~~

~~Instruction Sheet, DPOR Form ID-2 (7/1/93).~~

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Interior Designer Verification of Registration, DPOR Form ID-3 (7/1/93) ID-2 (Rev. 3/1/96).

Request Memo to NCIDQ for Interior Designer Application - Verification of Written NCIDQ Examination, DPOR Form ID-4 (7/1/93) ID-3 (Rev. 3/1/96).

Reference Form - Interior Design Applicants, DPOR Form ID-5 (7/1/93) ID-4 (Rev. 3/1/96).

Experience Verification Form Interior Designer Verification of Experience, DPOR Form ID-6 (7/1/93) ID-5 (Rev. 3/1/96).

Application to Register as a Branch Office (Eff. 5/19/94).

Application to Practice as a Professional Limited Liability Company, PLLC-1 (Eff. 5/19/94).

Document Incorporated by Reference

Intern Development Guidelines, 1995-1996, National Council of Architectural Registration Boards.

VA.R. Doc. No. R96-518; Filed August 2, 1996, 2:57 p.m.

THE COLLEGE OF WILLIAM AND MARY

REGISTRAR'S NOTICE: The College of William and Mary is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: 8 VAC 115-10-10 et seq. Motor Vehicle Parking and Traffic Rules and Regulations (amending 8 VAC 115-10-10 through 8 VAC 115-10-90, 8 VAC 115-10-110, 8 VAC 115-10-140, 8 VAC 115-10-150, 8 VAC 115-10-190, 8 VAC 115-10-200, 8 VAC 115-10-230, 8 VAC 115-10-290, 8 VAC 115-10-310 through 8 VAC 115-10-340, 8 VAC 115-10-360, 8 VAC 115-10-410, 8 VAC 115-10-420; adding 8 VAC 115-10-345 and 8 VAC 115-10-440).

Statutory Authority: § 23-9.2:3 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until October 15, 1996.

Summary:

This regulation reduces traffic congestion, facilitates orderly parking, provides a safe campus environment, and promotes the fair and consistent enforcement of the rules.

Agency Contact: Nancy S. Nash, Assistant to the Vice President for Management and Budget, The College of William and Mary, P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (757) 221-2743, FAX (757) 221-2749, or (757) 221-1787/TDD.

CHAPTER 10. MOTOR VEHICLES PARKING AND TRAFFIC REGULATIONS.

PART I. GENERAL PROVISIONS.

8 VAC 115-10-10. Decals.

A. Decals shall be permanently affixed to the left rear bumper or on the outside of the left rear windshield. ~~No parking decal may be taped inside the vehicle. Parking decals cannot be taped inside the vehicle.~~ Once a new decal is purchased, any previous decal on the same vehicle is no longer valid. A decal is only valid for the vehicle for which it was purchased.

B. The Parking Services office will recognize an official grace period in August of each school year for "No Decal" violations. ~~For the Fall 1993 session, the grace period extends through August 31, 1993.~~ During the grace period, only "No Decal" violations will be waived. Parking enforcement officers will continue to cite all other violations during the grace period. Student vehicles that are parked in faculty/staff spaces during the grace period will receive a citation for reserved space. *Students may not park in faculty/staff spaces the Monday and Tuesday before each semester, except for 30 minutes to unload.*

Resident students are not permitted to park in day spaces.

Day students are not permitted to park in resident spaces.

C. The fine for parking on the sidewalk, grass or area designated for grass is \$25.

C. D. The costs of decals vary to accommodate various categories of students and are adjusted at different times of the year. The following rates apply:

Category	Aug 95 96	Jan 96 97	Apr 96 97	Jul 97
Faculty/Staff/Student	\$52.00	\$31.00	\$21.00	\$10.00
Non-College Affiliated	\$52.00	\$31.00	\$21.00	\$10.00
Hourly/Part-time Employee	\$26.00	\$26.00	\$21.00	\$10.00
Evening Student Only	\$26.00	\$26.00	\$21.00	\$10.00
William & Mary Hall Lot Only	\$21.00	\$21.00	\$21.00	
Motorcycle	\$26.00	\$26.00	\$21.00	\$10.00
Additional Decal	\$ 5.00	\$ 5.00	\$ 5.00	\$ 5.00
Restricted Use	\$21.00	\$21.00	\$21.00	\$10.00
Additional for Vehicle	\$31.00	\$10.00	\$10.00	\$ 5.00

8 VAC 115-10-20. Temporary permits.

A. Temporary permits are available for periods not to exceed two weeks and cost ~~\$1.00~~ \$3.00 per week. After the two-week period has expired, a permanent decal must be purchased.

B. Temporary permits, ~~at no charge and with a two-hour limit,~~ (at no charge) are available for loading and unloading

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(two-hour limit), temporary handicaps, temporary plates and car repairs.

8 VAC 115-10-30. Enforcement of parking meters.

In general, campus parking meters are enforced 7 7:30 a.m. to 5 p.m., Monday through Saturday. ~~However, meters at Hunt Hall are enforced from 7:30 a.m. to 5 p.m., Monday through Saturday, and~~ Exceptions are those meters at Swem Library which are enforced seven days a week, 24 hours a day. Multiple citations may be issued at meters. For example, at a 30-minute meter, multiple tickets may be issued 30 minutes apart.

8 VAC 115-10-40. Payment of fines.

A. Tickets paid within 10 working days of the date of the ticket will be reduced by \$5.00.

B. Payment for wheellocked vehicles may be paid ~~by check or credit card with cash, credit card, check, or William and Mary debit card.~~

C. Visitors to the college, who receive a No Decal violation, are not required to pay their first three No Decal violations. However, after three such violations, subsequent violations shall be paid.

8 VAC 115-10-50. Faculty/staff lots.

A. Evening students may park in any faculty/staff (except the Jones Lot ~~Lot R~~ and the six spaces marked "Faculty/Staff at all times" on Landrum Drive behind Millington Hall), resident or day space after 4 p.m. This option is available to other students after 5 p.m.

B. Six spaces on Landrum Drive and all spaces in the Jones Lot is reserved 24 hours a day, seven days a week for faculty/staff only.

8 VAC 115-10-60. Miscellaneous provisions.

A. It is a violation to purchase and distribute additional decals to other individuals or transfer or exchange decals for use on other vehicles or both. Such cases will be referred to the Dean of Students for appropriate action.

B. Parking in the Common Glory lot (~~Lot D~~) is prohibited unless there is a curb blocker at the space permitted only at curb blockers.

C. Individuals who are associated with the college and have handicapped tags shall also display a William and Mary parking decal.

D. Fees for parking decals are generally not refundable. However, students and faculty/staff who leave the college before the end of the school year may apply for a partial refund. The decal must be returned when the application for the refund is made.

E. The use of hazard lights does not preclude the issuance of a citation if the vehicle is in violation of parking rules.

F. Temporary/Visitor Permits are available from Campus Police when the Parking Services office is not open.

G. When vehicle or license plate information changes, please notify the Office of Parking Services, ext. 14764.

~~H. Enforcement of the faculty/staff designation at the PBK and Morton Hall lots runs from 7:30 a.m. to 5 p.m. All students, faculty and staff are responsible for the information presented in the parking rules and regulations. Failure to have knowledge of rules will not be a valid defense for violations.~~

PART II.

REGISTRATION OF MOTOR VEHICLES.

8 VAC 115-10-70. Registration of motor vehicles.

A. All motor vehicles, including motorcycles and motorbikes, parked on college property shall be registered with Parking Services located at 204 S. Boundary Street. This registration may can also be accomplished at the Watermen's Hall Registration Desk for those individuals at the York River Campus. The operator of each vehicle will be issued an appropriate decal or permit. The purchase of a decal entitles individuals to park only in those areas designated for the respective decal. The purchase of a decal does not guarantee a parking space. Maps highlighting the major lots by type of decal for both the Williamsburg and York River Campuses are incorporated by reference and made a part of this chapter available. Decals are effective for the school year which runs from August 16 September 1 through August 31 of the following calendar year. Temporary permits are issued as necessary for durations appropriate with their purpose.

B. Acceptance of a decal or permit by an individual attests to that person's complete understanding of the College of William and Mary Motor Vehicle Regulations and such person's responsibility to adhere to these regulations. Additionally, it is a violation to purchase additional decals for distribution to other individuals.

C. Registrants who misstate their classification category will be referred to the Dean of Students. ~~When there is a change in (i) classification status of a registrant; or (ii) the purpose for which a decal or permit was issued; or (iii) the vehicle registration information, it shall be~~ When the classification status of a registrant, or the purpose for which a decal or permit was issued changes, or the vehicle registration information changes, it is the sole responsibility of the registrant to notify Parking Services so that the decal or permit may be suitably altered.

PART III.

REGISTRATION, ELIGIBILITY AND CLASSIFICATION.

8 VAC 115-10-80. Classification of registrant.

Should registrants or Parking Services or both disagree as to proper classification, Parking Services may issue a 14-day temporary permit in favor of the registrant, who shall immediately file an appeal with the Traffic Appeals Board. The registrant is solely responsible for a clear statement of the situation in the appeal and for completing a permanent registration immediately upon receiving a decision from the Traffic Appeals Board.

8 VAC 115-10-90. Categories of decals.

The categories of decals issued by the Parking Service office are listed below.

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1. Faculty/Staff (blue). All faculty, administrative personnel, classified and hourly employees of the college are eligible to register motor vehicles and will be issued a blue decal. Students who work part time for the college will have eligibility determined according to their student status.

2. Resident (yellow). All individuals classified as students by the Registrar of the college, who reside in college administered housing and have completed 54 semester hours (or 4 semesters), or students who reside at Dillard Complex and have completed the equivalent of two semesters, qualify as for a resident and will be issued a yellow decal.

3. Day (green). Those individuals classified as students by the Registrar of the college who do not reside in college administered housing will receive a green day decal upon registering a motor vehicle.

4. Evening (maroon). Students whose classes begin after 4 p.m., and who do not reside in college administered housing, qualify as an evening student and will be issued a maroon for the evening decal. After 4 p.m. they may park in any faculty/staff or student space unless otherwise posted. Evening students who have a frequent need to park on campus before 4 p.m. may purchase the day (green) decal, as no provision is made for the evening designation prior to 4 p.m. Evening students who have an occasional need to park on campus before 4 p.m. must obtain a temporary day (green) permit, which allows parking in day areas only.

5. Restricted use (red). Students otherwise ineligible to register a motor vehicle, who have obtained permission through the Traffic Appeals Board, will receive a restricted use red decal upon registration. The red decal allows parking only in the William and Mary Hall Lot. Application forms for this permission are available at Parking Services. Permission may be granted upon demonstration that a vehicle is indispensable for employment, essential to continuance at the college, for physical disability or for other college related needs. A student who brings a vehicle to the college without prior special permission is in violation of this chapter.

The William and Mary Hall Lot only permit is available to all college community members who are otherwise eligible. This permit is priced significantly lower than other permits for which individuals may be eligible.

This restricted permit is available to all college community members who are otherwise eligible for campus parking decals. This permit is priced significantly lower (\$21) than other permits for which individuals may be eligible. This permit is valid only in the William and Mary Hall lot and the Dillard Complex student lot.

Students otherwise ineligible to register a motor vehicle, who have obtained permission through the Traffic Appeals Board, may receive this decal at a cost of \$52 upon registration of the vehicle. This decal allows parking only in the William and Mary Hall lot. Forms for this permission are available at Parking Services.

Permission may be granted upon demonstration that a vehicle is indispensable for employment, essential to continuance at the college, for physical disability or for other college related needs. A student who brings a vehicle to the college without prior special permission is in violation of these regulations.

6. General (gold). General decals, which are gold, are intended for Marriott employees, child care center, bookstore employees and noncollege affiliated persons who volunteer at the college or have a frequent need to visit and use college facilities. The general decal allows parking in faculty/staff areas, except the Jones Lot and the six faculty/staff spaces at all times on Landrum Drive, only.

8 VAC 115-10-110. Additional or replacement decals.

An additional or replacement decal may be purchased for \$5.00. If replacing a motorcycle with a vehicle, the cost will be \$31.

8 VAC 115-10-140. Display of decals.

Vehicle registration is not complete until the permit or decal is properly displayed. Decals or permits displayed improperly will constitute an improper display violation. Decals shall be securely affixed to the left rear bumper or to the outside of the left rear windshield. Affixing the decal to the outside rear windshield facilitates removal at a later date. Taping the decal to the inside of the windshield is not permissible.

PART IV. TRAFFIC REGULATIONS.

8 VAC 115-10-150. Enforcement.

A. The Campus Police are authorized to will enforce moving violations which will be returnable in the respective district courts.

B. Barriers may be placed by the Campus Police at any point deemed necessary for specific temporary use - most often emplaced for safety reasons and traffic flow. Removal of any such barriers without permission, except for passage of emergency vehicles, is prohibited.

C. In all cases, the directions of a police officer supersede the regulations posted by sign or signal.

PART V. PARKING REGULATIONS.

8 VAC 115-10-190. Parking/no parking designations.

A. Signs have been posted to designate the following parking areas which are enforced between 7:30 a.m. and 5 p.m., Monday through Friday, except for the regulation provision regarding evening students as set out in subdivision 4 of 8 VAC 115-20-90 8 VAC 115-10-90.

Visitors
Faculty/staff
Day
Resident
Time limit spaces

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B. The following designations are reserved and enforced 24 hours a day, seven days a week, *including holidays*:

- Firelanes
- No Parking zones
- Handicapped spaces
- Reserved For spaces
- Official Vehicle spaces
- Service/Vendor spaces
- Jones Hall Lot
- Visitors of the President*
- Decal or Permit Required (except in metered spaces)*
- Faculty/staff at all times in Landrum drive*
- Motorcycle spaces*
- Meters at ~~Hunt Circle~~ and Swem Library

C. "No Parking" signs indicate an emergency lane, and no parking is permitted day or night. Parking in any portion of a No Parking zone for ~~any length of time~~ is a violation of this chapter.

D. Spaces reserved for service ~~or Vendor vehicles/vehicle~~ may only be used by vehicles displaying service ~~or Vendor/vehicle~~ permits issued by Parking Services. Employees of the college who have service ~~or Vendor/vehicle~~ permits must also have a William and Mary *faculty/staff* parking permit if they are using their personal vehicle and parking in a service ~~or Vendor/vehicle~~ space. *These spaces are only to be used for delivery and pickup.*

E. Parking space designation as to faculty, staff, and students will be observed when the college is in session. Parking space designations *on the William and Mary campus* will not be observed during holidays posted in the college catalog, unless otherwise posted. *Parking space designations on the York River campus, however, are enforced year-round.* All other traffic and parking regulations will be enforced throughout the calendar year. *Students if in doubt should*, contact Parking Services, ext. 14764.

8 VAC 115-10-200. Vacating certain lots.

A. The Cary Field/Bryan Lot, the University Center Lot, the ~~Post Office Lot and the Old Dominion Lot~~, the pull-in spaces at the rear of St. Bede's Church adjacent to College Terrace at James Blair and the pull-in spaces on College Terrace must be vacated by 8 a.m. on the Saturdays of home football games. Vehicles in violation may be towed at owner's expense.

B. The ~~University Center Lot~~ pull-in spaces on College Terrace and the parking along the stadium wall shall be vacated the Friday and Saturday of the Colonial Relays. This is generally the first weekend in April of each year. Vehicles in violation may be towed at owner's expense.

C. Brooks Street around William and Mary Hall shall be vacated by 4 p.m. on the days of home basketball games. Vehicles in violation may be towed at owner's expense.

8 VAC 115-10-230. Motorcycles.

~~Parking or storing motorcycles or motorbikes inside a building or in or near an entrance way is prohibited. Motorcycles or motorbikes must not be stored inside a building or parked in or near an entrance way.~~ In order to comply with state regulations and to preclude possible fire hazards, motorcycles and motorbikes will be ticketed and removed at the owner's expense when so parked. Cycle owners are asked to make use of the motorcycle parking spaces throughout campus.

8 VAC 115-10-250. ~~Bumper blocks~~ Curb blockers.

~~Bumper blocks~~ Curb blockers, if present, establish parking spaces. This is especially true in Common Glory ~~(Lot D)~~ where parking is only permitted at ~~bumper blocks curb blockers~~.

8 VAC 115-10-290. Faculty/staff parking.

~~Members of the faculty and staff are expected to observe the parking regulations and are encouraged not to drive their vehicles point-to point on campus.~~ Faculty and staff are expected to park only in faculty and staff areas. *Faculty may park in student areas only if no faculty spaces are available and they need to teach a class or meet with a student.*

8 VAC 115-10-310. Resident student parking.

Resident students may park only in resident areas. Resident students are encouraged to abstain from driving to class to help reduce parking congestion and to afford other residents across campus availability to resident spaces. As an exception, Dillard and the Graduate Student Complex residents may park in the Common Glory Lot ~~(Lot D)~~ and other resident designated areas provided they have current resident and ~~Dillard~~ Common Glory decals. *Dillard students may purchase the restricted use decal for \$21 and park at Dillard or the William and Mary Hall lot.*

8 VAC 115-10-320. Handicapped parking.

Permanent handicap license plates or placards may be obtained from the Department of Motor Vehicles. Faculty and staff members requiring temporary handicapped parking may make application through the Affirmative Action Office ~~(College Apt #3 Old Dominion Basement 221-2615)~~. Students requiring temporary handicapped parking may make application through the Office of the Dean of Students ~~(James Blair 102 Campus Center 109)~~ and employees at the York River Campus should contact the Manager of Administrative Services (Watermen's Hall). Vehicles displaying appropriate handicap plates or placards may park in any handicapped, faculty/staff or student space. Those individuals affiliated with the college who have handicapped parking permission must also display a William and Mary parking decal.

8 VAC 115-10-330. Visitor parking.

Visitor spaces are provided only for individuals outside the college community who have legitimate business on campus. No vehicle which has, or should have, a decal or permit is considered a visitor. Spaces reserved for "Visitors To" are intended for noncollege affiliated individuals only. Permits to

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use these spaces may be obtained from the respective office visited.

Visitors with visitor permits may park in any faculty/staff, or student or visitor space. Visitor permits are not valid at metered or timed spaces. Members of both campuses who have visitors coming to the campus should contact Parking Services for appropriate permits. *Anyone coming to campus frequently is not considered a visitor and must purchase a permit to park on college property or use meter parking.*

8 VAC 115-10-340. Metered/timed spaces.

Metered spaces are intended for high turn over, high demand areas. Anyone may park at a meter, and everyone must pay. Meters are enforced from 7:30 a.m. to 5 p.m., Monday through Saturday, except for the Swem Library and Hunt Circle meters which are enforced 24 hours a day, 7 days a week. ~~It is a violation to park in a metered space when the violation flag is visible.~~ Multiple citations on the same car may be issued at meters and timers. *For example, citations may be issued at one-hour intervals at one-hour meters.*

8 VAC 115-10-345. Special events.

Special events such as convocation and home athletic events require many parking spaces on the campus to be reserved. Whenever possible, three days notice will be given to the college community so alternate parking plans can be made.

PART VI.
ENFORCEMENT.

8 VAC 115-10-360. Additional citations for same violation.

~~After the first citation for violation of a motor vehicle regulation, any vehicle which remains in violation of the same regulation is subject to additional citations. metered or timed space, vehicles which remain in violation are subject to additional citations, tickets being issued no more frequently than the maximum time allowed for the respective meter/timed space. For all other violations, citations will be limited to one per 24 hours unless the vehicle has been moved.~~

8 VAC 115-10-410. Schedule of fines; payment policy.

A. Schedule of fines.

Violation	If Paid Within 10 Working Days	If Paid After 10 Working Days
No Valid Decal	\$25	\$30
Handicapped Space	\$25	\$30
Towed - Special Event	\$25	\$30
Illegal Parking:		
Firelane	\$10	\$15
Reserved Space	\$10	\$15
Expired Meter	\$10	\$15
No Parking Zone	\$10	\$15

Vendor's Space	\$10	\$15
Improper Display	\$10	\$15
Overtime	\$10	\$15
Visitor's Space	\$10	\$15
Crosswalk	\$10	\$10
Sidewalk/Crosswalk/Grass	\$10 \$20	\$15 \$25
Improper Parking/Other	\$10	\$15

B. The following policy establishes the accepted payment methods for outstanding parking fines:

1. Payment may be made by cash, personal check, cashier's check, money order, credit card (VISA or Master Card only) or William and Mary debit card. *Coins must be properly rolled and are not accepted in bulk.*

2. Owners of vehicles that have been towed must pay all outstanding fines and fees using payment methods described in item 1 above. Additionally, the owner must pay the towing contractor the towing fee and any storage fees. If payment is made at Campus Police, they can accept forms of payment mentioned in item *subdivision 1 of this subsection*, with the exception of the William and Mary debit card.

3. Employees at the York River Campus may mail checks, money orders or cashier's checks to the Office of Parking Services. Checks should be made payable to the College of William and Mary. Alternatively, they may use the courier provided by Administrative Services.

C. ~~Wheellock policy. Vehicle owners with a vehicle that is wheellocked must pay all outstanding fines, plus a \$20 wheellock fee, within 48 hours of the wheellock. Acceptable payment methods are as described in B 1 of this section, with the exception that the debit card may only be used when paying at Parking Services from 8 a.m. to 4 p.m., Monday through Friday. Vehicles wheellocked in excess of 48 hours will be towed to a private, licensed garage. Vehicles generally become eligible liable for wheellock when there are three or more outstanding tickets which have not been paid or appealed within 14 days of the date of the latest ticket. Vehicles with two tickets which have not been paid within 30 days of the date of the later ticket are also eligible liable for wheellock.~~

Vehicle owners with a vehicle that is wheellocked must pay all outstanding fines, plus a \$20 wheellock fee, within 48 hours of the wheellock. Acceptable payment methods are as described in subdivision B 1 of this section, with the exception that the debit card may only be used when paying at Parking Services from 7:45 a.m. to 4 p.m., Monday through Friday. Vehicles wheellocked in excess of 48 hours will be towed to a private, licensed garage at owner's expense.

8 VAC 115-10-420. Appeals.

A. Campus parking citations are treated as minor infractions of college regulations with the right of appeal as stated in the Student Handbook. The operation of a motor vehicle on the campus constitutes implied consent for college parking violations to be handled through written appeals

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made to the Traffic Appeals Board. The Traffic Appeals Board is, by Presidential appointment, the highest authority on campus in parking matters and consists of members from all college constituencies.

B. The board does not look favorably upon the following appeals:

- No decal/failure to buy additional decal
- No spaces available
- Bad weather/didn't want to walk
- Usually park off campus
- Didn't have time to get a decal
- Someone else driving my vehicle
- ~~Residents parked in day spaces~~
- ~~Day students parked in resident spaces~~
- ~~Students in faculty/staff spaces~~

Nonpayment of past due fines may not entitle students to register for and attend classes.

8 VAC 115-10-440. Motor Assistance Program (MAP).

The Parking Services Office operates an on-campus Motorist Assistance Program (MAP) that provides the following services: jump starts, assistance with keys locked in vehicles, access to an air pump, gas can and transportation to the nearest gas station, if needed. Call 221-4764 and assistance will be provided as soon as possible. This service is available 8 a.m. to 4:30 p.m. Monday through Friday.

VA.R. Doc. No. R96-528; Filed August 13, 1996, 12:32 p.m.

MOTOR VEHICLE DEALER BOARD

Title of Regulation: 24 VAC 22-20-10 et seq. Motor Vehicle Dealer Fees.

Statutory Authority: §§ 46.2-1503.4, 46.2-1506, 46.2-1519, and 46.2-1546 of the Code of Virginia.

Public Hearing Date:

- September 30, 1996 - 2 p.m. (Wytheville)
- October 1, 1996 - 1 p.m. (Vinton)
- October 2, 1996 - 10 a.m. (Harrisonburg)
- October 7, 1996 - 10 a.m. (Richmond)
- October 8, 1996 - 11 a.m. (Hampton)
- October 9, 1996 - 2:30 p.m. (Annandale)

Public comments may be submitted until November 2, 1996.

(See Calendar of Events section for additional information)

Basis: Section 46.2-1506 of the Code of Virginia provides the Motor Vehicle Dealer Board with broad authority to promulgate regulations. Specifically, subdivision 4 of § 46.2-1503.4 states that the board is to levy and collect fees to cover the administrative expenses of the board. In addition, §§ 46.2-1519 and 46.2-1546 not only state that the board

shall determine fees, but also set out specific maximum amounts the board may charge.

Purpose: The Motor Vehicle Dealer Board is responsible for the oversight of the automobile dealer industry. At the root of all of the board's mandates and programs is protection of the consumer. Aside from the purchase of a house, the purchase of an automobile is probably the most expensive item a consumer will purchase. The General Assembly has wisely chosen to oversee this industry through the MVDB.

It was recognized early on that fees would need to be adjusted in order for the board to be self-sufficient. The General Assembly granted the board authority to set fees within specific limits. Prior to the 1995 action of the General Assembly to move this function from DMV to a board, the program was running at a deficit, subsidized by the DMV Special Fund. In order to make the operation self-sufficient, even if it had stayed with DMV, a fee increase would be necessary. It is projected that the MVDB will have a negative cash balance by the end of March of 1997 if fees are not adjusted. The continued function of the MVDB will be impacted if fees are not adjusted to meet the expenses of the board.

The board is running as efficiently as possible and it is not possible to economize and decrease expenses to meet the financial demand without seriously compromising the board's responsibilities.

Substance: The regulations will increase the fees for seven dealer-related requirements as follows:

1. Certificate of dealer registration
2. Motor vehicle dealer license
3. Permanent supplemental license
4. Temporary supplemental license
5. Motor vehicle dealer salesperson license
6. First two dealer license plates
7. Third and subsequent dealer license plates

One intent of the General Assembly at the time it enacted the legislation to create the Motor Vehicle Dealer Board, was that the board be self-sufficient. In order for the board to achieve self-sufficiency it must increase its revenue, hence the need to increase fees.

Issues: At the current fee level, the MVDB will not be able to meet its expenses. The MVDB was established by the 1995 General Assembly as a self-sustaining entity. All expenses for the board must be paid through fees assessed by the board. At the time the legislation was proposed, it was recognized that fees would need to be adjusted in order for the board to be self-sufficient. This is evident by the fact that the General Assembly granted the board authority to set fees within specific limits.

It is projected that the MVDB will have a negative cash balance by the end of March of 1997 if fees are not adjusted. In order to ensure a reasonable cash flow, the board feels that it needs the authority to adjust the fees by January 1,

1997. Once the authority to adjust the fees is granted, the first increased payments will be a minimum of 30 days later.

The MVDB is comprised of members who are representative of franchised dealers, independent dealers, consumers and other state agencies. Thorough discussion of the fiscal operation of the board and available options for self-sufficiency led to the decision to increase these specific fees.

Failure to increase the fees will result in a lack of funds for the MVDB which will jeopardize the continued operation of the board.

The advantage to promulgating the regulations is that the Motor Vehicle Dealer Board will enhance its financial security and will continue its mandated function of oversight of motor vehicle dealers throughout the Commonwealth and consumer protection.

There are no disadvantages to promulgating the regulations.

Estimated Impact: Fund balances for the MVDB are projected to drop below \$200,000 in October 1996 and below \$100,000 in December 1996. It is prudent business practice to ensure an adequate fund balance for operating expenses and, accordingly, it is recommended that the MVDB fund balance should never drop below a level equivalent to 60 days of expenses -- i.e., approximately \$220,000 to \$230,000. Further, it is recommended that the board initiate increases to certain fees to ensure that a continuing revenue stream will be available to fund board operations over an extended period of time -- a planning horizon of five years is recommended, providing sufficient resources through fiscal year 2000.

Projected expenditures through the planning horizon can be increased annually at approximately 3.0% to account for inflationary growth in board costs -- both personnel and nonpersonnel -- as shown below. This will provide an estimate of the revenue base needed through fiscal year 2000. The number of dealerships and salespersons are not expected to grow over this time period. Therefore, revenues are not expected to increase.

Year	Projected Revenues (a)	Projected Expenditures (c)
FY96	\$1,231,600 (b)	\$ 890,000
FY97	900,000	1,363,100
FY98	900,000	1,404,000
FY99	900,000	1,446,000
FY00	900,000	1,489,500

(a) Estimates developed by DMV economic/forecasting staff

(b) This includes \$448,138 in fund balance transfers from the Department of Motor Vehicles

(c) FY 97 represents the first full year of expenditures for the board; FY 96 expenditures reflect only a portion of the entire year's expenditure due to the transition of responsibilities from DMV to the MVDB.

There will be no economic impact to the general public and there will be no economic impact to localities by increasing these fees.

In Virginia there are approximately:

655 franchised dealers
3,360 independent dealers
21,270 salespersons

Since January the MVDB issued or renewed approximately:

1,579 certificates of registration
229 permanent supplemental licenses
207 temporary supplemental licenses
26,977 dealer license plates

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 effects.

Summary of the Proposed Regulation. Prior to the creation of the Motor Vehicle Dealer Board (MVDB) by the 1995 General Assembly, regulation of motor vehicle dealers was the responsibility of the Department of Motor Vehicles (DMV). Roughly half of the funds DMV expended to regulate this industry came from various fees charged to motor vehicle dealers and their salespersons, and roughly half were subsidized using other DMV funds. By giving the MVDB statutory authority "to levy and collect fees ... sufficient to cover all expenses for the administration and operation of the Board,"¹ the 1995 General Assembly made it clear that the board would be entirely self-sufficient. Pursuant to this charge, the MVDB is proposing to increase the fees charged to motor vehicle dealers and their salespersons to cover that portion of operational expenditures that had previously been subsidized.

The proposed fee changes are as follows:

- The current fee for certificate of dealer registration is increased from \$100 to \$200;
- The current annual fee for motor vehicle dealer licenses is increased from \$100 to \$200;
- The current fee for supplemental motor vehicle dealer licenses is increased from \$20 to \$40;
- The current fee for motor vehicle dealer salesperson licenses is increased from \$10 to \$20; and

¹ Emphasis added from original.

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- The current fees for dealer license plates are increased from \$30 for the first two plates and \$13 for each additional plate to \$40 for the first two plates and \$15 for each additional plate.

Estimated Economic Impact. The primary economic effect of the proposed regulation would be to increase the regulatory compliance costs incurred by motor vehicle dealers and their salespersons. According to information provided by DMV, it is anticipated that the proposed fee increases would raise total annual regulatory compliance costs by approximately \$770,000.² This figure is based on a projected \$416,000 increase in the total annual fees collected for dealer licenses, a \$252,900 increase in the total annual fees collected for salespersons licenses, and a \$101,100 increase in the total annual fees collected for dealer tags.

Even though the total growth in regulatory compliance costs occasioned by the proposed fee increases is substantial, from the perspective of an individual dealer such fees represent a trivial portion of the overall cost of entering or remaining in the industry. As a result, fee changes like the ones contained in the proposed regulation are unlikely to have a significant effect on the number of dealers choosing to operate in the industry. For this reason, the proposed regulation should have no effect on employment or other indicators of economic activity associated with the size of this industry.

It is likely however, that at least some portion of the anticipated increase in regulatory compliance costs will be passed on to consumers in the form of higher prices. In this regard it is important to note that based on projections provided by DMV, MVDB revenues under the proposed fee increase are expected to exceed expenditures by \$306,900 in FY 1997, \$266,000 in FY 1998, \$224,000 in FY 1999, and \$180,500 in FY 2000.³ Although prudent management practices dictate that the MVDB maintain some surplus, a projected cumulative surplus of \$977,400 over four years is cause for scrutiny. To put these figures in perspective: the projected surplus for FY 1997 accounts for 40% of the total projected increase in regulatory compliance costs for that year; the surplus in FY 1998, 35%; the surplus in FY 1999, 29%; and the surplus in FY 2000, 23%.

Businesses and Entities Particularly Affected. The proposed regulation particularly affects the approximately 655 franchised motor vehicle dealers, 3,360 independent dealers, and 21,270 dealer salespersons currently operating in Virginia.

Localities Particularly Affected. No localities are particularly affected by this proposed regulation.

Projected Impact on Employment. The proposed regulation is not anticipated to have a significant effect on employment.

Affects on the Use and Value of Private Property. The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

Summary of Analysis. The proposed regulation would increase fees paid by motor vehicle dealers and their salespersons for licensure in the Commonwealth of Virginia. It is anticipated that the primary economic effect of these fee increases would be to increase total annual regulatory compliance costs by approximately \$770,000.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Motor Vehicle Dealer Board is proposing regulations to increase its fees in order to prevent a cash deficit. If the fees are not increased, it is projected that the board will have a negative cash balance by the end of March of 1997. The proposed regulation would increase fees paid by motor vehicle dealers and their salespersons by a projected \$770,000 per year.

In its review of the economic impact of this proposed regulation, DPB has commented that the proposed fee increase will result in a projected cumulative surplus of \$977,400 in the Dealer Board fund by FY 2000. DPB feels the magnitude of this surplus gives cause for scrutiny.

The Dealer Board has carefully chosen the proposed fee structure for the reasons enumerated below.

1. The board felt it important to enact a fee structure which would make the board self-sufficient in the long run, so that a request for further increases would not have to be put to the members in a few years.
2. As the DPB analysis notes, good cash management practices suggest carrying a cash balance is prudent.
3. The uncertainty of revenue forecasts suggests that fee increases which are only marginally sufficient are risky.
4. Consolidation of the industry into fewer but larger dealerships with fewer salespersons seems a likely trend. Fees should be high enough to generate the needed revenue from a declining tax base.
5. The board is proposing a legislative package for 1997 which could potentially decrease the estimated additional revenues generated by the new fees. This package would decrease the number of dealers currently paying license and dealer plate fees. Over four years, this legislative package could decrease the DPB anticipated surplus of board revenues by \$280,000.
6. Finally, §§ 46.2-1519 and 46.2-1546 give the board the authority to determine fees subject to specified ceilings. The proposed fees put forward by the board are below these maximum levels and within the statutory authority given to the board by the General Assembly.

² This estimate is based on the number of license transactions projected for fiscal year (FY) 1997. Information provided by DMV indicates that, in the near future, the current wave of consolidations in the motor vehicle dealer industry is likely to offset the number of new entrants into this industry and keep the overall number of dealers at, or slightly below, current levels. As a result, it is anticipated that future license transactions and, consequently, the \$770,000 increase in total annual regulatory compliance costs, will likely remain constant at the FY 1997 level.

³ These estimated surpluses are based on DMV's projections of \$1,670,00 in revenues and \$1,363,100 in expenditures for FY 1997, \$1,670,00 in revenues and \$1,404,000 in expenditures for FY 1998, \$1,670,00 in revenues and \$1,446,00 in expenditures for FY 1999, and \$1,670,00 in revenues and \$1,489,000 in expenditures for FY 2000.

Summary:

The Motor Vehicle Dealer Board is a self-sustaining entity. All expenses for the board must be paid through fees assessed by the board. At the current fee level the board will not be able to meet its expenses. It is projected that the board will have a negative cash balance by the end of March 1997 if the fees are not adjusted. The proposed regulations will increase certain fees for motor vehicle dealers and salespersons and enable the board to continue its function.

CHAPTER 20. MOTOR VEHICLE DEALER FEES.

24 VAC 22-20-10. Definitions.

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

"Dealer license plates" means license plates bearing a distinctive number, and the name of the Commonwealth, which may be abbreviated, together with the word "dealer" or a distinguishing symbol, indicating that the plate is issued to a manufacturer, distributor, or dealer, and further distinguishes franchised or independent dealers.

"Motor vehicle dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or the same as provided in § 46.2-1500 of the Code of Virginia;
2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him; or
3. Offers to sell, sells, displays, or permits the display for sale of, five or more motor vehicles within any 12 consecutive months.

The term "motor vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.
2. Public officers, their deputies, assistants, or employees, while performing their official duties.
3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520 and 46.2-1548 of the Code of Virginia.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.

6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

7. Any person licensed to sell real estate who sells a mobile home or similar vehicle in conjunction with the sale of the parcel of land on which the mobile home or similar vehicle is located.

8. Any person who permits the operation of a motor vehicle show or permits the display of motor vehicles for sale by any motor vehicle dealer licensed under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2 of the Code of Virginia.

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of vehicles under a contract with its insured in the regular course of business.

10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.

11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia.

"Motor vehicle salesperson" means any person who is licensed and employed as a salesperson by a motor vehicle dealer to sell or exchange motor vehicles. It shall also mean any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles.

"Supplemental license" means a license issued by the Motor Vehicle Dealer Board for a licensed motor vehicle dealer to display for sale or sell vehicles at locations other than his established place of business, subject to compliance with local ordinances and requirements.

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24 VAC 22-20-20. Fees.

A. *Certificate fees. All applications for certificates are nonrefundable. Fees for application of certificates are as follows:*

Certificate of Dealer Registration \$200

B. *License fees. All license fees, except initial license fees, are nonrefundable. Annual fees for licenses are as follows:*

Motor Vehicle Dealer License \$200

Permanent Supplemental License \$40

Temporary Supplemental License (Valid for 7 days)
\$40 (per 7-day license)

Motor Vehicle Dealer Salesperson License \$20

C. *Dealer license plate fees. Fees for dealer license plates are nonrefundable. Annual fees for dealer license plate are as follows:*

First two plates \$20 each

Third and subsequent plates \$15

All renewal fees are due to the Motor Vehicle Dealer Board on the last day of the expiration month and shall be considered filed on time if postmarked prior to the expiration date.

VA.R. Doc. No. R96-531; Filed August 14, 1996, 11:39 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

Title of Regulation: 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) (amending 9 VAC 5-80-50, 9 VAC 5-80-60, 9 VAC 5-80-70, 9 VAC 5-80-80, 9 VAC 5-80-90, 9 VAC 5-80-110, 9 VAC 5-80-150, 9 VAC 5-80-190, 9 VAC 5-80-210, 9 VAC 5-80-230, 9 VAC 5-80-270, 9 VAC 5-80-280, 9 VAC 5-80-310, 9 VAC 5-80-320, 9 VAC 5-80-340 and 9 VAC 5-80-350; adding 9 VAC 5-80-305, 9 VAC 5-80-355, 9 VAC 5-80-710 and 9 VAC 5-80-720).

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

Effective Date: October 15, 1996.

Summary:

The regulation amendments concern provisions covering federal operating permits for stationary sources and permit program fees for stationary sources and are summarized as follows: (i) source applicability has been cited directly to federal law; (ii) a definition of "Title I modification" has been added; (iii) the definition of state regulations considered federally enforceable has been clarified; (iv) the fee calculation formula has been changed to specify a fee of \$25; (v) certain provisions pertaining to insignificant activities have been modified; and (vi) an allowance was made for the submission of multiple permit applications by a single source.

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. There is a copy charge of \$.20 per page.

PART II.

FEDERAL OPERATING PERMITS AND PERMIT PROGRAM FEES FOR STATIONARY SOURCES.

Article 1.

Federal Operating Permits for Stationary Sources (Rule 8-5).

9 VAC 5-80-50. Applicability.

A. Except as provided in subsection C of this section, the provisions of this rule apply to the following stationary sources:

1. Any major source.
2. Any source, including an area source, subject to the provisions of 9 VAC 5-40-10 et seq. and 9 VAC 5-50-10 et seq. as adopted pursuant to a standard, limitation, or

other requirement under § 111 of the federal Clean Air Act.

3. Any source, including an area source, subject to the provisions of 9 VAC 5-60-10 et seq. as adopted pursuant to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.

4. Any affected source or any portion of it not subject to Rule 8-7 (9 VAC 5-80-360 et seq.).

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 source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Rule 5-5 (9 VAC 5-50-400 et seq.).

2. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR 61.145, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos, *Standard for Demolition and Renovation*), ~~§ 61.145 (Standard for Demolition and Renovation)~~, as prescribed in Rule 6-1 (9 VAC 5-60-60 et seq.).

3. Any source that would be subject to this rule solely because it is subject to regulations or requirements concerning prevention of accidental releases under § 112(r) of the federal Clean Air Act.

4. 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 5-80-180.

D. Deferral from initial applicability.

1. Sources deferred from initial applicability. Area sources subject to this rule under subdivision A 2 or subdivision A 3 of this section shall be deferred from the obligation to obtain a permit under this rule. The decision to require a permit for these sources shall be made at the time that a new standard is promulgated and shall be incorporated into 9 VAC 5-40-10 et seq., 9 VAC 5-50-10 et seq. or 9 VAC 5-60-10 et seq. along with the listing of the new standard.

2. Sources not deferred from initial applicability. The following sources shall not be deferred from the obligation to obtain a permit under this rule:

a. Major sources.

b. Solid waste incineration units subject to the provisions of 9 VAC 5-40-10 et seq. and 9 VAC 5-50-10 et seq. as adopted pursuant to § 129(e) of the federal Clean Air Act.

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3. Any source deferred under subdivision D 1 of this section may apply for a permit. The board may issue the permit if the issuance of the permit does not interfere with the issuance of permits for sources that are not deferred under this section or otherwise interfere with the implementation of this rule.

E. 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.

F. The provisions of 9 VAC 5-80-90 concerning application requirements shall not apply to insignificant activities designated in ~~Section II of 9 VAC 5-10-20, Appendix W 9 VAC 5-80-720~~ with the exception of the requirements of 9 VAC 5-80-90 D 1 and ~~Section I of Appendix W 9 VAC 5-80-710.~~

9 VAC 5-80-60. Definitions.

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

B. As used in this rule, all terms not defined here shall have the meaning given them in 9 VAC 5-10-10 et seq., unless otherwise required by context.

C. Terms defined.

"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 under 40 CFR Part 72, 73, 75, 76, 77 or 78.

"Allowable emissions" means the emission rates of a stationary 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 or both) and the most stringent of the following:

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

"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):

a. 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.

b. Any term or condition of any preconstruction permit issued pursuant to 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 or of any operating permit issued pursuant to 9 VAC 5-80-40, 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.

c. Any standard or other requirement prescribed under these regulations, particularly the provisions of 9 VAC 5-40-10 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.

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

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

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

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

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

i. 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.

j. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in 9 VAC 5-80-20.

"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):

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

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

"Area source" means any stationary source that is not a major source. For purposes of this rule, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Complete application" means an application that contains all the information required pursuant to 9 VAC 5-80-80 and 9 VAC 5-80-90 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.

"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 regulation, 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 regulation, the term shall be construed to include the alternate designated representative.

"Draft permit" means the version of a permit for which the board offers public participation under 9 VAC 5-80-270 or affected state review under 9 VAC 5-80-290.

"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 a stationary 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 40 CFR Part 72.

"Federal implementation plan" means the plan, including any revision of it, 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:

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

"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 5-80-270 and 9 VAC 5-80-290.

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

"General permit" means a permit issued under this rule that meets the requirements of 9 VAC 5-80-120.

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

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

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

- (1) Coal cleaning plants (with thermal dryers).
- (2) Kraft pulp mills.
- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric, sulfuric, or nitric acid plants.
- (10) Petroleum refineries.
- (11) Lime plants.
- (12) Phosphate rock processing plants.
- (13) Coke oven batteries.

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- (14) Sulfur recovery plants.
- (15) Carbon black plants (furnace process).
- (16) Primary lead smelters.
- (17) Fuel conversion plant.
- (18) Sintering plants.
- (19) Secondary metal production plants.
- (20) Chemical process plants.
- (21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.
- (26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (27) [~~All other stationary source categories regulated by a standard promulgated under § 111 or 112 of the federal Clean Air Act, but only with respect to those air pollutants that are regulated for that category. Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the administrator has made an affirmative determination under § 302(j) of the federal Clean Air Act.~~]

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (No. requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"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.

"Permit," unless the context suggests otherwise, means any permit or group of permits covering a source subject to 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 5-80-210 on minor permit modifications, 9 VAC 5-80-220 on group processing of minor permit modifications, or 9 VAC 5-80-230 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9 VAC 5-80-210, 9 VAC 5-80-220 or 9 VAC 5-80-230 or any administrative permit amendment that meets the requirements of 9 VAC 5-80-200.

"Potential to emit" means the maximum capacity of a stationary 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.

"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 5-80-290.

"Regulated air pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound.
- b. Any pollutant for which an ambient air quality standard has been promulgated.
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
- d. 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.
- e. 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.
- f. Any pollutant subject to a regulation adopted pursuant to a 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.

"Research and development facility" means all the following as applied to any stationary source:

- a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or into refining and improving existing

products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge.

b. The source is operated under the close supervision of technically trained personnel.

c. The source is not engaged in the manufacture of products for commercial sale. An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Responsible official" means one of the following:

a. For a business entity, such as a corporation, association or cooperative:

(1) 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

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

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

c. 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).

d. For affected sources:

(1) 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

(2) The designated representative or any other person specified in this definition for any other purposes under this rule.

"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 of it, 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.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see Appendix M). At the request of the applicant, any research and development facility may be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

"Title I modification" means any modification under Parts C and D of Title I or § [§] 111(a)(4), [§] 112(a)(5), or [§] 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in 40 CFR 61.07; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

9 VAC 5-80-70. General.

A. No permit may be issued pursuant to this rule until the rule has been approved by the administrator, whether full, interim, partial [, for federal delegation purposes,] 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 implementing and enforcing those provisions of this rule associated with applicable federal requirements as well as those provisions of this rule intended to implement Title V of the federal Clean Air Act, 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 5-80-80. Applications.

A. A single application is required identifying each emission unit subject to this rule. The application shall be

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submitted according to the requirements of this section, 9 VAC 5-80-90 and procedures approved by the board. Where several units are included in one stationary source, a single application covering all units in the source shall be submitted. ~~[Notwithstanding the preceding, upon approval of the board owners of stationary sources that include numerous emitting units may submit more than one application on a case-by-case basis provided that the resulting collection of permits would not interfere with the determination of the applicability of this rule, the determination or imposition of any applicable requirement, or the calculation of permit fees.]~~ A separate application is required for each stationary source subject to this rule.

B. For each stationary source, the owner shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. Timely application.

1. The owner of a stationary source applying for a permit under this rule for the first time shall submit an application within 12 months after the source becomes subject to this rule, except that stationary sources not deferred under 9 VAC 5-80-50 D shall submit their applications on a schedule to be determined by the department but no later than 12 months following the effective date of approval of this rule by the administrator [, to include approval for federal delegation purposes].

2. New source review.

a. 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.

b. 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.

3. 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. Complete application.

1. To be determined complete, an application shall contain all information required pursuant to 9 VAC 5-80-90.

2. Applications for permit revision or for permit reopening shall supply information required under 9 VAC 5-80-90 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, 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.

E. Duty to supplement or correct application.

1. 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.

2. 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. Application shield.

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 5-80-150.

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 5-80-210 F or 9 VAC 5-80-220 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 5-80-150.

4. If the source notifies the board that it wants to make an operational flexibility permit change under 9 VAC 5-80-280 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 5-80-280 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 5-80-140, 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 F 1 and F 5 (ii) of this section 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.

G. Signatory and certification requirements.

1. Any application form, report, compliance certification, or other document required to be submitted to the board under this rule shall be signed by a responsible official.

2. Any person 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 5-80-90. 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.

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.

D. Emissions-related information.

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 ~~section II B or II C of 9 VAC 5-10-20, Appendix W 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 ~~section II A of Appendix W 9 VAC 5-80-720 A.~~

(2) Regardless of the emissions units designated in ~~section II A or II C of 9 VAC 5-10-20, Appendix W 9 VAC 5-80-720 A or C~~ or the emissions levels listed in ~~section II B of Appendix W 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 of the applicability of this rule*, 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 quantifiable regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

2. Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to Rule 8-6 as required by the board. Identification and description of all points of emissions described in subdivision D 1 of this section 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.

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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 D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirements.

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 5-80-110 J or to define permit terms and conditions implementing operational flexibility under 9 VAC 5-80-280.

I. Compliance plan.

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 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 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.

4. 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.

J. Compliance certification.

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, record keeping, 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 (9 VAC 5-80-310 et seq.).

[9 VAC 5-80-110. Permit content.

A. General.

1. For major sources subject to this rule, the board shall include in the permit all applicable requirements for all emissions units in the major source except those deemed insignificant in [~~9 VAC 5-10-20, Appendix W~~ Article 4 (9 VAC 5-80-710 et seq.) of this part].

2. For any source other than a major source subject to this rule, the board shall include in the permit all applicable requirements that apply to emissions units that cause the source to be subject to this rule.

3. For all sources subject to this rule, the board shall include in the permit applicable requirements that apply to fugitive emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

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

B. Emission limitations and standards. 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. Equipment specifications and operating parameters. 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. Duration. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Monitoring. 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 record keeping 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. Record keeping provisions may be sufficient to meet the requirements of subdivision E 2 of this section.

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

F. Record keeping and reporting.

1. To meet the requirements of subsection E of this section with respect to record keeping, the permit shall contain terms and conditions setting out all applicable record keeping 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 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 5-80-80 G.

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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. Enforcement. 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 subsection L of this section, 9 VAC 5-80-240 and 9 VAC 5-80-260. 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. Permit fees. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with the fee schedule approved pursuant to Rule 8-6 (9 VAC 5-80-310 et seq.).

I. Emissions trading.

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any 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 of this section shall be included to determine compliance.

b. The permit shield described in 9 VAC 5-80-140 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. Alternative operating scenarios. 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 5-80-140 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. Compliance. 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 record keeping 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 5-80-80 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 5-80-90 I.

4. Progress reports consistent with an applicable schedule of compliance and 9 VAC 5-80-90 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 [, and if not continuous, documentation of each incident of noncompliance].

(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. Reopening. 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 a major 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 5-80-80 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 not be reopened by the board if additional applicable state requirements become applicable to a major source prior to the expiration date established under subsection D of this section.

M. Miscellaneous. 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. Federal enforceability.

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 N 2 of this section.

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 5-80-290 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 provisions will become federally enforceable upon approval of the provisions by the administrator and through an administrative permit amendment.]

[9 VAC 5-80-150. Action on permit application.

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A. 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, except that a complete application need not be received before issuance of a general permit under 9 VAC 5-80-120.
2. Except for modifications qualifying for minor permit modification procedures under 9 VAC 5-80-210 or 9 VAC 5-80-220, the board has complied with the requirements for public participation under 9 VAC 5-80-270.
3. The board has complied with the requirements for notifying and responding to affected states under 9 VAC 5-80-290.
4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Rule 8-6 (9 VAC 5-80-310 et seq.), and the requirements of this rule.
5. The administrator has received a copy of the proposed permit and any notices required under 9 VAC 5-80-290 A and 9 VAC 5-80-290 B and has not objected to issuance of the permit under 9 VAC 5-80-290 C within the time period specified therein.

B. The board shall take final action on each permit application (including a request for permit modification or renewal) no later than 18 months after a complete application is received by the board, with the following exceptions:

1. For sources not deferred under 9 VAC 5-80-50 D, one-third of the initial permits shall be issued in each of the three years following the administrator's approval of this rule [, to include approval for federal delegation purposes].
2. For permit revisions, as required by the provisions of 9 VAC 5-80-200, 9 VAC 5-80-210, 9 VAC 5-80-220 or 9 VAC 5-80-230.

C. 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.

D. 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). The board shall send this statement to the administrator and to any other person who requests it.

E. 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 5-80-190. Changes to permits.

A. Applicability.

1. 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 through D of this section and 9 VAC 5-80-200 through 9 VAC 5-80-240 of this rule.

2. 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.

3. Changes to a permit issued under this rule and during its five-year term that pertain to applicable federal requirements may be initiated by the permittee as specified in subsection B of this section or by the board or administrator as specified in subsection C of this section.

B. Changes initiated by the permittee.

1. 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 5-80-200 through 9 VAC 5-80-230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. Changes initiated by the administrator or the board. The administrator or the board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-240.

D. Permit term. Changes to permits shall not be used to extend the term of the permit.

E. Changes at a source and applicable state requirements.

1. Exemption from permit revision and reopening requirements. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9 VAC 5-80-200 through 9 VAC 5-80-240.

2. Criteria for making the change. 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.

- 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 pertaining 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. Notification. 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. Permit shield. The change shall not qualify for the permit shield under 9 VAC 5-80-140.

9 VAC 5-80-210. 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 record keeping 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 record keeping 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, 9 VAC 5-80-30 or § 112 of the federal Clean Air Act Title I modification~~, 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, 9 VAC 5-80-30 or under § 112 of the federal Clean Air Act Title I modifications~~; and
6. Are not required to be processed as a significant modification under 9 VAC 5-80-230; or as an administrative permit amendment under 9 VAC 5-80-200.

B. Notwithstanding subsection A of this section and 9 VAC 5-80-220 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. Application. An application requesting the use of minor permit modification procedures shall meet the requirements of 9 VAC 5-80-90 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 5-80-80 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Public participation and EPA and affected state notification.

1. 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 5-80-290 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 5-80-290 B 2 to the administrator.

2. The public participation requirements of 9 VAC 5-80-270 shall not extend to minor permit modifications.

E. Timetable for issuance.

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 5-80-290 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.
- 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 5-80-290 A.

F. Ability of owner to make change.

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 F 1 of this section 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 F 2 of this section, 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.

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G. Permit shield. The permit shield under 9 VAC 5-80-140 shall not extend to minor permit modifications.

9 VAC 5-80-230. Significant modification procedures.

A. Criteria.

1. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9 VAC 5-80-210 or 9 VAC 5-80-220 or as administrative amendments under 9 VAC 5-80-200.

2. Significant modification procedures shall be used for those permit modifications that:

a. Involve significant changes to existing monitoring, reporting, or record keeping 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 record keeping requirements.

b. 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 9 VAC 5-80-10 et seq.

c. 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:

(1) A federally enforceable emissions cap assumed to avoid classification as a ~~modification under 9 VAC 5-80-10, 9 VAC 5-80-20, 9 VAC 5-80-30 or § 112 of the federal Clean Air Act Title I modification.~~

(2) 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. Application. An application for a significant permit modification shall meet the requirements of 9 VAC 5-80-80 and 9 VAC 5-80-90 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 5-80-290.

C. EPA and affected state notification. The provisions of 9 VAC 5-80-290 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. Public participation. The provisions of 9 VAC 5-80-270 shall apply to applications made under this section.

E. Timetable for issuance. The board shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. Ability of owner to make change. 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. Permit shield. The provisions of 9 VAC 5-80-140 shall apply to changes made under this section.

9 VAC 5-80-270. Public participation.

A. Required public comment and public notice. 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. Notification.

1. 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.

2. For major 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. 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. Affected states review. The board shall provide such notice and opportunity for participation by affected states as is provided for by 9 VAC 5-80-290.

E. Opportunity for public hearing.

1. The board shall provide an opportunity for a public hearing as described in subdivisions E 2 through E 6 of this section.

2. Following the initial publication of notice of a public comment period, the board will 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 subdivision 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 E 4 of this section.

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 E 1 through E 6 of this section, 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 E 3 a and b of this section 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.

F. Public comment record.

1. The board shall keep two records of public participation as follows:

a. A record of the commenters.

b. 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.

2. Such records shall be made available to the public upon request.

9 VAC 5-80-280. 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. Changes that contravene an express permit term.

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1. General.

a. The board shall allow a change at a stationary 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 A Title I modification.~~

~~(2) A modification under the provisions of or regulations promulgated pursuant to § 112 of the federal Clean Air Act.~~

~~(3).~~ (2) A change that would exceed the emissions allowable under the permit.

(4) (3) A change that would violate applicable requirements.

(5) (4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), record keeping, 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 B 1 b of this section to their copy of the relevant permit.

d. The permit shield under 9 VAC 5-80-140 shall not extend to any change made pursuant to ~~subsection~~ *subdivision* B 1 of this section.

2. Emission trades within permitted facilities provided for in these regulations.

a. With the exception of the changes listed in subdivision B 1 a of this section, 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 5-80-140 shall not extend to any change made under subdivision B 2 of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of these regulations.

3. Emission trades within stationary 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 5-80-110 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 subsection B 3 of this section if it is a change listed in subdivision B 1 of this section.

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 5-80-140 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. 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: Title I modifications.~~

~~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 ~~section II A of Appendix W 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 5-80-140.

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 5-80-305. Review and confirmation of this article by board.

A. Within three years following the approval by the U. S. Environmental Protection Agency of this article, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this article; (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements; (iii) the federal approval status of this article; and (iv) an assessment of the need for continuation of this article.

B. Upon review of the department's analysis, the board shall confirm (i) the continuation of this article; (ii) the repeal of this article; or (iii) the need to amend this article. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.]

Article 2.

Permit Program Fees For Stationary Sources (Rule 8-6).

9 VAC 5-80-310. Applicability.

A. Except as provided in subsection C of this section, the provisions of this rule apply to the following stationary sources:

1. Any major source;
2. Any source, including an area source, subject to the provisions of Parts IV and V of these regulations adopted pursuant to a standard, limitation, or other requirement under § 111 of the federal Clean Air Act;
3. Any source, including an area source, subject to the provisions of Part VI of these regulations adopted pursuant to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act;
4. Any affected source;
5. Any other source subject to the permit requirements of Rule 8-5 (9 VAC 5-80-50 et seq.); and
6. Any source that would be subject to the permit requirements of Rule 8-5 in the absence of a permit issued under 9 VAC 5-80-40.

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. All sources and source categories that would be subject to this rule solely because they are subject to the provisions of 40 CFR Part 60, Subpart AAA (standards of performance for new residential wood heaters), as prescribed in Rule 5-5; (9 VAC 5-50-400 et seq.).

2. All sources and source categories that would be subject to this rule solely because they are subject to the provisions of 40 CFR ~~61.145~~ (national emission standard for hazardous air pollutants for asbestos, standard for demolition and renovation), Subpart M, ~~§61.145~~ (national emission standard for hazardous air pollutants for asbestos, standard for demolition and renovation), as prescribed in Rule 6-1; (9 VAC 5-60-60 et seq.).

3. Any source issued a permit under 9 VAC 5-80-10, 9 VAC 5-80-20, or 9 VAC 5-80-30 that began initial operation during the calendar year preceding the year in which the annual permit program fee is assessed;

4. That portion of emissions in excess of 4,000 tons per year of any regulated air pollutant emitted by any source otherwise subject to an annual permit program fee;

5. During the years 1995 through 1999 inclusive, any affected source under § 404 of the federal Clean Air Act (phase I sulfur dioxide requirements);

6. Any emissions unit within a stationary source subject to this rule that is identified as being an insignificant activity in ~~9 VAC 5-10-20, Appendix W; and Article 4~~ (9 VAC 5-80-710 et seq.) of this part.

7. All sources and source categories that would be subject to this rule solely because they are subject to regulations or requirements under § 112(r) of the federal Clean Air Act.

[9 VAC 5-80-320. Definitions.

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

B. All words and phrases not defined in subsection C of this section shall have the meaning given them in 9 VAC 5-10-10 et seq., unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions in tons per year of any regulated air pollutant emitted from a source subject to this rule over the preceding calendar year. Actual emissions may be calculated according to any method acceptable to the department provided such calculation takes into account the source's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Any regulated pollutant which could be classed in more than one category shall be classed in only one category.

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

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"Affected unit" means a unit that is subject to any federal acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR [Parts] 72, 73, 75, 77 or 78.

"Area source" means any stationary source that is not a major source. For purposes of this section, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

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

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

- (1) Coal cleaning plants (with thermal dryers);
- (2) Kraft pulp mills;
- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plant;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(27) [~~All other stationary source categories regulated by a standard promulgated under § 111 or § 112 of the federal Clean Air Act, but only with respect to those air pollutants that have been regulated for that category. Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the administrator has made an affirmative decision under § 302(j) of the federal Clean Air Act.~~]

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NOx requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Permit program costs" means all reasonable (direct and indirect) costs required to develop, administer, and enforce the permit program; and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

"Potential to emit" means the maximum capacity of a stationary 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.

"Regulated air pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound;
- b. Any pollutant for which an ambient air quality standard has been promulgated except carbon monoxide;
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;
- d. Any pollutant subject to a standard promulgated under § 112 (hazardous air pollutants) or other requirements established under § 112 of the federal Clean Air Act, particularly §§ 112(b), 112(d), 112(g)(2), 112(j), and 112(r); except that any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under § 112(r) of the federal Clean Air Act shall be exempt from this rule.

"Research and development facility" means all the following as applied to any stationary source:

- a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge;
- b. The source is operated under the close supervision of technically trained personnel; and
- c. The source is not engaged in the manufacture of products for commercial sale in commerce.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same persons (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., if they have the same two-digit code) as described in the Standard Industrial Classification Manual (see [~~9-VAC-5-10-20, Appendix M 9 VAC 5-10-21~~]). Any research and development facility shall be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

9 VAC 5-80-340. Annual permit program fee calculation.

A. The annual permit program fee shall not exceed the base year amount as specified in § 10.1-1322 B of the Virginia Air Pollution Control Law and shall be adjusted annually by the Consumer Price Index as provided in § 10.1-1322 B of the Virginia Air Pollution Control Law.

1. The annual permit program fee shall be increased (consistent with the need to cover reasonable costs) each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year

ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the U.S. Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

2. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

B. The annual permit program fee described in subsection A of this section and the amount billed to the owner as provided in subsection A of 9 VAC 5-80-350 for a given year shall be calculated in accordance with the following formulae:

$$B = (A)(F)$$

$$F = \frac{X(1 + \Delta \text{CPI})}{\text{CPI} - 122.15}$$

$$\Delta \text{CPI} = \frac{\text{CPI} - 122.15}{122.15}$$

where:

B = the amount billed to the owner during the year after the year in which the actual emissions occurred, expressed in dollars

A = actual emissions covered by permit fees, expressed in tons

F = the maximum adjusted fee per ton for the calendar year in which the actual emissions occurred, expressed in dollars per ton

X = ~~the base year amount specified in § 10.1-1322 B of the Virginia Air Pollution Control Law 25~~, expressed in dollars per ton

Δ CPI = the difference between the CPI and 122.15 (the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31, 1989)

CPI = the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31 of the year in which the emissions actually occurred, expressed as a percentage

C. The actual emissions covered by the permit program fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the department.

D. If the assessment of the annual permit program fee calculated in accordance with subsections A, B, and C of this section results in a total amount of fee revenue in excess of the amount necessary to fund the permit program costs, a lesser annual permit program fee shall instead be calculated and assessed according to the formula specified in subsection E of this section. Any adjustments made to the annual permit program fee shall be within the constraints of

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40 CFR 70.9 and § 10.1-1322 of the Virginia Air Pollution Control Law.

E. The lesser annual permit program fee shall be calculated according to the following formula: estimated permit program costs ÷ estimated actual emissions = lesser annual permit program fee. The estimated permit program costs and estimated actual emissions shall be determined from the data specified in subdivisions E 1 and E 2 of this section, incorporating any anticipated adjustments to the data.

1. The current permit program costs shall be determined from the most recent available annual expenditure record of the amount spent by the department on permit program costs.

2. The current actual emissions shall be determined from the most recent available annual emissions inventory of the actual emissions for each regulated pollutant subject to fees from all sources subject to the annual permit program fee.

[9 VAC 5-80-350. Annual permit program fee payment.

A. Upon determining that the owner owes an annual permit program fee, the department shall mail a bill for the fee to that owner no later than [*June August*] 1, or in the case of the initial bill no later than 60 days after federal program approval, unless the governor determines that fees are needed earlier for Virginia to maintain primacy over the program, as provided in § 10.1322 B of the State Air Pollution Control Law.

B. Within 30 days following the date of the postmark on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full. The fee shall be paid by check or money order made payable to "Department of Environmental Quality" and mailed to the address specified by the department.

2. The owner may make a written request to the department to authorize an alternative payment schedule. The deadline for payment of the fee shall be held in abeyance pending the department's response.

C. Failure of the owner to respond within 90 days following the date of the postmark on the bill in one of the two ways specified in subsection B of this section shall be grounds to institute a collection action against the owner by the Attorney General or to initiate appropriate enforcement action as provided in the Virginia Air Pollution Control Law.]

[9 VAC 5-80-355. Review and confirmation of this article by board.

A. Within three years following the approval by the U. S. Environmental Protection Agency of this article, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this article; (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements; (iii) the federal approval status of this article; and (iv) an assessment of the need for continuation of this article.

B. Upon review of the department's analysis, the board shall confirm (i) the continuation of this article; (ii) the repeal of this article; or (iii) the need to amend this article. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.]

Article 3.

Reserved.

9 VAC 5-80-360 through [~~9 VAC 5-80-700~~ 9 VAC 5-80-705]. Reserved.

APPENDIX W. INSIGNIFICANT ACTIVITIES.

Article 4.

Insignificant Activities.

I. 9 VAC 5-80-710. General.

A. For the purposes of Rules 8-5 (9 VAC 5-80-50 et seq.), 8-6 (9 VAC 5-80-310 et seq.) and 8-7 (9 VAC 5-80-360 et seq.), insignificant activities shall be those activities listed in Section II of this appendix 9 VAC 5-80-720. There are three categories of insignificant activities as follows:

1. Insignificant emissions units. This category includes emissions units that are deemed insignificant because they are sufficiently small so as to be considered insignificant for the purpose of identifying the emissions units in permit applications. Emissions units in this category are not required to be included in permit applications submitted pursuant to Rule 8-5 or Rule 8-7. Insignificant activities falling into this category are listed in section II A of this appendix 9 VAC 5-80-720 A.

2. Emissions units with insignificant emissions levels. This category includes emissions units, other than those in section I subdivision A 1 of this appendix section, that are deemed insignificant because they have emissions levels sufficiently small so as to be considered insignificant for the purpose of quantifying the emissions from the emissions units in a permit application. Emissions units emitting at these insignificant levels are required to be identified by listing them as insignificant emissions units in the permit application submitted pursuant to Rule 8-5 or Rule 8-7. The list of insignificant emissions units shall also specify the pollutant or pollutants emitted at insignificant emissions levels for each emissions unit on the list. However, information on the amount of emissions from these units is not required to be provided. insignificant activities in this category are listed in section II 9 VAC 5-80-720 B of this appendix.

3. Emissions units of an insignificant size or production rate. This category includes emissions units, other than those in section I A 1 or section I A 2 of this appendix subdivision 1 or 2 of this subsection, that are deemed insignificant because the emissions from these units are considered to be of minimal or no air quality concern for the purpose of quantifying the emissions from the emissions units in a permit application. Emissions units in this category are required to be identified by listing them as insignificant emissions unit in the permit application submitted pursuant to Rule 8-5 or Rule 8-7.

The list of insignificant emissions units shall also specify the size or the production rate for each emissions unit on the list. Insignificant activities in this category are listed in ~~section II C of this appendix~~ 9 VAC 5-80-720 C.

4. Regardless of the emissions units designated in ~~sections II A, II B, or II C of this appendix~~ 9 VAC 5-80-720 A, B, or C, the emissions from any emissions unit should be included in the permit application submitted pursuant to Rule 8-5 or Rule 8-7 if the omission of those emissions units would interfere with *the determination of applicability of Rule 8-5 or 8-7*, the determination of or imposition of any applicable requirement, or the calculation of permit fees.

B. Definitions.

1. For the purpose of this ~~appendix article~~ and subsequent amendments issued by the board, the words or terms shall have the meaning given them in ~~subsection B subdivision 2 of this section~~ *subsection*. As used in this ~~appendix article~~, all terms not defined here shall have the meaning given them in 9 VAC 5-10-10 et seq., unless otherwise required by context.

2. Terms defined.

"Uncontrolled emissions" means the emissions from a source when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment which is not vital to its operation, except that its use enables the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted or processed may be used in determining the uncontrolled emissions of a source. Secondary emissions do not count in determining the uncontrolled emissions of a stationary source.

II. 9 VAC 5-80-720. Insignificant activities.

A. Insignificant emissions units.

1. Gas flares or flares used solely to indicate danger to the public; .
2. ~~Comfort air conditioning~~ or Ventilation systems not used to remove air contaminants generated by or released from specific units of equipment; .
3. Portable heaters which can reasonably be relocated through the manual labor of one person; .
4. Space heaters operating by direct heat or radiant heat transfer, or both; .
5. Office activities and the equipment and implements used to carry out these activities, such as typewriters, printers, and pens; .
6. Interior maintenance activities and the equipment and supplies used to carry out these activities, such as

janitorial cleaning products and air fresheners, but not cleaning of production equipment; .

7. Architectural maintenance and repair activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing and sandblasting, where no structural repairs are made in conjunction with the installation of new or permanent facilities; .

8. Exterior maintenance activities conducted to take care of the grounds of the source, including lawn maintenance; .

9. Bathroom and locker room ventilation and maintenance; .

10. Copying and duplication activities for internal use and support of office activities at the source; .

11. Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source; .

12. Equipment used solely for the purpose of preparing food to be eaten on the premises of industrial and manufacturing operations; .

13. Safety devices; .

14. Air contaminant detectors and test equipment; .

15. Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source; .

16. The engine of any vehicle, including but not limited to any marine vessel, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment, including any auxiliary engine that provides cooling or refrigeration of the vehicle; .

17. Firefighting equipment and the equipment used to train firefighters; .

18. Laboratories used solely for the purpose of quality control or environmental compliance testing that are associated with manufacturing, production or other industrial or commercial facilities; .

19. Laboratories in primary and secondary schools and in schools of higher education used for instructional purposes; .

20. Air compressors and pumps (engines for these emissions units are covered separately under ~~Section II subdivision C 1 of this section~~); .

21. Dumpster; .

22. Grinding or abrasive blasting for nondestructive testing of metals; .

23. Dryers and distribution systems for instrument air; .

24. Parts washer (water-based); .

25. Dispensing facilities for refueling diesel-powered vehicles or equipment, including any diesel fuel storage tank serving only such dispensing facility; [, to the extent

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that this activity is not regulated by § 111 or § 112 of the federal Clean Air Act].

26. Laboratory analytical equipment and vents except at stationary sources primarily engaged in research and development; .

27. Nonroutine clean out of tanks and equipment for the purposes of worker entry or in preparation for maintenance or decommissioning; .

28. Sampling connections and systems used exclusively to withdraw materials for testing and analysis including air contaminant detectors and vent lines; .

29. Maintenance activities such as hand-held or manually-operated maintenance equipment, railroad track maintenance, repair and maintenance cleaning, and maintenance surface preparation activities; .

30. Solvent storage cabinet (containers covered); .

31. Cooling ponds; .

32. Coal pile run-off ponds; .

33. Mechanical drive or gear boxes; .

34. Equipment for steam cleaning or brushing dust off equipment; .

35. Repair of residential units; .

36. Farm equipment; [, with the exception of grain elevators or combustion devices not already listed as insignificant activities].

37. Water tanks; .

38. Hydroblasting; .

39. Process raw water treatment (e.g., phosphate); .

40. Water cooling tower except for systems including contact process water or water treated with chromium-based chemicals; .

41. Spill collection tanks; .

42. Steam vents and leaks from boilers and steam distribution systems; .

43. Boiler water treatment operations, except those involving use of hydrazine.

44. Herbicide mixing and application activities not involving herbicide manufacture; .

45. [~~Internal combustion powered compressors and pumps used for emergency replacement or standby service; Nonhazardous boiler cleaning solutions~~].

46. Portable or mobile containers; .

47. Vent or exhaust system for:

- a. Transformer vaults and buildings;
- b. Electric motor and control panel vents; and
- c. Deaerators and decarbonators.

48. Vents or stacks for sewer lines or enclosed areas required for safety or by code; .

49. Pump seals; .

50. Rupture discs for gas handling systems; .

51. Molasses storage tanks; .

52. Storage of substances in closed drums, barrels or bottles; .

~~53. Refrigeration systems;~~

~~54. 53. Purging of natural gas lines; .~~

~~55. 54. Blanking, chopping, trimming, perforating, repacking, and inspecting in connection with plastics manufacturing processes.~~

~~55. Sealed batteries such as those used for emergency backup power supplies.~~

~~56. [Activities associated with the maintenance, repair, or resurfacing of facility properties. Parking lot resurfacing.]~~

~~57. Relief valves [, excluding air pollution equipment bypass valves].~~

~~[58. Nonhazardous boiler cleaning solutions.]~~

B. Emissions units, other than those listed in ~~section II subsection A~~ of this ~~appendix section~~, with insignificant emissions levels.

1. Emissions units with uncontrolled emissions of less than [~~40 five~~] tons per year of nitrogen dioxide, sulfur dioxide, total suspended particulates or particulate matter (PM₁₀);

2. Emissions units with uncontrolled emissions of less than [~~7-0 five~~] tons per year of volatile organic compounds;

3. Emissions units with uncontrolled emissions of less than 100 tons per year of carbon monoxide;

4. Emissions units with uncontrolled emissions of less than 0.6 tons per year of lead;

5. Emissions units with uncontrolled emissions of hazardous air pollutants at or below the de minimis emissions rates set out in the table in 40 CFR 63.44;

6. Emissions units with uncontrolled emissions of any pollutant regulated under subpart C of 40 CFR Part 68 at or below the de minimis emissions rates set out in the table in 40 CFR 63.44 or, if the pollutant is not listed in the table in 40 CFR 63.44, at or below the threshold quantity listed in the tables in 40 CFR 68.130 if those emissions are below the threshold levels set forth at 40 CFR 63.44, the accidental release threshold levels set forth at 40 CFR 68.130, or 1,000 pounds per year, whichever is least.

C. Emissions units, other than those listed in ~~section II-A or section II-B subsection A or B~~ of this ~~appendix section~~, of an insignificant size or production rate.

1. Internal combustion engines, including portable generators, as follows:

- a. Engines burning diesel fuel (maximum 0.5% sulfur) with 51,800 Btu per hour input [~~(20.3 horsepower)~~] or less;
- b. Engines burning gasoline with 36,413 Btu per hour input [~~(14.3 horsepower)~~] or less.

2. Fuel burning equipment or combustion units with heat input levels less than:

- a. 10 million Btu per hour rated input, using natural gas;
- b. 1 million Btu per hour rated input, using distillate oil (maximum 0.5% sulfur).

3. Reservoirs and storage tanks for lubricant or used oil with a capacity of less than 1,000 gallons.

[4. Internal combustion powered compressors and pumps used for emergency replacement or standby service, operating at 500 hours per year or less, as follows:

- a. Gasoline-fueled emergency generators of 911 horsepower or less;
- b. Diesel-fueled emergency generators of 6,667 horsepower or less;
- c. Natural gas-fueled turbine emergency generators of 45,325 horsepower or less.]

NOTICE: The form used in administering 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) is not being published due to its length. The form is 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.

Air Operating Permit Application, DEQ Form 805, 2/15/96

VA.R. Doc. No. R96-530; Filed August 13, 1996, 4:30 p.m.

Title of Regulation: 9 VAC 5-20-10 et seq. **General Provisions (adding 9 VAC 5-20-21).**
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 5-80-705).

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

Effective Date: October 15, 1996.

Summary:

The regulation amendments concern provisions covering acid rain operating permits. The 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.

Changes made to the regulation since proposed include the following: (i) a definition of "Title I modification" was added and subsequent references to such modifications were clarified; (ii) the definition of those state regulations that are considered federally enforceable was clarified; (iii) the acid rain qualification was omitted from the applicable emissions limitation for nitrogen oxides; (iv) references to program approval were qualified for federal delegation purposes; (v) an applicability determination qualification was added to the interference criteria for the omission of emissions units from permit applications; and (vi) a provision for review and confirmation of the acid rain permit is added.

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. There is a copy charge of 20¢ per page.

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 H~~ *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

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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 (Pararosaniline 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).

1. 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) [,]" [1991.]

(4) D388-95, "Standard Classification of Coals by Rank [,]" [1995.]

(5) D396-92, "Standard Specification for Fuel Oils [,]" [1992.]

(6) D975-94, "Standard Specification for Diesel Fuel Oils [,]" [1994.]

(7) D1072-90, "Standard Test Method for Total Sulfur in Fuel Gases [,]" [1990, reapproved 1994.]

(8) D1265-92, "Standard Practice for Sampling [Liquefied Liquefied] Petroleum (LP) Gases (Manual Method) [,]" [1992.]

(9) D2622-94, "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry [,]" [1994.]

(10) D4057-88, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products [,]" [1988.]

(11) D4294-90, "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy [,]" [1990.]

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).

1. 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).

1. 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).

1. 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

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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 5-40-10 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

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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 [D975-94 D975-94], "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
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.

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

"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.

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"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 D396-92], "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 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;

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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 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.

["Title I modification" means any modification under Parts C and D of Title I or § 111(a)(4), § 112(a)(5), or § 112(G) of the federal Clean Air Act; under regulations promulgated by the U. S. Environmental Protection Agency thereunder or in 40 CFR 61.07; or under regulations approved by the U. S. Environmental Protection Agency to meet such requirements.

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"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

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"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 operator 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 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:

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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~~ D2622-94], 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 implementing and enforcing those provisions of

this rule associated with applicable federal requirements as well as those provisions of this rule intended to implement Title V of the federal Clean Air Act], 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.

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:

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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:

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

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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 [, to include approval for federal delegation purposes].

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 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.

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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 of the applicability of this rule,] 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 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.

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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;
 - 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:

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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.

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.

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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.
- 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

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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 [, and if not continuous, documentation of each incident of noncompliance].

(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 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.

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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.

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.

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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 Title I modification~~]; 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 Title I modifications~~]; 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.
- 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.

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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 Title I modification~~].
 - 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.

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.

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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 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;

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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.

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:

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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 A Title I modification].~~

~~[(2) A modification under the provisions of or regulations promulgated pursuant to § 112 of the federal Clean Air Act.]~~

~~[(3) (2)]~~ A change that would exceed the emissions allowable under the permit.

~~[(4) (3)]~~ A change that would violate applicable requirements.

~~[(5) (4)]~~ 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 for Title I modifications].~~

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.

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

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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.

[9 VAC 5-80-705. Review and confirmation of this article by board.

A. Within three years following the approval by the U. S. Environmental Protection Agency of this article, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this article; (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements; (iii) the federal approval status of this article; and (iv) an assessment of the need for continuation of this article.

B. Upon review of the department's analysis, the board shall confirm (i) the continuation of this article; (ii) the repeal of this article; or (iii) the need to amend this article. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.]

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. R96-529; Filed August 13, 1996, 4:32 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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 Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: State Plan for Medical Assistance Services Relating to Nursing Facility Sanctions.

12 VAC 30-10-750. Remedies for Skilled Nursing and Intermediate Care Facilities that Do Not Meet Requirements of Participation (REPEALED).

12 VAC 30-10-751. Enforcement of Compliance for Nursing Facilities.

12 VAC 30-20-249. Criteria for the Application of Specific Remedies for Skilled Nursing Facilities and Intermediate Care Facilities (Attachment 4.35-A) (REPEALED).

12 VAC 30-20-250. Alternative Remedies to Specified Remedies for Skilled Nursing and Intermediate Care Facilities (Attachment 4.35-A) (REPEALED).

12 VAC 30-20-251. Enforcement of Compliance for Nursing Facilities: Termination of Provider Agreement (Attachment 4.35-B).

12 VAC 30-20-252. Enforcement of Compliance for Nursing Facilities: Temporary Management (Attachment 4.35-C).

12 VAC 30-20-253. Enforcement of Compliance for Nursing Facilities: Denial of Payment for New Admissions (Attachment 4.35-D).

12 VAC 30-20-254. Enforcement of Compliance for Nursing Facilities: Civil Money Penalty (Attachment 4.35-E).

12 VAC 30-20-255. Enforcement of Compliance for Nursing Facilities: State Monitoring (Attachment 4.35-F).

12 VAC 30-20-256. Enforcement of Compliance for Nursing Facilities: Transfer of Residents; Transfer of Residents with Closure of Facility (Attachment 4.35-G).

12 VAC 30-20-257. Enforcement of Compliance for Nursing Facilities: Required Plan of Correction (Attachment 4.35-I).

12 VAC 30-20-258. Enforcement of Compliance for Nursing Facilities: Appeals (Attachment 4.35-J).

12 VAC 30-20-259. Enforcement of Compliance for Nursing Facilities: Repeated Substandard Quality of Care (Attachment 4.35-K).

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

Effective Date: October 2, 1996.

Summary:

The purpose of this action is to specify in the Plan for Medical Assistance the procedures to be initiated upon the finding of substantial noncompliance by a nursing facility in conformance to federal law. These procedures are specified in federal law and are being incorporated into the State Plan without materially differing.

Section 9-6.14:4.1 C 4(c) of the Administrative Process Act provides for the exemption of certain regulatory actions by state agencies due to conformance to federal mandates. This Plan section specifies the procedures that the Commonwealth must follow upon the Virginia Department of Health's determination of noncompliance by a nursing facility with applicable life, health, and safety codes. The specification of these procedures in the State Plan for Medical Assistance was mandated by the Health Care Financing Administration (HCFA) and provided for in the issuance of preprinted pages in HCFA Program Memorandum 95-4.

Section 1919(h) of the Social Security Act specifies the requirements and enforcement process that states must use when, during the nursing facility survey process, nursing facilities are found not to be in compliance with federal and state life, health, or safety requirements. Sections 32.1-27, 32.1-27.1, 32.1-123, 32.1-124, 32.1-125, 32.1-125.1, 32.1-126, 32.1-127, 32.1-127.01, 32.1-132, 32.1-135, 32.1-137 of the Code of Virginia also

specify the procedures to be initiated upon the finding of substantial noncompliance by nursing facilities.

Chapter 788 of the Acts of the Assembly (1996) also necessitates this regulatory action. That action requires that "[t]he Board's regulations ... incorporate sanctions and remedies for certified nursing facilities established by state law, in accordance with 42 CFR 488.400 et seq. 'Enforcement of Compliance for Long-Term Care Facilities With Deficiencies.'"

This regulatory action incorporates into the State Plan only federal requirements, consistent with 42 CFR 488.400 et seq. for the enforcement of survey and certification requirements applicable to nursing facilities. These policies provide for specific sanctions against nursing homes when, upon the standard Department of Health survey, they are found to be substantially out of compliance with life, health, or safety codes.

The advantages to the public of the promulgation of these regulations will be the improved enforcement of basic life, health, or safety codes which apply to all certified nursing facilities across the Commonwealth. These referenced codes are determined by the federal government and applied uniformly nationwide. In the Commonwealth, the codes are administered by the Department of Health's Division of Licensure and Certification.

There has been no budget impact projected for this issue because federal regulations require that all funds collected from sanctions be applied to the protection of the health or property of residents associated with nursing facilities that the Commonwealth or HCFA find deficient.

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 30-10-750. Remedies for skilled nursing and intermediate care facilities that do not meet requirements of participation. (Repealed.)

~~A. The Medicaid agency meets the requirements of Section 1919(h) (2) (A) through (E) of the Act concerning remedies for skilled nursing and intermediate care facilities that do not meet one or more requirements of participation. 12 VAC 30-20-250 describes the criteria for applying the remedies specified in Section 1919(h) (2) (A) (i) through (iv) of the Act.~~

~~B. The agency uses the following remedy(ies):~~

- ~~1. Denial of payment for new admissions.~~
- ~~2. Civil money penalty.~~
- ~~3. Appointment of temporary management.~~
- ~~4. In emergency cases, closure of the facility and/or transfer of residents.~~

12 VAC 30-10-751. Enforcement of compliance for nursing facilities.

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A. The Commonwealth shall comply with the Medicaid Program requirements of 42 CFR 488.300 et seq.

B. Notification of enforcement remedies. When taking an enforcement action against a nonstate operated nursing facility, the state provides notification in accordance with 42 CFR 488.402(f).

1. The notice (except for civil money penalties and state monitoring) specifies:

- a. The nature of noncompliance;
- b. Which remedy is imposed;
- c. The effective date of the remedy; and
- d. The right to appeal the determination leading to the remedy.

2. The notice for civil money penalties is in writing and contains the information specified in 42 CFR 488.434.

3. Except for civil money penalties and state monitoring, notice is given at least two calendar days before the effective date of the enforcement remedy for immediate jeopardy situations and at least 15 calendar days before the effective date of the enforcement remedy when immediate jeopardy does not exist. The two-day and 15-day notice periods begin when the facility receives the notice, but, in no event will the effective date of the enforcement action be later than 20 calendar days after the notice is sent. (42 CFR 488.402(f)(3),(4), (5))

4. Notification of termination is given to the facility and to the public at least two calendar days before the remedy's effective date if the noncompliance constitutes immediate jeopardy and at least 15 calendar days before the remedy's effective date if the noncompliance does not constitute immediate jeopardy. The state must terminate the provider agreement of a nursing facility in accordance with procedures in 42 CFR Parts 431 and 442. (42 CFR 488.456(c) and (d)).

C. Factors to be considered in selecting remedies. In determining the seriousness of deficiencies, the state considers the factors specified in 42 CFR 488.404(b)(1) and (2).

D. Application of remedies.

1. If there is immediate jeopardy to resident health or safety, the state terminates the nursing facility's provider agreement within 23 calendar days from the date of the last survey or immediately imposes temporary management to remove the threat within 23 days. (42 CFR 488.410)

2. The state imposes the denial of payment (or its approved alternative) with respect to any individual admitted to a nursing facility that has not come into substantial compliance within three months after the last day of the survey. (42 CFR 488.417(b)(1) and § 1919(h)(2)(C) of the Act)

3. The state imposes the denial of payment for new admissions remedy as specified in 42 CFR 488.417 (or its approved alternative) and a state monitor as specified

at 42 CFR 488.422, when a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys. (42 CFR 488.414 and § 1919(h)(2)(D) of the Act)

4. The state follows the criteria specified at 42 CFR 488.408(c)(2), (d)(2), and (e)(2) when it imposes remedies in place of or in addition to termination. (42 CFR 488.408(b) and § 1919(h)(2)(A) of the Act)

5. When immediate jeopardy does not exist, the state terminates a nursing facility's provider agreement no later than six months from the finding of noncompliance if the conditions of 42 CFR 488.412(a) are not met.

E. Available remedies.

1. The state has established the remedies defined in 42 CFR 488.406(b).

- a. Termination;
- b. Temporary management;
- c. Denial of payment for new admissions;
- d. Civil money penalties;
- e. Transfer of residents; transfer of residents with closure of facility; and
- f. State monitoring.

12 VAC 30-20-251 through 12 VAC 30-20-259 describe the criteria for applying the above remedies, plan of correction, nursing facility appeals, and repeated substandard quality of care.

F. In the event that the Commonwealth and HCFA disagree on findings of noncompliance or application of remedies in a nonstate operated nursing facility or a dually participating facility when there is no immediate jeopardy, such disagreement shall be resolved in accordance with the provisions of 42 CFR 488.452 (1995).

G. The Commonwealth shall have the authority to apply one or more remedies for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

H. As set forth by 42 CFR 488.454(d), remedies shall terminate on the date that HCFA or the Commonwealth can verify as the date that substantial compliance was achieved and the facility has demonstrated that it could maintain substantial compliance once the facility supplies documentation acceptable to HCFA or the Commonwealth that it was in substantial compliance and was capable of remaining in compliance.

~~12 VAC 30-20-249. Criteria for the application of specific remedies for skilled nursing facilities and intermediate care facilities. (Repealed.)~~

~~(When and how each remedy is applied, the amounts of any fines, and the severity of the remedies)~~

~~The Commonwealth meets the requirements of the Act § 1919, regarding nursing facilities deficient in meeting conditions of participation through the Code of Virginia §§~~

~~32.1-27, 32.1-27.1, 32.1-123, 32.1-124, 32.1-125, 32.1-125.1, 32.1-126, 32.1-127, 32.1-127.01, 32.1-132, 32.1-135, 32.1-137.~~

~~12 VAC 30-20-250. Alternative remedies to specified remedies for skilled nursing and intermediate care facilities. (Repealed.)~~

~~1.0. Definitions. The following definitions are as used herein unless a different meaning or construction is clearly required by the context or otherwise:~~

~~A. "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.~~

~~B. "Class I violation" means failure of a nursing home or certified nursing facility to comply with one or more requirements of state or federal law or regulations which creates a situation that presents an immediate and serious threat to patient health or safety.~~

~~C. "Class II violation" means a pattern of noncompliance by a nursing home or certified nursing facility with one or more federal conditions of participation which indicates delivery of substandard quality of care but does not necessarily create an immediate and serious threat to patient health and safety. Regardless of whether the facility participates in Medicare or Medicaid, the federal conditions of participation shall be the standards for Class II violations.~~

~~D. "Immediate and serious threat" means a situation or condition having a high probability that serious harm or injury to patients could occur at any time, or already has occurred, and may occur again, if patients are not protected effectively from the harm, or the threat is not removed.~~

~~E. "State Health Commissioner" means the Commissioner of the Virginia Department of Health.~~

~~F. "Virginia Department of Health (VDH)" means the state agency of the Commonwealth of Virginia that is responsible for the licensure and certification of nursing facilities.~~

~~2.0. The Commonwealth of Virginia imposes sanctions on skilled nursing and intermediate care facilities which violate state and federal laws and regulations. The following information specifically explains how those sanctions, along with the federal sanctions specified in Section 1919(h) of the Social Security Act, will be applied.~~

~~3.0. Criteria.~~

~~A. In determining which remedies to impose, the State shall impose the remedies that are most likely to achieve correction of deficiencies, encourage sustained compliance with certification requirements, and protect the health, safety, and rights of facility residents.~~

~~B. In addition, the following shall be considered:~~

- ~~1. The presence or absence of immediate jeopardy.~~
- ~~2. The relationships of groups of deficiencies to each other.~~

~~3. The facility's history of compliance with certification requirements generally and in the specific area of the deficiency or deficiencies.~~

~~4. Whether the deficiency or deficiencies are directly related to resident care.~~

~~5. The nature, scope, and duration of the non-compliance with certification requirements.~~

~~6. The existence of repeat deficiencies.~~

~~7. The category of certification requirements with which the facility is out of compliance.~~

~~8. The facility's degree of culpability.~~

~~4.0. Enforcement remedies.~~

~~A. The State shall deny payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.~~

~~B. The civil penalties set forth in this section may be imposed by the circuit court for the city or county in which the facility is located as follows:~~

~~1. A civil penalty for a Class I violation shall not exceed the lesser of \$25 per licensed or certified bed or \$1,000 for each day the facility is in violation, beginning on the date the facility was first notified of the violation.~~

~~2. A civil penalty for a Class II violation shall not exceed the lesser of \$5 per licensed or certified bed or \$250 per day for each day the facility is in operation, beginning on the date the facility was first notified of the violation.~~

~~C. In the event federal law or regulations require a civil penalty in excess of the amounts set forth above for Class I or Class II violations, then the lowest amounts required by such federal law or regulations shall become the maximum civil penalties under this section. The date of notification under this section shall be deemed to be the date of receipt by the facility of written notice of the alleged Class I or Class II violation, which notice shall include specifics of the violation charged and which notice shall be hand-delivered or sent by overnight express mail or by registered or certified mail, return receipt requested.~~

~~D. All penalties received pursuant to this subsection shall be paid into a special fund of the Virginia Department of Health (VDH) for the cost of implementation of this section, to be applied to the protection of the health or property of residents or patients of facilities that the State Health Commissioner or the United States Secretary of Health and Human Services finds in violation, including payment for the costs for relocation of patients, maintenance of temporary management or receivership to operate a facility pending correction of a violation, and for reimbursement to residents or patients of lost personal funds.~~

~~E. The State shall provide that a civil money penalty be assessed and collected, with interest, for each day in which the facility is or was out of compliance as stated herein. Funds collected by the State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty) shall be applied to the protection of the~~

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health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

F. In addition to the remedies provided in Section 3 and the civil penalties set forth in this section, the State Health Commissioner may petition the circuit court for the jurisdiction in which any nursing home or certified nursing facility as defined in Section 4 is located for the appointment of a receiver in accordance with the provision of this subsection whenever such nursing home or certified nursing facility shall:

1. Receive official notice from the Commissioner that its license has been or will be revoked or suspended, or that its Medicare or Medicaid certification has been or will be cancelled or revoked; or
2. Receive official notice from the United States Department of Health and Human Services or the Department of Medical Assistance Services (DMAS) that its provider agreement has been or will be revoked, cancelled, terminated, or not renewed; or
3. Advise the Department of its intention to close or not to renew its license or Medicare or Medicaid provider agreement less than ninety days in advance; or
4. Operate at any time under conditions which present a major and continuing threat to the health, safety, security, rights, or welfare of the patients, including the threat of imminent abandonment by the owner or operator; and
5. VDH is unable to make adequate and timely arrangements for relocating all patients who are receiving medical assistance under this chapter and Title XIX of the Social Security Act in order to ensure their continued safety and health care.

G. Where health and safety issues are cited, court action shall be taken immediately after the State has presented its case to the court. While VDH shall make the case to the court, the presentation shall be coordinated with DMAS. In addition, DMAS may independently terminate the facility's provider agreement when just cause is shown. DMAS shall be responsible for moving Medicaid recipients out of the facility in case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both. If VDH finds a deficiency or cluster of deficiencies that creates immediate jeopardy, it must notify DMAS. In accordance with the requirements of subsections 1919(h)(1)(A) and (h)(2)(A) of the Social Security Act, VDH may impose either temporary management or termination of the facility's Medicaid participation in any of the following ways: appointment of temporary management to oversee the orderly closure of the facility and the transfer of residents, or termination of the facility's Medicaid participation.

H. Upon the filing of a petition for appointment of a receiver, the court shall hold a hearing within ten days, at which time VDH and the owner or operator of the facility may participate and present evidence. The court may grant the petition if it finds any one of the conditions identified in 1.

through 4, above to exist in combination with the identified in 5, and the court further finds that such conditions will not be remedied and that the patients will not be protected unless the petition is granted.

I. No receivership established under this subsection shall continue in effect for more than 180 days without further order of the court, nor shall the receivership continue in effect following the revocation of the nursing home's license or the termination of the certified nursing facility's Medicare or Medicaid provider agreement, except to enforce any post-termination duties of the provider as required by the provisions of the Medicare or Medicaid provider agreement.

J. The appointed receiver shall be a person licensed as a nursing home administrator in the Commonwealth pursuant to Title 54.1 of the Code of Virginia or, if not so licensed, shall employ and supervise a person so licensed to administer the day-to-day business of the nursing home or certified nursing facility.

K. The receiver shall have (i) such powers and duties to manage the nursing home or certified nursing facility as the court may grant and direct, including but not limited to the duty to accomplish the orderly relocation of all patients and the right to refuse to admit new patients during the receivership, (ii) the power to receive, conserve, protect, and disburse funds, including Medicare and Medicaid payments on behalf of the owner or operator of the nursing home or certified nursing facility, (iii) the power to execute and avoid executory contracts, (iv) the power to hire and discharge employees, and (v) the power to do all other acts, including the filing of such reports as the court may direct, subject to accounting to the court therefore and otherwise consistent with state and federal law, necessary to protect the patients from the threat or threats set forth in original petitions, as well as such other threats arising thereafter or out of the same conditions.

L. The court may grant injunctive relief as it deems appropriate to VDH or to its receiver either in conjunction with or subsequent to the granting of a petition for appointment of a receiver under this section.

M. The court may terminate the receivership on the motion of VDH, the receiver, or the owner or operator, upon finding, after a hearing, that either (i) the conditions described in the petition have been substantially eliminated or remedied, or (ii) all patients in the nursing home or certified nursing facility have been relocated. Within thirty days after such termination, the receiver shall file a complete report of his activities with the court, including an accounting for all property of which he has taken possession and all funds collected.

N. All costs of administration of a receivership hereunder shall be paid by the receiver out of reimbursement to the nursing home or certified nursing facility from Medicare, Medicaid, and other patient care collections. The court, after terminating such receivership, shall enter appropriate orders to ensure such payments upon its approval of the receivers reports. A receiver appointed under this section shall be an officer of the court, shall not be liable for conditions at the nursing home or certified nursing facility which existed or originated prior to his appointment, and shall not be

personally liable, except for his own gross negligence and intentional acts which result in injuries to persons or damage to property at the nursing home or certified nursing facility during his receivership.

O. The provisions of this subsection shall not be construed to relieve any owner, operator, or other party of any duty imposed by law or of any civil or criminal liability incurred by reason of any act or omission of such owner, operator, or other party.

P. The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while there is an orderly closure of the facility or improvements are made in order to bring the facility into compliance. The temporary management under this clause shall not be terminated until the State has determined that the facility has the management capability to ensure continued compliance.

Q. If a nursing facility has not complied with the requirements of the law as stated herein, within three months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in Section 4 for all individuals who are admitted to the facility after such date.

R. In the case of a nursing facility which, on three consecutive standard surveys, has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided) impose the penalty described in Section 4 and monitor the facility until it has demonstrated, to the satisfaction of the State, that it is in compliance and that it will remain in compliance with such requirements.

5.0. Regulations to authorize certain sanctions and guidelines.

A. The regulations established shall authorize the Commissioner to initiate court proceedings against nursing homes and certified nursing facilities, except for facilities or units certified as facilities for the mentally retarded. Such proceedings may be initiated by themselves or in conjunction with administrative sanctions.

B. The Board of Health shall promulgate in regulation the guidelines for the Commissioner to determine when the imposition of administrative sanctions or initiation of court proceedings as specified in Section 32.1-27.1 of the Code of Virginia, or both, are appropriate in order to ensure prompt correction of violations involving noncompliance with requirements of state or federal law or regulation as discovered on any inspection conducted by VDH pursuant to the provisions of this article or the provisions of Title XVIII or Title XIX of the Social Security Act or as discovered on any inspection conducted by DMAS pursuant to Title XIX of the Social Security Act.

6.0. Revocation or suspension of license or certification; restriction or prohibition of new admissions to nursing home.

A. 1. In accordance with applicable regulations of the Board of Health, the State Health Commissioner (i) may restrict or prohibit new admissions to any

nursing home or certified nursing facility, or (ii) may petition the court to impose a civil penalty against any nursing home or certified nursing facility or to appoint a receiver for such nursing home or certified nursing facility, or both, or (iii) may revoke the certification or may revoke or suspend the license of a hospital or nursing home or the certification of any certified nursing facility for violation of any provision of this article or Article 2 of the Code of Virginia of this chapter or of any applicable regulations promulgated under this chapter or for permitting, aiding, or abetting the commission of any illegal act in the hospital or nursing home.

2. All appeals from notice of imposition of administrative sanctions shall be received in writing within fifteen days of the date of receipt of such notice. The provisions of the Administrative Process Act shall be applicable to such appeals.

3. The State shall proceed with denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility has been made.

4. A civil money penalty shall be assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsections (b), (c), or (d) of Section 1919 of the Social Security Act.

B. If a license or certification is revoked as herein provided, a new license or certification may be issued by the Commissioner after satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with all provisions of this article and applicable state and federal law and regulations hereunder has been obtained.

C. Suspension of a license shall in all cases be for an indefinite time. The Commissioner may completely or partially restore a suspended license or certificate when he determines that the conditions upon which suspension was based have been completely or partially corrected and that the interests of the public will not be jeopardized by resumption of operation. No additional service charges shall be required for restoring such license.

7.0. Certification of medical care facilities under Title XVIII of the Social Security Act. The Board of Health shall constitute the sole agency of the Commonwealth to enter into contracts with the United States government for the certification of medical care facilities under Title XVIII of the United States Social Security Act and any amendments thereto and with the Virginia Department of Medical Assistance Services for the certification of medical care facilities under Title XIX of the United States Social Security Act and any amendments thereto.

Final Regulations

Revision: HCFA-PM-95-4(HSQB)
JUNE 1995

Attachment 4.35-A
Page 1 of 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

95 AUG -8 PM 4:42
ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

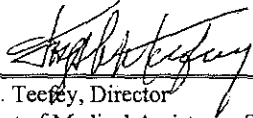
The State uses other factors described below to determine the seriousness of deficiencies in addition to those described at §488.404(b)(1):

Not applicable.

CERTIFIED:

Date

8/8/96


Joseph M. Teehey, Director
Department of Medical Assistance Services

TN	Approval Date	Effective Date
No.	_____	_____
Supersedes	_____	_____
TN		HCFA ID:
No.	_____	

12 VAC 30-20-251. Enforcement of compliance for nursing facilities: termination of provider agreement.

A. *Mandatory termination.* As set forth by 42 CFR 488.408 (1995), the Commonwealth shall (i) impose temporary management on the nursing facility; (ii) terminate the nursing facility's provider agreement; or (iii) impose both of these remedies when there are one or more deficiencies that constitute immediate jeopardy to resident health or safety. In addition, the Commonwealth shall terminate the nursing facility's provider agreement when the nursing facility fails to relinquish control to the temporary manager, or in situations when a facility's deficiencies do not pose immediate jeopardy, if the nursing facility does not meet the eligibility criteria for continuation of payment set forth in 42 CFR 488.412(a) (1995).

B. The Commonwealth shall have the authority to terminate a nursing facility's provider agreement if such nursing facility:

1. Is not in substantial compliance with the requirements of participation, regardless of whether or not immediate jeopardy is present; or
2. Fails to submit an acceptable plan of correction within the timeframe specified by the Commonwealth. For purposes of this section, substantial compliance shall be defined as meaning a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

C. *Situations without immediate jeopardy.* If a nursing facility's deficiencies do not pose immediate jeopardy to residents' health or safety, and the facility is not in substantial compliance, the Commonwealth shall have the authority to terminate the nursing facility's provider agreement or allow the nursing facility to continue to participate for no longer than six months from the last day of the survey agency's survey if:

1. The survey agency finds that it is more appropriate to impose alternative remedies than to terminate the nursing facility's provider agreement;
2. The Commonwealth has submitted a plan and timetable for corrective action approved by HCFA; and
3. The facility in the case of a Medicare skilled nursing facility or Commonwealth in the case of a Medicaid nursing facility agrees to repay to the federal government payments received after the last day of the survey that first identified the deficiencies if corrective action is not taken in accordance with the approved plan of correction.

D. *Effect of termination.* Termination of the provider agreement shall end payment to the nursing facility.

E. *Patient transfer.* The Commonwealth shall provide for the safe and orderly transfer of residents when the facility's provider agreement is terminated.

F. *Continuation of payments to a facility with deficiencies.* As set forth by 42 CFR 488.450:

1. The Commonwealth shall have the authority to terminate the nursing facility's provider agreement before the end of the correction period if the following criteria are not met: (i) the survey agency finds that it is more appropriate to impose alternative remedies than to terminate the nursing facility's provider agreement; (ii) the Commonwealth has submitted a plan and timetable for corrective action which has been approved by HCFA; and (iii) the Commonwealth has agreed to repay the federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.

2. *Cessation of payments.* If termination is not sought, either by itself or with another remedy or remedies, or any of the criteria of subdivision 1 of this subsection are not met or agreed to by either the facility or the Commonwealth, the facility or the Commonwealth shall receive no federal Medicaid payments, as applicable, from the last day of the survey.

3. *Period of continued payments.* If the criteria of subdivision 1 of this subsection are met, HCFA may continue payments to the Commonwealth for a Medicaid facility with noncompliance that does not constitute immediate jeopardy for up to six months from the last day of the survey. If the facility does not achieve substantial compliance by the end of this six-month period, the Commonwealth shall have the authority to terminate its provider agreement.

12 VAC 30-20-252. Enforcement of compliance for nursing facilities: temporary management.

A. *Temporary management in cases of immediate jeopardy.* In accordance with 42 CFR 488.408 (1995) and 42 CFR 488.410 (1995), the Commonwealth shall (i) impose temporary management on the nursing facility; (ii) terminate the nursing facility's provider agreement; or (iii) impose both of these remedies when there are one or more deficiencies that constitute immediate jeopardy to resident health or safety. For purposes of this section, temporary management shall mean the temporary appointment by HCFA or the Commonwealth of a substitute facility manager or administrator with authority to hire, terminate, or reassign staff, obligate nursing facility funds, alter nursing facility procedures, and manage the nursing facility to correct deficiencies identified in the nursing facility's operation. The individual appointed as a temporary manager shall meet the qualifications of 42 CFR 488.415(b) (1995) and be compensated in accordance with the requirements of 42 CFR 488.415(c) (1995). The Commonwealth shall notify the facility that a temporary manager is being appointed. In situations of immediate jeopardy, the Commonwealth shall also have the authority to impose other remedies, as appropriate, in addition to termination of the provider agreement and temporary management. In a nursing facility or dually participating facility, if the Commonwealth finds that such nursing facility's or facility's noncompliance poses immediate jeopardy to resident health or safety, the Commonwealth shall notify HCFA of such finding.

Final Regulations

B. Temporary management in situations of no immediate jeopardy. When there are widespread deficiencies that constitute actual harm that is not immediate jeopardy, the Commonwealth shall have the authority to impose temporary management in addition to the remedies of denial of payment for new admissions or civil money penalties of \$50 to \$3,000 per day.

C. Failure to relinquish authority to temporary management.

1. **Termination of provider agreement.** If a nursing facility fails to relinquish authority to the temporary manager, the Commonwealth shall terminate the nursing facility's provider agreement within 23 calendar days of the last day of the survey if the immediate jeopardy is not removed. If the facility fails to relinquish control to the temporary manager, state monitoring may be imposed pending termination of the provider agreement. If the facility relinquishes control to the temporary manager, the Commonwealth must notify the facility that, unless it removes the immediate jeopardy, its provider agreement shall be terminated within 23 calendar days of the last day of the survey. A nursing facility's failure to pay the salary of the temporary manager shall be considered a failure to relinquish authority to temporary management.

2. **Duration of temporary management.** Temporary management shall end when the nursing facility meets any of the conditions specified in 42 CFR 488.454(c) (1995). If the nursing facility has not achieved substantial compliance to reassume management control, the Commonwealth shall have the authority to terminate this nursing facility's provider agreement and impose additional remedies. For purposes of this section, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

12 VAC 30-20-253. Enforcement of compliance for nursing facilities: denial of payment for new admissions.

A. Denial of payment for new admissions. The Commonwealth shall (i) deny payment for new admissions; (ii) impose civil money penalties of \$50 to \$3,000 per day; or (iii) impose both of these remedies when there are widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy, or one or more deficiencies that constitute actual harm that is not immediate jeopardy. As set forth by 42 CFR 488.417 (1995), the Commonwealth shall deny payment for new admissions when a nursing facility is not in substantial compliance three months after the last day of the survey identifying the noncompliance, or the survey agency has cited a nursing facility with substandard quality of care on the last three consecutive standard surveys. As set forth by 42 CFR 488.417, the Commonwealth shall have the authority to deny payment for all new admissions when a facility is not in substantial compliance. For the purposes of this section, a new admission shall be defined as a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been

discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment. Also for the purposes of this section, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

B. Denial of payment for substandard quality of care on last three surveys. As set forth by 42 CFR 488.414 and 42 CFR 488.417 (1995), if a facility is found to have provided substandard quality of care on the last three consecutive standard surveys, regardless of other remedies provided, the Commonwealth shall deny payment for all new admissions and shall impose state monitoring until such facility demonstrates to the satisfaction of the Commonwealth that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements.

C. The Commonwealth shall have the authority to deny payment for new admissions for any deficiency except when the facility is in substantial compliance.

12 VAC 30-20-254. Enforcement of compliance for nursing facilities: civil money penalty.

A. Immediate jeopardy. In situations of immediate jeopardy, the Commonwealth shall have the authority to impose (in accordance with 42 CFR 488.430 through 42 CFR 488.444) a civil money penalty in the range of \$3,050 to \$10,000 in addition to the remedies of imposing temporary management or terminating the nursing facility's provider agreement. In imposing civil money penalties, the Commonwealth shall comply with all provisions of 42 CFR 488.430 through 488.444 (1995).

B. No immediate jeopardy. In accordance with 42 CFR 488.430 through 42 CFR 488.444, the Commonwealth shall (i) deny payment for new admissions; (ii) impose civil money penalties of \$50 to \$3,000 per day; or (iii) impose both of these remedies when there are widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy, or one or more deficiencies that constitute actual harm that is not immediate jeopardy.

C. Notice. Either HCFA or the Commonwealth, as appropriate, shall send a prior written notice of the penalty to the facility as set forth by 42 CFR 488.434 (1995).

D. The Commonwealth shall have the authority to impose civil money penalties of \$50 to \$3,000 per day to any deficiency except when the nursing facility is in substantial compliance. If the Commonwealth imposes a civil money penalty for a deficiency that constitutes immediate jeopardy, the penalty must be in the range of \$3,050 to \$10,000 per day. For the purposes of this section, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

12 VAC 30-20-255. Enforcement of compliance for nursing facilities: state monitoring.

A. In accordance with 42 CFR 488.422 (1995), the Commonwealth shall directly monitor the delivery of services for nursing facilities to have isolated deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy, or found to have a pattern of deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy. As set forth by 42 CFR 488.408(c)(3) (1995), the Commonwealth shall have the authority to impose state monitoring at any time to any deficiency except when the facility is in substantial compliance. As set forth by 42 CFR 488.414 (1995), if a facility is found to have provided substandard quality of care on the last three consecutive standard surveys, regardless of other remedies provided, the Commonwealth shall deny payment for all new admissions and shall impose state monitoring as specified in 42 CFR 488.422 until such facility demonstrates to the satisfaction of the Commonwealth that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements. For purposes of this section, a new admission shall be defined as a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment. For the purposes of this section, substantial compliance shall mean a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

B. For state monitoring, no prior notice shall be required of the Commonwealth to the nursing facility.

12 VAC 30-20-256. Enforcement of compliance for nursing facilities: transfer of residents; transfer of residents with closure of facility.

A. The Commonwealth shall arrange for the safe and orderly transfer of Medicare and Medicaid nursing facility residents when the provider agreement with the nursing facility is terminated.

B. In an emergency, the Commonwealth shall have the authority to transfer Medicare and Medicaid residents to another facility, or close the facility and transfer the Medicare and Medicaid residents to another facility.

Final Regulations

Revision: HCFA-PM-95-4(HSQB)
JUNE 1995

Attachment 4.35-H
Page 1 of 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

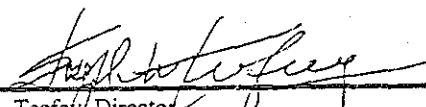
Additional Remedies: Describe the criteria (as required at §1919(h)(2)(A)) for applying the additional remedy. Include the enforcement category in which the remedy will be imposed (i.e., category 1, category 2, or category 3 as described at 42 CFR 488.408).

Not applicable.

CERTIFIED:

Date

8/8/96



Joseph M. Teeefey, Director
Department of Medical Assistance Services

12 VAC 30-20-257. Enforcement of compliance for nursing facilities: required plan of correction.

A. In accordance with 42 CFR 488.408(f) (1995), a nursing facility found to have a deficiency with regard to a program requirement shall submit a plan of correction for approval by the Commonwealth without regard to the remedies which are imposed or the seriousness of the identified deficiencies. A nursing facility shall not be required to submit a plan of correction when it has been found to have deficiencies that are isolated that the Commonwealth determines have only a potential for minimal harm but no actual harm has occurred.

B. For the purposes of this section, a plan of correction shall mean a plan developed by the nursing facility or the appointed temporary manager and approved by HCFA or the state survey agency that describes the actions the nursing facility will take to correct deficiencies and specifies the date by which those deficiencies will be corrected.

12 VAC 30-20-258. Enforcement of compliance for nursing facilities: appeals.

A. Nursing facility appeal rights. As set forth by 42 CFR 488.408(g) (1995), a nursing facility for which deficiencies have been identified may appeal a certification of noncompliance leading to an enforcement remedy.

B. Appeal limits. As set forth by 42 CFR 488.408(g) (1995), nursing facilities may not appeal the Commonwealth's choice of the remedy to be applied, including the factors considered by the Commonwealth or HCFA in selecting the remedy specified in 42 CFR 488.404.

12 VAC 30-20-259. Enforcement of compliance for nursing facilities: repeated substandard quality of care.

Any remedies or sanctions which may be imposed by the Commonwealth pursuant to 42 CFR 488.414(a) shall be imposed in accordance with the requirements set forth by 42 CFR 488.414(b) through 488.414(e) and 488.454(b).



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

August 19, 1996

Joseph M. Teefey, Director
Department of Medical Assistance Services
600 East Broad Street
Suite 1300
Richmond, Virginia 23219

Attention: Victoria P. Simmons, Regulatory Coordinator

Dear Mr. Teefey:

This letter acknowledges receipt of 12 VAC 30-10-750, 12 VAC 30-10-751, and 12 VAC 30-20-249 through 12 VAC 30-20-259, State Plan for Medical Assistance Services Relating to Nursing Facility Sanctions, from the Department of Medical Assistance Services.

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,

E. M. Miller, Jr. /jc

E. M. Miller, Jr.
Acting Registrar of Regulations

VA.R. Doc. No. R96-522; Filed August 8, 1996, 4:40 p.m.

**VIRGINIA WORKERS' COMPENSATION
COMMISSION**

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 Virginia Workers' Compensation Commission will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 16 VAC 30-80-10 et seq. Regulations Governing Individual Self-Insurance Under the Virginia Workers' Compensation Act (amending 16 VAC 30-80-30).

Statutory Authority: § 65.2-201 of the Code of Virginia.

Effective Date: October 2, 1996.

Summary:

Effective July 1, 1996, a legislative change to § 65.2-801 of the Virginia Workers' Compensation Act (Chapter 181, 1996 Acts of Assembly) increased the maximum allowable debt/equity ratio used in evaluating an employer for self-insured status from 2.0 to 2.2.

Agency Contact: Copies of the regulation may be obtained from Aljuana C. Brown, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-2067.

16 VAC 30-80-30. Applications for self-insurance.

A. Applicants for individual self-insurance shall meet the following minimum requirements:

1. At least three years of operation under the current corporate identity.
2. Positive tangible net worth.
3. No fewer than 50 full-time employees within Virginia, except that for applicants with more than 250 employees in all U.S. jurisdictions this requirement will be waived.
4. No more than one net loss within the last three years.
5. A current ratio, based on audited figures, of at least 1.00, except that upon satisfactory and acceptable proof from the applicant that the median current ratio for the applicant's industry is less than 1.0, that median ratio shall be used as the minimum standard.
6. A debt/equity ratio (total liabilities to net worth), based on audited figures, of less than 2.0 2.2, except that upon satisfactory and acceptable proof from the applicant that the debt/equity ratio for the applicant's industry is greater than 2.0 2.2, that median figure shall be used as the minimum standard.

B. All applications for self-insurance must be submitted on the current version of the Employer's Application for Individual Self-Insurance (VWC Form No. 20).

C. All applications must be filled out completely and signed by an officer of the applying corporation, or by an agent authorized by the board of directors or trustees.

D. All applications must be accompanied by:

1. The latest three years of audited financial statements.
2. The latest three years of detailed claims information.
3. An overview of program operations (if this is not included with the financial figures as part of an annual report).
4. A nonrefundable application fee in the amount currently set by the commission.

VA.R. Doc. No. R96-526; Filed August 13, 1996, 9:31 a.m.

STATE CORPORATION COMMISSION

PROPOSED REGULATION

Bureau of Financial Institutions

Title of Regulations: 10 VAC 5-60-40. Rules Governing Open-End Credit Business in Licensed Consumer Finance Offices.

10 VAC 5-60-50. Rules Governing Real Estate Mortgage Business in Licensed Consumer Finance Offices.

Statutory Authority: § 6.1-244 and 12.1-13 of the Code of Virginia.

AT RICHMOND, AUGUST 8, 1996

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. BFI960072

Ex Parte: In the matter of amending the rules governing open-end credit and mortgage lending in offices licensed under the Consumer Finance Act

ORDER DIRECTING NOTICE

The Commission has authorized certain licensees under the Consumer Finance Act ("the Act"), Chapter 6 (Section 6.1-244 *et seq.*) of Title 6.1 of the Code of Virginia, to engage in the businesses of extending open-end credit and mortgage lending through affiliates operating in offices licensed under the Act, subject to certain rules, *viz.*, "Rules Governing Open-End Credit Business in Licensed Consumer Finance Offices" (10 VAC 5-60-40) and "Rules Governing Real Estate Mortgage Business in Licensed Consumer Finance Offices" (10 VAC 5-60-50). The Bureau of Financial Institutions has recommended that the Commission consider amending each set of Rules to delete the prohibition against converting an open-end credit balance or mortgage loan balance to a loan made under the Act, as shown in the two attachments to this order.

It appearing that interested parties should be afforded notice of the proposed amendments to the regulations and an opportunity to be heard in the matter of their adoption,

IT IS ORDERED THAT:

(1) This matter shall be assigned Case No. BFI960072 and papers relating to this matter be filed therein.

(2) On or before September 24, 1996, any interested person may submit written comments in support of, or in opposition to, the Commission's adoption of the amended regulation. Any such person may file a written request for a hearing in this matter on or before the same date. All comments and requests for a hearing shall be filed with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall make reference to Case No. BFI960072.

(3) This Order and two attachments shall be sent forthwith to the Registrar of Regulations for appropriate publication in the Virginia Register.

(4) The Bureau of Financial Institutions shall send a copy of this Order and the proposed amendments to every licensee under the Act, the Virginia Financial Services Association, the Virginia Citizens Consumer Council, the Virginia Poverty Law Center, and the Office of the Attorney General, Division of Consumer Counsel, and shall provide copies upon request to other interested persons.

This Order and the proposed amendments will also be available for inspection at, or distribution from, the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, telephone (804) 371-9033.

ATTESTED COPIES HEREOF shall be sent to the Commissioner of Financial Institutions and the Office of General Counsel.

10 VAC 5-60-40. Rules governing open-end credit business in licensed consumer finance offices.

A. The business of extending open-end credit shall be conducted by a separate legal entity, and not by the consumer finance licensee. The separate, open-end credit entity ("separate entity") shall comply with all applicable state and federal laws.

B. Separate books and records shall be maintained by the licensee and the separate entity, and the books and records of the licensee shall not be commingled with those of the separate entity, but shall be kept in a different location within the office. The Bureau of Financial Institutions shall be given access to the books and records of the separate entity, and shall be furnished such information as it may require in order to assure compliance with this chapter.

C. The expenses of the two entities will be accounted for separately and so reported to the Bureau of Financial Institutions as of the end of each calendar year.

D. Advertising or other information published by the licensee or the separate entity shall not contain any false, misleading or deceptive statement or representation concerning the rates, terms or conditions for loans or credit made or extended by either of them. The separate entity shall not make or cause to be made any misrepresentation as to its being a licensed lender, or as to the extent to which it is subject to supervision or regulation.

E. The licensee and the separate entity shall not make both a consumer finance loan and an extension of open-end credit to the same borrower or borrowers as part of the same transaction.

F. Except as authorized by the Commissioner of Financial Institutions, or by order of the State Corporation Commission, insurance, other than credit life insurance, credit accident and sickness insurance and credit involuntary unemployment insurance, shall not be sold in licensed consumer finance offices in connection with any extension of open-end credit by the separate entity.

G. When the balance owed under an open-end credit agreement is paid, finance charges will be assessed only to the date of payment.

~~H. The balance owed under an open-end credit agreement shall not, in whole or in part, be converted to or included in the amount of a consumer finance loan.~~

10 VAC 5-60-50. Rules governing real estate mortgage business in licensed consumer finance offices.

A. The business of making or purchasing loans secured by liens on real estate shall be conducted by a separate legal entity, and not by the consumer finance licensee. This separate, mortgage entity ("separate entity") shall comply with all applicable state and federal laws.

B. Separate books and records shall be maintained by the consumer finance licensee and the separate entity, and the books and records of the consumer finance licensee shall not be commingled with those of the separate entity, but shall be kept in a different location within the office. The Bureau of Financial Institutions shall be given access to the books and records of the separate entity, and shall be furnished such information as it may require in order to assure compliance with this chapter.

C. The expenses of the two entities shall be accounted for separately and so reported to the Bureau of Financial Institutions as of the end of each calendar year.

D. Advertising or other information published by the consumer finance licensee or the separate entity shall not contain any false, misleading or deceptive statement or representation concerning the rates, terms or conditions for loans made by either of them. The separate entity shall not make or cause to be made any misrepresentation as to its being a licensed lender, or as to the extent to which it is subject to supervision or regulation.

E. The consumer finance licensee and the separate entity shall not make both a consumer finance loan and a real estate mortgage loan to the same borrower or borrowers as part of the same transaction.

~~F. The balance owed under a real estate mortgage loan shall not, in whole or in part, be converted to or included in the amount of a consumer finance loan.~~

G. F. Any compensation paid by the separate entity to any other party for the referral of loans, pursuant to an agreement or understanding between the separate entity and such other party, shall be an expense borne entirely by the separate entity. Such expense shall not be charged directly or indirectly to the borrower.

H. G. Except as authorized by the Commissioner of Financial Institutions, or by order of the State Corporation Commission, insurance, other than credit life insurance, credit accident and sickness insurance and credit involuntary unemployment insurance, shall not be sold in licensed consumer finance offices in connection with any mortgage loan made or purchased by the separate entity.

I. H. No interest in collateral other than real estate shall be taken in connection with any real estate mortgage loan made or purchased by the separate entity.

FINAL REGULATIONS

Bureau of Insurance

Title of Regulation: 14 VAC 5-234-10 et seq. Rules Governing Essential and Standard Health Benefit Plan Contracts (Insurance Regulation 46) (amending 14 VAC 5-234-30 and 14 VAC 5-234-40).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: September 1, 1996.

Agency Contact: Copies of the regulation may be obtained from Jackie Cunningham, Bureau of Insurance, State Corporation Commission, P. O. Box 1197, Richmond, Virginia 23218, telephone (804) 371-9348. Copying charges are \$1.00 for the first two pages and 50¢ for each additional page.

AT RICHMOND, AUGUST 5, 1996

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS960165

Ex Parte: In the matter of adopting revised Rules Governing Essential and Standard Health Benefit Plan Contracts

ORDER ADOPTING REGULATION

WHEREAS, by order entered herein July 1, 1996, all interested persons were ordered to take notice that the Commission would enter an order subsequent to July 30, 1996, adopting a revised regulation proposed by the Bureau of Insurance unless on or before July 30, 1996, any person objecting to the adoption of the regulation filed a request for a hearing with the Clerk of the Commission;

WHEREAS, as of the date of this order, no request for a hearing has been filed with the Clerk of the Commission;

THEREFORE, IT IS ORDERED that the regulation entitled "Rules Governing Essential and Standard Health Benefit Plan Contracts" which is attached hereto and made a part hereof should be, and it is hereby, ADOPTED to be effective September 1, 1996.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who shall forthwith give further notice of the adoption of the regulation by mailing a copy of this order, together with a complete copy of the regulation, to all insurers, health services plans, and health maintenance organizations licensed in the Commonwealth of Virginia.

State Corporation Commission

14 VAC 5-234-30. Definitions.

For the purposes of this chapter:

"*Adult*" means an individual 18 years old and older.

"*Carrier*" means any person that provides one or more health benefit plans or insurance in this Commonwealth, including an insurer, a health services plan, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement, a third-party administrator or any other person providing a plan of health insurance subject to the authority of the commission.

"*Case management*" means a form of medical management that coordinates the health care needs of individuals having chronic conditions or serious illness or injury requiring multiple medical services over an extended period of time, to ensure the cost-effective and appropriate use of medically necessary health care services.

"*Child*" means an individual from birth to the age of 18 years.

"*Coinsurance percentage*" or "*coinsurance*" means the percentage of allowable charges allocated to the carrier and to the covered person.

"*Copayment*" means a specified charge that a covered person must pay each time services of a particular type or in a designated setting are received by a covered person.

"*Deductible*" means the amount of allowable charges that must be incurred by an individual or a family per year before a carrier begins payment.

"*First-degree relative*" means a parent or child of an individual.

"*Health benefit plan*" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a MEWA (Multiple Employer Welfare Arrangement) or plan provided by another benefit arrangement. Health benefit plan does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"*Hospital*" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

1. The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

a. Be an institution operated pursuant to law;

b. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and

c. Provide 24-hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

2. The definition of the term "hospital" may state that such term shall not include:

a. Convalescent homes, convalescent rest, or nursing facilities;

b. Facilities primarily affording custodial, educational or rehabilitative care; or

c. Facilities for the aged, drug addicts or alcoholics.

"*Medically effective*" means a service which (i) is furnished or authorized for the diagnosis or treatment of the covered individual's illness, disease, injury, or pregnancy; (ii) pursuant to the prevailing opinion within the appropriate specialty of the United States medical profession, is safe and effective for its intended use, and that omission would adversely affect the person's medical condition; and (iii) is furnished by a provider with appropriate training, experience, staff, and facilities to furnish that particular service.

"*Medical emergency*" means a condition or chief complaint manifested by acute symptoms of sufficient severity which, without immediate and necessary medical attention, could reasonably be expected to result in (i) serious jeopardy to the mental or physical health of the individual, or (ii) danger of serious impairment of the individual's bodily functions, or (iii) serious dysfunction of any of the individual's organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"*Medically necessary*" means a service acknowledged as acceptable medical practice by an established United States medical society for the treatment or management of pregnancy, illness, or injury which (i) is the most appropriate and cost-effective service to be provided safely to the patient, (ii) is consistent with the patient's symptoms or diagnosis, and (iii) is not experimental or investigative in nature. The fact that a physician prescribes a service does not automatically mean such service is medically necessary and will qualify for coverage.

"*Medicare*" shall be defined in any hospital, surgical, or medical expense policy which relates its coverage to eligibility for Medicare or Medicare benefits. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of the Public Laws 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the 'Health Insurance for the Aged Act,' as then constituted and any later amendments or substitutes thereof," or words of similar import.

"*Mental or nervous disorder*" shall not be defined more restrictively than a definition including neurosis, psycho neurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind including physiological and psychological dependence on alcohol and drugs.

"*Morbid obesity*" means the greater of two times normal body weight or 100 pounds more than normal body weight. Normal body weight is determined for a covered person using generally accepted weight tables for a person's age, sex, height and frame.

"*Newborn care*" means the initial routine history, examination and subsequent care of a healthy newborn infant, rendered while the newborn infant is an inpatient at the facility where, and during the admission when, birth occurred.

"*Nurse*" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse" or "registered nurse" are used without specific description as to type, then the use of such terms requires the carrier to recognize the services of any individual who qualifies under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.

"*Physician*" may be defined by including words such as "duly qualified physician" or "duly licensed physician."

"*Plan*" means the contracts offering the standard or essential benefits pursuant to §§ 38.2-3431 through 38.2-3433 of the Code of Virginia.

"*Prehospital emergency medical services*" means care received by acutely ill or injured patients who require immediate medical attention because of an unexpected or sudden occurrence or accident or an urgent or pressing need, including care that may be provided by urgent care centers.

"*Primary care provider*" means the physician or other health care practitioner designated from a network of providers as the provider responsible for providing, managing or directing all health care received by the covered individual enrolled in a preferred provider organization or a health maintenance organization.

"*Primary small employer*," a subset of "small employer," means any person actively engaged in business that, on at least 50% of its working days during the preceding year, employed no more than 25 eligible employees and not less than two unrelated eligible employees, except as provided in subdivision A 2 of § 38.2-3523 of the Code of Virginia, the majority of whom are enrolled within this Commonwealth. Primary small employer includes companies that are affiliated companies or that are eligible to file a combined tax return. Except as otherwise provided, the provisions of this regulation that apply to a primary small employer shall apply until the earlier of the plan anniversary or one year following the date the employer no longer meets the requirements of this definition.

"*Small employer*" or "*small employer market*" means any person actively engaged in business that, on at least 50% of

its working days during the preceding year, employed less than 50 100 eligible employees and not less than two unrelated eligible employees, the majority of whom are employed within this Commonwealth. A small employer market group includes companies that are affiliated companies or that are eligible to file a combined tax return. Except as otherwise provided, the provisions of Article 5 (§ 38.2-3431 et seq.) of Chapter 4 of Title 38.2 of the Code of Virginia that apply to a small employer shall continue to apply until the earlier of the plan anniversary or one year following the date the employer no longer meets the requirements of this definition.

14 VAC 5-234-40. General requirements.

A. Every insurer, health services plan, fraternal benefit society, or health maintenance organization licensed to issue policies of accident and sickness insurance, subscription contracts, or evidences of coverage in this Commonwealth; and every multiple employer welfare arrangement operating in this Commonwealth and subject to the jurisdiction of the commission must notify the commission in writing of its intent to participate or not participate in the primary small group market or the small group market [~~within 90 days of the effective date of this regulation by November 30, 1996,] or within 90 days of the effective date of any legislation affecting qualification as a small employer carrier or primary small employer carrier. Registration procedures, including, but not limited to the validity of existing registrations following a change affecting small employer or primary small employer qualification and the registration of new or additional carriers [~~subsequent to the 90-day period by November 30, 1996~~], shall be provided to all entities described in 14 VAC 5-234-20 in the form of an administrative letter sent by regular mail to the entity's mailing address shown in the commission's records.~~

B. All small employer carriers issuing essential and standard plans must report to the commission annually by March 1 the number of primary small employers covered by the essential and standard plans during the preceding calendar year. The report shall include the number of employees covered, including dependents, the age and sex of all employees, and shall be on the "Virginia Primary Small Employer Coverage Report" form as adopted herewith or later modified by the commission.

C. Periodic demonstration of fair and active marketing of the essential and standard benefit plans shall be submitted to the commission by all small employer carriers. The number of new plans issued, their geographic location, and industry must be submitted to the commission beginning December 1, 1995, on the "Virginia Primary Small Employer New Business Report" form as adopted herewith or later modified by the commission. Each federally qualified health maintenance organization must demonstrate to the commission's satisfaction its inability to offer the essential plan in the event the health maintenance organization believes that it is unable to offer such plan.

D. Small employer carriers are not allowed to issue riders or endorsements which reduce or eliminate benefits, with the exception of dental benefits which may be provided by separate contract in accordance with § 38.2-3431 D of the Code of Virginia.

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E. No contract may exclude coverage for a loss due to a preexisting condition for a period greater than 12 months as described in §§ 38.2-3432 A 1 and 38.2-3431 C of the Code of Virginia.

F. All contracts must comply with the requirements of Title 38.2 of the Code of Virginia which are not inconsistent with Article 5 (§ 38.2-3431 et seq.) of Chapter 34 of Title 38.2.

G. Small employer carriers must provide 30 days advance notice to the commission and either the policyholder, contract holder, enrollee, or employer of their decision to cease to write new business in the primary small employer market.

H. Any plan which does not utilize a primary care provider shall be responsible for providing all benefits required by the essential and standard benefit plans. The requirement that a primary care provider provide, manage, or direct care for a covered individual shall be waived.

I. Carriers must offer primary small employers electing to be covered under an essential or standard health benefit plan the option to choose coverage that does not provide dental benefits. The primary small employer making such election must purchase separate dental coverage for all eligible employees and eligible dependents from a dental services plan authorized pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia.

J. Plans must comply with §§ 38.2-3408 or 38.2-4221 of the Code of Virginia relating to reimbursement to providers.

Virginia Primary Small Employer
Coverage Report

Insurance Company Name:

NAIC Number: Date:

Contact Person:

Title:

Telephone Number:

ESSENTIAL HEALTH BENEFIT PLANS

Number of Primary Small Employer Groups Covered:

Number of Covered Employees:

	Male	Female
Age 0-18		
18-29		
30-39		
40-49		
50-64		
65 & over		

Total Number of Persons Covered:

STANDARD HEALTH BENEFIT PLANS

Number of Primary Small Employer Groups Covered:

Number of Covered Employees:

	Male	Female
Age 0-18		
18-29		
30-39		
40-49		
50-64		
65 & over		

Total Number of Person Covered:

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Virginia Primary Small Employer New Business Report

Insurance Company Name:

NAIC Number: Date:

Contact Person:

Title:

Telephone Number:

Period Covered: to

ESSENTIAL HEALTH BENEFIT PLANS

Number of New Essential Plans Issued:

For each new essential plan issued, identify the industrial classification and geographical location of the employer below.

New Plan	Industrial Classification	Geographic Location
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

STANDARD HEALTH BENEFIT PLANS

Number of New Standard Plans Issued:

For each new standard plan issued, identify the industrial classification and geographical location of the employer below.

New Plan	Industrial Classification	Geographic Location
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

VPSE-2
May/95

Title of Regulation: 14 VAC 5-350-10 et seq. Rules Governing Surplus Lines Insurance (amending 14 VAC 5-350-10, 14 VAC 5-350-20, 14 VAC 5-350-30, 14 VAC 5-350-50, 14 VAC 5-350-70 through 14 VAC 5-350-120, and 14 VAC 5-350-140 through 14 VAC 5-350-170; repealing 14 VAC 5-350-230).

Statutory Authority: §§ 12.1-13, 38.2-223 and 38.2-4813 of the Code of Virginia.

Effective Date: September 1, 1996.

Agency Contact: Copies of the regulation may be obtained from Chris Brockwell, Bureau of Insurance, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, telephone (804) 371-9333. Copying charges are \$1.00 for the first two pages and 50¢ for each additional page.

AT RICHMOND, AUGUST 5, 1996

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS960168

Ex Parte: In the matter of adopting revised Rules Governing Surplus Lines Insurance

ORDER ADOPTING REGULATION

WHEREAS, by order entered herein July 1, 1996, all interested persons were ordered to take notice that the Commission would enter an order subsequent to July 30, 1996, adopting a revised regulation proposed by the Bureau of Insurance unless on or before July 30, 1996, any person objecting to the adoption of the regulation filed a request for a hearing with the Clerk of the Commission;

WHEREAS, as of the date of this order, no request for a hearing has been filed with the Clerk of the Commission;

THEREFORE, IT IS ORDERED that the regulation entitled "Rules Governing Surplus Lines Insurance" which is attached hereto and made a part hereof should be, and it is hereby, ADOPTED to be effective September 1, 1996.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission of the Bureau of Insurance in care of Administrative Manager Brian P. Gaudiose, who shall forthwith give further notice of the adoption of the regulation by mailing a copy of this order, together with a complete copy of the regulation, to all licensed surplus lines brokers and approved surplus lines insurers in the Commonwealth of Virginia.

14 VAC 5-350-10. Purpose.

A. The purpose of this chapter is to set forth rules, forms and procedures consistent with the Surplus Lines Insurance Law (§§ 38.2-4800 through 38.2-4815 of the Code of Virginia) and the Insurance Information and Privacy Protection Law (§§ 38.2-600, 38.2-602, 38.2-608, 38.2-609, 38.2-610, 38.2-

611, and 38.2-612 of the Code of Virginia) to carry out the provisions of these laws.

B. The Bureau of Insurance shall issue the necessary forms to carry out the provisions of the Surplus Lines Insurance Law and this chapter.

14 VAC 5-350-20. Applicability.

This chapter applies to all *Persons persons* procuring surplus lines insurance coverage on risks resident, located or to be performed in Virginia, to all surplus lines policies issued for delivery in Virginia and to any other evidence of surplus lines insurance coverage issued for delivery in Virginia.

14 VAC 5-350-30. Definitions.

As used in this chapter:

"Admitted insurer" means an insurer licensed by the commission to do an insurance business in this Commonwealth.

"Authorized to write the insurance coverage sought" means that the admitted insurer is licensed for that class of insurance in this Commonwealth and has complied with the applicable provisions of Title 38.2 of the Code of Virginia concerning the filing of rules, rates and policy forms providing the insurance coverage sought, unless such insurance coverage has been exempted from filing by commission order.

"Class of insurance" means the classes enumerated in §§ 38.2-109 through 38.2-121 and §§ 38.2-124 through 38.2-134 of the Code of Virginia.

"Commercial insured" means an insured (i) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer, (ii) whose aggregate annual premiums for insurance on all risks total at least \$75,000, or (iii) who has at least 25 full-time employees.

"Diligent effort" means:

1. For business that is originated by a surplus lines broker, a good faith search for insurance among admitted insurers resulting in declinations of coverage by three unaffiliated admitted insurers licensed and authorized in this Commonwealth to write the insurance coverage sought, whether or not the surplus lines broker is an agent of any of the declining insurers; and
2. For business that is referred from a licensed property and casualty insurance agent, declinations or rejections of coverage by three insurers licensed in this Commonwealth to write the class of insurance, whether or not the surplus lines broker is an agent of any of the declining insurers.

"Eligible surplus lines insurer" means a non-admitted insurer approved by the commission pursuant to subsection B of § 38.2-4811.

"Nonadmitted insurer" means an insurer not licensed to do an insurance business in this Commonwealth. "Nonadmitted insurer" includes insurance exchanges authorized under the laws of a state.

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"Procure" means to bind or cause to be bound insurance coverage (orally or in writing) or to issue or cause to be issued an insurance policy, whichever comes first.

"Surplus lines broker" means a person licensed under this chapter to procure insurance on risks resident, located or to be performed in this Commonwealth from eligible surplus lines insurers.

"Surplus lines insurance" means any insurance in this Commonwealth of risks resident, located or to be performed in this Commonwealth, permitted to be procured by or through a surplus lines broker from an eligible surplus lines insurer. Surplus lines insurance does not include reinsurance, insurance obtained directly from a nonadmitted insurer by the insured upon his own life or property, life insurance, credit life, industrial life, variable life, annuities, variable annuities, credit accident and sickness, credit insurance, title insurance, contracts of insurance on vessels or craft, their cargo, freight, marine, builder's risk, maritime protection and indemnity, ship repairer's legal liability, tower's liability or other risks commonly insured under ocean marine insurance, and insurance of the rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to the ownership, maintenance or operation of such railroads.

"Unaffiliated" means admitted insurers who are not part of a group of insurers under common ownership or control.

14 VAC 5-350-50. Application for surplus lines brokers' broker's license.

Any applicant for a new or renewal surplus lines broker's license shall file with the commission an application on Form SLB-1 (Appendix 1). The applicant shall submit with the application the license fee required by § 38.2-4802 of the Code of Virginia.

14 VAC 5-350-70. Applicants to file bond with commission.

The applicant shall file a surety bond with the commission on Form SLB-2 (Appendix 2) in the amount prescribed by § 38.2-4804 of the Code of Virginia prior to the issuance of a surplus lines broker's license. The applicant shall file with the bond the appropriate acknowledgement of principal on Form SLB-2a (Appendix 3) if an individual or partnership, or on Form SLB-2b (Appendix 4) if a corporation contained in Form SLB-2.

14 VAC 5-350-80. Suspension, revocation, and refusal of license.

The commission may refuse to issue a surplus lines broker's license or may suspend or revoke the license of any surplus lines broker under § 38.2-1831 of the Code of Virginia for any one or more of the following reasons:

1. Failure to allow the commission to examine the broker's records and accounts as required by this chapter and Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia;
2. Failure to make and file monthly quarterly reports as required by this chapter and Chapter 48;

3. Failure to make and file the annual report required by this chapter and Chapter 48;

4. Failure to pay when due the surplus lines premium tax, assessment, or penalty required by this chapter and Chapter 48;

5. Failure to meet the qualifications for issuance of a surplus lines broker's license required by this chapter and Chapter 48;

6. Violation of any provision of the Surplus Lines Insurance Law Chapter 48 or this chapter; or

7. Any other cause for which a property and casualty agent's license may be revoked, suspended, or refused.

14 VAC 5-350-90. Affidavit that insurance is unprocureable from licensed insurers.

A. ~~When a surplus lines broker procures insurance coverage from an eligible surplus lines insurer, the surplus lines broker procuring the insurance shall execute Form SLB-5a (Appendix 5) for an individual affidavit or Form SLB-5b and SLB-5b (Supplement) (Appendix 6) for a combined affidavit, stating that the surplus lines broker was unable, after "diligent effort," as defined in this chapter and subsection A of § 38.2-4806 of the Code of Virginia, to procure the insurance requested from companies licensed in Virginia in a form and at a premium acceptable to the insured. Each surplus lines broker shall execute an affidavit on Form SLB-3 to accompany the quarterly report required by subsection D of § 38.2-4806 of the Code of Virginia. Each surplus lines broker shall also execute an affidavit on Form SLB-4 to accompany the annual report required by subsection A of § 38.2-4807 of the Code of Virginia. The affidavit shall be a sworn statement, covering all of the policies reported by the broker on the accompanying quarterly or annual report, that such policies were procured by the broker in accordance with the applicable laws and rules governing surplus lines insurance in this Commonwealth.~~

B. ~~The affidavits quarterly affidavit required under this section shall be filed with and received by the commission within the period specified in subsection A of § 38.2-4806 of the Code of Virginia. The annual affidavit shall be filed by March 1 of each year.~~

C. ~~If the insurance transaction involves insurance primarily for personal, family, or household needs rather than business or professional needs, the surplus lines broker must comply with the provisions of Chapter 6 (§ 38.2-600 et seq.) of Title 38.2 of the Code of Virginia by giving the prospective insured the required adverse underwriting decision notice Form VA-6024, as required by § 38.2-610 of the Code of Virginia. A copy of the executed adverse underwriting decision notice must be attached to the individual affidavit, or, in the case of combined affidavits, to each applicable SLB-5b (Supplement) quarterly affidavit which covers the policy to which it applies.~~

14 VAC 5-350-100. Commercial insured waiver of diligent effort.

A commercial insured as defined in this chapter may waive the requirement of a diligent effort being made by the surplus

lines broker among companies licensed and authorized to write the class of insurance sought. The licensed surplus lines broker shall have the commercial insured sign the waiver notice required under subsection C of § 38.2-4806 of the Code of Virginia as prescribed in Form ~~SLB-12 (Appendix 13)~~ *SLB-10*. The signed waiver required under this section shall be attached to the *quarterly* affidavit forwarded to the commission as prescribed in ~~14 VAC 5-350-100~~ *14 VAC 5-350-90*. A copy of each signed waiver shall be retained by the surplus lines broker for the time period specified in *14 VAC 5-350-140*.

14 VAC 5-350-110. Changes requiring refiling of affidavit quarterly report.

If, after delivery of any policy or other written evidence of insurance, there is any change in the identity of the insurer(s), or in the proportion of the risk assumed by any insurer, or if there is any material change in coverage, the surplus lines broker shall promptly issue and deliver to the insured an appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible thereunder. The *affidavit quarterly report* required under ~~14 VAC 5-350-90~~ *14 VAC 5-350-150* of this chapter shall be refiled to reflect any changes listed in the preceding sentence. Such refiling may be accomplished by the filing of a copy of the original *affidavit quarterly report* with such changes noted thereon or attached thereto.

14 VAC 5-350-120. Notice to insured.

The licensed surplus lines broker shall provide the notice to the insured required under subsection B of § 38.2-4806 of the Code of Virginia as prescribed in Form *SLB-9 (Appendix 10)*. The notice shall be given prior to the placement of the insurance; however, if coverage must be placed and become effective within 24 hours after referral of the business to the surplus lines broker, the notice may be given promptly following such placement. An additional copy of the notice shall be affixed to the policy by stamp, sticker, or other means on all policies procured pursuant to this chapter. When a property and casualty agent refers coverage to a surplus lines broker, it is the responsibility of the surplus lines broker to assure that this requirement is satisfied.

14 VAC 5-350-140. Records of surplus lines broker.

Each surplus lines broker shall keep in his office the records required by subsection A of § 38.2-4807 of the Code of Virginia. *In addition, for each policy procured by him, the surplus lines broker shall make and keep a record of the rejections or declinations of coverage which include the name of the declining admitted insurer, the representative of the admitted insurer responsible for rejecting or declining the coverage sought, and the date the coverage was rejected or declined by the admitted insurer.* The record of each policy, other than the records required by subsection A of § 38.2-4807, shall be made available for inspection by the commission within 24 hours of a request therefor.

The records required by § 38.2-4807 of the Code of Virginia shall be subject to examination without notice by the commission pursuant to § ~~38.1809~~ *38.2-1809* of the Code of Virginia and shall be available during normal business hours.

Such records shall be retained for a period of not less than five years following termination of the policy.

14 VAC 5-350-150. Surplus lines broker to file monthly quarterly report.

Every licensed surplus lines broker shall file with the commission a report on Form ~~SLB-7a (Appendix 7)~~ *SLB-5* for the business conducted during the previous ~~month~~ *calendar quarter*. This report shall be filed with and received by the commission not more than 30 days after the end of the ~~calendar month~~ *quarter* in which any such insurance has been procured by the surplus lines broker. ~~However, a surplus lines broker may file the combined affidavit set forth in 14 VAC 5-350-90 of this chapter in lieu of Form SLB-7a.~~

14 VAC 5-350-160. Surplus lines broker to file annual report.

On or before the first day of March of each year every licensed surplus lines broker shall file with the commission a report as required by § 38.2-4807 of the Code of Virginia on Form ~~SLB-8 (Appendix 8)~~ *SLB-6* for the business conducted during the previous calendar year. The report prescribed in this section shall be verified and notarized. In lieu of filing Form ~~SLB-8, Part 1, SLB-6~~ a broker may file legible photocopies of the previously filed *monthly quarterly reports on Form SLB-5* for the calendar year.

14 VAC 5-350-170. Surplus lines broker to file gross premium tax report and remit taxes and assessments due.

A. Every licensed surplus lines broker whose annual premium tax liability can reasonably be expected to exceed \$1,500 shall file with the commission the quarterly gross premium tax report on Form ~~SLB-10 (Appendix 11)~~ *SLB-7* no later than 30 days after the end of each calendar quarter. Form ~~SLB-10~~ *SLB-7* shall be verified and notarized. The licensed surplus lines broker shall also file Form ~~SLB-11, Parts 1, 2, 3, and 4 (Appendix 12)~~ *SLB-5* at the same time that Form ~~SLB-10~~ *SLB-7* is filed. ~~In lieu of filing Form SLB-11, Part 1, a broker may file legible photocopies of the previously filed monthly reports for the quarter.~~ Every licensed surplus lines broker shall remit to the commission the full amount of gross premium tax due as calculated on Form ~~SLB-10~~ *SLB-7* when this report is filed. Such remittance shall be made payable to the Treasurer of Virginia.

B. On or before the first day of March of each year every surplus lines broker that was licensed for any portion of the preceding calendar year shall file with the commission the gross premium tax and assessment report on Form ~~SLB-7 (Appendix 9)~~ *SLB-8*. The report prescribed in this section shall be verified and notarized. Enclosed with the ~~SLB-7~~ *SLB-8* report, every licensed surplus lines broker shall remit to the commission the full amount of gross premium tax and assessment due as calculated on Form ~~SLB-7~~ *SLB-8*. Such remittance shall be made payable to the Treasurer of Virginia.

C. If a payment is made in an amount later found to be in error, the commission shall, if an additional amount is due, notify the surplus lines broker of the additional amount and

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the surplus lines broker shall pay such amount within 14 days of the date of the notice. Failure to pay the full amount of gross premium tax and assessment due on or before the first day of March shall be punishable under §§ 38.2-4814, 38.2-403 or 58.1-2507 of the Code of Virginia. In addition, any person licensed or required to be licensed under this chapter who willfully fails or refuses to pay the full amount of the tax or assessment required by this chapter, either by himself or through his agents or employees, or who makes a false or fraudulent return with intent to evade the tax or assessment levied, or who makes a false or fraudulent claim for refund shall be guilty of a Class 1 misdemeanor. If any person licensed or required to be licensed under Chapter 48, (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia, charges and collects from the insured the taxes and assessments required by this chapter and Chapter 48, such person shall be a fiduciary to this Commonwealth for any taxes and assessments owed to this Commonwealth under this chapter and Chapter 48. If an overpayment is made, the surplus lines broker may petition the commission for a refund of such overpayment pursuant to the provisions of § 58.1-2030 of the Code of Virginia.

14 VAC 5-350-230. Effective date. (Repealed.)

~~This chapter shall take effect on May 1, 1987. Surplus lines broker's licenses issued prior to May 1, 1987 and expiring on March 15, 1988 shall be deemed valid on the effective date of this chapter.~~

NOTICE: The forms used in administering the Rules Governing Surplus Lines Insurance (14 VAC 5-350-10 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 State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

~~Form SLB-1, Application for License as Surplus Lines Broker, SLB-1 (eff. 5/87) [(rev. 8/96) (rev. 9/96)] .~~

~~Form SLB-2, Bond for Surplus Lines Broker, SLB-2 (eff. 5/87) [(rev. 8/96) (rev. 9/96)] .~~

~~Acknowledgment of Principal Individual or Partnership, SLB-2a (eff. 5/87).~~

~~Acknowledgment of Principal Corporations Only, SLB-2b (eff. 5/87).~~

~~Individual Affidavit by Surplus Lines Broker, SLB-5a (eff. 5/88).~~

~~Combined Affidavit by Surplus Lines Broker, SLB-5b (eff. 5/88).~~

~~Form SLB-3, Quarterly Combined Affidavit by Surplus Lines Broker [(eff. 8/96) (eff. 9/96)] .~~

~~Form SLB-4, Annual Combined Affidavit by Surplus Lines Broker [(eff. 8/96) (eff. 9/96)] .~~

~~Form SLB-5, Surplus Lines Quarterly Report [(eff. 8/96) (eff. 9/96)] .~~

~~Form SLB-6, Surplus Lines Annual Report [(eff. 8/96) (eff. 9/96)] .~~

~~Form SLB-7, Quarterly Gross Premiums Tax Report [(eff. 8/96) (eff. 9/96)] .~~

~~Form SLB-8, Annual Gross Premiums Tax Report, Surplus Lines Broker, SLB-7 (eff. 5/88) [(rev. 8/96) (rev. 9/96)] .~~

~~Annual Gross Premiums Tax Report Part 1, Additional Premiums Part 2, Return Premiums Part 3, Notarized Statement Part 4, SLB-8 (eff. 12/87).~~

~~Form SLB-9, Notice to Insured [(eff. 8/96) (eff. 9/96)] .~~

~~Form SLB-10, Commercial Insured Waiver [(eff. 8/96) (eff. 9/96)] .~~

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APPENDIX 1.

VIRGINIA FORM SLB-1 (REV. 5/87)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
Richmond, Virginia

APPLICATION FOR LICENSE
AS SURPLUS LINES BROKER

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, RICHMOND, VIRGINIA

The undersigned applicant who is currently licensed as a Property & Casualty Agent in the Commonwealth of Virginia hereby applies for a license as a Surplus Lines Broker under the provisions of Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and the Commission's Rules Governing Surplus Lines Insurance, for the term expiring on the 15th day of March next succeeding the license issue date.

Remittance of (\$50.00) (\$25.00) is submitted herewith to cover the required license fee. (If license application is filed on or before September 15, the license fee is \$50.00; if filed after September 15, the license fee is \$25.00).

The applicant submits the following statements and answers in support of this application:

1. Name of Applicant _____ IRS # _____
Tel No. () _____
2. Business Address _____ () Individual
(Street Number) () Partnership
() Corporation
(Town or City) (State) (Zip Code)

3. Residence Address (if applicant is an INDIVIDUAL)
(Street Number) (Town or City) (State) (Zip Code)

4. Active Members (if applicant is a PARTNERSHIP or a CORPORATION)
NOTE: Individuals to act for partnership or corporation in the transaction of insurance under authority of license applied for limited to partners, officers, directors, or employees of applicant, each of whom is individually licensed as a Property and Casualty Insurance Agent as defined in Section 38.2-1800 of the Code of Virginia.

Table with columns: NAME, SS#, TITLE, RESIDENCE ADDRESS

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5. ~~The submission of this application signifies the applicant's understanding and agreement to abide by the requirements outlined in Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and Commission's Rules Governing Surplus Lines Insurance regarding insurance transacted under the authority granted by the applicant's licensure as a surplus lines broker.~~

~~The applicant hereby declares that the foregoing answers are true and correct; and that the requirements outlined in Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and the Commission's Rules Governing Surplus Lines Insurance are fully understood and will be fully complied with.~~

(Signature of Applicant, if an individual)

(Print name of applicant, if a partnership
or corporation)

By _____
(Officer or Partner of applicant)

Title _____

State Corporation Commission

STATE OF VIRGINIA _____)

County (City) of _____) To-Wit:

This day _____ personally

(Name of Individual Surplus Lines Broker)

appeared before me in the County (City) aforesaid, and verified that the foregoing answers and declarations given in this application are true and correct.

Given under my hand this _____ day of _____, 19____.

(Notary Public)

My Commission expires _____

STATE OF VIRGINIA _____)

County (City) of _____) To-Wit:

This day _____ of _____

(Name of Authorized Individual) — (Name of Corporation or Partnership)

personally appeared before me in the County (City) aforesaid, and verified that the foregoing answers and declarations given in this application are true and correct.

Given under my hand this _____ day of _____, 19____.

(Notary Public)

My Commission expires _____

State Corporation Commission

APPENDIX 2

VIRGINIA FORM SLB-2 (REV. 5/87)

BOND FOR SURPLUS LINES INSURANCE BROKER
(To comply with Section 38.2-4804 of the Code of Virginia)

KNOW ALL MEN BY THESE PRESENTS, That _____ of _____ as Principal, and the _____ Company, a corporation organized and existing under the laws of the State of _____, and authorized to do business in the Commonwealth of Virginia, as Surety, are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the penal sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000) for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, successors and assigns, jointly and severally, firmly by these presents.

SIGNED, SEALED, AND DATED THIS _____ day of _____, 19 _____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the said Principal has applied to the State Corporation Commission of the Commonwealth of Virginia for a license to act as a Surplus Lines Broker pursuant to Chapter 48 (§ 38.2-4800 et seq.) of the Code of Virginia and, in accordance with Section 38.2-4804 thereof, is required to give a corporate surety bond unto the COMMONWEALTH OF VIRGINIA in the penal sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000);

NOW THEREFORE, the condition of this obligation is such that if the said Principal shall conduct business under said license in accordance with the provisions of the laws and regulations of the Commonwealth of Virginia pertaining to Surplus Lines Brokers, and, further, shall promptly remit the taxes and assessments provided by such laws and regulations, then this obligation shall be null and void; otherwise, to remain in full force and effect;

PROVIDED, this bond shall cover the acts of the Principal during the period beginning on the date such license becomes effective and ending on the fifteenth day of March next succeeding; and in no event shall the Surety's aggregate liability hereunder for all losses exceed the penal sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000);

PROVIDED FURTHER, the Surety may be released from liability for future breaches of the conditions of this bond only after thirty days have elapsed from the giving of written notice to the State Corporation Commission of the Commonwealth of Virginia of its desire to be so released;

IN WITNESS WHEREOF, the said Principal has caused these presents to be signed and the said Surety has caused these presents to be signed by its duly authorized officer or Attorney-in-Fact and its corporate seal affixed on the day and year first written above.

(Principal)
BY _____
(If Principal is Partnership or Corporation)

TITLE _____
(SEAL OF SURETY)

(Surety)
BY _____
(Officer or Attorney-in-Fact)

State Corporation Commission

APPENDIX 3

VIRGINIA FORM SLB 2-a (REV. 5/87)

ACKNOWLEDGMENT OF PRINCIPAL
(INDIVIDUAL OR PARTNERSHIP)

STATE OF VIRGINIA
CITY (COUNTY) OF _____ to wit:

I, _____, a Notary Public in and for the City (County) aforesaid, in the State of Virginia, do certify that _____ whose name or names is or are signed to Virginia Form SLB 2 bearing date on the _____ day of _____, personally appeared before me and acknowledged the same.

My term of office expires on the _____ day of _____, 19____.

Given under my hand this _____ day of _____, 19____.

Notary Public

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

STATE OF VIRGINIA
CITY (COUNTY) OF _____, to wit:

I, _____, a Notary Public in and for the City (County) aforesaid, in the State of Virginia, do certify that _____ personally appeared before me and made oath that he is _____ of the _____; that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____, and recorded in the Clerk's office of the _____ of _____, in Deed Book No. _____, page _____; that said power of attorney has not been revoked; that the said company has complied with all the requirements of law regulating the admission of such companies to transact business in the State of Virginia; that the said company holds a license authorizing it to do business in the State of Virginia; that it has a surplus to policyholders of \$ _____; that the penalty of the foregoing bond is not in excess of ten per centum of said sum; that the said company is not by said bond incurring in the aggregate on behalf or on account of the principal named in said bond a liability for an amount larger than 1/10 of its surplus to policyholders; that the said company is solvent and fully able to meet promptly all of its obligations, and the said _____ thereupon, in the name and on behalf of the said company, acknowledging the foregoing writing as its act and deed.

My term of office expires on the _____ day of _____, 19____.

Given under my hand this _____ day of _____, 19____.

Notary Public

State Corporation Commission

APPENDIX 4.
VIRGINIA FORM SLB-2-b
ACKNOWLEDGMENT OF PRINCIPAL
(CORPORATIONS ONLY)

STATE OF VIRGINIA
CITY (COUNTY) OF _____, to-wit:

I, _____, a Notary Public in and for the City (County) aforesaid, in the State of Virginia, do certify that _____ appeared before me personally on the _____ day of 19____ and, being duly sworn by me, deposed and stated that he resides in _____; that he is the _____ of the _____, the corporation described in and which executed Virginia Form SLB-2; and that he signed his name thereto by like order.

I further certify that my term of office expires on the _____ day of _____, 19____.

Given under my hand this _____ day of _____, 19____.

(Notary Public)

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

STATE OF VIRGINIA
CITY (COUNTY) OF _____, to-wit:

I, _____, a Notary Public in and for the City (County) aforesaid, in the State of Virginia, do certify that _____ personally appeared before me and made oath that he is _____ of the _____; that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____, and recorded in the Clerk's office of the _____ of _____, in Deed Book No. _____, page _____; that said power of attorney has not been revoked; that the said company has complied with all the requirements of law regulating the admission of such companies to transact business in the State of Virginia; that the said company holds a license authorizing it to do business in the State of Virginia; that it has a surplus to policyholders of \$_____; that the penalty of the foregoing bond is not in excess of ten per centum of said sum; that the said company is not by said bond incurring in the aggregate on behalf or on account of the principal named in said bond a liability for an amount larger than 1/10 of its surplus to policyholders; that the said company is solvent and fully able to meet promptly all of its obligations, and the said _____ thereupon, in the name and on behalf of the said company, acknowledging the foregoing writing as its act and deed.

My term of office expires on the _____ day of _____, 19____.

Given under my hand this _____ day of _____, 19____.

Notary Public

State Corporation Commission

APPENDIX 5.

VIRGINIA FORM SLB 5a (REV. 5/87)

TRANSACTION NO. _____

INDIVIDUAL AFFIDAVIT BY SURPLUS LINES BROKER

Re:

INSURANCE ON VIRGINIA RISK PLACED WITH AN UNLICENSED INSURER

STATE OF _____, CITY/COUNTY OF _____:

I, _____, being duly sworn, affirm:

1. THAT I, a duly licensed Surplus Lines Broker or an individual authorized under the license issued to _____ under Chapter 48, Title 38.2 of the Code of Virginia, was engaged by the insured named below or through _____ (Lic. No. _____) a Property and Casualty Agent duly licensed in Virginia acting in behalf of the named insured, to obtain insurance against certain risks:

NAME AND ADDRESS OF INSURED	DESCRIPTION OF RISK AND LOCATION	CLASS OF INSURANCE	AMOUNT

2. Check the statement below which applies to this transaction. Only one of the three options listed will be applicable.

- A. The commercial insured named above, as defined in Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and 14 VAC 5-350-30 of Chapter 350 of Title 14 of the Administrative Code, has waived the requirement of a diligent effort and a copy of the signed waiver (SLB-12) is attached; or
- B. THAT I, for business that is referred from a licensed property and casualty insurance agent, after making a diligent effort, found that the insurance requested could not be procured from insurers licensed in Virginia in a form and at a premium acceptable to the insured, and

THAT the following three insurers are among those licensed to write the class of insurance desired in Virginia but which specifically declined to issue or rejected the coverage desired (List three insurers):

NAME OF ADMITTED INSURERS DECLINING COVERAGE	COMPANY REPRESENTATIVE* (Name Title Location)	DATE DECISION GIVEN

*Individual Named Must Have The Authority To Accept The Risk

- C. OR, THAT I, for business that was originated by me, after making a diligent effort, found that the insurance requested could not be procured from insurers licensed in Virginia in a form and at a premium acceptable to the insured, and

THAT the following three unaffiliated insurers are among those licensed to write the insurance coverage sought in Virginia and said insurers have complied with the applicable provisions of Title 38.2 of the Code of Virginia concerning the filing of rules, rates, and policy forms for the insurance coverage sought, but which specifically declined to issue or rejected the coverage desired (List three insurers):

State Corporation Commission

NAME OF ADMITTED INSURERS DECLINING COVERAGE	COMPANY REPRESENTATIVE* (Name, Title, Location)	DATE DECISION GIVEN

*Individual Named Must Have The Authority To Accept The Risk

3. THAT the insurance set forth above has been effected with the following unlicensed insurer(s):

NAME OF UNLICENSED INSURER(S)	POLICY NO. AND DATE PROCURED	EFFECTIVE DATE AND TERM OF POLICY	PREMIUM

4. THAT I, if the transaction involves insurance primarily for personal, family, or household needs rather than business or professional needs, have complied with the provisions of Chapter 6 (§ 38.2-600 et seq.) of Title 38.2 of the Code of Virginia and 14 VAC 5-350-90 of Chapter 350 of Title 14 of the Administrative Code by giving the prospective insured the required adverse underwriting decision notice Form VA-6024, a copy of which is attached to this affidavit.

5. THAT the insured has been given the notice required by § 38.2-4806.B., Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and 14 VAC 5-350-120 of Chapter 14 of the Administrative Code.

(Surplus Lines Broker)

By _____
(Authorized individual if licensee is a Corporation or Partnership)

SUBSCRIBED AND SWORN TO before me
this _____ day of _____, 19 _____.

(Notary Public)

My commission expires _____.

State Corporation Commission

APPENDIX 6
VIRGINIA FORM SLB-5b

TRANSACTION NOS.

COMBINED AFFIDAVIT BY SURPLUS LINES BROKER

Re:

INSURANCE ON VIRGINIA RISK PLACED WITH AN UNLICENSED INSURER

STATE OF CITY/COUNTY OF

I, being duly sworn, affirm:

License No.

- 1. THAT I, a duly licensed Surplus Lines Broker or an individual authorized under the license issued to ... (Lic. No. ...) under Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia, was engaged by the insureds named herein or Property and Casualty Agents duly licensed in this Commonwealth acting in behalf of the insureds named herein to obtain insurance against certain risks during the month of ..., 19...
2. THAT I, if the transaction involves insurance primarily for personal, family, or household needs rather than business or professional needs, have complied with the provisions of Chapter 6 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and 14 VAC 5-350-90 of Chapter 350 of Title 14 of the Administrative Code by giving the prospective insured the required adverse underwriting decision notice Form VA-6024, a copy of which is attached to the applicable SLB-5b (Supplement(s)).
3. THAT each insured named herein has been given the notice required by subsection B of §38.2-4806 of the Code of Virginia, Chapter 48, (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and 14 VAC 5-350-120 of Chapter 350 of Title 14 of the Administrative Code.
4. THAT the gross premiums written during the month of ..., 19... are \$... and the amount of the tax (2.75%) applicable thereto is \$...
5. THAT the insurance described herein has been effected with the unlicensed insurers named herein.

Surplus Lines Broker

By

(Authorized individual if licensee is a Corporation or Partnership)

SUBSCRIBED AND SWORN TO before me this ... day of ..., 19...

(Notary Public)

My Commission expires ... (See Reverse Side For Instructions)

State Corporation Commission

INSTRUCTIONS:

- ~~1. This Combined Affidavit is to be used to record policies effective in a particular month. For example, a policy with a July 31st effective date would be reported on the July SLB-5b and the SLB-5b (Supplement) due August 30th.~~
- ~~2. If no policies were effective during a given month, the Monthly Premium Report (SLB-7a) must be filed for that month, indicating "no policies written effective during report month".~~
- ~~3. Gross premium (all premium, dues, and assessments, but excluding premium taxes, etc., charged to the policyholder) shown on the Combined Affidavit (SLB-5b (Supplement)) must agree with the gross premium shown in Item 4 on the reverse side. Any differences, discrepancies, endorsements, audits, etc. changing premium on the Combined Affidavit filed are to be reported on the Additional Premium Report (SLB-8, Part 2) or Return Premium Report (SLB-8, Part 3). Item 4 on the reverse is verification of the premiums shown on the (Combined Affidavit SLB-5-B(Supplement(s))).~~
- ~~4. When a policy has been written on a deposit or installment basis, a photocopy of the previously filed Combined Affidavit (SLB-5b (Supplement)) in question must be filed.~~
- ~~5. A revised Combined Affidavit (SLB-5b, Page 1) for a prior month must be submitted in the event that Combined Affidavits (SLB-5b (Supplement(s))) filed during the current effective month were effective during a prior month. For example, if several Combined Affidavit (SLB-5b (Supplement(s))) effective in February were filed with the Bureau in May, then a revised Combined Affidavit (SLB-5b, Page 1) for February must be submitted.~~

State Corporation Commission

Surplus Lines Broker _____

Transaction No. _____

VIRGINIA FORM SLB-5b
(Supplement)

Page _____ of _____

Mo. _____ Year _____

COMBINED AFFIDAVIT BY SURPLUS LINES BROKER

Re:

INSURANCE ON VIRGINIA RISK PLACED WITH AN UNLICENSED INSURER

NAME AND ADDRESS OF INSURED	DESCRIPTION OF RISK AND LOCATION	CLASS OF INSURANCE	AMOUNT

1. Name of Property and Casualty Agent duly licensed in Virginia acting on behalf of the insured if applicable:
 _____ (Lic. No. _____);

2. Check the statement below which applies to this transaction. Only one of the three options listed will be applicable.

A. The commercial insured named above, as defined in Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and 14 VAC 5-350-30 of Chapter 350 Title 14 of the Administrative Code, has waived the requirement of a diligent effort and a copy of the signed waiver (SLB-12) is attached; or

B. THAT I, for business that is referred from a licensed property and casualty insurance agent, after making a diligent effort, found that the insurance requested could not be procured from insurers licensed in Virginia in a form and at a premium acceptable to the insured, and

— THAT the following three insurers are among those licensed to write the class of insurance desired in Virginia but which specifically declined to issue or rejected the coverage desired (List three insurers):

NAME OF ADMITTED INSURERS DECLINING COVERAGE	COMPANY REPRESENTATIVE* (Name, Title, Location)	DATE DECISION GIVEN

*Individual named must have the authority to accept the risk

C. OR, THAT I, for business that was originated by me, after making a diligent effort, found that the insurance requested could not be procured from insurers licensed in Virginia in a form and at a premium acceptable to the insured, and

— THAT the following three unaffiliated insurers are among those licensed to write the insurance coverage sought in Virginia and said insurers have complied with the applicable provisions of Title 38.2 of the Code of Virginia concerning the filing of rules, rates, and policy forms for the insurance coverage sought, but which specifically declined to issue or rejected the coverage desired (List three insurers):

NAME OF UNAFFILIATED ADMITTED INSURERS DECLINING COVERAGE	COMPANY REPRESENTATIVE* (Name, Title, Location)	DATE DECISION GIVEN

State Corporation Commission

*Individual named must have the authority to accept the risk

3. Complete the following:

NAME OF UNLICENSED INSURER(S)	POLICY NO. & DATE PROCURED	EFFECTIVE DATE & TERM OF POLICY	PREMIUM

USE ONE PAGE FOR EACH POLICY OF SURPLUS LINES INSURANCE PROCURED.

State Corporation Commission

APPENDIX-7.

GROSS PREMIUMS - SURPLUS LINES POLICY

Broker's Name _____ Page _____

IRS or Sec. Sec. No. _____ of _____
 _____ Month _____ Year

Name of Insured	Name of Unlicensed Company	Policy Number	Policy Dates (FROM - TO)	Premium	Comments

_____ Page Total _____ Total Including
 _____ This Page
 _____ \$ _____ \$
 Tax (2.75%) \$ _____ \$ _____

VIRGINIA FORM SLB-7a (Rev. 5/87)
 (See Reverse Side For Instructions)

State Corporation Commission

INSTRUCTIONS:

1. ~~Monthly Premium Report (SLB-7a) is to be filed in addition to affidavit(s) (SLB-5a). The Monthly Report is used to record policies effective in a particular month. For example, a policy with a July 31st effective date would be reported on the July SLB-7a report, due August 30th.~~

2. ~~The report must be filed whether any policies were effected or not. If no policies were effective during the month, file report, indicating "no policies written effective during report month".~~

3. ~~Gross premium (all premiums, dues, fees, and assessments, but excluding premium taxes, etc., charged to the policyholder) shown on the affidavit (SLB-5a) must agree with premiums shown on the Monthly Report (SLB-7a). Any differences, discrepancies, endorsements, audits, etc. changing premium on the affidavit filed are to be reported on the Additional Premium Report (SLB-8, Part 2), or Return Premium Report (SLB-8, Part 3).~~

- ~~The monthly report is verification of the gross premiums shown on the affidavits.~~

4. ~~When a policy has been written on a deposit or installment basis, report installments on monthly report, with notation (installment" in COMMENTS column, and include photocopy of previously filed affidavit.~~

5. ~~A revised Monthly Premium Report for a prior monthly must be submitted in the event that affidavits filed during the current effective month were effective during a prior month. For example, if several affidavits effective in February were filed with the Bureau in May, then a revised Monthly Premium Report for February must be submitted.~~

6. ~~Copies of Monthly Premium Reports (SLB-7a) must be reproduced for brokers' use. The Bureau does not maintain a supply of these forms.~~

State Corporation Commission

APPENDIX-8

GROSS PREMIUMS - SURPLUS LINES POLICY

Broker's Name _____ Page _____

IRS or Sec. Sec. NO. _____ Year Ending _____ of _____

Name of Insured	Name of Unlicensed Company	Policy Number	Policy Dates (FROM - TO)	Premium	Comments

Page Total _____ Total Including
_____ This Page
\$ _____ \$ _____

VIRGINIA FORM SLB-8
PART 1
(Rev. 5/87)

State Corporation Commission

VIRGINIA
FORM SLB-8
PART 2
(REV. 5/87)

ADDITIONAL PREMIUMS (by Endorsement & Audits) - SURPLUS LINES POLICIES

For Year Ending December 31, _____ Page _____

Broker's Name

(Show ADDITIONAL premiums resulting from endorsement to or audit of policies previously reported for tax purposes.)

POLICY NO.	INSURANCE COMPANY	NAME OF INSURED AND ADDRESS	ENDORSEMENT OR AUDIT?	EFFECTIVE DATE	ADDITIONAL PREMIUM

TOTAL _____

State Corporation Commission

VIRGINIA
FORM SLB-8
PART 3

RETURN PREMIUMS (by Endorsement, Audits, Cancellations) - SURPLUS LINES POLICIES

For Year Ending December 31, _____ Page _____

Broker's Name

(Show RETURN premiums resulting from endorsement to, or audit, or cancellation of policies previously reported for tax purposes.)

POLICY NO.	INSURANCE COMPANY	NAME OF INSURED AND ADDRESS	ENDORSEMENT, AUDIT OR CANCELLATION?	EFFECTIVE DATE	RETURN PREMIUM

TOTAL _____

State Corporation Commission

APPENDIX 8

VIRGINIA FORM SLB-8

PART 4

(REV. 5/87)

STATE OF VIRGINIA _____ To-Wit:

County (City) of _____

This day _____

_____ (Name) _____ (Title)

of _____ personally appeared before me in the County
(City) aforesaid, and verified that the foregoing report is correct.

Given under my hand this _____ day of _____, 19____

(Notary Public)

My Commission expires _____

State Corporation Commission

APPENDIX 9

VIRGINIA FORM SLB-7 (REV. 5/87)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
Richmond, Virginia 23209

SURPLUS LINES BROKER'S
ANNUAL GROSS PREMIUMS TAX REPORT

Year ended December 31, 19

(Surplus Lines Broker)

(Address)

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, Richmond, Virginia

In compliance with §§ 38.2-4807 and 38.2-4809 of the Code of Virginia, following is a report of ALL GROSS PREMIUMS, ASSESSMENTS, DUES AND FEES charged on contracts of insurance effected in unlicensed insurers on Virginia risks by the undersigned. This report also includes details of all additional and return premiums on such business.

- 1. GROSS PREMIUMS (SLB-8, Part 1, attached, or Monthly Reports attached) \$
2. ADDITIONAL PREMIUMS (See Form SLB-8, Part 2, attached) \$
3. Less: RETURN PREMIUMS (See Form SLB-8, Part 3, attached) \$
4. BALANCE (Taxable Premium Income) \$
5. Premium Tax (2 3/4% of BALANCE, Line 4) \$
6. Assessment for Maintenance of Bureau of Insurance (based upon Taxable Premium (Line 4) at % (subject to a minimum of \$)) \$
7. TOTAL TAX AMOUNT DUE OR (Lines 5 & 6) \$
8. Less: QUARTERLY AMOUNT(S) PREVIOUSLY PAID (if any) \$
9. BALANCE DUE AND CHECK MADE PAYABLE TO THE TREASURER OF VIRGINIA ATTACHED \$
10. RETURN DUE IF LINE 8 IS GREATER THAN LINE 7 \$

(Date)

By

(Title)

(over)

State Corporation Commission

STATE OF VIRGINIA _____)

County (City) of _____) To Wit:

This day _____

_____ (Name) _____ (Title)

of _____ personally appeared before me in the County
(City) aforesaid, and verified that the foregoing report is correct.

Given under my hand this _____ day of _____, 19____.

(Notary Public)

My Commission expires _____

State Corporation Commission

APPENDIX 10

VIRGINIA FORM SLB-9 (REV. 5/87)

DATE _____

Applicant/Insured _____

Name of Non-Admitted Insurer
(If available) _____

Policy No. _____

NOTICE TO INSURED

~~THE INSURANCE POLICY THAT YOU HAVE APPLIED FOR HAS BEEN PLACED WITH OR IS BEING OBTAINED FROM AN INSURER APPROVED BY THE STATE CORPORATION COMMISSION FOR ISSUANCE OF SURPLUS LINES INSURANCE IN THE COMMONWEALTH, BUT NOT LICENSED OR REGULATED BY THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA. THEREFORE, YOU, THE POLICYHOLDER, AND PERSONS FILING A CLAIM AGAINST YOU ARE NOT PROTECTED UNDER THE VIRGINIA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ACT (§§ 38.2-1600 et seq.) OF THE CODE OF VIRGINIA AGAINST DEFAULT OF THE COMPANY DUE TO INSOLVENCY. IN THE EVENT OF INSURANCE COMPANY INSOLVENCY YOU MAY BE UNABLE TO COLLECT ANY AMOUNT OWED TO YOU BY THE COMPANY REGARDLESS OF THE TERMS OF THIS INSURANCE POLICY, AND YOU MAY HAVE TO PAY FOR ANY CLAIMS MADE AGAINST YOU.~~

(Name of Surplus Lines Broker)

(Licence Number)

(Broker's Mailing Address)

State Corporation Commission

APPENDIX 11

VIRGINIA FORM SLB-10 (5/87)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
Richmond, Virginia 23209

SURPLUS LINES BROKER'S
QUARTERLY GROSS PREMIUMS TAX REPORT
Quarter ended _____, 19__

(Surplus Lines Broker)

(Address)

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, Richmond, Virginia

In compliance with §38.2-4809 of the Code of Virginia, following is a report of ALL GROSS PREMIUMS, ASSESSMENTS, DUES AND FEES charged on contracts of insurance effected in unlicensed insurers on Virginia risks by the undersigned. This report also includes details of all additional and return premiums on such business.

Table with 2 columns: Description and Amount. Rows include: 1. GROSS PREMIUMS (SLB-11, Part 1, attached, or Monthly Reports attached) \$; 2. ADDITIONAL PREMIUMS (See Form SLB-11, Part 2, attached) \$; 3. Less: RETURN PREMIUMS (See Form SLB-11, Part 3, attached) \$; 4. BALANCE (Taxable Premium Income) \$; 5. Premium Tax (2 3/4% of BALANCE, Line 4) \$; TOTAL TAX AMOUNT DUE AND CHECK MADE PAYABLE TO THE TREASURER OF VIRGINIA ATTACHED \$

(Date)
By
(Title)
(over)

State Corporation Commission

STATE OF VIRGINIA _____)
County (City) of _____) To Wit:

This day _____
_____ (Name) _____ (Title)

of _____ personally appeared before me in the County
(City) aforesaid, and verified that the foregoing report is correct.

Given under my hand this _____ day of _____, 19____

(Notary Public)

My Commission expires _____

State Corporation Commission

APPENDIX 12: GROSS PREMIUMS - SURPLUS LINES POLICY

Broker's Name _____ Page _____

IRS or Soc. Sec. No. _____ of _____
_____ Quarter Ending _____

Name of Insured	Name of Unlicensed Company	Policy Number	Policy Dates (FROM - TO)	Premium	Comments

VIRGINIA FORM SLB-11 _____ Page Total _____ Total Including

PART 1 _____ This Page

(5/87)

_____ \$ _____ \$ _____

State Corporation Commission

VIRGINIA
FORM SLB-11
PART 2
(5/87)

ADDITIONAL PREMIUMS (by Endorsement & Audits) - SURPLUS LINES POLICIES

For Quarter Ending _____

Page _____

Broker's Name _____

(Show ADDITIONAL premiums resulting from endorsement to or audit of policies previously reported for tax purposes.)

POLICY NO.	INSURANCE COMPANY	NAME OF INSURED AND ADDRESS	ENDORSEMENT OR AUDIT?	EFFECTIVE DATE	ADDITIONAL PREMIUM

TOTAL _____

State Corporation Commission

VIRGINIA

FORM SLB-11

(5/87)

PART 3

RETURN PREMIUMS (by Endorsement, Audits, Cancellations) - SURPLUS LINES POLICIES

Quarter Ending _____

Page _____

Broker's Name _____

(Show RETURN premiums resulting from endorsement to, or audit, or cancellation of policies previously reported for tax purposes.)

POLICY NO.	INSURANCE COMPANY	NAME OF INSURED AND ADDRESS	ENDORSEMENT, AUDIT OR CANCELLATION?	EFFECTIVE DATE	RETURN PREMIUM

TOTAL _____

State Corporation Commission

APPENDIX-12

VIRGINIA

FORM SLB-11

PART 4

(REV. 5/87)

STATE OF VIRGINIA _____ To-Wit:

County (City) of _____

This day _____

(Name)

(Title)

of _____ personally appeared before me in the County (City) aforesaid, and verified that the foregoing report is correct.

Given under my hand this _____ day of _____, 19____.

(Notary Public)

My Commission expires _____

State Corporation Commission

APPENDIX 13

VIRGINIA FORM SLB-12 (5/87)

COMMERCIAL INSURED WAIVER

~~I, the commercial insured named below, hereby waive the requirement of a diligent search by the surplus lines broker among companies licensed and authorized to write the class of insurance sought prior to placing my coverage with an unlicensed insurer.~~

~~For the purpose of this waiver, a commercial insured is an insured (i) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer, (ii) whose aggregate annual premiums for insurance on all risks total at least \$75,000 or (iii) who has at least twenty-five full-time employees.~~

Commercial Insured

Authorized Individual's
Signature-Commercial Insured

Date of Waiver

Name of Surplus Lines Broker

VA.R. Doc. No. R96-519; Filed August 8, 1996, 10:36 a.m.

ADMINISTRATIVE LETTERS

Bureau of Insurance

August 9, 1996

Administrative Letter 1996-13

TO: ALL INSURERS AUTHORIZED TO WRITE ACCIDENT AND SICKNESS INSURANCE IN VIRGINIA, AND ALL HEALTH SERVICES PLANS AND HEALTH MAINTENANCE ORGANIZATIONS LICENSED IN VIRGINIA

RE: 1996 House Bill 442 - § 38.2-3407.11 of the Code of Virginia, as amended
"Direct Access" to obstetricians and gynecologists

It has come to our attention that a number of insurers are having difficulty with implementation of the above-referenced statute enacted by the 1996 Virginia General Assembly. In order to assist insurers in their efforts to comply with the new law, which took effect on July 1, 1996, the Bureau of Insurance is providing in this Administrative Letter some general guidelines and interpretations that we suggest be followed.

1. The new law applies to any of the following plans where coverage for obstetrical or gynecological services is provided:

- individual or group accident and sickness insurance policies issued by insurers and providing hospital, medical and surgical or major medical coverage on an expense-incurred basis;
- individual or group subscription contracts provided by health services plans; and
- health care plans for health care services issued by health maintenance organizations.

For purposes of the remainder of this Administrative Letter, we shall use the term "insurer" to refer to all of the above entities.

2. The law applies to all contracts, plans, policies, etc. that are:

- delivered, issued for delivery, reissued, renewed, or extended on or after July 1, 1996; or at any time thereafter that any term of any such policy, contract, or plan is changed or any premium adjustment is made.

Some insurers have chosen to implement the new requirements across the board effective July 1, 1996, instead of "rolling them in," and this is, of course, perfectly acceptable.

3. The law does NOT apply to:

- short-term travel policies;
- accident only policies; and
- short-term nonrenewable policies of not more than six months' duration.

4. The new law requires affected insurers to provide direct access to the services of an obstetrician-gynecologist to any covered female of age 13 or older.

- The obstetrician-gynecologist must be:
 - ◆ a participating provider;
 - ◆ authorized to provide services under the policy, contract, or plan; and
 - ◆ selected by the covered female.
- The services must include:

...the full scope of medically necessary services provided by the obstetrician-gynecologist in the care of or related to the female reproductive system and breasts and in performing annual screening and immunization for disorders and diseases in accordance with the most current published recommendations of the American College of Obstetricians and Gynecologists. [Also included are] services provided by nurse practitioners, physician's assistants, and certified nurse midwives in collaboration with the obstetrician-gynecologists providing care to individuals covered under any such policies, contracts or plans. (§ 38.2-3407.11.C)

• Direct access includes, WITHOUT A REFERRAL OR PRIOR AUTHORIZATION FROM THE PRIMARY CARE PHYSICIAN:

- ◆ An annual examination and routine health care services incident to and rendered during an annual visit.

Some insurers are apparently taking the position that "annual" means no more often than after an interval of 12 months. The Bureau believes that "annual" in this context means that a covered female may receive an examination once during each contract year. The statute does not appear to require an interval of 12 months between examinations.

- ◆ Follow-up care and subsequent visits, except that the insurer may require that the obstetrician-gynecologist consult with the primary care physician regarding such visits.

The statute is clear that such consultation may be by telephone, and the statute does not appear to require that such consultation occur prior to the follow-up care or subsequent visits.

5. Additional health care services not discussed above may be rendered to the covered female by the obstetrician-gynecologist, subject to the following requirements:

- Before an obstetrician-gynecologist may refer the covered female to another specialty provider, the insurer may require prior consultation with and authorization by the primary care physician, including a visit to the primary care physician, if determined necessary by the primary care physician.

State Corporation Commission

- The insurer may require prior authorization for any inpatient hospitalization or outpatient surgical procedure involving the covered female and recommended by the obstetrician-gynecologist.

6. NOTIFICATION TO PRIMARY CARE PHYSICIAN - The law makes specific provision to allow the insurer to require the participating obstetrician-gynecologist to provide written notification to the covered female's primary care physician of any visit to such obstetrician-gynecologist, including a description of the health care services rendered at the time of the visit.

This is not the same as pre-authorization or referral. It is simply for the purpose of ensuring that the primary care physician is kept apprised of and has a complete record of all relevant medical information pertaining to his or her patient.

7. NOTIFICATION TO INSUREDS - The law specifies that the insurer must inform "subscribers" IN WRITING of the provisions of the new law.

The Bureau believes the meaning of the term "subscribers" to be the "insured" under an individual contract or the primary "covered person" under a certificate issued under a group contract. It is also our interpretation that a separate written notice be provided, rather than that the notice requirement can be fulfilled simply by revision of contract forms or benefit booklets. Any such separate notice (unless it is to become part of the contract) need NOT be filed with us. Compliance with this requirement will be determined through consumer complaints and market conduct examinations.

Those insurers which have previously provided information to participating health care providers or insureds that is not consistent with the above are instructed to send corrected material to all affected parties immediately.

Questions regarding the content of this letter should be addressed, in writing, to the attention of:

Jacqueline K. Cunningham
Supervisor, Life and Health Forms & Rates Section
Bureau of Insurance
Box 1157
Richmond, VA 23218

/s/ Alfred W. Gross
Commissioner of Insurance

VA.R. Doc. No. R96-520; Filed August 9, 1996, 1:29 p.m.

FORMS

DEPARTMENT OF MINES, MINERALS AND ENERGY

EDITOR'S NOTICE: The following forms have been amended by the Department of Mines, Minerals and Energy:

Title of Regulation: **4 VAC 25-130-10 et seq. Coal Surface Mining Reclamation Regulation.**

Notice of Temporary Cessation, DMLR-ENF-220 (Rev. 10/92) (Rev. 2/96).

~~Surface Coal Mining Distance Example - Waiver (300 Feet from Dwelling)~~, DMLR-PSPT-223 (Rev. 6/88) (Rev. 2/96).

~~Certification of Stream Channel Diversions Diversion(s) Certification~~, DMLR-PT-233 (Rev. 8/92) (Rev. 2/96).

Affidavit (Reclamation Fee Payment), DMLR-PT-244 (Rev. 3/94) (Rev. 2/96).

~~Line Transect For - Forest Land Count~~, DMLR-TS-224PT-224 (Rev. 1/89) (Rev. 2/96).

Title of Regulation: **4 VAC 25-150-10 et seq. Gas and Oil Regulation.**

Technical Data Sheet for Permit Applications Under § 45.1-361.29, DGO-GO-9 (9/94) (Rev. 5/23/96).

Copies of the forms may be obtained from Stephen A. Walz, Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 North 9th Street, Richmond, VA 23217, telephone (804) 692-3200.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-100-10 et seq. Certification of Radiological Technology Practitioners (REPEALING).

Title of Regulation: 18 VAC 85-101-10 et seq. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen

Governor

Date: July 29, 1996

VA.R. Doc. No. R96-524; Filed August 12, 1996, 11:43 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-120-70 et seq. Part II: Home and Community Based Services for Technology Assisted Individuals.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen

Governor

Date: July 26, 1996

VA.R. Doc. No. R96-523; Filed August 12, 1996, 11:43 a.m.

The Legislative Record

Volume 6 No. 3

August 1996

HJR 221

Joint Subcommittee Studying the Future of Virginia's Environment

August 1, 1996, Richmond

HJR 221 created a two-year joint legislative study committee to study the future of Virginia's environment. At its first meeting, the joint subcommittee heard two staff reports and presentations from a number of state natural resource agencies.

HJR 221 directs the joint study committee to examine the history of environmental and natural resource programs and the budgetary trends for resource management in the Commonwealth. In addition, the study committee is directed to develop a long-term vision and plan for the future management of Virginia's natural resources. The joint subcommittee may also consider additional issues as it deems appropriate, such as innovative approaches used in other states, integrated environmental strategies and effective environmental negotiation mechanisms.

The directives of HJR 221 are based on findings that the citizens of the Commonwealth support the protection of clean air and water; the conservation of natural resources; the protection of open spaces, natural areas and parks; and economic development that does not degrade the environment. HJR 221 also points out that ongoing reorganizations and proposed reorganizations of natural resource management and protection responsibilities in the Commonwealth have created uncertainty and unpredictability in Virginia's approach to resource management.

INSIDE:

- 2 HJR 149: Joint Subcommittee Studying Funding Mechanisms for Navigational Dredging
- 4 HJR 240: Joint Subcommittee to Evaluate the Future Delivery of Publicly Funded Mental Health, Mental Retardation and Substance Abuse Services
- 6 HJR 135: Commission on Educational Infrastructure
- 8 HJR 167: Joint Subcommittee Studying the Status and Needs of the African-American Male in Virginia
- 9 HJR 252: High-Speed Rail System Commission
- 10 HJR 174: Commission Studying Creative Solutions for Funding for the Arts in the Commonwealth
- 10 HJR 168: Commission Studying Accountability for Educational Excellence
- 12 SJR 86/HJR 198: Joint Subcommittee Studying Handicapped Parking
- 13 HJR 108: Commission on State and Local Government Responsibility and Taxing Authority
- 14 Chesapeake Bay Restoration Advisory Committee
- 15 HJR 33: Joint Subcommittee Studying Sovereign and Charitable Immunity
- 15 Virginia Small Business Commission
- 16 SJR 118: Joint Subcommittee Examining the Restructuring of the Electric Utility Industry
- 18 HJR 84: Joint Subcommittee Studying Remedial Summer School Programs
- 19 HJR 184: Commission on the Impact of Certain Federal Court Decisions on the Commonwealth's Institutions of Higher Learning
- 22 HJR 256: Joint Subcommittee on Pain Management
- 23 Dr. Martin Luther King, Jr., Memorial Commission

VIRGINIA DIVISION OF LEGISLATIVE SERVICES

Staff Report

At the August 1 meeting, staff presented an initial report dealing with the history of natural resource and environmental management programs falling within the Secretariat of Natural Resources. Noting that natural resource agency management and environmental-protection-related state activities have been studied and altered numerous times over the last century and particularly in the past 30 years, the staff report presents two methods for reviewing this history. The first provides a review of the evolution of natural resource agencies and their responsibilities. The second provides a review of a number of broad governmental structure, natural resources, and environmental protection reviews and studies previously conducted in the Commonwealth. The staff report also provides brief descriptions of several current studies and, because HJR 221 refers to reorganization proposals before the 1996 Session of the General Assembly, it provides brief summaries of those proposals.

Budget Trends

A legislative fiscal analyst with the House Appropriations Committee provided a review of budget trends for natural resource management and environmental protection in the Commonwealth. The review of appropriations and funding from other sources, such as the federal government, for the period 1988 to 1998 provides a number of observations, including:

1. General fund contributions to environmental protection and resource management have declined from 1.19 percent to 0.80 percent of the state operating budget.
2. A total of all funds (general funds combined with funds from sources such as the federal government) for environmental protection and resource management in the Commonwealth has increased since 1988 from 0.97 percent to 1.00 percent of the state operating budget.
3. Prior to 1990, funding from all sources was weighted slightly in favor of resources management. In 1990 this trend was reversed, with environmental protection receiving the greatest proportion of funding.

Agency Reports

Representatives from the Departments of Environmental Quality, Conservation and Recreation, and Game and Inland Fisheries, from the Marine Resources Commission, and from the Chesapeake Bay Local Assistance Department made presentations to the study committee regarding their agencies. Each was asked to describe (i) the mission of the agency, (ii) the current priorities of the agency, and (iii) the priorities and plans (or planning processes) that are in place to guide the protection, enhancement, and utilization of Virginia's natural resources into the future. Study committee members raised a number of questions, including those related to the impact of the Workforce Transition Act; authorized versus actual levels of employment; hiring practices, particularly with relation to those for parks; and state owned and protected lands and their uses.

Issues

Members, while not limiting the scope of future discussions and input, raised critical issues to examine over the course of the study, including (i) the importance and needs of resource-based industries; (ii) the need for preservation and improvement of water and air quality; (iii) the need for monitoring, evaluation, and enforcement; (iv) the use and development of land; (v) open space and recreational needs; (vi) waste management; and (vii) governance issues, such as the structure for natural resource management and protection and policy development and implementation.

Next Meeting

The next meeting is scheduled for August 28 at the Annandale Campus of the Northern Virginia Community College, beginning with a business meeting at 2:30. A public hearing will be held that night at 7:00 at the same location.

The Honorable Thomas W. Moss, Jr., *Chair*
Legislative Services contact: Shannon R. Varner



HJR 149

Joint Subcommittee Studying Funding Mechanisms for Navigational Dredging

July 16, 1996, Norfolk

The joint subcommittee met at the Virginia Port Authority offices in Norfolk to discuss the need for and availability of federal and state funding for channel dredging projects in the Commonwealth. The subcommittee also compared Virginia's funding mechanisms to those of Maryland and North Carolina.

Federal Funding

Channel dredging projects ensure the navigability of the nation's waterways. Commercial projects, that is, projects that benefit at least two commercial entities, are financed through cost-sharing arrangements between the federal government and a local sponsor. For large projects in Virginia, the local sponsor is usually the Virginia Port Authority, and for smaller projects, the local sponsor is a locality. Representatives of the United States Army Corps of Engineers addressed the subcommittee and provided a list of planned large projects and their funding requirements (Table 1).

The first four projects listed in table are authorized by § 107 of the federal Rivers and Harbors Act. According to the Corps representatives, appropriations legislation currently under consideration in Congress would provide \$5 million for all of the

nation's § 107 projects, and this amount is insufficient to pay for all of the projects planned. Because the availability of federal funding for Virginia projects thus appears uncertain, the subcommittee agreed that letters should be written to Virginia's congressional delegation urging them to seek to have the projects listed on the chart specifically authorized in the appropriations legislation.

The Corps representatives also pointed out that funding for the Corps' Operations and Maintenance dredging program may also be in jeopardy, especially for projects that are justified primarily on the basis the recreational benefits. This is important because currently, once project construction has been cost-shared by the federal government and a local sponsor, the federal government maintains the project for 50 years, without the state's having to contribute to maintenance costs. State contributions toward the cost of channel maintenance dredging could become necessary if federal Operations and Maintenance funds are reduced.

State Funding: Virginia, Maryland, and North Carolina

For navigational dredging projects for which the local sponsor is a Virginia locality, state money is available to help the locality pay its share. Known as the Aid to Local Ports Fund, this \$800,000-per-year fund is part of the Commonwealth Port Fund, which is the 4.2 percent of the Transportation Trust Fund that the Virginia Port Authority receives every year. Localities may request up to 50 percent of the nonfederal cost of the project.

Fund money is used not only for dredging projects, but also for the Eastern Shore Railroad, which is owned by the Accomack-Northampton Planning District Commission. About half the money in the fund each year has gone to the railroad each year since 1989. According to the Port Authority, requests are soon going to exceed money available in the Aid to Local Ports Fund, and the Port Authority does not have the resources necessary to make complex decisions prioritizing projects. The uncertainty of the federal funding situation is cause for concern not only with regard to large projects for which the Port Authority is the local sponsor, but also with regard smaller local projects.

Maryland and North Carolina both have programs to help localities to pay the nonfederal share of dredging projects. In both states, the programs are administered by natural resources officials. Both programs provide funding for a broad range of different kinds of water projects in addition to navigational dredging. In North Carolina, grants may be requested for recreational navigation projects, flood control and drainage projects, stream restoration, beach protection, land acquisition and facility development for water-based recreation sites operated by localities, and aquatic weed control. In Maryland, fund money can be used for marking channels and harbors, constructing and maintaining marine facilities beneficial to the boating public, improvement or removal of bridges that obstruct the boating public, shore erosion control, boating information and education, and marine firefighting, police and medical services.

For "general navigation" projects in North Carolina, localities can request a state grant for up to 80 percent of the nonfederal share of the cost of the project. Like Virginia, in addition to

Table 1: Corps of Engineers Planned Large Projects

Project	Type	Federal Share	Non-federal Share	Total Cost	Date non-federal \$ due
York River Entrance Channel Chesapeake Bay	Navigation	\$2,953,000	\$1,590,000	\$4,543,000 10/94 price levels	Feb. 97
Hunting/Guilford Creeks Accomack	Navigation	\$549,000	\$385,000	\$934,000 10/94 price levels	Jan. 97
Back River Poquoson	Navigation	\$467,000	\$185,000	\$652,000 10/93 price levels	Sep. 98
Jones Creek Isle of Wight	Navigation	\$200,800	\$71,200	\$272,000 10/95 price levels	Nov. 96
50-ft. anchorage, Norfolk Harbor and Channels	Navigation	\$1,839,500	\$2,247,500	\$4,087,000 10/96 price levels	Oct. 97
South Branch of Elizabeth River Chesapeake	Navigation	\$10,000,000	\$17,000,000	\$27,000,000 10/95 price levels	1998

providing grants to localities, the state of North Carolina often acts as the local sponsor for large projects. The money for both kinds of projects comes out of general funds.

Maryland's law establishes a Waterway Improvement Fund. The law provides that the department may expend a total of \$225,000 from the fund each year without prior legislative approval, of which \$125,000 can be used for small projects (having a cost of \$5,000 or less each) such as dredging projects and construction of marine facilities. The fund is financed by an excise tax on watercraft of five percent of the fair market value of the vessel. The law directs that \$225,000 of the funds derived from this tax be deposited in the general fund and the balance deposited in the Waterway Improvement Fund.

Virginia also has a sales and use tax on watercraft, at a rate of two percent. A 1994 law provides that funds from the tax are to be paid into the general fund and allocated to the motorboat and water safety fund of the game protection fund. In 1996, 1997, and 1998, 50 percent, and in 1999, 75 percent of the funds collected are to be allocated in this way. In and after the year 2000, 100 percent of the funds from the tax are to be allocated to the motorboat and water safety fund, which is used by the Department of Game and Inland Fisheries for the administration and enforcement of the state's boating laws and the Watercraft Dealer Licensing Act.

Next Meeting

At its next meeting, scheduled to be held September 9 at 10:00 a.m. at the Port Authority offices in Norfolk, the subcommittee will learn more about the amount of money used in Virginia, Maryland, and North Carolina for dredging projects and the sources of those funds. In addition, the subcommittee will receive briefings on several marine-related revenue streams, including the watercraft sales and use tax and the portion of the motor fuels tax paid on fuel used to propel boats. The subcommittee will also continue to monitor the progress of the federal appropriations bill, which will fund § 107 dredging projects.

The Honorable Robert S. Bloxom, *Chairman*
Legislative Services contact: Nicole R. Beyer



HJR 240

Joint Subcommittee to Evaluate the Future Delivery of Publicly Funded Mental Health, Mental Retardation and Substance Abuse Services

June 24 and 25, 1996, Richmond
July 30 and 31, 1996, Tidewater

The 1996 General Assembly, after evaluating the need for reexamining the current delivery of mental health, mental retardation and substance abuse services to the citizens of the Commonwealth and assessing other studies that had begun this process, directed the HJR 240 joint subcommittee to make recommendations on, but not be limited to, the following issues:

- ▶ The current system of delivering mental health, mental retardation and substance abuse services in the Commonwealth;
- ▶ The principles and goals for a comprehensive publicly funded program in the Commonwealth;
- ▶ The range of services, and eligibility for those services, necessary to serve Virginians' needs for services;
- ▶ The proper method of funding publicly supported community and facility services, including operations and capital needs, and projecting costs of meeting identified needs and revenue required;
- ▶ The proper relationship between the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the components of the publicly funded system that deliver services, the community services boards, and the state facilities;
- ▶ The information, such as outcome and consumer satisfaction measures and comparable cost and utilization review data, and the technology needed to provide appropriate and enhanced accountability;
- ▶ The applicable chapters and sections of Title 37.1 of the Code of Virginia;
- ▶ The ways to more effectively involve consumers and families in planning and evaluating the Commonwealth's publicly funded mental health, mental retardation and substance abuse services; and
- ▶ The possible changes in the system based on the recommendations made by the Joint Subcommittee Studying Deinstitutionalization (HJR 139, 1994, and HJR 549, 1995) and on the possible recommendations by the Health and Human Resources Secretary's System Reform Task Force regarding the development of regional pilot projects.

Because of the enormity of its tasks, the complexity of the various services, and the emerging challenges in the field of health care in general, two years have been allotted for the completion of the joint subcommittee's tasks. The first year of the study will be devoted to education, information, and personal contact, to be accomplished by six two-day meetings, each consisting of informational meetings, tours of programs and facilities, and public hearings.

Background

In 1995, the Commonwealth expended a total of \$946,513,497 for public mental health, mental retardation and substance abuse services (Figure 1). To place the services provided in Virginia in perspective with those provided in other states and the District of Columbia, the Continuum of Care Study, as revised in June 1996, makes the following observations:

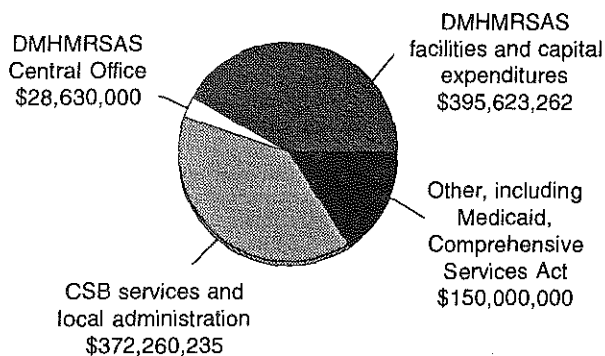


Figure 1. Commonwealth expenditures for public mental health, mental retardation and substance abuse services, 1995.

Total per capita spending:

- ▶ Virginia's total per capita spending to support public mental health (MH) services was on par with most other states (27th of 51);
- ▶ Mental retardation (MR) services were less than average (42nd);
- ▶ Virginia spent more on facility-based care (17th);
- ▶ Virginia spent less on community-based services (39th);
- ▶ For MR services, Virginia spent less than most other states on congregate programs (29th) and less on community programs (44th);
- ▶ Substance abuse (SA) services ranks midway (24th).

Proportion of total general revenue:

- ▶ Virginia was average in MH services spending (23rd);
- ▶ Virginia spent less on MR services (40th);
- ▶ Virginia spent more on SA services (16th of 50).

To better understand these spending figures and put them in proper perspective, the joint subcommittee reviewed the organization of the department and the local community services boards and how they operate to provide services to clients.

State facilities have evolved over the years from the primary source of mental health, mental retardation and substance abuse services to the more efficient use of facilities in a continuum of services working in tandem with community services boards (CSBs). The concept of community services boards developed as a result of an increasing emphasis on treatment in the least restrictive environment and was implemented by the Bagley Commission in the early 1980s. Today, public mental health, mental retardation and substance abuse services are accessed through the CSBs, which provide evaluation and connections to appropriate treatment. Institutions are but a part of this spectrum of services and are divided into three types of facilities: mental health, mental retardation, and medical.

Because of the emphasis on community-based treatment, which evolved through the concept of "deinstitutionalization," state mental health facilities' census declined from 9,343 in 1971 to 2,417 in 1995, and the census in mental retardation

facilities during that same period declined from 5,327 to 2,249. But the demand for services has continued to grow. Community services boards report that they served 208,453 individuals in 1986 (these are "duplicated" numbers in that they represent, in some cases, several services provided to a single person) and in excess of 10,000 persons remained on waiting lists for services. The number of clients served climbed to 284,328 in 1994, a 36 percent increase. Additionally, the 1994-2000 Comprehensive Plan identified 85,378 persons who will need services in that time frame. Unfortunately, the comprehensive plan process was halted two years ago, which has left a void in the collection of information and data as well as the planning process for delivery of services.

State Board

The system of mental health, mental retardation and substance abuse services in the Commonwealth is state regulated and locally operated for those clients who do not require institutional care or treatment. Institutional care is a coordinated effort between the state and the CSBs, which provide pre-admission evaluations and aftercare. The State Board for Mental Health, Mental Retardation and Substance Abuse Services is comprised of nine members of whom no less than one-third are consumers of mental health, mental retardation and substance abuse services or family members of consumers. The board has the primary responsibility for the programmatic and fiscal policies governing the operation of state hospitals and community services boards. In addition to monitoring the activities of the department and fiscal issues, the board is responsible for long-range planning and educational efforts.

Department

Under the guidance of the State Board, the department, led by the commissioner, fulfills its obligations to provide facility care to the persons experiencing serious mental illness, mental retardation and substance abuse, either long-term or for purposes of stabilization. In addition, the department (i) contracts with the CSBs for services supported through departmental grants of state general and federal block grant funds, (ii) licenses providers and facilities to deliver services, (iii) monitors the operations of the CSBs through performance reviews, (iv) provides consultation, technical assistance, guidance, and direction to the CSBs, and (v) encourages and supports evaluation and quality assurance activities conducted by the CSBs.

The largest tangible connection between the department and the CSBs is the program oversight and funding accountability, which occurs during the fiscal process. Each CSB applies to the department for funding for each fiscal year, together with the local board, by filing a plan and budget that includes the comprehensive needs assessment of the service area, an inventory of available services provided by the board and other local agencies, and the expected utilization of such services. The department then reviews the plan and makes allocations based on statutory factors.

Community Services Boards

As a result of recommendations of the Bagley Commission, the Code of Virginia requires each locality, individually or as a part of several, to establish a community services board. Local CSBs are the local governmental agencies that are responsible for providing mental health, mental retardation and substance abuse services in the community. They function as service providers, advocates for consumers, community educators, organizers and planners, advisors to their local government, and fiscal and programmatic auditors to ensure accountability.

Community Services Boards are mandated by statute to provide emergency services to anyone in need regardless of ability to pay and may provide inpatient, outpatient, and day-support services, residential services, prevention and early intervention services, and other appropriate programs necessary to provide a comprehensive system of services. Receipt of state allocations is based generally on a base level of funding to guarantee that essential services are maintained and additional funds distributed on a formula-driven allocation system.

Other Studies

Many other legislative studies have examined the issues surrounding the provision of mental health, mental retardation and substance abuse services to clients in need in the Commonwealth. Other states are facing the challenge of providing such services in the least restrictive environment, in a way that ensures accountability, and in a way that is economically responsible to the greatest number of clients needing services. Appearing throughout many of these studies are consistent themes that address issues such as (i) the efficacy of community-based services, (ii) downsizing facilities, (iii) providing individualized services in a continuum of care provided in a single system of care, (iv) ensuring that funds follow the client, (v) reinvesting funds saved from decreased usage of facilities into community-based programs, (vi) ensuring increased consumer and family involvement in the development of and provision of services, (vii) ensuring accountability, and (viii) determining the proper relationship between the department and the CSBs. In addition to revisiting some of these issues and how they play out in today's health care system, the joint subcommittee will be examining the impact of the managed care phenomenon on the delivery of mental health, mental retardation and substance abuse services.

Future Meetings

The joint subcommittee has designed each of its meetings to focus on different areas of concern that need to be addressed during this comprehensive study, such as funding, specialized service areas, managed care, future capital needs of the state mental health system, and examination of the mistakes and successes of other states in their attempts to answer some of these same questions.

Future meetings are tentatively scheduled for August 27 and 28 in Roanoke, September 25 and 26 in the Southwest, October 29 and 30 in Lynchburg/Danville, and December 3 and 4 in Northern Virginia.

The Honorable Franklin P. Hall, *Chairman*
The Honorable Joseph V. Gartlan, Jr., *Chairman*
Legislative Services contact: Gayle Vergara



HJR 135

Commission on Educational Infrastructure

July 16, 1996, Richmond

Citing school construction and technology issues such as the age of many of Virginia's public school buildings and the need for public school infrastructure capable of supporting educational technology, the increasingly important role of technology in business and industry, and the relationship between educational technology and student achievement, HJR 135 (1996) established this 23-member commission and directed it to:

- ▶ Inventory and evaluate the physical and technical infrastructure needs of public schools throughout the Commonwealth;
- ▶ Review current capital construction projects and estimate future public school construction and renovation needs;
- ▶ Determine the technological needs of the public schools;
- ▶ Recommend appropriate alternative revenue sources for school construction and renovation, including ways to provide a sound and viable educational technology infrastructure for the public schools;
- ▶ Determine the level and source of funding required to support the infrastructure and how to provide computers for all students by the year 2000, integrated instructional technology in the classroom, networking, connection to the internet, and staff development; and
- ▶ Recommend an educational technology master plan that incorporates current networking and funding initiatives and provides a vision for meeting future school construction and educational technology needs as Virginia enters the 21st century.

Status Survey

Every other year, the Department of Education conducts the school facility status survey, documenting the condition of Virginia's schools and the estimated need for renovation or new construction. This questionnaire is distributed to every school division in the Commonwealth, thereby providing a vehicle for self-reporting of school building conditions. The resulting comparative statistical information on the school building deficiencies and capabilities encapsulates information for decision-making and funding projections and charts the evolution of the Commonwealth's changing educational infrastructure.

The 1995-1996 survey shows that school divisions' use of temporary classrooms (trailers) is on the increase, with 45 percent of school divisions utilizing 3,621 mobile classrooms; that many schools (30 percent) report overcrowded classrooms; that 27 percent of Virginia's classrooms are obsolete in terms of today's technological needs; that, over the next five years, an estimated 13 percent increase in new classrooms will be needed—approximately 7,900 classrooms; and that 52 percent of the Commonwealth's school divisions report that school maintenance is being deferred.

On the positive side, school divisions report a reduction in environmental concerns and increased building access for students with disabilities. In many school divisions, the learning environment, although showing steady improvement, still has many problems. The new data show energy efficiency in 62 percent of schools, air conditioning in 68 percent of schools, and access for the disabled in 74 percent of schools. Approximately 400 schools in Virginia still have environmental concerns, such as no emergency lighting, structural defects, and no fire alarms. Other environmental issues include poor indoor air quality, lead, radon, asbestos, and underground storage tanks. Some school environment problems present a Catch 22; for example, energy efficiency is a must for air conditioning, air conditioning is a must for computer technology and year-round use of buildings, and lack of energy efficiency eats up funds that could be allocated for these improvements.

Capital Improvement

With 63 percent of the schools over 25 years old and in need of substantial renovation or replacement, cost-effective capital planning always hinges on the availability of money. Localities are estimating school construction investments of \$4.1 billion in the next five years, which will remedy less than two-thirds of known construction deficiencies of \$6.2 billion and will not correct the tendency to defer maintenance needs—a practice that increases long-term costs. Figures obtained through on-site capital improvement surveys indicate that school divisions underreport capital needs by 54 percent; therefore the real unmet capital construction need in Virginia's school divisions could exceed \$8.2 billion. Exacerbating these problems: local government economies have suffered in recent years, while the demand for services has increased; many school divisions report 11 percent or more of their budgets dedicated to debt service; and future debt capacity may be limited. In addition, school construction costs have experienced increases in recent years that far outpace the general rate of inflation.

In Virginia, school boards do not have fiscal authority other than the vested authority to "supervise" the schools, which includes managing the funds appropriated by the state and local governments for public education. The state and the various local governments share the constitutional responsibility for funding the operation of public schools through the implementation of the Standards of Quality. However, local capital costs fall squarely and solely on local governments. Local governments must, therefore, either use existing revenues to fund capi-

tal outlay (i.e., cash) or borrow the funds, usually through general obligation bonds.

General obligation debt is secured, without conditions, by the local governments' full faith, credit, and taxing power. Section 10 of Article VII of the Constitution of Virginia controls the extent to which local governments may incur general obligation debt, with cities and counties treated differently. In municipalities, bonds and other interest-bearing obligations may be issued without the approval of the voters; however, these debts cannot exceed 10 percent of the assessed value of real estate subject to local taxes (with certain exceptions). Counties, which do not have any debt ceiling, may issue general obligation bonds after obtaining voter approval. Under § 10, Article VII, counties are not, however, required to go to referendum for bonds sold to the two loan programs maintained by the Commonwealth for school construction and other capital projects—the Literary Fund, a constitutionally established, "permanent and perpetual school fund," or the Virginia Public School Authority (VPSA), a statutorily established bond bank.

Literary Fund

The Board of Education governs the Literary Fund, with a codified maximum of \$5 million per loan. Current board policy establishes the minimum loan as \$50,000 and limits the loan terms to 5 to 20 years. Literary Fund loan interest rates are keyed to the local school division's composite index, a measure of local ability to pay; for example, localities with very low composite indices of between .2 and .2999 must only pay 2 percent interest, whereas localities with composite indices of .6 and above are charged 6 percent interest. Loan applications are prioritized, with localities with composite indices of less than .6 and less than \$20 million in loans from the Literary Fund given preference. Localities with composite indices of 6.0 or localities having more than \$20 million in loans from the Literary Fund are second priority. This year, 41 projects, costing approximately \$114.1 million, are on the first-priority waiting list.

As provided in the Virginia Constitution, the General Assembly may use Literary Fund moneys for public school purposes, "so long as the principal of the Fund totals as much as eighty million dollars." The economic exigencies of the early 1990s resulted in diversions of Literary Fund moneys for public school purposes, with the choices being to maintain funding of the Standards of Quality or to maintain the capacity of the Literary Fund. Thus, funds were transferred for teacher retirement as a means of liberating general funds for other uses. The fiscal disturbances of the early 1990s resulted in sharp reductions in the capacity of the Literary Fund, with no loans being issued in fiscal years 1991, 1992, and 1993, and only \$23.2 million in loans being issued in fiscal year 1994. Dependency on Literary Fund diversions have been reduced in recent years from a high of \$101.1 million in 1992 to a projected \$23.3 million in 1998. Although fiscal year 1995 began with a first-priority waiting list of \$92.2 million, approximately half of which had been waiting for over a year and a number of which

had been waiting for nearly two years, \$113.6 million in projects were funded during 1995-1996, and the waiting list time has now been reduced to one year.

The Literary Fund provides direct loans for new construction, building additions or renovations, interest rate subsidies for projects funded through the Virginia Public School Authority, and moneys for other school purposes, such as teacher retirement and debt service on technology equipment notes (i.e., the purchase of computers and related technology). The interest rate subsidy program, initiated when the Literary Fund's loan capacity became depleted, is a kind of "hold harmless" provision that makes up the difference between the costs of debt services through the Virginia Public School Authority and the interest rate that could have been obtained, if funds had been available, through the Literary Fund. Over \$300 million in projects have been supported through the subsidy program.

The Literary Fund's principal was reported as approximately \$338 million in June of this year. Revenues for 1996-1997 are projected to be \$110.7 million, with \$41 million to be transferred to teacher retirement, \$40.1 million to pay the second-year debt service on the technology equipment notes, \$10 million for interest rate subsidy projects valued at approximately \$30 million, and \$50 million for direct loans.

VPSA

The Virginia Public School Authority offers low-cost financing for public education capital projects, thereby providing the localities with a low-cost method of bond issuance and consistent Aa ratings. The VPSA offers school boards two programs—stand alone and pooled bond programs. The pooled bond program's advantages are access to the bond market, low-cost financing, no requirement for voter referendum, and no limit on loan amounts.

The VPSA's traditional resolution pooled bonds are secured by the underlying locality bonds and Literary Fund notes held in the VPSA Reserve Fund, plus the state aid intercept provision (allowing the withholding of state aid to pay the debt). The capacity to issue these traditional bonds is dependent on the Literary Fund's loans being converted to permanent loan notes. Therefore, the diversions of the early 1990s meant that too few Literary Fund loans were made to replenish the VPSA Reserve Fund, with a resulting forecast of a drop in coverage to 1.35, and the VPSA's traditional loan program was closed in September, 1993. In 1991, the General Assembly authorized the VPSA to issue "moral obligation" bonds of up to \$500 million, secured by local school bonds, the state aid intercept provision, the debt service reserve account, and the pledge or moral obligation of the Commonwealth. The \$500 million ceiling on this bond resolution was raised to \$800 million in 1995. Recent estimates, based on current activity, are that the \$800 million ceiling will be inadequate by the Spring of 1998. The VPSA stand-alone bond program is secured by the local general obligation school bonds and the state aid intercept provision. The rating on these bonds is the locality's general obli-

tion rating. The VPSA also conducts the educational technology funding program, which financed 1995 grants to localities for the purchase of computers and other equipment and networks and will finance 1996 grants to localities for school technology infrastructure, networking, and purchasing of equipment.

Next Meeting

The next meeting of the commission, set for September 10, will focus on educational technology, including review of the Six-Year Plan for Educational Technology, staff development and instructional technology application, the history of Virginia's educational technology initiatives, and a review of the 1994, 1995, and 1996 legislative educational technology initiatives.

The Honorable Donald S. Beyer, Jr., *Chairman*
Legislative Services contact: Norma E. Szakal



HJR 167

Joint Subcommittee Studying the Status and Needs of the African-American Male in Virginia

August 6, 1996, Richmond

Citing several statistics and acknowledging that the welfare and development of African-American males demand immediate and aggressive attention, the 1996 General Assembly adopted HJR 167 to evaluate the current status and future needs of the African-American male in Virginia. At the organizational meeting, staff briefed the joint subcommittee on the background issues related to the status and needs of African-American men in Virginia, two speakers addressed the joint subcommittee, and the joint subcommittee entertained comments from members of the public.

Background

Recent statistics reveal that African-American males are eight times more likely than whites to be murdered, endure unemployment rates that are more than double those of whites, are less likely to receive a college degree in 1997 than in 1977, are exponentially more likely than whites to contract the AIDS virus, and comprise more than 50 percent of the total number of males convicted for drug trafficking in America.

Study Plan

The staff suggested that the joint subcommittee target specific issues at each meeting. The issues identified were sub-

stance abuse, education, employment, incarceration, health care, violence, and cultural dynamics. Data generated for the study will be analyzed relative to the demographic regions of the Commonwealth: urban, suburban, and rural areas. Task forces will be organized to study issues and ultimately report to the joint subcommittee. Members of the joint subcommittee as well as members of the public were invited to sign up for task forces that interested them.

Meetings

The joint subcommittee will schedule public meetings in various venues to allow access to the general public. The next subcommittee meeting will be held in September.

The Honorable Jean W. Cunningham, *Chair*
Legislative Services contact: Chris Anderson



HJR 252

High-Speed Rail System Commission

July 25, 1996, Richmond

Following introductions of members, Chairman Beyer stated his belief that high-speed passenger rail service would benefit Virginia by saving time, creating business opportunities, and preserving and enhancing the quality of life. He added that high-speed passenger rail service—not only between Richmond and Washington, D. C., but also to Hampton Roads and Southwest Virginia—must be part of Virginia's total transportation system.

Separate Passenger Service

An executive with the CSX Corporation observed that, economically, environmentally, and socially, railroads are the best way to move passengers and freight, but that passenger service must not be “superimposed” on freight service, leading to “second class service” for both passengers and freight. He urged the construction of a parallel third main line on existing railroad right-of-way between Richmond and Washington, D.C., to accommodate passenger service without compromising freight service. He estimated the cost of such an undertaking at approximately \$3 million per mile for rails and signals.

A discussion of the desirability and feasibility of separate tracks for freight and passenger service followed. Several members suggested that while separate tracks might be necessary in some areas, additional tracks might not be needed everywhere.

Responding to remarks and questions, two members of the commission offered to develop, in cooperation with the Chairman, a definition of “high-speed rail service” (as distinct from commuter rail service) for use by the commission in focusing its upcoming activities.

Future of High-Speed Rail

A former federal rail administrator shared with the commission his views on high-speed rail passenger service and its place in Virginia's future transportation system. He observed that federal deregulation had caused a “renaissance” in the railroad industry, resulting in a technologically advanced American rail system equal to any in the world. This will cause the rail transportation system to become the fundamental long-distance land mode in a global intermodal transportation system. The same economies of scale that enable railroads to carry high volumes of freight long distances safely and at relatively low cost will enable them to do the same for passengers. He felt it was impossible to “build our way out” of highway gridlock and that it was necessary to provide passengers with the same sort of intermodal transportation system now available for freight.

Richmond-Washington Corridor

The director of the Department of Rail and Public Transportation briefed the commission on the results of the department's study of the need for and feasibility of high-speed rail passenger service in the Richmond-Washington corridor (see House Document No. 57 of 1996) and the Bristol-Washington and Bristol-Richmond corridors (see House Document No. 51 of 1996). Noting that a rail passenger trip from Richmond to Washington takes 120 minutes, he set forth a seven-phase process by which this time could gradually be reduced to 60 minutes (with eight stops). He explained that relatively uncomplicated changes in tracks and signals could allow trains to reach 110 miles per hour in this corridor, but that all grade crossings within the corridor would have to be eliminated to allow trains to reach the 130 miles per hour speeds required for reducing the travel time to 60 minutes.

Comments from several members led to a general discussion of the role of high-speed rail as the long-distance component of an intermodal passenger transportation system wherein the railway stations would serve as hubs, linking rail service to other modes (such as buses, taxicabs, subways, and private automobiles).

At the conclusion of these remarks, the members made suggestions for items to be included on the agenda of future meetings and elements of an over-all work plan. The commission will meet again at the call of the Chairman.

The Honorable Donald S. Beyer, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold



HJR 174

Commission Studying Creative Solutions for Funding for the Arts in the Commonwealth

July 25, 1996, Richmond

State-supported funding for the arts has reached a crossroads. With an increasing share of the states' budgets allocated for education, Medicaid, and criminal justice, states must find other sources of revenue to support the arts. Federal spending cuts and the possible elimination of the National Endowment for the Arts have forced states to look internally for these funding solutions. At the first meeting of the Commission Studying Creative Solutions for Funding for the Arts in the Commonwealth, staff updated commission members on the progress of other states in their search for ways to ensure the constant flow of funds to the arts.

Virginia's Support for the Arts

Traditionally, Virginia has supported the arts through general appropriations to the Virginia Commission for the Arts, nonstate educational and cultural entities, and institutions of higher learning for art activities. In 1996, Virginia also established a special license program, in which \$15 of the \$25 purchase price for special arts license plates exceeding 1,000 registrations will be transferred to the Commission for the Arts. The commission uses its funding to distribute grant awards to artists, arts and other not-for-profit organizations, educational institutions, educators and local governments and provides technical assistance in arts management.

In 1990, general appropriations to the commission reached an all-time high of \$5.3 million, or nearly \$.87 per capita. However, during the early 1990s, at the height of the budget reductions, the commission's budget was cut by 73 percent to \$1.4 million, or \$.25 per capita. Although the General Assembly has increased appropriations to the commission in every year since, the commission's current budget falls short of the \$1 per capita (\$6.5 million) goal recommended by 1992 Governor's Task Force on Promotion of the Arts and the Joint Subcommittee Studying Educational Museums and the Appropriate Level of Public Support to Be Provided to Such Institutions (1993-1996).

According to statistics compiled by the Virginia Commission for the Arts, state funding for the arts constitutes a very small share (only six percent) of the total support received. Earned income, generated primarily from ticket sales, accounts for the highest share at 66 percent. However, state funding is still seen as essential because of its ripple effect in stimulating local government, corporate, and individual contributions that add another 28 percent to the pool of funds.

Other Revenue Sources

Through creative thinking, several states have found steady sources of funding for the arts from:

- ▶ Endowment funds;
- ▶ Bond issues;
- ▶ Special license plate programs;
- ▶ Income tax checkoffs;
- ▶ Lottery proceeds;
- ▶ Corporate filing fees;
- ▶ Local option taxes, such as meals and lodging sales taxes;
- ▶ Special metropolitan cultural tax districts; and
- ▶ Capital projects that must designate a percentage of their costs for inclusion of artwork.

Following a discussion of the advantages and disadvantages of each of these funding mechanisms, commission members asked staff to obtain more information about:

- ▶ The current level of support for the arts in Virginia and how much of this support is earmarked for educational purposes;
- ▶ Projected revenues of the various funding mechanisms, with particular emphasis on the revenues that would be generated if corporate filing fees were increased or redirected; and
- ▶ Ways other states have enhanced indirect support for the arts through tax deduction incentives for individual or corporate contributors.

Next Meeting

At the next meeting, scheduled for September 10th in Richmond, the commission plans to continue its assessment of the various funding mechanisms and hear from affected agencies regarding the costs of implementation and administration of these programs.

The Honorable Marian Van Landingham, *Chair*
Legislative Services contact: Ginny Edwards



HJR 168

Commission Studying Accountability for Educational Excellence

July 25, 1996, Richmond

The commission is specifically charged to develop and recommend a comprehensive plan for statewide student and teacher assessment; communicate and coordinate with certain legislative study committees; develop and recommend a comprehensive plan for the accreditation of public schools that incorporates the revised standards of learning and statewide student and teacher assessment goals; and determine appropriate alter-

natives to maximize "time-on-task" and to facilitate the productive use of daily instructional time to ensure that each student's educational needs are served.

Education Reform and Accountability

Frustration with a lack of significant improvement in the quality of public education has provided impetus for standards-based reform in public education: initiatives linking learning and accountability by making clear what students must learn and what teachers must teach. Unlike the fiscal-based accountability initiatives of the early 1970s, the current accountability movement focuses on measuring student performance and assigning responsibility for improvement. Accountability in public education has been described as a tripod, whose three legs are clearly stated goals; prompt and accurate information about progress toward them; and positive and negative consequences that follow from the information.

Inextricably linked to educational accountability are standards—skills or competencies that are valued—and assessments—the measurement of progress toward the achievement of those standards. Although accountability seems to have become almost synonymous with standardized testing, education scholars are exploring—and school divisions implementing—other modes of assessing student achievement. Some scholars have eschewed standardized testing in favor of more subjective measures of learning, such as pupil portfolios, research projects, oral presentations, exhibitions, and essays. "Graduation by exhibition" rather than as a result of "time served in class" has been employed in some high schools to reflect performance and the application of knowledge.

Standards, Assessments, and Accountability

Virginia's constitutional and statutory provisions and regulations already provide a plethora of mechanisms for the accountability of students, teachers, administrators, schools, and school divisions. The standards, assessments, and consequences so integral to any accountability initiative are primarily found in the Standards of Quality (SOQ), the Standards of Learning (SOL), and the Standards of Accreditation (SOA). The Board of Education developed and adopted in June 1995 revised SOL in the core subject areas of mathematics, science, English, and history and social science. The 1996-98 biennial budget appropriated \$6,003,000 in each year for the development and administration of new assessment materials and tests that reflect these new Standards of Learning. Data generated from the new assessments during 1996-97 are to be used only to determine test validity and reliability; the data may not be used to "impose consequences" on schools, school divisions, teachers or students.

The accountability of schools and school boards for quality education is highlighted in the SOA, regulations that include

student outcome measures, requirements and guidelines for instructional programs, staffing levels, auxiliary programs such as library and media services, and graduation requirements. The current SOA, developed in 1992, are now under review for revision by the Board of Education.

Measuring School Performance

Pursuant to the SOQ, the Superintendent of Public Instruction is responsible for the development of criteria for determining and recognizing educational performance in the public school divisions and schools. Subject to the approval of the board, these criteria are to become part of the accreditation process and must include student outcome measurements. Reflecting this directive is the Outcome Accountability Project (OAP), which provides annual reports of student performance data as a tool for improving public education in Virginia. The OAP uses "outcome indicators," such as course enrollments, attendance, and dropout rates, that target seven educational objectives:

1. Preparing students for college;
2. Preparing students for work;
3. Increasing the graduation rate;
4. Increasing special education students' living skills and opportunities;
5. Educating elementary school students
6. Educating middle school students; and
7. Educating secondary school students.

Because these performance criteria have not yet been established, OAP reports are presently used for informational purposes only. Once the performance criteria are created, it is anticipated that the OAP will expand its function to incorporate determinations of accountability.

Accountability for Students

Consistent with accountability models in other states, the Commonwealth measures student academic progress through a battery of tests and assessments. The Virginia State Assessment Program incorporates the Iowa Tests of Basic Skills for grades 4 and 8 and Tests of Achievement and Proficiency for grade 11. In 1988, the General Assembly added a Literacy Passport requirement to the standards for graduation. Promotion to the 9th grade is contingent on passing the Literacy Passport Test; a statutory exception is made for disabled students who are progressing according to an individualized education program (IEP).

Accountability for Professional Personnel

In the Commonwealth, accountability for professional personnel is primarily addressed through training, licensure, and employment laws and regulations. Employment as a public school teacher in Virginia is contingent upon licensure. Current board regulations address teacher preparation and training

requirements; issuance, revocation, suspension, and reinstatement of licenses; and qualifications for administrative, supervisory, and instructional and noninstructional positions in the public schools. Statutory provisions also help ensure accountability for quality instruction by underscoring requirements for probationary and continuing contract employment as well as suspension and dismissal.

Other Accountability Initiatives

Fiscal accountability is addressed in statutory provisions governing the development of local school board budgets, which are approved by the local governing body, and the expenditure of school funds. All school board expenditures are detailed in an annual report to the governing body appropriating funds to the school board. Parental accountability for pupil discipline is evident in various compulsory attendance and truancy laws, many of which were strengthened by the 1996 Session of the General Assembly.

Issues for Study

Although accountability initiatives are not new to the Commonwealth, recent revisions to the SOL have prompted the need for new assessments that reflect curriculum changes. The commission may consider, among other things, the implementation of these new SOL, including any accompanying student testing and assessments; current accountability mechanisms and programs in the Commonwealth's public education system; and educational accountability initiatives in other states. Similarly, consideration of the Board of Education's ongoing review and proposed revision of the SOA is necessary to create a comprehensive plan for the accreditation of public schools that incorporates the revised SOL and statewide student and teacher assessment goals.

The Honorable Donald S. Beyer, Jr., *Chairman*
Legislative Services contact: Kathleen G. Harris



SJR 86/HJR 198

Joint Subcommittee Studying Handicapped Parking

August 6, 1996, Richmond

At the opening of the joint subcommittee's second meeting, Chairman Whipple announced the appointment of a technical advisory committee, consisting of citizens who have insight and expertise regarding the issues and obstacles facing the disabled community and their usage of handicapped parking spaces. Following this announcement, the subcommittee heard several presentations.

Other States' Laws

In light of increasing abuse of handicapped parking laws, numerous states have tightened enforcement and enhanced penalties for parking violations. For example, to deter non-disabled drivers from illegally parking in spaces reserved for the disabled, Texas has enacted a system of escalating fines ranging from a minimum fine of \$100 for a first offense to a maximum of \$500 for a fifth or subsequent offense. As an additional form of punishment, Florida requires all second-time offenders to complete 40 hours of community service for a non-profit organization serving the disabled community. Florida's community service law is intended to sensitize the violator to the needs and obstacles faced by disabled persons.

Enforcing handicapped parking laws is often problematic due to drivers who create counterfeit handicapped parking placards and license plates and by drivers who use a friend's or family member's parking indicia. As a result, many states, such as Tennessee and Michigan, have made counterfeiting and unauthorized use misdemeanor offenses. California and Florida have also sought to address these problems by authorizing law-enforcement officers to request photo identification by placard and plate holders to ensure that such indicia are authentic and are being used by legitimately disabled persons. If the placard or license plate is counterfeit or is being used illegally, the officer is also authorized to confiscate the indicia immediately.

To raise public awareness about the potential consequences of illegally parking in a handicapped parking space, states such as New Jersey, North Carolina, Tennessee, Pennsylvania, and Florida have placed a summary of penalties on the handicapped parking sign itself. Similarly, notices of potential penalties are being placed on license plate and placard application forms to deter applicants and physicians from providing false information on such documents.

Another innovation in the area of handicapped parking law that has been very popular in other states is the creation of volunteer handicapped parking enforcement units. Such units typically consist of volunteers from the disabled community. They receive training and uniforms and patrol parking lots and city streets for drivers who are violating handicapped parking laws.

Evolution of Virginia's Statutes

Staff provided the subcommittee with an overview of the legislative evolution of Virginia's handicapped parking statutes. Virginia first authorized the issuance of special license plates "to persons with physical handicaps which limit their mobility" in 1972. Since that time, the scope and complexity of Virginia's handicapped parking laws have increased steadily through recurring legislation focusing primarily on the penalties imposed for parking violations, types of disabilities qualifying one for special parking privileges, signage identifying handicapped spaces, free parking for the disabled, and numerous other provisions.

Department of Motor Vehicles

Representatives from the Department of Motor Vehicles (DMV) summarized their agency's role in issuing, tracking, and revoking disabled parking special license plates and placards. Currently, there are 89,702 active disabled special license plates and 138,926 active disabled parking placards in Virginia. To ensure that such plates and placards are issued properly and used in an authorized manner, DMV (i) trains all Customer Service Center representatives on the correct procedures for issuing placards and plates; (ii) maintains an automated record of disabled placards and plates accessible by law-enforcement officers through the Virginia Criminal Information Network (VCIN); (iii) conducts random monthly sampling of applications to verify physician information provided on the form; (iv) tracks complaints of placard and plate misuse and either refers the complainant to law enforcement or assigns a DMV investigator depending on the nature of the misuse; (v) revokes misused placards and plates; and (vi) implements other monitoring and tracking procedures.

DMV noted that its greatest challenge is balancing its commitment to providing excellent customer service with the desire to prevent non-disabled individuals from obtaining placards and plates fraudulently. The agency suggested that the subcommittee consider shifting the responsibility of issuing disabled parking indicia to physicians or to localities and encouraged the subcommittee to take measures to enhance enforcement of handicapped parking violations on the state and local levels. Members of the subcommittee requested that DMV provide statistics on the number and nature of complaints received at DMV branches throughout the state, an accounting of distribution of placards and plates by branch, and a numerical breakdown of how many plates and placards are issued for each qualifying disability.

Local Government Perspective

The Arlington County treasurer testified before the subcommittee that Arlington County loses between \$500,000 and \$700,000 annually in parking meter revenues as a result of the "Four Hour Law," which entitles disabled persons to park in metered spaces for up to four hours free of charge, and by drivers fraudulently using handicapped parking indicia. He asserted that disabled parking abuse is confirmed by statistics indicating that although only four percent of the population is disabled, anywhere from 55 to 90 percent of metered spaces in Crystal City in Arlington County are occupied daily by vehicles using disabled plates and placards. He recommended that the four hour law be repealed and commented that he saw no rationale for presuming that those who are disabled are also economically disadvantaged and in need of a parking subsidy. As an alternative, he suggested that local governments be given the authority to set aside four percent of all metered spaces for the disabled and to implement pre-paid parking decals or electronic in-vehicle parking meters (Parkulators) for use by the disabled community.

Next Meeting

The subcommittee plans to meet again during the third week of September. The anticipated agenda will focus on the enforcement of handicapped parking laws and will include presentations by law-enforcement officers and a parking enforcement volunteer. An opportunity for public comment will be provided to interested parties.

The Honorable Mary Margaret Whipple, *Chair*
Legislative Services contact: Kenneth W. Gibson



HJR 108

Commission on State and Local Government Responsibility and Taxing Authority

August 12, 1996, Charlottesville

Plans for 1996

The commission held its first meeting for 1996 at the Local Government Officials Conference. Chairman Beyer opened the meeting with a review of the commission's accomplishments, focusing on the BPOL legislation that was passed during the 1996 General Assembly Session. Next, he discussed the commission's tasks for the remainder to the year.

Because it was charged with examining services offered by the Commonwealth and its localities, as well as its revenue sources, the commission will examine the current framework for delivering services and decide if it needs to be modified. In doing so, it will also attempt to anticipate the federal government's attempts to transfer more responsibility to state and local governments.

Assuming it is determined that changes are needed regarding which level of government delivers what services, a timetable for action will be proposed, including both short-term and long-term plans. The initial work will be accomplished by a special subcommittee on devolution, which will report to the commission in mid-October and later in November with final recommendations.

Devolution

The dictionary defines "devolution" as a passing down through successive stages; a delegating of authority or duties to a subordinate or substitute. This is not a new concept when it comes to governing; it is the way our system works. The federal government develops a program, decides how much of the

program it can provide, and then passes the rest to the states. In some types of programs there is flexibility in how much the state must take on. With others, there is little or no flexibility.

According to the federal affairs counsel for the National Conference of State Legislatures, that is exactly what the U.S. Congress is doing with its new welfare reform plan, which will save the federal government \$55 billion over a six-year period. How it all will work is not completely clear, but what is clear is that some of the social services that were provided for by the federal government will now be the responsibility of the states. Coming up with the funds to pay for some of these services will also fall to the states.

One factor that should prove helpful with the federal welfare reform plan is the fact that the Commonwealth has already adopted its own welfare reform plan. The planning that went into developing Virginia's welfare reform package should ease the transition required with the new federal plan. It remains to be seen how the two plans operate, individually and together.

Services Overview

A general overview and review of two of the service areas, education and social services, was presented by a Virginia Municipal League representative and a consultant, respectively. The main point with regard to education is that the state sets the standards of quality (SOQ) and the localities must write a check for part of the cost of achieving those standards. They have no say in establishing such standards. In fact, most localities exceed the SOQ requirements.

With regard to social services, two main points were made. First, the current arrangement of a locally administered, state-supervised system of the delivery of social services has accountability. Second, since 1987, the state has required local governments to provide local social services, while underfunding the reimbursement to localities for provision of services.

Future Meetings and Activities

The other service areas (transportation, corrections, health, and general administration) will be reviewed in a later meeting of the commission. The next meeting of the full commission will be in mid-October, when the devolution subcommittee will make its preliminary report. Public hearings may be held, depending on the findings and recommendations of this subcommittee.

The Honorable Donald S. Beyer, Jr., *Chairman*
Legislative Services contact: Joan E. Putney



Chesapeake Bay Restoration Advisory Committee

July 22, 1996, Richmond

Background

The Chesapeake Bay Restoration Advisory Committee was established by statute in 1995 and was given the responsibility of developing goals and guidelines for the use of the moneys collected from the sale of the special Chesapeake Bay license plates. By December 1 of each year, the advisory committee is to present to the Governor and the General Assembly a plan for expending these funds. The plan developed by the advisory committee includes the awarding of financial grants for the support of specific Chesapeake Bay environmental education and restoration projects.

At its first meeting this year, the advisory committee received a status report on the 1996 grant awards and discussed possible program changes and the schedule for the 1997 grant cycle. In the first round of grants the advisory committee awarded \$305,917 to 32 recipients.

1997 Schedule

The advisory committee made no major changes in the program's guidelines or subject area priorities. It did establish a schedule for the 1997 grant year. The revised application forms were available on August 8, 1996, and the deadline for submission of project proposals is October 1, 1996. The advisory committee will complete its review of the applications on November 12, 1996, at which time it will make its funding recommendations to the 1997 Session of the General Assembly. Approximately \$335,000 will be awarded for projects in 1997. The money will become available upon approval of amendments to the 1997 budget, presumably in May 1997.

Next Meeting

The advisory committee's tentative schedule calls for a meeting on November 12, 1996, to review grant proposals and make recommendations for the funding of specific Chesapeake Bay-related projects.

The Honorable Frederick M. Quayle, *Chairman*
Legislative Services contact: Marty Farber



HJR 33**Joint Subcommittee Studying Sovereign and Charitable Immunity***August 5, 1996, Richmond*

At its first meeting, the subcommittee reviewed the traditional doctrines of immunity and the immunity statutes and case law. Members discussed the common law features of sovereign and charitable immunity, the governmental and discretionary functions, and the different immunity protections afforded the agencies and employees of the state and of a county, city and town. The subcommittee heard from a representative of the Virginia Trial Lawyers Association, a private law firm representing a highway contractor, and a local community services board.

Issues

During their discussion of sovereign and charitable immunity, the members decided that the following issues should be reviewed during the course of the study:

1. Whether counties and cities and towns should share the same degree of immunity and whether the discretionary v. ministerial test is more appropriate than the governmental v. proprietary test to decide if particular governmental conduct is protected from tort liability;
2. Whether the notice of claim of injury required by cities and towns should be different from that required by counties;
3. Whether private contractors, such as highway contractors, when working pursuant to a contract with a governmental agency, should be afforded the same type of immunity normally afforded the governmental agency;
4. Regarding charitable immunity, whether insurance coverage should be discoverable and considered; whether charities should maintain some minimum level of insurance or be subject to a statutory cap, either money or insurance, to limit a charity's exposure, and whether, except for good Samaritan acts, the distinction between volunteer and paid employee or for-profit and not-for-profit should remain; and
5. Whether standardized language can be developed in order to locate all of the charitable and sovereign immunity statutes into one place in the Code of Virginia.

Next Meeting

The subcommittee will ask representatives from the Virginia Municipal League, the Virginia Association of Counties, and various charitable organizations, along with the others in attendance at its first meeting, to serve as resources and to attend the next meeting.

The Honorable Joseph P. Johnson, Jr., *Chairman*
Legislative Services contact: C. William Cramme, III

**Virginia Small Business Commission***July 23, 1996, Richmond*

The commission met to receive updates on current governmental programs supporting and encouraging small business development in the Commonwealth and to approve its 1996 work plan. This legislative commission was formally established by the 1995 Session of the Virginia General Assembly to study, report, and make recommendations on issues of concern to small businesses in the Commonwealth.

In 1995 the commission conducted meetings and public hearings, receiving information about issues of concern to the small business community, including proposed BPOL tax reforms. The commission plans to examine the following in 1996: (i) the role of small business in state governmental economic development plans; (ii) financing assistance programs for Virginia's small businesses; (iii) an analysis of the needs of Virginia's small business community; (iv) health care coverage for employees of small businesses; and (v) attracting small business to Virginia.

Small Business and Economic Development

The commission heard testimony at this meeting concerning the role of small business in state economic development plans and the status of financing programs for small business. The executive director of the Virginia Economic Development Partnership told the commission that the partnership will support Virginia's small businesses principally by working to attract large businesses to Virginia. The partnership, he said, will serve as the sales force for economic development in the Commonwealth. He added that in his view the most effective programs assisting small businesses are the financing programs administered by the Virginia Small Business Financing Authority (SBFA) and the management counseling programs made available through the Virginia Small Business Development Centers (SBDC).

Financing Programs**SBDC**

The SBDC program provides management assistance and technical advice to small to medium-sized start-ups and existing businesses. Virtually all SBDC clients employ fewer than 100 people. Funded by federal, state, and private financing, 21 SBDC locations throughout Virginia have provided statewide coverage for this program since 1992. The federal Small Busi-

ness Administration furnishes approximately \$1.5 million each year; the General Assembly approximately \$700,000; and additional funding comes through localities' matching funds.

The 1996 General Assembly appropriated \$500,000 per year in the current budget biennium to the SBDC program. According to the director of Small Business and Financial Services for the Department of Business Assistance, about \$350,000 will be used each year for client counseling and training, while the balance will support new offices in Alexandria and Martinsville (specifically established by the legislation), new MIS equipment, and staff professional development. Chief among the SBDC program's priorities is the implementation of exacting program evaluation standards, including regular examination of such issues as jobs created or saved through the program.

SBFA

The SBFA offers a variety of loan and guaranty programs through public-private partnerships to provide financing to Virginia businesses for growth and expansion. The authority offers industrial development bonds, a loan guaranty program, export financing assistance, and similar programs, including defense conversion and child day care financing programs.

Funding for the Child Day Care Financing Program, which provides loans up to \$25,000 for improvements in child day care programs and facilities, has not been requested in Virginia's 1996-1998 federal block grant application for child care and development. Federal block grant funds are the Day Care Financing Program's sole funding source. Consequently, this program is without funding at this time. Responding to this information, a commission subcommittee was established to determine why this program was excluded from the block grant plan and whether the plan could be amended to obtain funding for this program.

The commission was also advised that the SBFA's Loan Guaranty Program is at capacity and that the SBFA hopes to modify this program and utilize private/public-funded loan loss reserve funds to maximize the program's potential outreach.

HJR 34

Chairman Walker appointed a subcommittee to examine the issues presented by HJR 34, which directs the commission to study the capital access needs of small businesses engaged in agribusiness, agriculture, and aquaculture. The subcommittee will report its findings and recommendations concerning these issues to the full commission at an upcoming meeting. Other issues of interest to the commission include the decline of small business in urban retail districts.

The commission will also review the potential for an export loan guaranty fund similar to one currently operating in Maryland. Additionally, the commission will review a proposal to incorporate into Virginia law a federal jury duty exemption for

persons who are indispensable to the operation of small businesses.

Child Day Care Financing Subcommittee

The Child Day Care Financing Program subcommittee met on August 5 to receive testimony from SBFA and Department of Social Services (DSS) representatives concerning the operating history of the program and the former Virginia Day Care Council's preparation of the 1996-1998 federal block grant application. The subcommittee learned from the DSS commissioner that funding for the 1996-1998 Child Care and Development Block Grant program is approximately \$17 million.

A representative of the SBFA advised the subcommittee that the funding allocated to the Child Day Care Financing Program in fiscal year 1995 was \$360,000, and in 1996, \$218,000. In 1996 the total funding spent for the loan program was \$785,000, resulting in 72 loans creating 1,032 child day care spaces and 51 new jobs. The subcommittee voted to recommend that the Small Business Commission, in coordination with the Commission on Early Childhood and Child Day Care Programs, urge immediate action by the Secretaries of Commerce and Trade (in which the SBFA resides) and Health and Human Resources (DSS' secretariat) to seek amendment to the federal block grant plan to secure funding for the Child Day Care Financing Program in 1996-1998. A letter requesting this action was sent from the subcommittee chairman to Secretaries Skunda and Metcalf, respectively.

The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Arlen K. Bolstad



SJR 118

Joint Subcommittee Examining the Restructuring of the Electric Utility Industry

July 2, 1996, Richmond

The joint subcommittee convened its first meeting to establish a work plan and to receive presentations from investor-owned utilities and other generators of electrical power in the Commonwealth.

Overview

SJR 118 directs this joint subcommittee to study restructuring and potential changes in the electric utility industry in the Commonwealth and to determine the need for legislative changes in order to promote the public interest. The Virginia

State Corporation Commission (SCC), which regulates the generation and distribution of electricity within Virginia, is concurrently examining similar issues and at the time of this meeting was slated to issue its report in late July. Prompting these and similar studies in other states is continuing pressure to allow nonutility generators of electricity to sell directly to customers within the service territories of franchised electric utilities.

The federal Energy Policy Act of 1992 (EPACT) is principally responsible for these developments. Building on the Public Utilities Regulatory Policy Act of 1978 (PURPA), it allowed nonutility generators to enter the wholesale power market where they could sell power to utilities at unregulated market rates. PURPA had required utilities to purchase power from nonutility generators but at rates that reflected the costs the utilities would avoid by purchasing the power rather than generating it. PURPA and EPACT together require utilities to permit nonutility generators access to utility distribution networks to facilitate wholesale power sales.

Presently, there are several bills pending before Congress that would authorize, in various forms, direct retail sales of electricity by nonutility generators. This potential deregulation of retail electricity sales raises three significant issues addressed by witnesses before the joint subcommittee: (i) the opportunities and challenges presented by unbundling generation from transmission and distribution; (ii) the potential for stranded utility assets, and (iii) competitive and regulatory parity between utilities and nonutility generators in the emerging deregulated market. An overarching issue is whether governmental responses to these issues should be generated by the state or federal government.

Appearing before the joint subcommittee were representatives of investor-owned utilities, independent power producers, electric cooperatives and municipal power suppliers. A representative of the Edison Electric Institute (EEI, a trade association representing investor-owned utilities) told the subcommittee that 47 states and the District of Columbia are addressing reforms to retail electric service. He noted that EEI members establish EEI's approach to competition policies but that some members disagree about the elements to that approach.

Investor-Owned Utilities

Virginia's EEI members include Virginia Power, American Electric Power, Virginia (AEP Virginia), and Potomac Edison (an operating unit of Allegheny Power). Their representatives appeared before the joint subcommittee to share each company's perspective on potential retail deregulation. Virginia Power (with operations centralized in Virginia) favors a state-focused approach to this process, keeping the center of all restructuring activity in the SCC. Believing that the current pressure for comprehensive deregulation coming from large industrial customers is premature and unnecessary, it urged the joint subcommittee to consider carefully such issues as power system reliability, parity among competing suppliers, and the possibil-

ity of cross-subsidization and cost-shifting among consumer classes.

An Allegheny Power representative, on the other hand, emphasized his company's support for 50-state uniformity and a preference for regional or national guidelines because of Allegheny's interstate service territory. Allegheny supports a deregulated, market-priced environment for electrical generation. Under its vision, electrical transmission and distribution would continue to be regulated. AEP Virginia advocates allowing state initiatives to move forward independent of any federal action at this time, with the exception of assuring equal interstate access to markets, or reciprocity by the states.

AEP Virginia favors retail customer choice for generation services. It believes that fair and efficient competition, with customer access to a large body of generating companies and resources, can best be accomplished by the creation of Independent System Operators (ISOs). ISOs would assume independent operating control, but not ownership, of the transmission systems of utilities within large regions of the country. Transmission pricing would be simplified and cost-based. In effect, an ISO would define the boundaries of a regional market for generation services.

Independent Power Producers

At the heart of these interrelated issues are the nonutility generating companies, also known as independent power producers, with more than \$3.7 billion in generating facilities in Virginia. As a general matter, the independents advocate retail competition for electrical sales within the national power grid. The Virginia Independent Power Producers' representative told the joint subcommittee that the independents have added approximately 60 percent of Virginia's new generating capacity within the past 10 years. The independents view the movement at the federal level toward full retail competition as unstoppable. Moreover, they believe that a competitive market will provide more tangible financial benefits for Virginians than the current regulated system.

Electrical Cooperatives and Municipal Power Systems

The Virginia, Maryland and Delaware Association of Electric Cooperatives was represented before the joint subcommittee. The association advocates a go-slow approach to electrical utility deregulation. With customers in many of Virginia's less densely populated areas, electric cooperatives are concerned about ensuring that all electric customers have access to safe, reliable electric service at reasonable cost. Thus, the cooperatives oppose any form of retail wheeling that would be detrimental to electric cooperative customers. Moreover, they contend that stranded costs should be borne by those who choose to leave their current supplier, not by the remaining customers, such as small business and residential customers.

Municipal utilities in Virginia typically purchase (rather than generate) their own power for resale. These utilities were represented at the meeting by municipal electrical utility managers from Harrisonburg and Blackstone. The managers expressed concern that in a competitive retail environment, utilities' reserve generation capacity could easily be eliminated. Without such reserve capacities, municipal power systems would find it increasingly difficult to purchase affordable power for their customers. They also expressed concern that their larger business customers could potentially abandon them for better deals from remote generators, leaving municipalities with the problem of recovering the cost of distribution system improvements made for the benefit of business customers. Thus, stranded costs were seen as a potential problem for municipal utilities as well.

Emerging Issues

A number of questions emerged from the joint subcommittee's first meeting. First and foremost was the likely impact of retail competition on the rates and service of residential and business customers. The subcommittee will meet in September, shifting its focus to these customers and their perspective on the continuing restructuring of the electricity market.

The Honorable Jackson E. Reasor, Jr., *Chairman*
Legislative Services contact: Arlen K. Bolstad



HJR 84

Joint Subcommittee Studying Remedial Summer School Programs

July 8, 1996, Richmond

First-Year Findings and Recommendations

Staff reviewed the joint subcommittee's status report, which included the study's objectives, the findings and status of its legislative recommendations to the General Assembly, and the 1996 proposed study plan. The joint subcommittee determined that over the last decade, the numbers of at-risk children attending summer school have increased significantly in Virginia. Public schools must provide appropriate prevention, intervention, and remediation or acceleration for them, particularly those who score in the bottom national quartile on the Virginia State Assessment Program Test and those who do not pass the Literacy Passport Test (LPT), while providing for the educational needs of other students. Generally, public schools offer remediation and acceleration for these students during summer school programs. Although the number of students requiring remediation or acceleration has increased significantly over re-

cent years, funding for such programs is not commensurate with the need, and questions linger about the effectiveness of remedial summer school to improve the academic performance of at-risk students.

Year-Round Remediation

Staff of the Department of Education presented the questionnaire on student demographics, remediation, and summer literacy passport test participation, and invited representatives of the Arlington, Suffolk, and Virginia Beach public schools described the approach taken by their school divisions to remediate students who are educationally at-risk. Approximately 30,000 students were expected to take the LPT during its first summer administration. The questionnaire was designed and appended to the test to solicit information directly from students concerning their experiences in taking the tests, their preparation for the test, and the effectiveness of remedial summer school programs relative to passage of the tests. Preliminary survey findings will be presented to the joint subcommittee at its September 9 meeting.

Arlington

School-Year Acceleration Services, a program that provides a variety of services to students who have below average academic achievement, is offered during the regular school year in the Arlington public schools. During the summer of 1995, almost one-third (5,052) of Arlington's public school students attended summer school. Seventy-one percent (3,900) were enrolled in programs designed to assist them in attaining expected levels of achievement. Each year, the number of students attending summer school increases, resulting in more summer programs for students in which the curricula and instruction are structured to meet the specific needs of students. This trend, according to the Arlington superintendent, represents the growing concept of an extended school year for students who require additional instruction or who can benefit from enrichment opportunities. Remedial instruction and enrichment services are crucial for educationally at-risk students whose gap in achievement may increase during the summer. Arlington public schools also provide other programs to support improved academic achievement among low-achieving students, namely remedial instruction for the LPT, supplemental services through Title I, and assistance in setting achievement goals through Project GO (Greater Opportunities).

Suffolk

Representatives of the Suffolk public schools indicated that the school division's remediation program includes identification of at-risk students, the elementary LPT predictor pre-assessment, the provision of remedial instruction during the school year in each middle school, a Title I summer program designed to serve middle school Title I students and unclassified high school students who have not passed all sections of the LPT, and a one-week summer remedial program for students who

score within the bottom quartile on the Virginia State Assessment Program or the Iowa Test of Basic Skills. Evaluation for this program component focuses on the number of students who are subsequently successful in passing the literacy tests. At two of the three middle schools, an after-school tutoring program, Project HOPE, is offered to assist students in acquiring the basic skills measured by the literacy tests, and to provide help in other academic areas. Suffolk's high school remediation programs are offered during the school day to unclassified students who have not passed all sections of the LPT.

Virginia Beach

Virginia Beach public schools have established The Literacy Center, a full-day, year-long program whose mission is to prepare all students for competency based on promotion and to enable them to achieve academic excellence in reading, mathematics, and writing. Students who have failed one or more parts of the LPT and who have less than a B average for the eighth grade or who have failed two or more parts of the LPT by the end of the eighth grade are required to attend the center. Instruction concentrates on reading, writing, and mathematics, and the development of various other discipline and organizational skills. Students attending the center are provided transportation, breakfast, and lunch free of charge. Student-teacher ratios average 13 to 1, which promotes good student-teacher relationships and facilitates intensive, individualized instruction in preparation for the LPT. Ninety-five percent of the students at the center pass the LPT and 75 percent of such students were promoted to tenth grade.

Data Compilation and Analysis

In preparation for the next meeting, the department's staff was requested to correlate data on students failing the LPT with drop out rates, ESL students, and the general and advanced studies diplomas awarded and to correlate data on passing the LPT with remediation during the school year. The department's staff was also asked to provide a profile on students who did not graduate this school year, specifically those who did not graduate solely due to failure of the LPT, those who successfully met state and local graduation requirements but failed the LPT, the number of students who dropped out of school due to failure of the LPT, and the number of students failing the LPT by grade, score, and test components.

The joint subcommittee agreed that remediation programs offered during the school year by urban school divisions, a report on the results of the summer administration of the LPT, and the preliminary findings of the LPT survey will be the focus of its September meeting.

The Honorable Judy A. Connally, *Chair*
Legislative Services contact: Brenda H. Edwards



HJR 184

Commission on the Impact of Certain Federal Court Decisions on the Commonwealth's Institutions of Higher Education

July 1, 1996, Richmond

The commission was established to examine the legal obligations pursuant to recent federal court decisions on the desegregation of public colleges and universities, identify and assess public policy needs and implications of such decisions, and determine and recommend appropriate strategies for implementing the objectives of the court decisions to ensure the state's compliance. The focus of the commission's first meeting included the study objectives, the relevant legal background, the findings and recommendations of previous legislative committees, the proposed study plan, and a presentation on the report of the Southern Education Foundation.

Legal Background

Adams Decision

In 1970, *Adams v. Richardson*, 480 F. 2d 1159,1164 (D.C. Cir. 1973) (en banc), a class action suit was brought by the NAACP Legal Defense Fund against the United States Department of Health, Education, and Welfare (HEW), charging it with non-enforcement of Title VI of the Civil Rights Act of 1964 with regard to 17 southern and border states. Title VI of the 1964 Civil Rights Act prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal aid. In 1973, the federal district court in Washington, D. C., ordered the Office for Civil Rights (OCR) to take corrective action. The Circuit Court of Appeals affirmed the lower court decision, and Virginia and nine other states were required to submit plans in 1974 to ensure that there were no remaining vestiges of what was once a dual system of higher education. The OCR accepted the plans in 1975; however, the *Adams* plaintiffs returned to court challenging the department's acceptance of the desegregation plans. The federal district court directed the OCR to notify six southern states that their plans were inadequate. An order specifying the acceptable measures for the desegregation of higher education in the states was issued on April 1, 1977. In 1978, the OCR issued regulations, *Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education*, 43 *Fed. Reg.* 6658 (Feb. 15, 1978), which the states were to use in preparing new desegregation plans. The regulations became applicable to a new plan negotiated with OCR in the first 45 days of Governor John N. Dalton's administration.

In 1982, the federal district court denied the motion on the part of the defendants to vacate the 1977 consent order. In March 1983, the court found that Florida, Georgia, Alabama, Virginia, and North Carolina's community colleges had defaulted in the commitments under their plans. Under Governor Charles S. Robb's administration, Virginia filed amendments to the 1978 Plan. In 1984, the OCR appealed the lower court's denial of the motion to vacate. On February 9, 1988, the OCR issued the *Final Report on Efforts Undertaken Pursuant to the Virginia Plan for Equal Educational Opportunity in State-Supported Institutions of Higher Education*, which indicated that while Virginia had substantially implemented most of the measures required by the plan, it failed to implement certain significant measures designed to enhance Virginia State University and Norfolk State University and other important directives designed to desegregate student enrollment. The OCR report listed 13 specific actions which Virginia was required to take.

The 13-Point Criteria

1. Increase faculty salaries at Virginia State University.
2. Improve the library collection at Virginia State University as instructed by the Virginia Secretary of Education in 1985.
3. Take measures to satisfy the requirements for accreditation of the Virginia State University School of Business.
4. Take measures to satisfy the requirements for accreditation of the Virginia State University Engineering Technology Program.
5. Implement a comparable program at Virginia State University designed to meet the same plan objective as the discontinued Nursing Program.
6. Establish the proposed undergraduate program in computer science at Virginia State University.
7. Complete certain renovation projects at Virginia State University, as set forth in the "Maintenance Survey Report" submitted to OCR on October 22, 1985.
8. Construct an addition to the Life Sciences Building at Norfolk State University.
9. Finish the renovation of G. W. C. Brown Hall at Norfolk State University.
10. Take measures to satisfy the requirements for accreditation of the Norfolk State University School of Business.
11. Take measures to satisfy the requirements for accreditation of the Norfolk State University Computer Science Program.
12. Fully establish a center for minority affairs at Longwood College.
13. Develop at 16 community colleges a recruitment brochure oriented towards black students.

Whether Virginia is still an *Adams* state continues to be debated, particularly since the lack of OCR enforcement of the plan since the late 1980s. Clarification on Virginia's status was sought from the OCR in 1993 by the Joint Subcommittee on Minorities and Higher Education, which was advised that OCR has no record that the Commonwealth has been officially dismissed from OCR oversight of its desegregation efforts.

Further, OCR advised that as a result of the U.S. Supreme Court decision in *Fordice*, the Commonwealth was officially notified on January 27, 1994, of a planned compliance review of Virginia's desegregation efforts.

Virginia Plan for Equal Opportunity in Higher Education

The Virginia Plan for Equal Opportunity in Higher Education, Virginia's desegregation plan, has been amended over the years, and it is the state's coordinated effort to provide equal higher education opportunity for all Virginians. The plan consists of four major components and six major programs.

Program components:

- ▶ Disestablishment of the structure of the dual system and enhancement of the traditionally black institutions.
- ▶ Desegregation of student enrollment at black and white institutions.
- ▶ Desegregation of faculty, administrative staff, non-academic personnel and governing boards.
- ▶ Reporting and monitoring requirements.

Major programs:

- ▶ Pre-collegiate information, (Better Information Project), a cooperative effort between the State Council of Higher Education and the Department of Education.
- ▶ Undergraduate student recruitment and retention.
- ▶ Graduate student recruitment.
- ▶ Faculty recruitment and retention.
- ▶ Improving campus human relations and climate.
- ▶ Institution-specific programs.

As a result of the *Adams* decision, the General Assembly has appropriated funds for the implementation of the Virginia Plan for Equal Opportunity in Higher Education Programs each year since 1976. The 1996 General Assembly appropriated \$9,052,791 in the first year and \$8,777,171 in the second year of the 1996-98 biennium for the plan.

Recent Federal Court Decisions

Fordice Decision

Nearly 14 years after suit was initially brought in 1978 in Mississippi, the United States Supreme Court, on June 26, 1992, in a 8-1 vote, vacated the decision of the Fifth Circuit Court of Appeals and refused to recognize that Mississippi's higher education system had been desegregated. The primary issue before the Supreme Court was whether Mississippi had met its duty to remedy the effects of past *de jure* segregation in higher education. Plaintiffs in the case argued that the dual system was maintained through student admission policies, employment practices, and the location of branch campuses of historically white institutions in close proximity to historically black institutions; that discrimination against the historically black institutions with respect to institutional missions, academic programming, quality of faculty, allocation of land grant functions, fa-

ilities, and funding resulted in unequal educational opportunity for black students; and that the state had an affirmative legal duty to eliminate the vestiges of the dual system. The State of Mississippi contended that race-neutral policies had been implemented and that the "mere continued existence" of predominantly black or white institutions did not constitute denial of equal protection.

In 1848, the University of Mississippi was established as an institution to serve white students, and by 1950, the Mississippi system of public higher education included five white schools and three black schools. In 1954, when the landmark school desegregation case, *Brown v. Board of Education* was decided, higher education in Mississippi was both separate and unequal. In 1961, the Board of Trustees of State Institutions of Higher Learning adopted an admission policy requiring applicants to take the American College Test (ACT) as a means of denying admission to a black student. By 1969, HEW directed the state to develop a desegregation plan, which was later rejected; however, the board adopted the plan despite HEW's rejection. The Mississippi legislature funded the plan in 1978, but at level less than half of that which was requested. Consequently, a class action suit was filed on behalf of black citizens of Mississippi in 1975 seeking injunctive relief and alleging that Mississippi was maintaining a dual system of public higher education in violation of the equal protection clause of the United States Constitution and Title VI of the Civil Rights Act of 1964.

The U. S. Supreme Court determined that "the correct legal standard had not been applied at the lower court level, and when it was applied, several aspects of the prior dual system were suspect." The Court stated that even though the policies governing the state's university system were race-neutral on their face, they in effect substantially restricted a person's choice of which institution to enter and that the policies contributed to the racial identifiability of Mississippi's public universities. Further, the Court's conclusions were that a nondiscriminatory admissions policy should include grades and other student characteristics, that unnecessary duplication of programs was being perpetuated, that the mission classifications were determined without educational justification, based on antecedent discrimination (i.e., comprehensive, urban, and regional). Maintenance of all eight schools was not intended to promote choice but rather to continue past practices and patterns. The Fifth Circuit decision was remanded for reconsideration, based on the Court's standard of equal protection, of the mission designations, maintenance of all eight institutions, and whether there was a necessity to increase the funding of historically black schools. The Court of Appeals was also instructed to examine Mississippi's other challenged policies. The Supreme Court did not offer definitive remedies to the Circuit Court; however, the *Fordice* decision emphasizes that states that previously operated dual systems of higher education have a legal obligation to remove all vestiges of past discrimination "to the extent practicable and consistent with sound educational practices."

Report of the Southern Education Foundation

A senior consultant representing the Southern Education Foundation, a 125-year-old Atlanta-based public charity concerned about equity throughout public education, addressed the commission concerning the mission and work of the foundation in the area of equity in public education. After the Supreme Court's ruling in *Fordice*, the Southern Education Foundation established the Panel on Educational Opportunity and Postsecondary Desegregation to examine the diverse issues and perspectives confronting states as they "attempt to interpret and comply with *Fordice*." The panel was requested to approach the legal mandate to desegregate postsecondary institutions as a gateway to the larger and more compelling issue of assuring expanded opportunities for minorities in a reformed system of public higher education.

After a comprehensive review of the desegregation efforts in the original *Adams* states, the panel found, among other things, that none of the states can demonstrate an acceptable level of success in desegregating their respective systems of public higher education. Minority students still have limited access to predominantly white institutions, minorities are underrepresented among bachelor's degree recipients, and minorities earn fewer than four percent of total doctorates awarded. The panel offered 10 recommendations:

1. Address the systemic nature of the problem: Create comprehensive state plans.
2. Make campuses responsible: Develop institutional plans.
3. Provide a fair start: Make access an institutional mission.
4. Level the playing field: Make success a core institutional responsibility.
5. Strengthen the system: Make community colleges full partners in higher education.
6. Be clear about accomplishments: Measure success and failure.
7. Advance access and enhance success: Support historically black institutions.
8. Build on strength: Restructure systems rather than close or merge institutions.
9. Share responsibility for effective desegregation: Promote leadership from both the public and private sectors.
10. Make promises real: Invest in reform.

Future Meetings

The staff was asked to revise the commission's study plan to provide a thematic approach for future meetings, emphasizing the continuum of education. Staff was also requested to follow-up requests made of state agencies and organizations, research those issues noted by commission members, and to develop a list of persons for consideration for the Citizens Advisory Task Force.

The Honorable Jerrauld C. Jones, *Chairman*
Legislative Services contact: Brenda H. Edwards



HJR 256

Joint Subcommittee on Pain Management

August 5, 1996, Richmond

Originally established in 1994, the pain management subcommittee has focused, prior to the present interim, on issues related to acute and cancer pain. The first 1996 meeting of the subcommittee focused on reviewing its previous work and launching its 1996 examination of issues related to chronic pain and third-party coverage of pain management.

Acute Pain

Interpretations of the meaning of pain have undergone considerable evolution over the centuries. Modern medical findings note that acute pain can emanate from injury of the skin, subcutaneous tissues, or deeper structures or from muscular spasms or orthopedic injuries. Cancer pain may come from the tumor itself or from bones or nerves affected by the abnormal cells or may be caused by chemotherapy, radiation therapy, or surgery. Opioids and anti-inflammatories may be used to relieve acute pain, and opioids are considered the gold standard for treatment of cancer pain.

Chronic Pain

The definition, causes, and effective treatment of chronic pain continue, however, to be debated, as understanding and measurement of chronic pain are still being researched. At present, chronic pain might be defined as that pain that persists longer than one month or beyond the normal course of the events, disease, trauma, or surgical procedure that initially caused the pain. Chronic pain recurs over time. There are no definitive therapies for chronic pain, although there are different theories about it. Chronic pain serves no useful physiological purposes, such as preventing further injury. Further, chronic pain does considerable damage to the patient, causing great stress, emotional turmoil, psychological symptoms, and dysfunction in everyday life. The patient frequently suffers financially and socially.

Theories

Several theories of pain have been put forth. The gate control theory, for example, avers that pain is modulated by a gating mechanism in the spinal cord and activity in structures of the higher central nervous system. This theory is consistent with the endogenous opioid theory: that endogenous opioids have receptors throughout the central nervous system and may bond with these receptors to prevent pain. The sensory pathway theory relates to the conveyance through various chemical changes and electrical impulses of sensory stimuli from sense organs or receptors to the sensory or reflex centers of the cen-

tral nervous system. The pathophysiology of chronic pain may be caused by disease processes or by malfunctioning of otherwise normal nerves. Three primary types of chronic pain syndromes are myofascial dysfunctional pain (inflammation of muscles and surrounding tissue), neuropathic pain (injury or dysfunction of nerves), and central pain (from amputation, stroke, or spinal cord injury).

Treatment

In treating chronic pain, the practitioner is advised to conduct a comprehensive patient evaluation through patient interviews; in-depth past medical history; assessment of symptoms such as range of motion, tender spots, and pain trigger points; and appraisal of the psychological effects of the pain. An accurate diagnosis should be determined and a treatment protocol or plan developed. The patient may require psychological or complimentary interventions as well as oral or injection medications, which can include anti-inflammatories and analgesics. Patients should be educated in the proper use of medications. Practitioners are also counseled to consider requiring contracts from their patients for the use of medications, with some flexibility built in for break-through pain or unusually high levels of pain. Practitioners are also advised to start with simple treatments and move to more draconian measures if necessary. Opioids are not the first line mode of treatment for chronic pain, but should be considered after other treatments have failed. Proper drug treatment is that which provides minimum side effects, increases the patient's level of functioning, and increases the patient's social viability. Monthly visits, unscheduled drug and alcohol testing, and development of cooperative, participatory relationships with patients should be used along with common sense and regular reevaluations of the patient's condition.

Issues

Issues related to chronic pain treatment are similar to those identified in the treatment of acute and cancer pain: drug tolerance, physical dependence, addiction, pseudoaddiction, undertreatment, drug diversion, and appropriate choices of medications. Also important are nonpharmaceutical pain therapies, such as transcutaneous electrical nerve stimulation (TENS), hypnosis, biofeedback, and acupuncture, and complimentary care, such as massage, whirlpools, heat, and cold.

Worker's Compensation

The joint subcommittee also heard from the chairman of the Worker's Compensation Commission, who noted that chronic pain is not a separate category within the worker's compensation system and that specific statistics on the effects of chronic pain are not available. Cases involving complaints of pain but no evidence of injury are especially difficult. The Worker's Compensation Commission is a quasi-judicial body that administers a peer review system and hearing process. Appeals from the peer review program (a panel of physicians) are heard by the commission.

1995 Conference

Pain Management: Attitudes, Obstacles and Issues was held on December 6, 1995, sponsored by the joint subcommittee in cooperation with the Medical Society of Virginia and supported with unrestricted educational grants from various sponsors. Over 200 practitioners and other interested parties attended the symposium, which was focused on provider education and offered four different kinds of continuing education credit. The symposium was structured to provide an overview of pain management treatment, followed by panel discussions of various issues in pain management. A review of the evaluations substantiated an overwhelmingly positive response to the symposium.

1996 Plan

The joint subcommittee concluded its meeting by reviewing its study objectives, including the charge to examine issues related to the economic effects of chronic pain, and adopted a study plan that projects four 1996 meetings. The next meeting will focus on chronic pain by presenting a review of literature on the economic effects, testimony from various health care and business groups, presentations on drug diversion, and additional reports on completing "proceedings" documents from the symposium. This meeting is being planned for October.

The Honorable Jane H. Woods, *Chair*
Legislative Services contact: Norma E. Szakal



Dr. Martin Luther King, Jr., Memorial Commission

May 28, 1996, Richmond
July 2, 1996, Richmond

A brief meeting to apprise new members of the commission's work and objectives was held on May 28, 1996. The legislative history of the study, the commission's statutory requirements, the King principles, activities to date, and the 1996 study plan were reviewed by the staff. A full commission meeting was scheduled for July 2, 1996, to receive status reports from the Secretary of Education, the Board of Education, the Department of Education, and the State Council of Higher Education concerning the implementation of legislation passed by the 1993 General Assembly, requiring a survey of commemorative events in honor of Dr. King at public institutions of higher education, and the inclusion of multicultural education and the King principles throughout the public school curriculum and Standards of Learning.

Survey of Public Institutions of Higher Education

Reviewing the State Council of Higher Education's 1993 report on commemorative activities honoring Dr. King at Virginia colleges and universities, the assistant director for student affairs noted that of the 16 public four-year institutions responding to the council's survey, 14 currently have some activity honoring Dr. King and 13 institutions have some additional activities planned for the future. Of the 23 public two-year institutions responding, 15 currently have some activity honoring Dr. King and have planned future commemorative activities. Twenty-one of the 27 private institutions responding indicated that they have activities that honor Dr. King and 20 of these institutions report planned future commemorative activities. Some commemorative activities offered by the institutions include unity marches, memorial services, workshops and lectures, library exhibits, awards, theater performances and concerts, and participation in local community and campus projects. The council staff was requested to follow-up on institutions that did not respond to the survey, update the survey findings, and assist the commission in identifying and inviting student representatives to participate in future meetings.

Living History Memorial

The commission's staff reviewed the status of the plans for the Dr. Martin Luther King, Jr., Living History Memorial and funding for the commission's work. The staff was directed to research and report on the procedure for establishing endowed chairs and institutes for policy analysis and scholarly inquiry and writings at the commission's September 6 meeting.

Statewide Conference

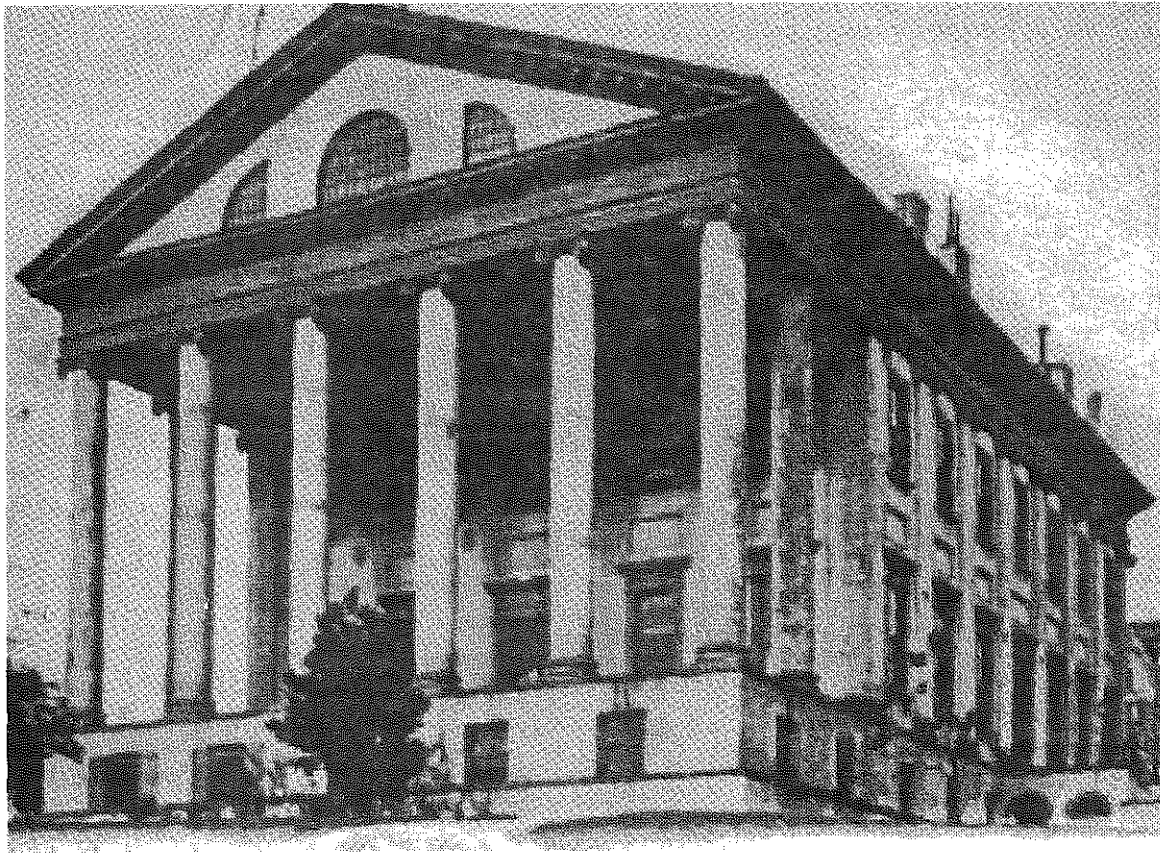
The commission adopted a motion to sponsor a statewide conference to provide public discussion on the growing problem of intolerance vis-a-vis Dr. King's principles of the Beloved Community, facilitate networking among persons committed to the fulfillment of Dr. King's ideals, and share ideas to promote equality throughout society. The Commission on the Impact of Certain Federal Court Decisions on the Commonwealth's Institutions of Higher Education (Fordice), the Virginia Legislative Black Caucus, and other relevant groups and state agencies will be invited to collaborate and participate in the conference.

Multicultural Education

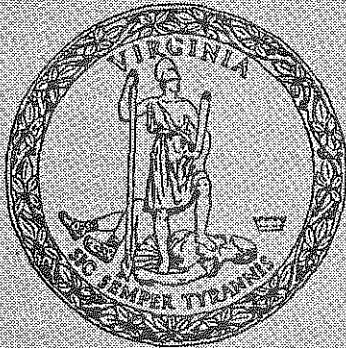
The commission also directed staff to request in writing again a response from the Secretary of Education, the Board of Education, and the Department of Education concerning the inclusion of multicultural education in the public school curriculum and the revised Standards of Learning, pursuant to HJR 610 (1993).

The Honorable William P. Robinson, Jr., *Chairman*
Legislative Services contact: Brenda H. Edwards





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Special Projects
Division of Legislative Services
910 Capitol Street, 2nd Floor
Richmond, Virginia 23219
(804) 786-3591



GENERAL NOTICES/ERRATA

Symbol Key

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

CHESAPEAKE BAY RESTORATION FUND ADVISORY COMMITTEE

† Notice of Acceptance of Grant Proposals Regarding the Chesapeake Bay Restoration Fund

The Chesapeake Bay Advisory Committee will be making recommendations for financial support grants to be awarded in May 1997 for Chesapeake Bay related projects. The advisory committee was given the responsibility of developing guidelines for the use of the moneys collected from the sale of the special Chesapeake Bay license plates. Applications will be accepted from state agencies, local government, and public or private not-for-profit agencies, institutions or organizations. Applications and guidelines may be obtained from Carol Agee or Martin Farber, Division of Legislative Services, General Assembly Building, 910 Capitol Street, Richmond, Virginia 23219, telephone (804) 786-3591. The deadline for submission of grant proposals is October 1, 1996.

GOVERNOR'S COMMISSION ON ENVIRONMENTAL STEWARDSHIP

Notice

The Governor's Commission on Environmental Stewardship will examine Virginia's environmental programs and policies and make recommendations to improve the stewardship of Virginia's rich natural heritage. The commission is also specially charged by the Governor to study ways to foster growth of the environmental technologies industry in Virginia.

The commission will:

Examine Virginia's laws and policies related to pollution prevention, compliance and enforcement, and make appropriate findings and recommendations regarding strategies for improvement;

Evaluate and provide recommendations for enhancing the awareness, understanding, commitment, and active involvement of Virginia citizens in ensuring wise stewardship of the Commonwealth's natural resources, now and in the future, through education, volunteerism, public/private partnerships, and incentive programs;

Evaluate Virginia's laws, programs, and policies relating to conservation, recreation, parks, natural areas, open spaces, private property protection, and wildlife management, and make appropriate findings and recommendations for improvement;

Examine the development of advanced environmental technologies in Virginia, and make recommendations for fostering growth of the environmental technologies industry in Virginia, including development of markets

and promotion of the use of such advanced environmental technologies in Virginia and regionally, nationally, and internationally;

Evaluate the laws, programs, and policies of the Commonwealth regarding waste management, litter control and recycling, and make appropriate findings and recommendations regarding strategies for improvement; and

Examine the role of citizen boards in the development, implementation and oversight of policies affecting natural resource conservation, environmental quality, and economic development, and make appropriate findings and recommendations for improvement.

Several public meetings will be conducted at different locations in the Commonwealth commencing in August, 1996. These meetings will be open to the public and public comment will be received. Dates, times, and locations will be announced as soon as determined. The commission also invites written public comments and recommendations.

Comments and requests to be notified of meeting dates, times and locations may be submitted to the commission's e-mail address, GREENVA@OAG.STATE.VA.US, by FAX to (804) 786-0034, or by mail to:

Governor's Commission on Environmental Stewardship
Commonwealth of Virginia
c/o Office of the Attorney General
Natural Resources Section
900 East Main Street
Richmond, Virginia 23219

or to

Governor's Commission on Environmental Stewardship
Commonwealth of Virginia
c/o Secretary of Natural Resources
Ninth Street Office Building
202 North Ninth Street, 7th Floor
Richmond, Virginia 23219

The commission's activities will also be updated on its internet homepage at: www.state.va.us/~greenva/gces.htm.

Contacts: David Nutter, Staff Director, Office of the Secretary of Natural Resources, 202 N. Ninth St., 7th Floor, Richmond, VA 23219, telephone (804) 786-0044, FAX (804) 371-8333, or Carl Josephson, Assistant Attorney General, Office of the Attorney General, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-2444 or FAX (804) 786-0034.

General Notices/Errata

DEPARTMENT OF LABOR AND INDUSTRY

Miscellaneous Changes to General Industry and Construction Standards; Proposed Paperwork Collection, Comment Request for Coke Oven Emissions and Inorganic Arsenic

The Virginia State Plan for the enforcement of Virginia Occupational Safety and Health (VOSH) laws commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U. S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following Federal OSHA notice:

U. S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Miscellaneous Changes to General Industry and Construction Standards; Proposed Paperwork Collection, Comment Request for Coke Oven Emissions and Inorganic Arsenic

29 CFR Part 1910 and 1926

(Docket No. S-778)

AGENCY: Occupational Safety and Health Administration (OSHA)

ACTION: Notice of proposed Federal rulemaking.

SUMMARY: Federal Occupational Safety Health Administration (OSHA) is continuing the process of removing or revising standards that are out of date, duplicative, unnecessary, or inconsistent in response to a March 4, 1995, memorandum from President Clinton. This notice proposes substantive changes to both health and safety standards to reduce regulatory requirements while maintaining employee protection. Changes proposed include reducing chest x-ray frequency and eliminating sputum cytology examinations for the coke oven and inorganic arsenic standards, changing the emergency-response provisions of the vinyl chloride standard, eliminating public safety provisions of the temporary labor camp standard, eliminating unnecessary OSHA standard references in the textile industry standards and others.

TEXT: Full text of the proposed rulemaking can be found at 61 FR 37849 of the July 22, 1996, issue of the Federal Register.

DATES: Written comments and requests for a hearing on this proposal must be postmarked by September 20, 1996.

ADDRESSES: Comments on the proposal should be submitted in quadruplicate or 1 original (hardcopy) and 1 diskette (5¼ or 3½ inch) in WordPerfect 5.0, 5.1, 6.0 or 6.1, or ASCII to: Docket Officer, Docket No. S-778, Room N-2634, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210, telephone (202) 219-7894. Any

information not contained on disk (e.g., studies, articles) must be submitted in quadruplicate.

Written comments limited to 10 pages in length also may be transmitted by facsimile to (202) 219-5046, provided an original and 3 copies are sent to the Docket Office thereafter. An additional copy should be submitted to the Director of Discrimination, Evaluation, Legal and Technical Assistance (DELTA), Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health, Room N-3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219-8615.

Comments on the reduction of paperwork burden and renewal of paperwork authorization for inorganic arsenic and coke oven emissions should be sent to the OSHA docket and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Rm. 10235, 725 17th, N.W., Washington, DC 20503, Attn.: OSHA Desk Officer.

For an electronic copy of this **Federal Register** notice, contact the Labor News Bulletin Board at (202) 219-4748; or OSHA's WebPage on the Internet at <http://www.OSHA.gov>. For new releases, fact sheets and other short documents, contact OSHA FAX at (900) 555-3400 at \$1.50 per minute.

FOR FURTHER INFORMATION CONTACT: Technical inquiries should be directed to Mr. Pat Cattafesta, Office of Electrical/Electronic and Mechanical Safety Standards, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3609, 200 Constitution Ave., N.W., Washington, DC 20210, telephone (202) 219-7202; FAX (202) 219-7477.

Requests for interviews and other press inquiries should be directed to Ms. Ann Cyr, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N-3647, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone (202) 219-8148.

STATE WATER CONTROL BOARD

Enforcement Action Proposed Consent Special Order Roanoke Electric Steel Corporation

The State Water Control Board proposes to issue a Consent Special Order and will consider it at a meeting in September 1996.

This order will allow Roanoke Electric Steel approximately 11 months to construct an improved wastewater treatment system and to comply with the final effluent limits in its VPDES Permit No. VA0001589 which was modified effective July 15, 1996. The order also reconciles monitoring and toxicity testing requirements on the existing combined process water - stormwater overflow during this period.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed amendment until September 18, 1996. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, P.O. Box 7017, Roanoke, Virginia 24019, and should refer to the Roanoke Electric Steel order.

The proposed order may be examined at the Department of Environmental Quality, Office of Enforcement and Compliance Auditing, 629 E. Main St., P.O. Box 10009, Richmond, VA 23240-0009, or at the Department of Environmental Quality, West Central Regional Office, 3015C Peters Creek Road, Roanoke, VA 24019. A copy of the order may be obtained in person or by mail from these offices.

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

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

4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

BOARD FOR ACCOUNTANCY

September 21, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.♿
(Interpreter for the deaf provided upon request)

The board will meet for a "brainstorming" session on privatization of the Board for Accountancy. Written comments from the public will be accepted prior to and 10 days after the meeting. There will be no public comment period during the meeting since this is a work session only on privatization of accountancy. No other business will be discussed at this 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 so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

† **October 17, 1996 - 10 a.m.** -- Open Meeting

† **October 18, 1996 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action, and to receive and discuss committee reports and disciplinary cases. A public comment period will be held at the beginning of the 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 so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-

Privatization Task Force

September 30, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.♿
(Interpreter for the deaf provided upon request)

A meeting of the Privatization Task Force to further discuss privatization of the Board for Accountancy. This is a work session. No other business will be discussed at this meeting. This task force is a three-member ad hoc committee. Written comments may be submitted prior to the meeting for consideration by the task force. 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 so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Board of Agriculture and Consumer Services

† **October 2, 1996 - 9 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.♿

A regular meeting 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 other business the board will entertain public comment 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, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-3535.

Pesticide Control Board

† **October 10, 1996 - 9 a.m.** -- Open Meeting
Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia. ☎

Committee meetings and a general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda beginning at 9 a.m. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558 or toll-free 1-800-552-9963.

Virginia Irish Potato Board

September 5, 1996 - 8 p.m. -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, 33446 Research Drive, Painter, Virginia. ☎

A meeting to discuss programs (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, P.O. Box 26, Onley, VA 23418, telephone (804) 787-5867.

STATE AIR POLLUTION CONTROL BOARD

September 9, 1996 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to **repeal** regulations entitled: **9 VAC 5-90-10 et seq., Regulations for the Control of Motor Vehicle Emissions, 9 VAC 5-100-10 et seq., Regulations for Vehicle Emissions Control Program Analyzer Systems, and 9 VAC 5-110-10 et seq.,**

Regulations for the Control of Motor Vehicle Emissions; and **adopt** regulations entitled: **9 VAC 9-91-10 et seq., Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area.** The purpose of the regulation is to require that motor vehicles undergo periodic emissions inspection and be maintained in compliance with emission standards in order to reduce harmful emissions of hydrocarbons, carbon monoxide and oxides of nitrogen. The regulation is being promulgated in response to state and federal laws requiring the emissions inspection program. The regulation applies to vehicles that have actual gross weights of 10,000 pounds or less and are registered in the Counties of Arlington, Fairfax, Loudoun, Prince William, Stafford, and Fauquier and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. It requires biennial emissions inspections in order to register the motor vehicle in the area described above. The regulation also describes requirements for inspection stations, inspectors, repair facilities and repair technicians.

It is further proposed that the board authorize for public comment the repeal of existing regulations to be replaced by 9 VAC 5-91-10 et seq. Specifically, the proposal is to repeal:

9 VAC 5-90-10 et seq. Regulation for the Control of Motor Vehicle Emissions (present program)

9 VAC 5-100-10 et seq. Regulation for Vehicle Emission Control Program Analyzer Systems (present program)

9 VAC 5-110-10 et seq. Regulation for the Enhanced Motor Vehicle Emissions Inspection Program in the Northern Virginia Area (test-only 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: The following localities will bear a disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

The Counties of Arlington, Fairfax, Loudoun, Prince William, Stafford, and Fauquier and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

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 Nonattainment and Mobile Sources Planning (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.

Calendar of Events

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia 22401
Ph: (540) 899-4600

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia 22150
Ph: (703) 644-0311

Lorton Mobile Sources Operations
Department of Environmental Quality
7240-D Telegraph Square Drive
Lorton, Virginia 22079

Statutory Authority: §§ 46.2-1178.1, 46.2-1179, 46.2-1180
and 46.2-1187.2 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. on
Monday, September 9, 1996, to the Director, Office of
Nonattainment and Mobile Sources Planning, Department of
Environmental Quality, 629 East Main Street, Eighth Floor,
P.O. Box 10009, Richmond, Virginia 23240.

Contact: David J. Kinsey, Policy Analyst, Office of
Nonattainment and Mobile Sources, Air Division, Department
of Environmental Quality, P.O. Box 10009, Richmond, VA
23240, telephone (804) 698-4432 or (FAX) (804) 698-4510.

State Advisory Board on Air Pollution

† **September 10, 1996 - 9 a.m.** -- Open Meeting
State Capitol, Capitol Square, House Room 4, Richmond,
Virginia. ☎

A regular meeting.

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

September 9, 1996 - 9:30 a.m. -- Open Meeting
September 23, 1996 - 9:30 a.m. -- Open Meeting
October 7, 1996 - 9:30 a.m. -- Open Meeting
October 21, 1996 - 9:30 a.m. -- Open Meeting
November 4, 1996 - 9:30 a.m. -- Open Meeting
November 18, 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.

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

September 6, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting of members of the land surveyors section and
exam consultants to compile the Virginia portion of the
land surveyor examination that will be administered in
October 1996.

Contact: George O. Bridewell, Examination Administrator,
Department of Professional and Occupational Regulation,
3600 W. Broad St., Richmond, VA 23230, telephone (804)
367-8572 or (804) 367-9753/TDD ☎

† **October 11, 1996 - 2:30 p.m.** -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia.

† **November 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 for Architects,
Professional Engineers, Land Surveyors and Landscape
Architects intends to amend regulations entitled: **18
VAC 10-20-10 et seq. Board for Architects,
Professional Engineers, Land Surveyors and
Landscape Architects Rules and Regulations.** The
purpose of the proposed amendments is to make the
regulations clearer and easier to understand.

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

Contact: Mark N. Courtney, Assistant Director, Department
of Professional and Occupational Regulation, 3600 W. Broad
St., Richmond, VA 23230-4917, telephone (804) 367-8514.

Board for Landscape Architects

† **September 26, 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 board at least 10 days prior to the meeting so that
suitable arrangements can be made. The board 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 Land Surveyors

† **September 19, 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 board at least 10 days prior to the meeting so that suitable arrangements can be made. The board 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

† **September 12, 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 board at least 10 days prior to the meeting so that suitable arrangements can be made. The board 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

† **September 11, 1996 - 10:30 a.m.** -- Open Meeting
Department of Social Services, Theater Row Building, 730 East Broad Street, 8th Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council will conduct new member orientation.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

† **September 12, 1996 - 9 a.m.** -- Open Meeting
† **October 10, 1996 - 9 a.m.** -- Open Meeting
† **November 14, 1996 - 9 a.m.** -- Open Meeting
† **December 12, 1996 - 9 a.m.** -- Open Meeting
Theater Row Building, 730 East Broad Street, Lower Level, Conference Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment will be received 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., Richmond, VA 23219, telephone (804) 692-1775.

STATE BOARD FOR COMMUNITY COLLEGES

September 11, 1996 - 1 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

State board committee meetings.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ☎

September 12, 1996 - 8:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

A regularly scheduled board meeting.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126, FAX (804) 371-0085, or (804) 371-8504/TDD ☎

COMPENSATION BOARD

September 26, 1996 - 11 a.m. -- Open Meeting
October 31, 1996 - 11 a.m. -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A routine business meeting.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23218-0710, telephone (804) 786-0786, FAX (804) 371-0235, or (804) 786-0786/TDD ☎

COMMONWEALTH COMPETITION COUNCIL

† **September 9, 1996 - 7 p.m.** -- Public Hearing
Old Dominion University, Norfolk, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting and public hearing.

Contact: Peggy Robertson, Coordinator, Commonwealth Competition Council, James Monroe Bldg., 101 N. 14th St., 5th Floor, P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 786-0240 or FAX (804) 786-1594.

Calendar of Events

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia Cave Board

† **September 7, 1996 - 1 p.m.** -- Open Meeting
Endless Caverns, New Market, Virginia.

A regularly scheduled meeting of the Virginia Cave Board. A variety of issues relating to cave and karst conservation will be discussed. No public comment period has been set aside on the agenda.

Contact: Lawrence R. Smith, Natural Area Protection Manager, Department of Conservation and Recreation, Division of Natural Heritage, 1500 E. Main St., Suite 312, Richmond, VA 23219, telephone (804) 786-7951, FAX (804) 371-2674, or (804) 786-2121/TDD ☎

Falls of the James Scenic River Advisory Board

September 5, 1996 - Noon -- Open Meeting

October 3, 1996 - Noon -- Open Meeting

City Hall, 900 East Broad Street, Planning Commission Conference Room, 5th Floor, Richmond, Virginia.

A meeting to review 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., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TDD ☎

Fall River Renaissance Committee

† **September 18, 1996 - 10 a.m.** -- Open Meeting
Department of Conservation and Recreation, 203 Governor Street, Soil and Water Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of committee members to report on progress for plans for the Fall River Renaissance campaign and continue to develop further plans. The Fall River Renaissance is a campaign to further the efforts of citizens and organizations that are engaged in volunteer activities to conserve and enhance Virginia's rivers and public waters. It will be held September 21-October 19, 1996.

Contact: Carol Comstock, Director of Development, Department of Conservation and Recreation, 203 Governor St., Suite 213, Richmond, VA 23219, telephone (804) 786-2294, FAX (804) 371-2072, or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

† **September 19, 1996 - 9 a.m.** -- Open Meeting

† **September 20, 1996 - 9 a.m.** -- Open Meeting

National Assessment Institute, 3813 Gaskins Road, Richmond, Virginia. ☎

Board members and invited subject matter experts will meet to conduct an examination workshop.

Contact: George O. Bridewell, Examination Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

Disciplinary Committee

† **October 2, 1996 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to review board member reports and summaries from informal fact-finding conferences held pursuant to the Administrative Process Act, and to review consent order offers in lieu of further disciplinary proceedings. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Suzanne E. Bambacus, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2683.

Recovery Fund Committee

September 10, 1996 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to consider claims 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 at least two weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561.

DEPARTMENT OF CORRECTIONAL EDUCATION

September 16, 1996 - 10 a.m. -- Public Hearing

James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia.

October 18, 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 Correctional Education intends to adopt regulations entitled: **6 VAC 10-10-10 et seq. Public Participation Guidelines**. The purpose of the proposed regulation is to provide

interested parties with a means to request the development, amendment or repeal of a regulation.

Statutory Authority: §§ 9-6.14:7.1 and 22.1-343 of the Code of Virginia.

Contact: Mark Monson, Budget Manager, Department of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3310, FAX (804) 225-3255, or (804) 371-8467/TDD ☎

BOARD FOR COSMETOLOGY

October 7, 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 Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

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 ☎

CRIMINAL JUSTICE SERVICES BOARD

† October 8, 1996 - 1 p.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, 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, FAX (804) 786-0588.

BOARD OF DENTISTRY

† September 19, 1996 - 11 a.m. -- Open Meeting
† September 20, 1996 - 8 a.m. -- Open Meeting
Williamsburg Lodge, 310 England Street, North Ballroom, Williamsburg, 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, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

† September 20, 1996 - 1 p.m. -- Open Meeting
Williamsburg Lodge, 310 England Street, North Ballroom, Williamsburg, Virginia. ☎ (Interpreter for the deaf provided upon request)

A business meeting to receive committee reports, and review consent orders, minutes, and general requests made to the board. This is a public meeting; however, no public comment will be taken except for a 20-minute comment period beginning at 1 p.m..

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

BOARD OF EDUCATION

† September 26, 1996 - 9 a.m. -- Open Meeting
John Handley High School, Winchester, Virginia. ☎ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: James E. Laws, Jr., Administrative Assistant to the Superintendent for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2924 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

† September 11, 1996 - 6 p.m. -- Open Meeting
Jones Communications, 3900 Wheeler Avenue, Alexandria, Virginia. ☎ (Interpreter for the deaf provided upon request)

An open meeting to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness Coordinator, 900 Second St., Alexandria, VA 22314, telephone (703) 838-3825 or (703) 838-5056/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

September 5, 1996 - 5:30 p.m. -- Open Meeting
October 3, 1996 - 5:30 p.m. -- Open Meeting
6610 Public Safety Way, Chesterfield, Virginia.

A regular meeting.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

Calendar of Events

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

September 4, 1996 - 3 p.m. -- Open Meeting
Shawnee Fire Company, 2333 Roosevelt Boulevard,
Winchester, Virginia.

A regular meeting.

Contact: L. A. Miller, Fire Chief, Winchester Fire and Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (540) 662-2298 or (540) 665-5645/TDD ☎

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **September 10, 1996 - 7 p.m.** -- Open Meeting
Salem Civic Center, 1001 Boulevard, Parlor A, Salem,
Virginia.

A meeting to receive public comment on the draft post-closure permit for the six closed hazardous waste surface impoundments at the Kopper's Industries, Inc. facility in Salem, Virginia.

Contact: Russell McAvoy, Department of Environmental Quality, Waste Division, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4194.

Work Group on Ammonia, Mercury, Lead and Copper with Respect to Water Quality Standards

October 17, 1996 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
Conference Room 5B, 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 November 21 and December 19, 1996; January 16, February 20, March 20, April 17, May 15, and June 19, 1997. Persons interested in the meetings should confirm meeting date, time and location with the contact person below.

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.

Work Group on Detection/Quantitation Levels

September 11, 1996 - 1:30 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
1st Floor Training Room, Richmond, Virginia. ☎

The department has established a work group on detection/quantitation levels for pollutants in the regulatory and enforcement programs. The work group will advise the Director of Environmental Quality. Other meetings of the work group have been tentatively

scheduled for September 25, October 9, October 23, November 6, November 20, December 4, and December 18, 1996; however, these dates are not firm. Persons interested in the meetings of this work group should confirm the date with the contact person below.

Contact: Alan J. Anthony, Chairman, Work Group on Detection/Quantitation, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4114, FAX (804) 698-4522, or toll-free 1-800-592-5482.

Virginia Ground Water Protection Steering Committee

September 17, 1996 - 9 a.m. -- Open Meeting
State Corporation Commission, 1300 East Main Street, 8th
Floor Conference Room, Richmond, Virginia. ☎

A meeting concerning ground water protection issues. All interested persons are welcome to attend. Meeting minutes and agenda are available from 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.

Litter Control and Recycling Fund Advisory Board

† **September 9, 1996 - 10 a.m.** -- Open Meeting
Plantation House, 1108 East Main Street, 2nd Floor
Conference Center, Richmond, Virginia.

A meeting to (i) promote the control, prevention, and elimination of litter from the Commonwealth and encourage recycling and (ii) advise the Director of the Department of Environmental Quality on other litter control and recycling matters. For details call Paddy Katzen or e-mail pmkatzen@deq.state.va.us.

Contact: Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4488.

Technical Advisory Committee for Solid Waste Management Regulations

September 13, 1996 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
First Floor Training Room, Richmond, Virginia. ☎

The Board of Waste Management and the Department of Environmental Quality are considering the amendment of the Solid Waste Management Regulations, 9 VAC 20-80-10 et seq., and have formed a technical committee to advise them on the contents of the proposed amendment. This committee will reconvene to continue their work on this project.

Contact: Wladimir Gulevich, Director of the Office of Technical Services, Department of Environmental Quality,

P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4218, FAX (804) 698-4327, (804) 698-4021/TDD ☎, or e-mail at wgulevich@deq.state.va.us.

BOARD OF FORESTRY

Reforestation of Timberlands Board

† **September 18, 1996 - 10 a.m.** -- Open Meeting
Department of Forestry, Fontaine Research Park, 900 Natural Resources Drive, George W. Dean Board Room, Charlottesville, Virginia. ☎

A meeting to discuss (i) accomplishments of the past year; (ii) RT budget for the 1996-97 program year; and (iii) the possibility of changing the cost-share rate.

Contact: Phil T. Grimm, Forest Development Team, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555 or FAX (804) 296-2369.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

September 11, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

A general board meeting to discuss board business. Public comments will be received for 15 minutes at the beginning of the meeting.

Contact: Elizabeth Young Kirksey, 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 ☎

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

September 4, 1996 - 7:30 p.m. -- Open Meeting
Deep Creek High School, 2900 Margaret Booker Drive, Chesapeake, Virginia.

September 4, 1996 - 7:30 p.m. -- Open Meeting
Blacksburg Community Center, 725 Patrick Henry Drive, Blacksburg, Virginia.

September 4, 1996 - 7:30 p.m. -- Open Meeting
Dabney Lancaster Community College, Route 60 West, Dabney Lane, Clifton Forge, Virginia.

September 4, 1996 - 7:30 p.m. -- Open Meeting
Henrico County Government Center, 4301 East Parham Road, Henrico Administration Building, Board Room, Richmond, Virginia.

September 5, 1996 - 7:30 p.m. -- Open Meeting
Toano Middle School, 7817 Richmond Road (Route 60), Auditorium, Toano, Virginia.

September 5, 1996 - 7:30 p.m. -- Open Meeting
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Meeting Room, Roanoke, Virginia.

September 5, 1996 - 7:30 p.m. -- Open Meeting
Virginia Highlands Community College, 140 Jonesboro Road, Abingdon, Virginia.

September 5, 1996 - 7:30 p.m. -- Open Meeting
Lord Fairfax Community College, Route 11 North, 173 Skirmisher Lane, Middletown, Virginia.

September 5, 1996 - 7:30 p.m. -- Open Meeting
National Rifle Association, 11250 Waples Mill Road, Auditorium, Fairfax, Virginia.

The department is holding a series of 10 open meetings for the purpose of receiving the public's comments regarding proposed changes to game fish and nongame regulations and a boating regulation. The Board of Game and Inland Fisheries is scheduled to propose regulatory amendments for advertisement at its August 22-23, 1996, meeting. The public input meeting series will be held subsequent to the August 22-23, 1996, board meeting. Comments regarding the proposed amendments which are received during the 10 public input meetings will be summarized and reported to the board for their consideration at their next scheduled meeting in October 1996.

The Department of Game and Inland Fisheries is exempted from the Administrative Process Act and Executive Order Number Thirteen (94) in promulgating regulations regarding the management of wildlife pursuant to § 9-6.14:4.1 A 3 of the Code of Virginia. However, the department is required by § 9-6.14:22 of the Code of Virginia to publish all proposed and final wildlife management regulations including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Contact: Phil Smith, Policy Analyst Senior, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

GEORGE MASON UNIVERSITY

Board of Visitors

† **September 17, 1996 - 6:30 p.m.** -- Open Meeting
George Mason University, Mason Hall, Room D3A/B, Fairfax, Virginia.

A meeting of the Board of Visitors to hear the report of the Student Affairs Committee and to act on recommendations presented by that committee.

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 or FAX (703) 993-8707.

Calendar of Events

† **September 18, 1996 - 3:30 p.m.** -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax,
Virginia.

A regular meeting of the board to hear reports of the standing committees of the board 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 and 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 or FAX (703) 993-8707.

DEPARTMENT OF HEALTH (STATE BOARD OF)

September 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 State Board of Health intends to **repeal** regulations entitled: **12 VAC 5-370-10 et seq., Rules and Regulations for the Licensure of Nursing Homes**, and **adopt** regulations entitled: **12 VAC 5-371-10 et seq., Regulations for the Licensure of Nursing Homes**. The proposed regulations constitute a comprehensive revision of the Commonwealth's existing regulations addressing nursing homes, which were adopted in 1980. This area of the health care field has changed dramatically since then and the proposed regulations are intended to address current conditions, while assuring safe, adequate, and efficient nursing home operations and promoting health safety and adequate care of nursing home residents.

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Contact: Nancy R. Hofheimer, Director, Office of Health Facilities Regulations, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102 or FAX (804) 367-2149.


BOARD OF HEALTH PROFESSIONS

Ad Hoc Committee on Criteria


† **September 10, 1996 - 10:30 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 meeting to review and consider proposals from invited health science centers dealing with a study of criteria to be applied when evaluating the need to regulate health care practitioners. Brief public comment will be received at the beginning of the meeting.


Contact: Robert A. Nebiker, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor,

Richmond, VA 23230, telephone (804) 662-9919 or (804) 662-7197/TDD 


Regulatory Research Committee

† **September 10, 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 review regulation of counseling related professions to include substance abuse counselors, art therapists, and rehabilitation providers. Brief public comment will be received at the beginning of the meeting.

Contact: Robert A. Nebiker, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9919 or (804) 662-7197/TDD 


STATE HAZARDOUS MATERIALS TRAINING ADVISORY COMMITTEE

† **September 25, 1996 - 1 p.m.** -- Open Meeting
Radisson Hotel, Birdneck Road, Virginia Beach, 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 of 1990, desiring to attend the meeting should contact the Department of Emergency Services 10 days prior to the meeting so appropriate accommodations can be made.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

BOARD FOR HEARING AID SPECIALISTS

September 9, 1996 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 2, Richmond,
Virginia. 

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475 or (804) 367-9753/TDD 

VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

† **September 26, 1996 - 10 a.m.** -- Open Meeting
† **October 24, 1996 - 10 a.m.** -- Open Meeting
† **November 21, 1996 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia. ☎

A regular meeting.

Contact: Diana F. Cantor, Executive Director, Virginia Higher Education Tuition Trust Fund, James Monroe Building, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 786-2060.

DEPARTMENT OF HISTORIC RESOURCES

State Review Board and Board of Historic Resources

† **September 18, 1996 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☎

A joint meeting of the State Review Board and Historic Resources Board to accept easement donations, approve highway marker text, and to place the following properties on the Virginia Landmarks Register and the National Register of Historic Places:

1. Church Hill North Historic District, City of Richmond
2. Bear Mountain Indian Mission School, Amherst County
3. Hotel William Byrd, City of Richmond
4. Mountain View, Amherst County
5. Brook Hill Farm, Bedford County
6. Gainsboro Library, City of Roanoke
7. Old Grayson County Courthouse and Clerk's Office, City of Galax
8. Thermo-Con House, Fairfax County
9. Weston, Fauquier County

Contact: M. Catherine Slusser, Director, Resource Information Division, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143, FAX (804) 786-2240, or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

September 3, 1996 - 9 a.m. -- Open Meeting
† **October 8, 1996 - 9 a.m.** -- Open Meeting
† **November 5, 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.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **September 15, 1996 - 1 p.m.** -- Open Meeting
† **September 16, 1996 - 9 a.m.** -- Open Meeting
† **September 17, 1996 - 9 a.m.** -- Open Meeting
Cavalier Hotel, Oceanfront at 42nd Street, Virginia Beach, Virginia. ☎

A retreat on September 15 and 16, and the regular meeting on September 17 of the Board of Commissioners. At the retreat, the board will consider and discuss various policies and issues relating to the authority's programs and operations. At the regular meeting, the Board of Commissioners will (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the retreat.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

September 9, 1996 - 1 p.m. -- Open Meeting
Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 900, Richmond, Virginia.

A regular meeting to discuss such matters as may be presented.

Contact: Adele MacLean, Secretary, 702 Eighth Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999, or (804) 786-1860/TDD ☎

STATE BOARD OF JUVENILE JUSTICE

† **September 11, 1996 - 9:30 a.m.** -- Open Meeting
700 Centre Building, 7th and Franklin Streets, 4th Floor, Richmond, Virginia. ☎

Committees of the board will meet at 9:30 a.m. The full board will meet at 10 a.m. to (i) review programs recommended for certification or probationary status; (ii) consider new and revised policies applying to juvenile correctional centers and court service units; and (iii) consider issuing for public comment regulations

Calendar of Events

governing juvenile residential facilities, court service units, and offices on youth.

Contact: Donald R. Carignan, Policy Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0743.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **September 19, 1996 - 10 a.m.** -- Open Meeting
New Horizons Regional Education Center, 520 Butler Farm Road, Hampton, Virginia. (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the council.

Contact: Fred T. Yontz, Apprenticeship Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-0295, FAX (804) 786-9877 or (804) 786-2376/TDD

Advisory Committee on Farm Safety Training Materials

September 6, 1996 - 1 p.m. -- Open Meeting
Virginia Farm Bureau Federation, 12580 West Creek Parkway, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Tech Biological Systems Engineering Department has prepared an Agricultural Tractor and Machinery Safety Program and is requesting approval from the Commissioner of Labor and Industry for this training program to be recognized as an approved training program under 16 VAC 15-50-10 et seq., Regulations Governing the Employment of Minors on Farms, in Gardens and in Orchards. The purpose of this meeting is to review this safety training program, to accept public comment, and in accordance with subsection F of 16 VAC 15-50-30, to decide whether to recommend to the commissioner that this program be approved for use in Virginia to train minors in safe tractor and machinery operation.

Contact: Dennis G. Merrill, Director, Labor Law Administration, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-3224, FAX (804) 371-2324, or (804) 786-2376/TDD

Migrant and Seasonal Farmworkers Board

† **September 25, 1996 - 10 a.m.** -- Open Meeting
Winchester Medical Center, 1840 Amherst Street, Administrative Board Room, Winchester, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board.

Contact: Patti C. Bell, Staff Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 371-6524 or (804) 786-2376/TDD

Safety and Health Codes Board

† **September 30, 1996 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The tentative agenda items for consideration by the board include: (i) proposed regulation concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees (16 VAC 25-35-10 et seq.); (ii) Personal Protective Equipment for Shipyard Employment (16 VAC 25-100-1915.159; corrections); (iii) consolidation of repetitive provisions; technical amendments; and (iv) Incorporation of General Industry Health and Safety Standards Applicable to Construction Work (16 VAC 25-175-1926.416 and 16 VAC 25-175-1926.417); correcting amendment.

Contact: Regina P. Cobb, Agency Management Analyst, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418 or (804) 786-2376/TDD

STATE LAND USE EVALUATION ADVISORY COUNCIL

September 17, 1996 - 10 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia.

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Office of Customer Services, Property Tax Unit, Department of Taxation, 2220 W. Broad St., Richmond, VA 23219, telephone (804) 367-8020.

LIBRARY BOARD

† **September 16, 1996 - Time to be announced** -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 3rd Floor, Supreme Court Meeting Room, Richmond, Virginia.

A meeting to discuss matters related to The Library of Virginia and its 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.

Automation and Networking Committee

† **September 16, 1996 - Time to be announced -- Open Meeting**

The Library of Virginia, 11th Street at Capitol Square, Conference Room B, Richmond, Virginia. ☎

A meeting to discuss automation and networking 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.

Executive Committee

† **September 16, 1996 - Time to be announced -- Open Meeting**

The Library of Virginia, 11th Street at Capitol Square, Office of the State Librarian, Richmond, Virginia. ☎

A meeting to discuss matters related to The Library of Virginia and its 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.

Legislative and Finance Committee

† **September 16, 1996 - Time to be announced -- Open Meeting**

The Library of Virginia, 11th Street at Capitol Square, Office of the Deputy State Librarian, Richmond, Virginia. ☎

A meeting to discuss legislative and financial 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.

Publications and Cultural Affairs Committee

† **September 16, 1996 - Time to be announced -- Open Meeting**

The Library of Virginia, 11th Street at Capitol Square, Richmond, Virginia. ☎

A meeting to discuss matters related to the Publications and Cultural Affairs Division and The Library of Virginia.

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.

Public Library Development Committee

† **September 16, 1996 - Time to be announced -- Open Meeting**

The Library of Virginia, 11th Street at Capitol Square, Richmond, Virginia. ☎

A meeting to discuss matters pertaining to public library development and The Library of Virginia.

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.

Records Management Committee

† **September 16, 1996 - Time to be announced -- Open Meeting**

The Library of Virginia, 11th Street at Capitol Square, Records Management Conference Room, Richmond, Virginia. ☎

A meeting to discuss matters pertaining to records management and The Library of Virginia.

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.

Research and Information Services Committee

† **September 16, 1996 - Time to be announced -- Open Meeting**

The Library of Virginia, 11th Street at Capitol Square, Conference Room B, Richmond, Virginia. ☎

A meeting to discuss research and information services and The Library of Virginia.

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.

COMMISSION ON LOCAL GOVERNMENT

September 16, 1996 - 10 a.m. -- Open Meeting
Richmond area; 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 Eighth Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

BOARD OF MEDICAL ASSISTANCE SERVICES

† **September 17, 1996 - 10 a.m. -- Open Meeting**
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to discuss medical assistance services and to take action on issues pertinent to the board.

Contact: Cynthia Klisz, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099.

Calendar of Events

Pharmacy Prior Authorization Advisory Committee

† **October 3, 1996 - 1 p.m.** -- Public Hearing

† **October 4, 1996 - 1 p.m.** -- Public Hearing

General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎

A public hearing to receive comments on pharmaceutical products that will be recommended for prior authorization to the Board of Medical Assistance Services.

Contact: Patty Atkins-Smith, Agency Management Analyst, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-6391.

† **October 10, 1996 - 10 a.m.** -- Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A routine business meeting including a discussion of implementation of a prior authorization program for the department.

Contact: Patty Atkins-Smith, Agency Management Analyst, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-6391.

BOARD OF MEDICINE

October 2, 1996 - Public comments may be submitted until this date. The public comment period has been extended.

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

September 4, 1996 - 9 a.m. -- Open Meeting

Roanoke Marriott Hotel, 2801 Hershberger Road, Roanoke, Virginia.

† **September 12, 1996 - 9:30 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

September 13, 1996 - 9 a.m. -- Open Meeting

Fort Magruder Inn and Conference Center, Route 60, Williamsburg, Virginia.

September 17, 1996 - 9 a.m. -- Open Meeting

Sheraton Inn, 2801 Flank Road, Fredericksburg, 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, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Legislative Committee

September 20, 1996 - 1 p.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet to (i) discuss legislative issues related to board activities and regulation, (ii) review any pending regulations pursuant to regulatory review or legislative action, and (iii) consider any other information that shall come before the committee. There will be a public comment period 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 Occupational Therapy

September 12, 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 18 VAC 85-80-10 et seq., Regulations for Certification of Occupational Therapy, and such other issues which may be presented. There will be a public comment period 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 ☎

MOTOR VEHICLE DEALER BOARD

Advisory Board on Physical Therapy

September 13, 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 18 VAC 85-30-10 et seq., Regulations Governing the Practice of Physical Therapy, and such other issues which may be presented. There will be a public comment period 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

September 13, 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 18 VAC 85-50-10 et seq., Regulations Governing the Practice of Physicians Assistants, and such other issues which may be presented. There will be a public comment period 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) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

VIRGINIA MILITARY INSTITUTE

Board of Visitors

September 21, 1996 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Preston Library, Lexington,
Virginia.

A regular meeting to hear committee reports. There will be an opportunity for public comment at approximately 9 a.m. immediately after the Superintendent's comments.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206 or FAX (540) 464-7600.

† **September 30, 1996 - 2 p.m.** -- Public Hearing
Wytheville Community College, 1000 East Main Street,
Grayson Hall, The Commons, Room 113, Wytheville,
Virginia.

† **October 1, 1996 - 1 p.m.** -- Public Hearing
Vinton War Memorial, 814 East Washington Avenue, Dining
Room (on right), Vinton, Virginia.

† **October 2, 1996 - 10 a.m.** -- Public Hearing
Virginia Army National Guard Armory, 340 South Willow
Street, Harrisonburg, Virginia.

† **October 7, 1996 - 10 a.m.** -- Public Hearing
DMV Headquarters Building, 2300 West Broad Street,
Agecroft Room, Richmond, Virginia.

† **October 8, 1996 - 11 a.m.** -- Public Hearing
Virginia Army National Guard Armory, 208 Marcella Road,
Hampton, Virginia.

† **October 9, 1996 - 2:30 p.m.** -- Public Hearing
Northern Virginia Community College, 8333 Little River
Turnpike, Ernst Cultural Center, Annandale, Virginia.

November 2, 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 Motor Vehicle Dealer Board intends to adopt regulations entitled: **24 VAC 22-20-10 et seq. Motor Vehicle Dealer Fees**. The Motor Vehicle Dealer Board is a self-sustaining entity. All expenses for the board must be paid through fees assessed by the board. At the current fee level the board will not be able to meet its expenses. It is projected that the board will have a negative cash balance by the end of March 1997 if the fees are not adjusted. The proposed regulations will increase certain fees for motor vehicle dealers and salespersons and enable the board to continue its function.

Statutory Authority: §§ 46.2-1506, 46.2-1503.4, 46.2-1519 and 46.2-1546 of the Code of Virginia.

Public comments may be submitted until November 2, 1996, to Barbara Klotz, P.O. Box 27412, Room 724, Richmond, VA 23269-0001.

Contact: Daniel B. Wilkins, Executive Director, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23230, telephone (804) 367-1100, FAX (804) 367-1053, or (804) 272-9278/TDD

† **September 17, 1996 - 1 p.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Room 702, Richmond, Virginia. (Interpreter for the deaf
provided upon request)


A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully

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complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.


Advertising Committee

† **September 17, 1996 - 8:30 a.m.** -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.


Dealer Practices Committee

† **September 16, 1996 - 8:30 a.m.** -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.


Finance Committee

† **September 17, 1996 - Noon** -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct general board business will immediately follow the conclusion of the Advertising Committee meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.


Licensing Committee

† **September 16, 1996 - 1 p.m.** -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

Transaction Recovery Fund Committee

† **September 16, 1996 - 4:30 p.m.** -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct general board business will immediately follow the conclusion of the Licensing Committee meeting. Persons desiring to participate in the meeting and requiring special accommodations or

interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

VIRGINIA MUSEUM OF FINE ARTS

September 3, 1996 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ☎

A meeting of the museum officers for an overview of current 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 23221-2466, telephone (804) 367-0553.

Collections Committee

September 10, 1996 - 10 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☎

A meeting to consider purchases and gifts of art work and loans to and from the collection. 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 23221-2466, telephone (804) 367-0553.

Finance Committee

September 19, 1996 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☎

A meeting to review budgets for 1996-1997. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

September 19, 1996 - Noon -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ☎

A regularly scheduled meeting of the board to review the budget and receive committee and staff reports. 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 23221-2466, telephone (804) 367-0553.

BOARD FOR OPTICIANS

September 13, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action. In addition, discussion of examination, election of officers, monthly budget statements enforcement cases and apprenticeship program will be discussed. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

BOARD OF OPTOMETRY

September 6, 1996 - 9 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, Fifth Floor, Conference Room 3, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A public hearing on proposed amendments to 18 VAC 105-30-10 et seq., Regulations on Certification of Optometrists to use therapeutic pharmaceutical agents. Amendments to the regulations on diseases and conditions which may be treated and the listing of therapeutic pharmaceutical agents are being promulgated as provided for in §§ 54.1-3223 and 9-6.14:4.1 A 18. The board may consider other items of business as may be necessary.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

September 18, 1996 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Fifth Floor, Conference Room 3, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A board meeting to adopt amendments to 18 VAC 105-30-10 et seq., Regulations on Certification of

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Optometrists to use therapeutic pharmaceutical agents. Amendments to the regulations on diseases and conditions which may be treated and the listing of therapeutic pharmaceutical agents are being promulgated as provided for in §§ 54.1-3223 and 9-6.14:4.1 A 18. The board may consider other items of business as may be necessary.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

POLYGRAPH EXAMINERS ADVISORY BOARD

September 24, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action. In addition, the Polygraph Examiners Licensing Examination will be administered to eligible polygraph examiner interns. A public comment period will be held at the beginning of the 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 so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

BOARD OF PSYCHOLOGY

† September 24, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A formal administrative hearing held pursuant to § 9-6.14:12 of the Code of Virginia. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9967, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

REAL ESTATE BOARD

September 19, 1996 -- 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 two weeks 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 ☎

BOARD OF REHABILITATIVE SERVICES

† September 26, 1996 - 9 a.m. -- Open Meeting
Woodrow Wilson Rehabilitation Center, Route 250, Fishersville, Virginia. ☎ (Interpreter for the deaf provided upon request)

A quarterly business meeting.

Contact: John R. Vaughn, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD ☎

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

September 25, 1996 - 10 a.m. -- Open Meeting
Ramada Inn, 1130 Motel Drive, Allegheny Room, Woodstock, Virginia. ☎

The board will hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia and 12 VAC 5-610-10, Sewage Handling and Disposal Regulations.

Contact: Robert Hicks, Secretary to the Board, Sewage Handling and Disposal Appeals Review Board, 1500 E. Main St., Suite 11, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

Loan Committee

September 24, 1996 - 10 a.m. -- Open Meeting
Department of Business Assistance, 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., 19th Floor, Richmond, VA 23219, telephone (804) 371-8256, FAX (804) 225-3384, or (804) 371-0327/TDD ☎

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

September 5, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 4, Richmond,
Virginia. ☎

The board and other subject matter experts will meet to write and review items for the soil scientists examination.

Contact: George O. Bridewell, Examination Administrator,
Department of Professional and Occupational Regulation,
3600 W. Broad St., Richmond, VA 23230, telephone (804)
367-8572 or (804) 367-9753/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

September 18, 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.

September 19, 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

† **October 10, 1996 - 9 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Richmond, Virginia. ☎ (Interpreter for the deaf provided upon
request)

The quarterly meeting of the board to review transportation safety issues in the Commonwealth.

Contact: Angelisa C. Jennings, Management Analyst,
Department of Motor Vehicles, 2300 W. Broad St.,
Richmond, VA 23220, telephone (804) 367-2026 or FAX
(804) 367-6031.

TREASURY BOARD

† **September 18, 1996 - 9 a.m.** -- Open Meeting
† **October 16, 1996 - 9 a.m.** -- Open Meeting
† **November 20, 1996 - 9 a.m.** -- Open Meeting
† **December 18, 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

† **September 12, 1996 - 9 a.m.** -- Open Meeting
Howard Johnson Olde Towne, 5821 Richmond Highway,
Alexandria, Virginia. ☎ (Interpreter for the deaf provided upon
request)

A formal hearing. Public comment will not be received.

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 ☎

Licensed Veterinary Technician Committee

† **September 16, 1996 - 1 p.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 meeting to discuss the scope of practice of veterinary technicians. Brief public comment will be received at the beginning of the meeting.

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 ☎

BOARD FOR THE VISUALLY HANDICAPPED

October 23, 1996 - 1:30 p.m. -- Open Meeting
Department for the Visually Handicapped, Administrative
Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on

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policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

Contact: Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Vocational Rehabilitation Advisory Council

September 21, 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)

The council meets quarterly to advise the Department for the Visually Handicapped on matters related to vocational rehabilitation services for 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, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

September 11, 1996 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia. ♿

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the formulary that became effective on January 15, 1996, and its most recent supplement. Copies of the proposed revisions to the formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, 101 North 14th Street, Room S-45, P.O. Box 2448, Richmond, VA 23218. Written comments sent to the above address and received prior to 5 p.m. on September 11, 1996, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4325.

October 24, 1996 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia. ♿

A meeting to consider public hearing comments and review new product data for drug products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

STATE WATER CONTROL BOARD

† **September 12, 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, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **October 3, 1996 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review, disciplinary cases, and other matters requiring board action. A public comment period will be held at the beginning of the 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 so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

COLLEGE OF WILLIAM AND MARY

Board of Visitors

† **September 5, 1996 - 8 a.m.** -- Open Meeting
† **September 6, 1996 - 8 a.m.** -- Open Meeting
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regularly scheduled meeting of the Board of Visitors to receive reports from several committees of the board, and to act on those resolutions that are presented by the administrations of the College of William and Mary and Richard Bland College. An informational release will be available four days prior to the board meeting for those individuals and organizations who request it.

Contact: William T. Walker, Jr., Director, Office of University Relations, College of William and Mary, 312 Jamestown Rd., P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2624.

INDEPENDENT

LOTTERY BOARD

† **September 25, 1996 - 9:30 a.m.** -- Open Meeting
State Lottery Department, 900 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. One period for public comment is scheduled.

Contact: Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

LEGISLATIVE

ADMINISTRATIVE LAW ADVISORY COMMITTEE

September 11, 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 on-going studies of the committee and other business.

Contact: Lyn Hammond, Program Coordinator, Administrative Law Advisory Committee, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 371-0169.

October 9, 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 on-going studies of the committee, adopt recommendations to present to the Virginia Code Commission, and conduct any other business.

Contact: Lyn Hammond, Program Coordinator, Administrative Law Advisory Committee, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 371-0169.

VIRGINIA CODE COMMISSION

September 18, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A joint meeting with the task force to finalize the recodification of Title 15.1.

Contact: E. M. Miller, Jr., Director, or Jane D. Chaffin, Deputy Registrar, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 692-0625.

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

September 9, 1996 - 9:30 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

A tentative staff briefing on Virginia Liaison Office, ADAPT progress report, and RFP Information Technology report.

Contact: Phillip A. Leone, Director, Joint Legislative and Audit Review Commission, General Assembly Building, 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

COMMISSION ON YOUTH

September 24, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss status offenders.

Contact: Joyce Huey, General Assembly Bldg., 910 Capitol Square, Suite 517B, Richmond, VA 23219-0406, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

September 3

Hopewell Industrial Safety Council
Museum of Fine Arts, Virginia

September 4

Emergency Planning Committee, Local - Winchester
Game and Inland Fisheries, Department of
Medicine, Board of

September 5

Agriculture and Consumer Services, Department of
- Virginia Irish Potato Board
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Emergency Planning Committee - Local, Chesterfield
County
Game and Inland Fisheries, Department of
Soil Scientists, Board for
† William and Mary, College of
- Board of Visitors

Calendar of Events

September 6

- Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Labor and Industry, Department of
 - Advisory Committee on Farm Safety Training Materials
- † William and Mary, College of
 - Board of Visitors

September 7

- † Conservation and Recreation, Department of
 - Virginia Cave Board

September 9

- Alcoholic Beverage Control Board
- † Environmental Quality, Department of
 - Litter Control and Recycling Fund
- Hearing Aid Specialists, Board for
- Intergovernmental Relations, Advisory Committee on
- Legislative Audit and Review Commission, Joint

September 10

- † Air Pollution Control Board
 - State Advisory Board on Air Pollution
- Contractors, Board for
- † Environmental Quality, Department of
- † Health Professions, Board of
 - Ad Hoc Committee on Criteria
 - Regulatory Research Committee
- Museum of Fine Arts, Virginia
 - Collections Committee

September 11

- Administrative Law Advisory Committee
- † Child Day-Care Council
- Community Colleges, State Board for
- † Emergency Planning Committee, Local - City of Alexandria
- Environmental Quality, Department of
 - Work Group on Detection/Quantitation Levels
- Funeral Directors and Embalmers, Board of
- † Juvenile Justice, State Board of

September 12

- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Professional Engineers
- † Child Day-Care Council
- Community Colleges, State Board for
- Medicine, Board of
 - Advisory Board on Occupational Therapy
- † Veterinary Medicine, Board of
- † Water Control Board, State

September 13

- Environmental Quality, Department of
 - Technical Advisory Committee for Solid Waste Management Regulations
- Medicine, Board of
 - Advisory Board of Physical Therapy
 - Advisory Committee on Physician's Assistant
- Opticians, Board for

September 15

- † Housing Development Authority, Virginia

September 16

- † Library Board
 - Automation and Networking Committee
 - Executive Committee
 - Legislative and Finance Committee
 - Publications and Cultural Affairs Committee
 - Public Library Development
 - Records Management Committee
 - Research and Information Services Committee
- Local Government, Commission on
- † Motor Vehicle Dealer Board
 - Dealer Practices Committee
 - Licensing Committee
 - Transaction Recovery Fund Committee
- † Veterinary Medicine, Board of
 - Licensed Veterinary Technician Committee

September 17

- Environmental Quality, Department of
 - Virginia Ground Water Protection Steering Committee
- † George Mason University
 - Board of Visitors
- † Housing Development Authority, Virginia
- Land Evaluation Advisory Council, State
- † Medical Assistance Services, Board of Medicine, Board of
- † Motor Vehicle Dealer Board
 - Advertising Committee
 - Finance Committee

September 18

- † Conservation and Recreation, Department of
 - Fall River Renaissance Committee
- † Forestry, Department of
 - Reforestation of Timberlands Board
- † George Mason University
 - Board of Visitors
- † Historic Resources, Department of
 - State Review Board and Historic Resources Board
- Optometry, Board of
- Transportation Board, Commonwealth
- † Treasury Board

September 19

- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Land Surveyors
- † Contractors, Board for
- † Dentistry, Board of
- † Labor and Industry, Department of
 - Apprenticeship Council
- Museum of Fine Arts, Virginia
 - Finance Committee
 - Board of Trustees
- Real Estate Board
- Transportation Board, Commonwealth

September 20

- † Contractors, Board for
- † Dentistry, Board of
- Medicine, Board of
 - Legislative Committee

September 21

Accountancy, Board for
 Military Institute, Virginia
 - Board of Visitors
 Visually Handicapped, Department for the
 - Vocational Rehabilitation Advisory Council

September 23

Alcoholic Beverage Control Board

September 24

Polygraph Examiners Advisory Board
 † Psychology, Board of
 Small Business Financing Authority, Virginia
 - Loan Committee
 Youth, Commission on

September 25

† Hazardous Materials Training Advisory Committee, State
 † Labor and Industry, Department of
 - Migrant and Seasonal Farmworkers Board
 † Lottery Board
 Sewage Handling and Disposal Appeals Review Board

September 26

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Landscape Architects
 Compensation Board
 † Education, Board of
 † Higher Education Tuition Trust Fund, Virginia
 † Rehabilitative Services, Board of

September 30

Accountancy, Board for
 - Privatization Task Force
 † Labor and Industry, Department of
 - Safety and Health Codes Board

October 2

† Agriculture and Consumer Services, Department of
 - Board of Agriculture and Consumer Services
 † Contractors, Board for
 - Disciplinary Committee

October 3

Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board
 Emergency Planning Committee - Local, Chesterfield County
 † Waterworks and Wastewater Works Operators, Board for

October 4

† Medical Assistance Services, Department of
 - Pharmacy Prior Authorization Advisory Committee

October 7

Alcoholic Beverage Control Board
 Cosmetology, Board for

October 8

† Criminal Justice Services Board
 - Committee on Training
 † Hopewell Industrial Safety Council

October 9

Administrative Law Advisory Committee

October 10

† Agriculture and Consumer Services, Department of
 - Pesticide Control Board
 † Child Day-Care Council
 † Medical Assistance Services, Department of
 - Pharmacy Prior Authorization Advisory Committee
 † Transportation Safety Board

October 16

† Treasury Board

October 17

† Accountancy, Board for
 Environmental Quality, Department of
 - Work Group on Ammonia, Mercury, Lead and Copper

October 18

† Accountancy, Board for

October 21

Alcoholic Beverage Control Board

October 23

Visually Handicapped, Board for the

October 24

† Higher Education Tuition Trust Fund, Virginia
 Voluntary Formulary Board, Virginia

October 31

Compensation Board

November 4

Alcoholic Beverage Control Board

November 5

† Hopewell Industrial Safety Council

November 14

† Child Day-Care Council

November 18

Alcoholic Beverage Control Board

November 20

† Treasury Board

November 21

† Higher Education Tuition Trust Fund, Virginia

December 12

† Child Day-Care Council

December 18

† Treasury Board

PUBLIC HEARINGS

September 6

Optometry, Board of
 † Competition Council, Commonwealth

September 9

† Competition Council, Commonwealth

Calendar of Events

September 11

Voluntary Formulary Board, Virginia

September 16

† Correctional Education, Department of

September 18

Opometry, Board of

September 30

† Motor Vehicle Dealer Board

October 1

† Motor Vehicle Dealer Board

October 2

† Motor Vehicle Dealer Board

October 3

† Medical Assistance Services, Department of
- Pharmacy Prior Authorization Advisory Committee

October 4

† Medical Assistance Services, Department of
- Pharmacy Prior Authorization Advisory Committee

October 7

† Motor Vehicle Dealer Board

October 8

† Motor Vehicle Dealer Board

October 9

† Motor Vehicle Dealer Board

October 11

† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for