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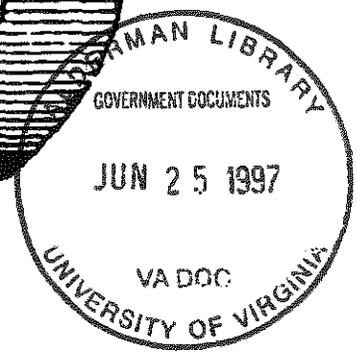
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THE VIRGINIA REGISTER

v.13 - no.18-22
1997

OF REGULATIONS

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MAY 26, 1997

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Pages 2081 Through 2334

THE VIRGINIA REGISTER INFORMATION PAGE

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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Symbol Key

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

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: 9 VAC 5-30-10 et seq. and 9 VAC 5-70-10 et seq. **Regulations for the Control and Abatement of Air Pollution (Rev. A97).** The purpose of the proposed action is to repeal regulatory provisions regarding total suspended particulate (TSP) ambient air quality standards (9 VAC 5-30-20) and significant harm levels for TSP for air pollution episodes (9 VAC 5-70-40) that have been determined to be no longer required by federal mandate pursuant to the review of existing regulations mandated by Executive Order 15(94).

Public Meeting: A public meeting will be held by the department in the Training Room, First Floor, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 9 a.m. on June 11, 1997, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m., on June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The contemplated regulations are not essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The agency performed an analysis to determine if statutory mandates justify continuation of the regulations. The analysis revealed that statutory justification does exist for the regulations with the one exception noted below. The regulations were adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the

Commonwealth's responsibilities under the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force with the provisions that initiated adoption of the regulation still intact.

Analysis reveals that the regulations, with the one exception noted below, are consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulations have changed to a degree that would justify a change to the basic requirements of the regulation, as explained below.

The one provision of the regulations that exceeds the specific minimum requirements of a legally binding state or federal mandate has been identified. In addition to establishing primary and secondary standards for the criteria pollutants specified in federal law, as well as significant harm levels for air pollution episodes, the state regulations also establish standards and significant harm levels for TSP. At the time of the state regulations' initial promulgation in 1972, federal regulation (40 CFR Part 50) mandated standards for this pollutant. In 1987, however, federal standards for particulate matter (PM₁₀) were promulgated and the standards for TSP rescinded, the former superseding the latter. Virginia has not yet followed the lead of the federal government in this regard, retaining both sets of standards in regulations. Therefore, the state regulations now exceed the federal mandate in this one provision.

Executive Order 15(94) states, "Unless otherwise mandated by statute, the only regulations that should remain in effect are those that are essential to protect the health, safety and welfare of citizens or for the efficient and economical performance of an important governmental function." The new PM₁₀ standards are more protective of public health and equally protective of public welfare than the old TSP standards. Rescission of the state TSP standards would contribute to the efficient and economical performance of government because it would eliminate outdated, duplicative, and insufficiently protective regulatory provisions.

Alternatives: Alternatives to the proposed regulation amendments being considered by the department are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulation amendments: to achieve consistency with federal requirements by repealing an outdated standard.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it will not ensure consistency with federal requirements.

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3. Take no action to amend the regulations and continue to enforce an outdated standard. This option is not being selected because it will ensure the continuance of an outdated standard.

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

Applicable Statutory Requirements: The regulations (9 VAC 5 Chapters 30 and 70) are mandated by federal law or regulation. However, certain provisions in these regulations related to TSP are not mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below.

Sections 109 (a) and (b) of the Clean Air Act require EPA to prescribe national primary air quality standards (to protect public health) and national secondary air quality standards (to protect public welfare) for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Clean Air Act. The primary and secondary air quality criteria are authorized for promulgation under § 108 of the Clean Air Act. The criteria for each pollutant shall include, to the extent practicable, information on the following: (i) variables which may adversely affect the impact of an air pollutant on public health or welfare; (ii) pollutants which may interact with other pollutants to produce an adverse effect on public health or welfare; and (iii) any known or anticipated adverse effects on public health or welfare.

Section 302 (h) defines effects on public welfare as including, but not limited to, effects on soils, water, vegetation, man-made materials, animals, weather, visibility. Also included are damage to and deterioration of property, hazards to transportation, and adverse effects on economic values, personal comfort, and well-being.

40 CFR Part 50 specifies the national primary and secondary ambient air quality standards for the following criteria air pollutants: sulfur dioxide, particulate matter (PM₁₀), carbon monoxide, ozone, nitrogen dioxide, and lead. In addition, since § 302 (g) of the Clean Air Act specifies that the term "air pollutant" includes precursors to the formation of any air pollutant, volatile organic compounds (hydrocarbons) are generically classed as a criteria air pollutant because of their function as a precursor in ozone formation.

Appendices A through J to 40 CFR Part 50 specify reference methods for measuring the following criteria air pollutants in the atmosphere or in the ambient air: sulfur dioxide, suspended particulate matter, carbon monoxide, ozone, hydrocarbons corrected for methane, nitrogen dioxide, lead in suspended particulate matter, and particulate matter (PM₁₀).

Appendices H and K to 40 CFR Part 50 interpret the National Ambient Air Quality Standards for two criteria air pollutants: ozone and particulate matter.

Subparts A through D of 40 CFR Part 53 specify ambient air monitoring reference and equivalent methods, specifically procedures for testing performance characteristics of automated methods for sulfur dioxide, carbon monoxide, ozone, particulate matter (PM₁₀), and nitrogen dioxide; and procedures for determining comparability between candidate methods and reference methods.

40 CFR Part 58 specifies procedures for ambient air quality surveillance, specifically monitoring criteria; state and local air monitoring stations (SLAMS); national air monitoring stations (NAMS); photochemical assessment monitoring stations (PAMS); air quality index reporting; and federal monitoring.

In addition to establishing primary and secondary standards for the criteria pollutants specified in federal law, 9 VAC 5-30-20 of the state regulation also establishes standards for TSP. At the time of the state regulation's initial promulgation in 1972, federal regulation (40 CFR Part 50) mandated standards for this pollutant. In 1987, however, federal standards for particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (PM₁₀) were promulgated and the standards for TSP rescinded. Virginia's regulations still contain provisions related to TSP in regulations regarding ambient air quality standards (9 VAC 5-30-20) and significant harm levels for TSP for air pollution episodes (9 VAC 5-70-40). Therefore, the state regulation now exceeds the federal mandate in this one provision.

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

Public comments may be submitted until 4:30 p.m. on June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

VA.R. Doc. No. R97-393; Filed April 15, 1997, 8:27 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 State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40-10 et seq. Regulations for the Control and Abatement of Air Pollution (Rev. E97)**. The regulation amendments are being proposed to address problems concerning the clarity of the regulation identified pursuant to the review of existing regulations mandated by Executive Order 15(94).

Public Meeting: A public meeting will be held by the department in the Training Room, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 9 a.m. on June 11, 1997, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by 4:30 p.m. on June 12, 1997, and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you wish

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to be on the group, you are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The agency performed an analysis to determine if statutory mandates justify continuation of the regulation. The analysis revealed that statutory justification does exist for the regulation. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force with the provisions that initiated adoption of the regulation still intact.

Analysis reveals that the regulation is consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program, and air pollution control methodology and technology) which justified the original issuance of the regulation have not changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. This regulation, Rule 4-8, was adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standards for particulate matter and sulfur dioxide, which are emitted by fuel burning equipment.

While the regulation meets federal requirements, the definition of fuel burning equipment should be revised to make it clear that it includes stationary internal combustion engines such as diesel generators and combustion turbines. Current DEQ interpretation of this regulation excludes these types of internal combustion engines. Consequently, stationary internal combustion engines are covered by the provisions of Rule 4-4 (General Process Operations). However, that rule excludes liquid and gaseous fuels from the definition of "process weight," so internal combustion engines have no process weight upon which to base a determination of allowable emissions. In addition, the exclusion of internal combustion engines from the definition of fuel burning equipment in Rule 4-8 makes it impossible for these engines to be included with boilers at the same source for determination of allowable emissions or to participate in an emission allocation system under Rule 4-8. Therefore, the

definition of an affected entity needs to reflect that this type of source is in fact affected by this rule.

Alternatives: Alternatives to the proposed regulation amendments are being considered by the department. The department has tentatively determined that the third alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation amendments. The alternatives considered by the department are as follows:

1. Take no action to amend the regulation. This option is not being selected because the current regulation does not adequately identify the entity to which the provisions of the regulation apply.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state or federal mandates. This option is not being selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community.
3. Amend the regulation to adequately identify the regulated entity to which the provisions of the regulation apply. This option has been selected in order to improve understanding and clarity of the regulation.

As provided in the public participation procedures of the State Air Pollution Control Board, the department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

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

Applicable Statutory Requirements: The contemplated regulation amendments are mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate are as follows:

Section 110(a) of the Clean Air Act mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

- (1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the Clean Air Act, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
- (2) establish schedules for compliance;
- (3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and
- (4) require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

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40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Section 51.214(c) under Subpart K specifies that the state implementation plan must contain procedures which require the types of sources set forth in Appendix P to meet the applicable requirements. Appendix P sets forth the minimum requirements for continuous emission monitoring and recording that each state implementation plan must include in order to be approved. The following source types specifically require monitoring: (i) fossil fuel-fired steam generators, monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide; (ii) fluid bed catalytic cracking unit catalyst regenerators, monitored for opacity; (iii) sulfuric acid plants, monitored for sulfur dioxide emissions; and (iv) nitric acid plants, monitored for nitrogen oxides emissions.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
- (5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;

(6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

(7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

(1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

(2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

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

Public comments may be submitted until 4:30 p.m. on June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

VA.R. Doc. No. R97-411; Filed April 15, 1997, 8:26 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 State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40-10 et seq. Regulations for the Control and Abatement of Air Pollution (Rev. C97)**. The purpose of the proposed action is to repeal Emission Standards for Mobile Sources (Article 41; 9 VAC 5-40-5650) because they have been determined to be no longer required by federal mandate pursuant to the review of existing regulations mandated by Executive Order 15(94).

Public Meeting: A public meeting will be held by the department in the Training Room, First Floor, Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, at 9 a.m. on Wednesday, June 11, 1997, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

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Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted until 4:30 p.m. on Thursday, June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Public Hearing Plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The regulation is no longer essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. It now exceeds the specific minimum requirements of legally binding state and federal mandates. An explanation as to how this conclusion was reached is set forth below.

The regulation is no longer needed for air pollution planning purposes. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the Federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force, but the provisions that initiated adoption of the regulation have changed.

Analysis reveals that the regulation is not consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulation have changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. This regulation, Rule 4-41, was adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standard for particulate matter, which is emitted by mobile sources.

Since Rule 4-41 was adopted in 1972, important changes have been made to the State Implementation Plan which have resulted in significantly better control of the emissions this regulation was designed to limit. For instance, under the 1990 amendments of the Clean Air Act, all motor vehicles in Virginia's metropolitan urban areas (two million vehicles out of the statewide total of five million) are now or will soon be subject to inspection and maintenance (I/M) programs, which will provide for a higher level of stringency for control of

visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of antitampering prohibitions is accomplished through statewide safety inspections carried out by the state police. (The antitampering provisions of Rule 4-41 merely duplicate those of § 46.2-1048 of the Code of Virginia.) In light of these newer and more effective controls, the regulation should be rescinded.

Alternatives: Alternatives to the proposed regulation amendments being considered by the department are as follows:

1. Take no action to amend the regulation. This option is not being selected for the reason specified below in 3.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state or federal mandates. This option is not being selected because no such changes are warranted.
3. Amend the regulation to satisfy the provisions of the legally binding state or federal mandates. This option is being selected because statutory justification no longer exists for the regulation. Since the adoption of this rule, changes to the State Implementation Plan have resulted in more effective methods to control the emissions this regulation was designed to limit. The inspection and maintenance programs mandated by the 1990 Clean Air Act for Virginia's metropolitan urban areas will provide for a higher level of stringency for control of visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of antitampering prohibitions is accomplished through statewide safety inspections carried out by the state police.

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

Applicable Statutory Requirements: The regulation was originally mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate are as follows:

Section 110(a) of the Clean Air Act mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

- (1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the Clean Air Act, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
- (2) establish schedules for compliance; and
- (3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state.

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40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping, procedures for testing, inspection, enforcement, complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
- (5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;
- (6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
- (7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

- (1) the provisions of law or regulation which the state determines provide the authorities required under this

section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

- (2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

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

Public comments may be submitted until 4:30 p.m. on Thursday, June 12, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabastanski, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

VA.R. Doc. No. R97-412; Filed April 15, 1997, 8:27 a.m.

STATE BOARD OF EDUCATION

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 repealing regulations entitled: **8 VAC 20-20-10 et seq. Regulations Governing the Licensure of School Personnel** and promulgating regulations entitled: **8 VAC 20-21-10 et seq. Regulations Governing the Licensure of School Personnel**. The purpose of this action is to repeal the Licensure Regulations for School Personnel and promulgate new regulations. The need to repeal the old regulations and establish new ones is based on the need to (i) align the licensure requirements for school personnel with the requirements of the Standards of Learning objectives for students; (ii) establish a statewide licensure system for all teacher education approved programs and continue to provide some flexibility for institutions with approved programs; and (iii) reduce the number of endorsements from the current 104. The proposal establishing new regulations accomplishes all three objectives, including recommending a reduction of 47% (from the current 104 to 49) in current endorsement areas. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 22.1-298 of the Code of Virginia.

Public comments may be submitted until June 13, 1997.

Contact: Dr. Thomas A. Elliott, Assistant Superintendent for Compliance, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522.

VA.R. Doc. No. R97-416; Filed April 15, 1997, 2:29 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 promulgating regulations entitled: **Conduct of Informal Appeals; Conduct of Formal Appeals**. The purpose of the proposed action is to provide a basic framework for the orderly and timely conduct of informal and formal appeals brought pursuant to the Administrative Process Act (§ 9-6.14.1 et seq. of the Code of Virginia). 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 June 11, 1997.

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. R97-429; Filed April 23, 1997, 10:40 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 amending regulations entitled: **12 VAC 30-30-20 and 12 VAC 30-120-400. Medallion II: Quality Control and Utilization Review; Coverage and Conditions of Eligibility**. The purpose of the proposed action is to promulgate federal requirements regarding monitoring HMOs under contract to Medicaid and conform federal preprinted pages to policies already promulgated. 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 May 28, 1997.

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. R97-395; Filed April 9, 1997, 9:25 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† 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 Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-100-10 et seq. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells**. The purpose of the proposed action is to amend the Department of Mines, Minerals and Energy's (DMME)

regulations governing drilling, equipping and operating vertical ventilation holes used to remove methane from underground coal mines. It also governs the practice of mining near or through a vertical ventilation hole or gas well. Use of vertical ventilation holes affects the safety of underground miners through their removal of explosive methane from the mine atmosphere, and due to potential hazards associated with mining activity occurring in close proximity to the vertical ventilation holes. The regulations are also necessary to protect the welfare of citizens having interests in the vicinity of a location of a vertical ventilation hole.

The amendments will implement the recommendations identified during DMME's regulation review under Executive Order 15(94). The recommendations will streamline the regulatory process, eliminate unnecessary regulatory requirements, clarify language, and implement changes based on DMME, mine operator, coal miner, and citizen experience implementing the regulation since it was last amended in 1991. Copies of the regulatory review report are available at the Department of Mines, Minerals and Energy, Division of Mines, Big Stone Gap, Virginia, and the Department of Mines, Minerals and Energy, 202 North Ninth Street, 8th Floor, Richmond, Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, 45.1-161.121, 45.1-161.254, and 45.1-161.292.

Public comments may be submitted until June 30, 1997.

Contact: Frank Linkous, Mine Division Chief, Department of Mines, Minerals and Energy, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100, FAX (540) 523-8239, or toll-free 1-800-828-1120 (VA Relay Center)

VA.R. Doc. No. R97-485; Filed May 7, 1997, 9:51 a.m.

BOARD OF NURSING

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 Nursing intends to consider amending regulations entitled: **18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing**. The Board of Nursing proposes action on the recommendations of its Executive Order 15(94) report as follows:

1. In the initial approval of nursing education programs, the board intends to eliminate several burdensome requirements such as submission of a study documenting need and a current catalog and reduce the time required for submission of information prior to the expected opening date from 15 to 12 months. The board also recommends moving the requirement for the institution to graduate its first class prior to final approval from Phase II to Phase III of the process.
2. In requirements for organization and administration, the board recommends elimination of the requirement for

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authorization by the charter of the controlling institution as unnecessary or redundant of other regulations. It also intends to provide more flexibility by specifying that the governing institution be accredited by a "state agency or by a certifying body recognized by the U. S. Department of Education" and to clarify that the agency or institution is one utilized "as a clinical experience facility" and that it shall be in good standing with the appropriate licensing body.

3. In an effort to clarify the role of the director of the nursing education program, the board recommends model language from the National Council of State Boards of Nursing. An amendment is recommended to clarify that there must be evidence of financial support and resources to meet the goals of the program in order to address a problem for students who are harmed by programs being abruptly terminated.

4. The board recommends amendments to eliminate program objectives that are difficult to measure and to clarify the requirements.

5. The board recommends continuing review and clarification of its requirements for faculty qualifications and reorganization and rewording to streamline the content of the regulations.

6. The board will consider amendments which will provide for a broader regulation on the proportional number of faculty to students. In its consideration, the board will consult with educators and clinical supervisors to determine a proportion that is sufficient to promote safety for patients to whom students provide care. It will also consider amendments to make the ratio requirement of faculty to students in a clinical setting less restrictive when preceptors are being utilized.

7. The board intends to promulgate other amendments which will eliminate unnecessary requirements such as the conditions of employment for faculty and the organizational requirements for the nursing faculty and will revise regulations on the principal functions of the faculty for clarification.

8. The board recommends a less restrictive and costly requirement which permits clinical supervision of students in a nursing program by preceptors rather by faculty in written agreements with cooperating agencies.

9. The board recommends amendments to permit the schools more flexibility and autonomy in revising curriculum.

10. The board recommends elimination of the burdensome and expensive reporting to the board when a school intends to make changes in its nursing education program.

11. To conform to changes in the Code of Virginia regarding the Education Special Conference Committee, the board intends to reduce the number of persons required to serve from three to two and to clarify other references in regulation to the committee.

12. In its regulations on the closing of an approved nursing education program, the board recommends

elimination of the specific procedures which a school must follow.

13. The board recommends consideration of amendments to Part III on Licensure and Practice which organize the requirements for greater clarity but which do not change the substance of the regulations, which the board finds to be necessary and reasonable.

14. In the requirements for approval of a nurse aide education program, the board recommends the addition of evidence of financial support and resources sufficient to meet the minimal requirements of these regulations to address a problem of nurse aide students who have lost tuition payments amounting to several thousand dollars.

15. In the section which sets forth qualifications for instructors in a nurse aide education program, the board will consider an amendment to the current requirement for the primary instructor to have experience as a RN for two years within the previous five years with at least one year in a long-term care facility.

16. The board will also consider other modifications to the requirements for nurse aide education to make some regulations less restrictive and eliminate some requirements which are no longer necessary.

17. The board recommends an amendment in Part VI on the Medication Administration Training Program to require a test at the conclusion of the program to provide some measure of assurance for the safety of the public that the person has minimum competency.

In addition to the recommended changes resulting from the review of regulations, the Board of Nursing has identified two issues which it seeks to address through promulgation of proposed regulations.

A. Identification of Category of Licensure for Patient Protection

In order for the public to be informed about the health care they are receiving, the board intends to consider amending its regulation to require registered nurses, licensed practical nurses, certified nurse aides, and clinical nurse specialists to identify themselves by name and appropriate title to their patients.

B. Establishment of protocol for administration of adult vaccines by certain practitioners.

In the 1996 General Assembly, the Drug Control Act was amended to permit the administration of adult vaccines by registered nurses when a person when prescriptive authority was not present under a protocol approved by the Board of Nursing. For consistency and ease of administration, the board has determined that development of a regulation for such a protocol would be in the best interest of public safety. Through the establishment of a standard protocol, the groups seeking to operate "flu vaccine clinics" would have guidelines to follow.

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

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until June 11, 1997.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943, or (804) 662-7197/TDD☎

VA.R. Doc. No. R97-420; Filed April 22, 1997, 12:59 p.m.

BOARD OF OPTOMETRY

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 Nursing intends to consider amending regulations entitled: **18 VAC 105-30-10 et seq. Regulations Governing the Certification of Optometrists to Use Therapeutic Pharmaceutical Agents.** The purpose of the proposed action is to clarify regulations, to eliminate unnecessary regulations, and to conform regulations to current regulations for the licensure of optometrists as follows:

1. Amendments to the definition of "postgraduate clinical training" to track the language of the statute. Definitions for terms such as "invasive modality" and "protocol," which are not used in the regulations, may be eliminated.
2. Since the certification of optometrists to administer Therapeutic Pharmaceutical Agents is now provided by the Board of Optometry, requirements for submission of certain documents and verification from the Board of Optometry (to the Board of Medicine) are no longer needed in regulation and may be deleted.
3. In the section setting forth the examination for certification, the board needs to identify that examination as the National Board of Optometry's examination in the Treatment and Management of Ocular Diseases known as TMOD, which is now being given as a part of the national examination in optometry. The board intends to also include the option of "an examination acceptable to the board" to allow for another examination which will be subsequently developed.
4. For consistency with the amended Code of Virginia section, the listing of Therapeutic Pharmaceutical Agents in this section should include a regulation permitting the use of epinephrine administered intramuscular for anaphylactic shock. Likewise, the board will consider an amendment to use Therapeutic Pharmaceutical Agents appropriate to the initiation of emergency treatment of acute angle closure glaucoma.
5. In order to provide consistency in the renewal cycle for the optometrist license and the Therapeutic Pharmaceutical Agent certification, the board intends to amend this section to have the two renewed at the same time.
6. The board intends to clarify that in addition to the one postgraduate program approved for Therapeutic Pharmaceutical Agent certification, other programs which

provide the minimum number of clinical hours of education may be acceptable.

7. Amendments are necessary for consistency or to eliminate redundancy.

8. The board intends to consider a reduction in the application fee from \$300 to \$200 since that fee no longer includes administration of an examination and an adjustment in the renewal fee for certification from a biennial to an annual fee of approximately one half the current amount.

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

Statutory Authority: § 54.1-2400 and Chapter 32 of Title 54.1 of the Code of Virginia.

Public comments may be submitted until June 11, 1997.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943, or (804) 662-7197/TDD☎

VA.R. Doc. No. R97-421; Filed April 22, 1997, 12:59 p.m.

PESTICIDE CONTROL 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 Pesticide Control Board intends to consider amending regulations entitled: **2 VAC 20-50-10 et seq. Requirements Governing Pesticide Applicator Certification Under Authority of the Virginia Pesticide Control Act.** The purpose of the proposed action is to amend the current regulation to clarify requirements for certification of applicators of pesticides in accordance with statutory changes effective July 1, 1995, in §§ 3.1-249.27, 3.1-249.51, and 3.1-249.53 of the Code of Virginia. In addition, several amendments to be considered by the Pesticide Control Board include but are not limited to: categories of pesticide applicators; certification Requirements for pesticide applicators; certification standards for pesticide applicators; suspension and revocation of certificates; denial of certification; reciprocal certification; recordkeeping requirements; evidence of financial responsibility; and general housekeeping changes to make the regulation clearer. In addition, as a part of this regulatory action, the agency intends to review the regulation for effectiveness and continued need and to eliminate unnecessary duplication of language. In addition to receiving comments about the regulation itself and contemplated amendments related thereto, the agency also invites comment on whether there should be an advisor for the purpose of this regulatory action. An advisor is (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; and (v) any combination thereof. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until noon on June 15, 1997.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 401, 1100 Bank St., Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 371-8598, toll-free 1-800-552-9963, or (804) 371-6344/TDD ☎

VA.R. Doc. No. R97-428; Filed April 23, 1997, 9:24 a.m.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

† 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 Professional Counselors and Marriage and Family Therapists intends to consider amending regulations entitled: **18 VAC 115-20-10 et seq. Regulations Governing the Practice of Professional Counseling.** The purpose of the proposed action is to clarify and simplify regulations pursuant to recommendations of Executive Order 15(94) as follows:

1. Establish an endorsement procedure for applicants with lengthy experience licensed in other states.
2. Include a reference to Regulations Governing the Certification of Sex Offender Treatment Providers.
3. Consider specialty designations under the professional counselor license.
4. Update and clarify educational requirements.
5. Recognize programs accredited by the Council of Accreditation for Counseling and Related Educational Programs, and the Commission on Rehabilitation Education as meeting the definition of a graduate degree in counseling.
6. Accept National Counselor Certification as fulfillment of the requirement for a graduate degree in counseling.
7. Reduce the hour requirement for the supervised residency from 4,000 to 3,000 hours and clarify the residency requirement.
8. Change the requirement for supervisors to submit annual evaluations to the board to submit evaluations directly to the applicant.
9. Include a provision to approve graduate programs that contain the core course work requirements and a 2,000 hour residency and allow graduates from those programs to sit for the examination upon receipt of the graduate degree.
10. Include a requirement for licensees to notify the board of change of name or address.
11. Simplify the reinstatement procedure for lapsed licenses.

12. Expand the requirement to report violations of the laws and regulations governing the practice of professional counselors to include violations committed by any mental health service provider.

13. Consider incorporating any ethical standards of the American Counseling Association that might enhance the board's ability to protect the public from unethical practitioners.

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

Statutory Authority: § 54.1-2400 and Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until June 25, 1997.

Contact: Janet D. Delorme, Deputy Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9575 or FAX (804) 662-9943.

VA.R. Doc. No. R97-492; Filed May 7, 1997, 11:36 a.m.

REAL ESTATE 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 Board intends to consider amending regulations entitled: **18 VAC 135-40-10 et seq. Time-Share Regulations.** The purpose of the proposed action is to review and seek public comment on the registration and disclosure requirements for time-shares offered or disposed of in the Commonwealth of Virginia. Other changes to the regulations which may be necessary will be considered. The agency intends to hold a public on the proposed regulation after publication.

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

Public comments may be submitted until June 27, 1997.

Contact: Emily O. Wingfield, Property Registration Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

VA.R. Doc. No. R97-481; Filed May 6, 1997, 11:47 a.m.

SOIL AND WATER CONSERVATION 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 Soil and Water Conservation Board intends to consider promulgating regulations entitled: **4 VAC 50-60-10 et seq. Watershed Improvement District Referenda Regulations.** The purpose of the proposed action is to develop regulations which will specify

Notices of Intended Regulatory Action

arrangement for the conduct of referenda associated with the formation and operation of a watershed improvement district (WID).

Need: The proposed regulation is needed to make an electoral process efficient, complete, and consistent. Promulgation should make it possible to carry out existing law for the establishment of a watershed improvement district (WID). Unfortunately, the completion of the regulations may automatically make other required resources and expertise unavailable from the State Board of Elections, local boards of elections, and registrars. A WID is a means for local citizens to organize themselves into a self-governing unit capable of accepting moneys and financing needed environmental structures. This enables community determination of needs, which may serve to prevent state or federal imposition of natural resource requirements.

This is not a new intent of state law. The change merely designates different responsibility for setting referenda procedures. Formerly the responsible entity was the local Soil and Water Conservation District; now it is the Virginia Soil and Water Conservation Board, which already is accountable for land and water management and oversight of Virginia's 46 soil and water conservation districts.

Substance and Purpose: The referendum is the means by which landowners in a particularly defined area can vote to determine if a watershed improvement district should be created, and to determine if taxes and service charges should be levied to support the financial commitments of that WID to make improvements. Through these regulations, citizens will have an ability to address unique natural resource issues in conjunction with their locally elected soil and water conservation district (SWCD).

State law authorizes establishment of a WID within a soil and water conservation district or districts. A referendum that must pass both among the resident landowners and among all the qualified voters has been the mechanism for determining the WID's existence. The passage limit on the landowner portion of the referendum must be by two-thirds in favor who also must own two-thirds of the land. Passage of the referendum portion by all qualified voters is by simple majority.

Recodification of the election laws several years ago inadvertently affected the WID formation process by not addressing the WID references to the election laws. In response, the 1995 General Assembly mandated that the referenda authorized under the WID law be governed by regulations developed by the Virginia Soil and Water Conservation Board. This will ensure that SWCD's across the state employ a consistent process, rather than each SWCD individually having to establish procedures for elections.

Estimated Impact: The regulations enable citizens to form a special assessment district, allowing the natural resource needs of a particular locale to be addressed and treated according to the wishes of the residents. Additional taxes and charges may be approved by referenda and collected to finance needed functions and structures within the district. A WID may incur indebtedness, borrow funds and issue bonds, subject to voter approval and landowner approval by

referenda. The economic impact of this regulatory proposal will depend on the needs of each area, and only if the qualified voters and the landowners themselves wish for it to occur.

The regulations will name persons to conduct a referendum and describe associated administrative systems. The placement of perfunctory duties will be determined through expert advice and suggestions received during the public processes of the Administrative Process Act and the board's Regulatory Public Participation Procedures. While many details cannot be predicted at this preliminary stage, the least burdensome option will be selected so as to minimize the procedural steps associated with a referendum. The Department of Conservation and Recreation and the Virginia Soil and Water Conservation Board are very mindful of the limitation of resources and do not want to afflict themselves, soil and water conservation districts or citizens with minutia and technicalities that go beyond the minimum legal and effective requirements for a secure election.

Alternatives: The agency is not aware of any less burdensome or less intrusive alternatives for achieving the intent of the statute, aside from promulgating a set of uniform regulations for use throughout the Commonwealth. These regulations are not intended to be burdensome, nor intrusive, but, rather to promote essential American freedoms, including that of voting, expressing individual views, and helping to shape the character of one's local community. Electoral processes are a necessary function of government. Taxation is also an essential function of government. In this case, these functions are placed at the local level closest to the people. All alternatives considered are outside the scope of the regulatory process and would require legislative action.

Alternatives considered involve:

1. Rewrite of the Watershed Improvement District Act to require the joint responsibility of the State Board of Elections, local boards of elections, and local registrars; the Virginia Soil and Water Conservation Board, the Director of the Department of Conservation and Recreation, and the local soil and conservation districts. Current law fractures these resources and appears to make the actual functioning of referenda unworkable due to the absence of one or more of the above required parties to carry out the process. Currently either the expertise and support of the State Board of Elections is missing or the specific methodology required by §§ 10.1-617, 10.1-625, 10.1-628, and 10.1-634 of the Code of Virginia to hold referenda is missing. This alternative should be explored, but is beyond the current requirement to produce a set of regulations. Such an alternative would require major statutory changes and is outside of this regulatory process.

2. Amendments to the basic law to ensure the continued involvement of the State Board of Elections, local boards of elections, and local registrars. Under current law, the responsibilities of the State Board of Elections for such WID referenda will end with the effective date of the proposed regulations. The Department of Conservation and Recreation cannot understand how the referenda process would function without these resources. The Virginia Soil and Water Conservation Board and the

Notices of Intended Regulatory Action

department would have to duplicate the processes and resources of the state and local boards of elections and local registrars. Such an alternative would require major statutory and budget changes and is outside of this regulatory process.

3. Amendment of the existing law to require the 46 local soil and water conservation districts individually to promulgate regulations. First, they probably would be required to promulgate individual sets of public participation procedures. Second, they would be required to promulgate individual sets of Watershed Improvement District Referenda Regulations. Thus there would be an additional 92 sets of regulations in the Commonwealth, which would surely differ and cause confusion to the public, particularly when WID proposals overlap jurisdictional boundaries. Further, this scenario would require districts to duplicate, on an individual district basis, the processes and resources of the state and local boards of elections and local registrars. Such an alternative would require major statutory changes and is outside of this regulatory process.

4. Amendment of the existing law to centralize the local soil and water conservation districts' authority under § 10.1-617 of the Code of Virginia to develop individual and separate regulations to conduct a public hearing as permitted by § 10.1-616 of the Code of Virginia under the authority of the Virginia Soil and Water Conservation Board. Current wording is permissive, not mandatory, for the local soil and water conservation districts to develop such regulations. If centralized, the Virginia Soil and Water Conservation Board could be directed to incorporate such requirements into these Watershed Improvement District Referenda Regulations to provide one uniform set of requirements statewide to cover this entire process. Such an alternative would require major statutory changes and is outside of this regulatory process.

5. Amendment to simply repeal the local soil and water conservation districts' authority under § 10.1-617 of the Code of Virginia to develop individual and separate regulations to conduct a public hearing as permitted by § 10.1-616 of the Code of Virginia. If repealed, the local soil and water conservation districts would rely upon the Virginia Freedom of Information Act and any other pertinent laws to conduct the public meeting. Such an alternative would require major statutory changes and is outside of this regulatory process.

Ad hoc Committee: The director intends to form an ad hoc committee to assist the board and department in gathering data and issues and in developing draft, proposed regulations. Meetings of the ad hoc committee will be public and published in The Virginia Register of Regulations.

The department requests comments on the costs and benefits of the stated alternatives or other alternatives.

The director intends to hold at least one public hearing on the proposed regulation after it is formally adopted by the board as a proposed regulation and it is published in The Virginia Register of Regulations.

To be considered, written comments should be directed to Mr. Leon E. App at the address below and must be received by 4 p.m. on Tuesday, July 29, 1997. In addition, the department's staff will hold a public hearing on Thursday, May 15, 1997, at 7 p.m. in House Room C of the Virginia General Assembly Building located at 910 Capitol Street, Richmond, Virginia 23219, to receive views and comments and to receive questions of the public.

Accessibility to Persons with Disabilities: The May 15, 1997, a public meeting is being held at a public facility accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. Leon E. App at the address below or by telephone at 804/786-4570. Persons needing interpreter services for the deaf must notify Mr. App no later than Thursday, May 8, 1997, at 4 p.m.

Applicable Laws and Regulations: Chapter 6 (§ 10.1-614 et seq.) of Title 10.1 of the Code of Virginia, especially §§ 10.1-634.1, 10.1-617, 10.1-624, 10.1-628 and 10.1-634.

Chapters 1.1:1 (§ 9-6.14:4.1 et seq.) and 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia.

The Virginia Soil and Water Conservation Board's Regulatory Public Participation Procedures found at 4 VAC 50-10-10 et seq. and formerly VR 625-00-00:1 apply.

Governor Allen's Executive Order 13 (94), Review of Regulations Proposed by State Agencies.

Note: It must be assumed at this time that the federal voting rights laws apply to this action. Advice from the Attorney General's Office is to complete the Virginia regulatory actions and then submit the final regulation product to the Attorney General who will forward it to the U. S. Department of Justice for their review and determination of coverage.

Public Hearing Plans: On behalf of the board, the department seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternative actions. In particular, the department requests comments on how the board may best develop these regulations to account for the total referenda process without assistance or resources from the State Board of Elections, local boards of elections and local registrars.

Additional Information: For additional information, review or copies of material or applicable laws and regulations, contact Mr. App at the address below.

Statutory Authority: § 10.1-634.1 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on July 29, 1997.

Contact: Leon E. App, Conservation and Development Programs Supervisor, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

VA.R. Doc. No. R97-396; Filed April 9, 1997, 11:32 a.m.

Notices of Intended Regulatory Action

DEPARTMENT OF TAXATION

† Withdrawal of Notices of Intended Regulatory Action

The Department of Taxation has withdrawn the following Notices of Intended Regulatory Action:

VR 630-3-446.2. Intercorporate Transactions, 8:24 VA.R. 4285 August 24, 1992.

VR 630-7-905. Filing Returns and Payment of Tax, 6:26 VA.R. 4347, September 24, 1990.

VR 630-10-9.1. Audit Sampling, 8:23 VA.R. 4037 August 10, 1992.

VR 630-18-796.11:1 through 630-18-796.11:9. Virginia Egg Excise Tax, 9:22 VA.R. 3838 July 26, 1993.

VA.R. Doc. No. R97-474 through R97-477; Filed May 1, 1997, 1:16 p.m.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION 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 Commonwealth Transportation Board intends to consider amending regulations entitled: **24 VAC 30-20-10 et seq. General Rules and Regulations of the Commonwealth Transportation Board.** The purpose of the proposed action is to revise the existing regulation, which establishes general guidelines, policies, and procedures that commercial, private, and governmental applicants must follow when seeking to perform work within the VDOT-owned or controlled right of way, to make it compatible with current state and federal regulations and current and future technology. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 33.1-12(3) of the Code of Virginia.

Public comments may be submitted until June 25, 1997.

Contact: Richard R. Bennett, Assistant Division Administrator, Right of Way and Utilities Division, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2923, FAX (804) 786-1706, or toll-free 1-800-307-4630/TDD ☎

VA.R. Doc. No. R97-496; Filed May 6, 1997, 2:06 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commonwealth Transportation Board intends to consider promulgating regulations entitled: **24 VAC 30-215-10 et seq. Utility Accommodation Policy.** The purpose of the proposed action is to clarify and amend the terms and conditions under which utility facilities may be granted access to highway right of way as required by current federal and state regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 33.1-12(3) of the Code of Virginia.

Public comments may be submitted until June 25, 1997.

Contact: Richard R. Bennett, Assistant Division Administrator, Right of Way and Utilities Division, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2923, FAX (804) 786-1706, or toll-free 1-800-307-4630/TDD ☎

VA.R. Doc. No. R97-495; Filed May 6, 1997, 2:06 p.m.

STATE WATER CONTROL BOARD

† Withdrawal of Notice of Intended Regulatory Action

The State Water Control Board has withdrawn the Notice of Intended Regulatory Action to amend the Fees for Permits and Certificates regulation (9 VAC 25-20-10 et seq.). The notice appeared in 11:25 VA.R. 4098-4099 September 4, 1995.

VA.R. Doc. No. R97-493; Filed May 7, 1997, 12:02 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

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

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

CRIMINAL JUSTICE SERVICES BOARD

July 8, 1997 - 10 a.m. – Public Hearing
The Library of Virginia, 800 East Broad Street, Richmond, Virginia.

July 25, 1997 – 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 Criminal Justice Services Board intends to amend regulations entitled: **6 VAC 20-160-10 et seq. Rules Relating to the Court-Appointed Special Advocate Program.** The purpose of the proposed action is to amend the current regulations related to the court-appointed special advocate programs to ensure that they are in support of and consistent with the mission and growth of the program in Virginia.

Statutory Authority: §§ 9-173.6 and 9-173.8 of the Code of Virginia.

Contact: Fran Ecker, Section Chief, Juvenile Services Unit, Department of Criminal Justice Services, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-3967 or FAX (804) 371-8981.

VIRGINIA RACING COMMISSION

June 18, 1997 - 9:30 a.m. – Public Hearing
Tyler Building, 1300 East Main Street, Richmond, Virginia.

July 25, 1997 – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-20-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.** The purpose of the proposed action is to establish conditions under which pari-mutuel wagering shall be conducted on horse racing in the Commonwealth.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: 6 VAC 20-160-10 et seq. Rules Relating to the Court-Appointed Special Advocate Program (CASA) (amending 6 VAC 20-160-10 through 6 VAC 20-160-100 and 6 VAC 20-160-120; repealing 6 VAC 20-160-110).

Statutory Authority: §§ 9-173.6 and 9-173.8 of the Code of Virginia.

Public Hearing Date: July 8, 1997 - 10 a.m.

Public comments may be submitted until July 25, 1997.
(See Calendar of Events section for additional information)

Basis: Section 9-173.6 of the Code of Virginia established the Court-Appointed Special Advocate Program (CASA) in Virginia. This section of the Code also legally mandated that the Department of Criminal Justice Services (DCJS) administer the CASA Program. The administration of the program includes promulgating and revising the regulations pertaining to the program and ensuring that programs adhere to the regulations enacted. Section 9-173.8 requires the department to promulgate regulations governing the qualifications of advocates.

Purpose: The current regulations were effective in 1992 and were intended to provide guidance to new programs in their infancy stages and to ensure the safety and welfare of the abused and neglected children served by the local programs. Since that time, many of these programs have matured and many other programs have been established. Local program directors have encouraged the Department of Criminal Justice Services to revise the existing regulations in order to clarify many issues which currently cause confusion across the state. Further, as programs have grown their needs have changed and their capacities to serve have grown. Now programs are moving into previously unexplored areas, thus they are soliciting the regulations for guidance in dealing with these new issues. By revising the regulations, it will be possible to address many of the specific concerns of the local programs that are governed by the regulations.

Substance: The proposed changes are of two main categories: corrective and substantive. The corrective changes are revisions which improve upon grammar or clarify the linguistic aspects of the regulations. The substantive changes are generally adjustments in training requirements and program ratios intended to maintain the quality of the CASA program.

Significant changes to the regulations are as follows:

- Programs will be required to have a board which guides them in their decision-making processes.
- New board members will be required to receive board training within six months of their appointment.

- The average number of cases per volunteer is not to exceed three for any program without a rationale provided to and approved by DCJS.

- The staff-to-volunteer ratio will not exceed one full-time equivalent to 25 volunteers without the submission of a rationale and its approval.

- Programs shall write policies regarding compliance with EOE, Drug-Free workplace, Smoke-Free workplace, and political activity statements.

- The training requirements for new volunteers is increased to 30 hours.

- Programs must make available at least 12 hours of in-service training annually.

- Volunteers must attend at least 12 hours of continuing education annually.

Issues: The regulations only pertain to the local programs, and thus are most likely to directly impact them. It is expected that the regulations will benefit the local programs by clarifying expectations and providing guidelines for their practice. The required accompanying reports follow a format suggested by the Virginia CASA Association and should thus be easier and less time-consuming for the programs to submit.

On a larger scale, failure to revise the regulations may have a detrimental impact on the children that the CASA program is intended to serve. Due to the expansion of the program throughout Virginia, CASA programs have in many ways outgrown the current regulations and have requested guidance on a number of issues vital to the maintenance of high quality service to clients. In order to ensure that CASA programs are able to protect children's best interest, it is necessary to set firm standards of acceptable practice.

Some programs may for various reasons struggle to meet the new standards set forth by the recommended regulations. However, there is considerable leniency and discretion allowed when programs demonstrate a rationale for their inability to meet any particular requirement of the regulations.

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

Proposed Regulations

presented below represents DPB's best estimate of these economic effects.

Summary of the proposed regulation. The proposed regulation amends current regulations governing court-appointed special advocates (CASA). CASA programs are locally operated programs that use court-appointed volunteers as advocates for children in judicial proceedings involving allegations of child abuse or neglect. The CASA regulations provide guidance regarding the administration of these local programs, the administration of volunteers, qualifications for volunteers, and training guidelines for volunteers. The primary amendments contained in the proposed regulation are as follows:

- In the absence of a board of directors, local CASA programs would be required to have an advisory board;
- New board members would be required to receive training within six months of their appointment;
- Staff to volunteer ratios would be changed from the current 1:30 to 1:25;
- Local CASA programs would be required to comply with all federal laws and regulations, including those governing political activity by government workers;
- An out-of-state criminal history would be required for volunteers who had lived outside of the Commonwealth in the last three years, rather than the current one year;
- Volunteers would be required to have 30 hours of initial training, rather than the current 25; and
- Volunteers would be required to receive 12 hours of continuing education annually, rather than the current "as determined by the director."

Estimated economic impact. Several of the proposed revisions largely update the regulation to reflect current practice in the local CASA programs. According to information provided by DCJS: 1) virtually all CASA programs that do not have a board of directors do have an advisory board; 2) the staff to volunteer ratio in most programs is already 1:25; 3) the requirement that volunteers receive 30 hours of initial training reflects current local and national standards; and 4) most programs already require volunteers to receive 12 hours of continuing education annually. Because these amendments to the regulation largely reflect current practice, they will not necessitate any procedural changes and will have no economic consequences.

Three of the proposed amendments are likely to have economic consequences however:

New board member training: The requirement that new board members receive training within six months of their appointments may impose some additional agency costs on the local CASA programs. Generally, such training is provided to new board members "in-house" by the local CASA program director. As a result, the costs associated with such training should be fairly minor. In addition, such training should assist board members in better performing their duties, thereby improving program administration.

Compliance with federal laws and regulations: The rationale provided by DCJS for this amendment was that many local programs are already required to comply with federal laws and regulations because such compliance is a condition of funding they receive from federal sources. Where this is the case, the proposed amendment will have no effect on current operating procedures and, therefore, no economic impact. In those instances where local programs are not already required to comply with federal laws and regulations, however, this amendment could increase agency costs. It would be cost prohibitive for DPB to identify the likelihood or magnitude of that increase however.

Out-of-state criminal history: The increased stringency associated with the requirement that volunteers who have recently lived outside the Commonwealth submit a criminal history record for that area will likely cause some minor increase in the costs associated with becoming a CASA volunteer. This cost is almost certainly outweighed, however, by the benefits associated with protecting abused children from being unintentionally placed in the hands of individuals with a criminal background.

Businesses and entities particularly affected. The proposed regulation particularly affects the 22 local CASA programs operating in Virginia and their clientele.

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 significant effect on employment.

Effects 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. DPB anticipates that the proposed amendments to the current regulation governing local CASA programs will have two primary economic effects: 1) a potential minor increase in agency costs and in the costs associated with becoming a CASA volunteer; and 2) an associated increase in the benefits derived from good program administration and providing for the safety of children involved in the program.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget's economic impact analysis indicated that the potential fiscal impact of the proposed regulations is minimal. The regulations hold no substantial monetary implications for any of the 22 local CASA programs in Virginia. The majority of the changes proposed revise the regulations to conform to current practice across the state. Most programs are already in compliance with the proposed regulations and would thus not be economically impacted by the new regulations.

Summary:

The proposed regulation is an amendment to the current regulation related to CASA programs. The amendments to the regulation are intended to ensure that the regulation is in support of and consistent with the mission and goals of CASA programs across Virginia.

These proposed amendments to the current regulation are of two main categories; corrective and substantive. The corrective changes are revisions which improve upon grammar or clarify the linguistic aspects of the regulations. The substantive changes are generally adjustments in training requirements and program ratios intended to maintain and enhance the quality of practice in Virginia's CASA programs.

Significant changes to the regulations are as follows: programs will be required to have a board which guides them in decision-making processes, new board members will be required to receive board training within six months of their appointment, the average number of cases per volunteer is not to exceed three for any program without a rationale provided to and approved by the Department of Criminal Justice Services, the staff-to-volunteer ratio will not exceed one full-time equivalent to 25 active volunteers without the submission of a rationale and its approval by the Department of Criminal Justice Services, programs shall write policies regarding compliance with EOE, Drug-Free workplace, Smoke-Free workplace, and political activity statements, the training requirements for new volunteers is increased to 30 hours from 25 hours, programs must make available at least 12 hours of in-service training annually, and volunteers must attend at least 12 hours of continuing education annually.

PART I.
GENERAL DEFINITIONS.

6 VAC 20-160-10. Definitions.

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

"Active case" means a case that is assigned by the director to a CASA volunteer.

"Board" means the Criminal Justice Services Board.

"CASA" means court-appointed special advocate.

"CASA program" means any locally operated court-appointed special advocate program which utilizes court-appointed volunteers to assist in judicial proceedings involving allegations that a child is abused, neglected, in need of services or in need of supervision and for whom the judge determines such services are appropriate.

"Case" means a child or sibling group referred to the CASA program.

"Closed case" means a case in which the court has released the CASA volunteer or the director has notified the court of their intent to release the case or there has been no volunteer activity for more than 90 days.

"DCJS" means the Department of Criminal Justice Services.

"Program Director" means the director or coordinator of a local CASA program responsible for the day-to-day operations of the local CASA program.

"Referred case" means a case that is referred by the court but is not assigned by the director to a CASA volunteer.

"Volunteer" means the court-appointed special advocate.

PART II.
PROGRAM ADMINISTRATION.

6 VAC 20-160-20. Advisory Boards.

A. ~~Although advisory boards are not mandated, CASA advisory boards are recommended. If a local CASA program does not have a board of directors, it shall have an advisory board.~~

B. The composition of local CASA advisory boards should include persons representatives of each geographic area served by the program having knowledge of or an interest in court matters, child welfare and juvenile justice issues from both public and private sectors.

C. All new board members shall receive board training within six months of their appointment.

6 VAC 20-160-30. Recordkeeping and monitoring.

A. CASA programs are required to maintain records of the activities of the CASA program.

B. CASA programs will shall provide quarterly reports on the operation of the CASA program to the Department of Criminal Justice Services in a format provided by the department. The CASA quarterly reports (Appendix A) will shall cover the following periods: July-September; October-December; January-March; April-June. These reports are due by the 20th day of the month following the end of each quarter on a timeline as established by DCJS.

C. The quarterly reports will shall include the following:

1. The number of volunteers who completed training during the quarter, the number currently assigned to cases, and the number of currently inactive or, and the number currently unassigned volunteers;
2. The number of volunteer hours and a dollar equivalency for volunteer services for the quarter as prescribed by DCJS;
3. The number of cases served during the quarter including cases opened, closed and continued from previous quarters to ensure unduplicated numbers;
4. Average number of cases per volunteer, if this number exceeds three cases a rationale must be submitted to and approved by DCJS;
5. Breakdown of the types of cases handled during the quarter;
6. Breakdown of the age, sex, and race of children served at the time of case assignment;
7. For cases closed during the quarter, the average length of time each case was assigned to the program;
8. For cases closed during the quarter, the average length of time each child was in out-of-home placement while assigned to the program; and
9. The number of new cases referred during the quarter awaiting assignment of a CASA volunteer or denied service due to lack of a CASA volunteer.

Proposed Regulations

D. An annual report (Appendices B, C and, D and E) will ~~shall~~ be due ~~September 15 of each year on a timeline as established by DCJS.~~ The annual report will ~~shall~~ include, but not be limited to, the following:

1. An annual statistical summary;
2. A program budget which contains expenditure and income projections and the sources and amounts of income from each source;
3. A narrative detailing the program's accomplishments, major changes in program policy or operation during the past year;
4. A letter from the CASA program's fiscal agent or accountant identifying who is responsible for maintaining the fiscal records, ~~and stating where the fiscal records are routinely kept; and a statement, prepared in accordance with generally accepted accounting practices, showing the total cash receipts and disbursements for the CASA program for the past year.~~
5. ~~A year-end fiscal statement prepared in accordance with generally accepted accounting practices showing the total cash receipts and disbursements for the CASA program from the past year.~~

6 VAC 20-160-40. Program and personnel policies.

A. Programs will ~~shall~~ ensure that an attorney is available for CASA program directors and boards to provide legal consultation in matters pertaining to administration of the programs.

B. Programs will ~~shall~~ not employ as paid staff any individual who concurrently supervises children-in-need of services or juvenile offender cases, either for the courts or any child serving agencies.

C. Programs shall write policies on the following and make those written policies available to the respective court:

1. The maximum number of cases to which a volunteer may be assigned at any one time. If that number is larger than three active cases, a rationale must be submitted to and approved by DCJS.
2. The maximum number of volunteers to be supervised by each staff person. ~~Consideration should be given to Calculations shall be based on the exact number of hours each staff person spends in supervision (as opposed to administrative or other duties) on case management activities as opposed to either administrative or fund-raising duties.~~ The staff-to-volunteer ratio ~~should calculated and reported each quarter shall~~ not exceed 1 full-time equivalent staff to 30 25 volunteers who are assigned to active cases. A request ~~must shall~~ be submitted to and approved by DCJS ~~should that number ratio exceed 30 1:25.~~
3. ~~A policy for~~ The review, investigation and handling of any complaints that may be received concerning CASA volunteers, including procedures for the removal of CASA program ~~to accept and prioritize cases for assignment to CASA volunteers should dismissal become necessary.~~

~~4. Policies shall be developed identifying~~ The specific factors to be used by the CASA program to accept and prioritize cases for assignment to CASA volunteers.

~~5. A policy emphasizing~~ The confidentiality of the records and information to which CASA volunteers will have access, and training volunteers on the importance of confidentiality.

~~6. A policy identifying~~ The objectives, standards, and conduct for CASA volunteers and the procedures that the CASA program has implemented to evaluate the performance of its volunteers in order to ensure that volunteers are meeting CASA's objectives and standards of conduct.

~~7. A policy and procedure for CASA volunteers~~ The CASA volunteers' responsibility to report incidents of suspected child abuse and neglect.

~~8. A policy and procedure~~ Concerning CASA investigations, CASA's role and responsibility in assisting the guardian ad litem, and monitoring court order compliance.

~~9. Compliance with federal laws, including Equal Opportunity Employment, Drug-Free workplace, Smoke-Free workplace, and political activity statements.~~

D. CASA programs shall provide staff capable of managing effective and efficient program operations. The following job descriptions provide for essential CASA program management:

1. The program director is responsible for accomplishing organizational goals and all managerial functions. This staff position requires a degree or equivalent experience in child welfare, public administration, counseling, human services, *juvenile justice or law.* *It is also important that this person have an understanding of* and experience with community organization and volunteer program management. Generally the duties and responsibilities of the program director will include:

- a. Conducting or overseeing the recruitment, screening, training, supervision and evaluation of the program volunteers and staff;
- b. Developing and maintaining procedures for case record keeping; supervising staff and volunteers in completing record-keeping tasks;
- c. Serving as a liaison to the court, to ~~the advisory their local~~ board, to local agencies serving children and, to DCJS personnel, *and to the Virginia CASA Network, to the Virginia CASA Association, and to the National CASA Association;*
- d. Planning *for and managing* program growth and, development *and evaluation,* including special projects, budgets, annual workplans, and analysis of trends in program services;
- e. Representing the program to networks of service providers, and community coalitions dealing with child welfare issues; *and*

~~f. Providing liaison and support to an advisory board; and~~

~~g. f. Supervising program operations including financial management, risk management, and resource development.~~

2. Program/volunteer coordinator. Depending on program size, it may be necessary to designate a staff person having knowledge of or interest in court matters, child welfare and juvenile justice issues who will focus ~~exclusively~~ on volunteer recruitment, screening, training ~~and~~, case assignment ~~and supervision~~. Generally, the duties and responsibilities of the program/volunteer coordinator will include:

a. Developing and distributing volunteer recruitment materials, and conducting presentations on the CASA program for the purpose of recruiting volunteers and increasing community awareness;

b. Screening volunteer applications and conducting interviews to determine suitability of the applicant for the CASA program;

c. Arranging training for CASA volunteers;

d. Recommending trained volunteers for acceptance into the CASA program;

e. *Assigning cases and supervising volunteers;*

f. Planning and implementing volunteer recognition events;

~~f. g. Evaluating effectiveness of volunteer recruitment, training, and case assignment, and recognition efforts; and~~

~~g. h. Conducting annual written evaluations of each CASA volunteer.~~

PART III.

VOLUNTEER ADMINISTRATION.

6 VAC 20-160-50. Case assignment.

A. The CASA program director shall be responsible for all decisions pertaining to the assignment or removal of specific volunteers to specific cases.

B. A CASA volunteer will ~~shall~~ not be assigned to a case involving any professional connection or close personal relationship with the child client or family.

6 VAC 20-160-60. CASA volunteer duties and responsibilities.

A. Volunteers shall follow specific policies regarding the nature of assistance:

1. Provided to the guardian ad litem;
2. Relating to ~~his~~ *their* investigative role; and
3. Relating to monitoring compliance with court orders; and
4. *Relating to the submission to the court of written reports.*

B. The CASA's investigation involves fact-finding via interviews, professional reports, observation of family and social interactions, and observation of the child's environment.

C. The CASA's investigation involves the observation of the child's circumstances. CASAs may conduct interviews of children; however, CASAs are specifically prohibited from questioning or inquiring of the child information regarding a precipitating incident or allegation involving child abuse and neglect.

D. The CASA volunteer should encourage interdisciplinary coordination and cooperation, whenever possible, in an effort to develop a plan of action in conjunction with other local agencies and professionals.

6 VAC 20-160-70. Confidentiality.

A. ~~A CASA volunteer~~ *All CASA volunteers* shall follow specific policies regarding the following:

1. Reporting suspected child abuse and neglect, and the procedure for making such reports;
2. Confidentiality of records and information ~~which are collected by the volunteer as part of his duties;~~ and
3. ~~Contacting and~~, interviewing ~~and responding to~~ persons involved in the case.

B. To the extent permitted by ~~state and federal~~ confidentiality regulations (~~both state and federal~~), CASA volunteers should share information gathered with other involved professionals whenever possible and practicable.

6 VAC 20-160-80. Code of ethics.

A. CASA volunteers should conduct themselves in a professional manner, adhering to a code of ethics which is consistent with ethical principles established by local, state or national guidelines.

B. A CASA volunteer should not become inappropriately involved in the case of ~~by~~ providing direct service delivery to any parties that could (i) lead to a conflict of interest or liability problems, or (ii) cause a child or family to become dependent on the CASA volunteer for services which should be provided by other agencies or organizations.

C. CASA volunteers should develop a general understanding of the code of ethics of other professionals with whom the CASA *volunteer* will be working.

PART IV.

QUALIFICATIONS OF VOLUNTEERS.

6 VAC 20-160-90. Qualifications.

A. CASA volunteers ~~must shall~~ be *at least* 21 years of age.

B. CASA volunteers ~~must shall~~ have the ability to communicate effectively, both orally and in writing, sufficient to prepare court reports and to provide testimony.

C. CASA volunteers ~~must shall~~ possess mature judgment, a high degree of responsibility and sufficient time to assist in advocating for the best interests of the child.

Proposed Regulations

D. CASA volunteers ~~must~~ *shall* be able to relate to persons of different cultures, ethnic backgrounds and different socioeconomic status.

6 VAC 20-160-100. Screening.

A. CASA volunteers ~~must~~ *shall* successfully complete screening procedures which, at a minimum, shall consist of ~~of~~ include a written application and personal interview.

B. Pursuant to § 9-173.8 of the Code of Virginia, CASA volunteers shall provide, ~~at their own cost,~~ a copy of their criminal history record or certification that no conviction data is maintained on them, in accordance with § 19.2-389 of the Code of Virginia, and a copy of information from the central registry, maintained pursuant to § ~~63.1-248 [Repealed.]~~ 63.1-248.8 of the Code of Virginia, on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. If the volunteer applicant has lived in another state within the past ~~42 months~~ *three years*, the CASA volunteer ~~should~~ *shall* also provide a copy of their criminal history record from that area. An applicant should be rejected if he refuses to sign a release of information for appropriate law-enforcement checks.

C. CASA volunteers ~~must~~ *shall* provide three references who will speak to their character, judgment and suitability for the position of CASA volunteer.

D. *Before the volunteer is sworn in, the director shall determine that the CASA volunteer is qualified under 6 VAC 20-160-90.*

~~6 VAC 20-160-110. Training.~~

E. CASA volunteers ~~must~~ *shall* successfully complete required training as set forth in 6 VAC 20-160-120.

PART V.

TRAINING GUIDELINES FOR VOLUNTEERS.

6 VAC 20-160-120. Training.

A. To ensure that volunteers are fully prepared to perform their role as a CASA and to assume the accompanying responsibilities, each volunteer ~~must~~ *shall* participate in a minimum of 25 30 hours of training prior to being accepted as a CASA volunteer and assigned cases. Credit may not be given (towards this 25 30 hours of training) for any previous training obtained by a volunteer prior to application to a local CASA program.

B. The initial training curriculum for a CASA should, at a minimum, include instructions on:

1. The delineation of the roles and responsibilities of a CASA focusing on the rationale for family preservation/permanency planning, discussion of the basic principles of advocacy, distinction between the appropriate and inappropriate activities for a CASA, level of commitment required of a CASA involved in a case and the performance expectations, review of the case assignment process and procedures, differentiation between the role of the CASA and other system personnel, and a comprehensive list of resources available and when and how to utilize these resources;

2. The ~~importance~~ *obligation* of confidentiality in the ~~work of a CASA related matters,~~ proper recordkeeping techniques, and the scope of state and federal statutes on the confidentiality of records;

3. The dynamics of cultural diversity and the development of cultural sensitivity by the CASA;

4. The nature of child abuse and neglect, the impact of drugs/ and alcohol on the incidence of abuse, identification of the family conditions and patterns which lead to and perpetuate abuse and neglect, and ~~discussions of instruction on~~ how social services respond to and assess reports of abuse and neglect;

5. The general principles and concepts of child and family development;

6. Permanency planning in the context of state law with consideration of the state's position on family preservation, family reunification and alternative permanent plans for a child who cannot be returned to the home. ~~Through the critical use of these concepts,~~ discussion of how a case plan is devised;

7. Basic communication and interview skills, with guidelines for dealing with sensitive issues and the interaction between the CASA and other parties to a case, and practice in conducting interviews and writing reports;

8. The juvenile court process which should include an outline of the various types of court events *proceedings*, what transpires at each event *proceeding*, the CASA's role at the event, who to contact when there is a question about the court process, a glossary of legal terminology, how to prepare for a hearing, and how to prepare a report for the court; and

9. The development of advocacy skills, such as negotiation and conflict management, and how they may be used by the CASA to improve the conditions for a child.

C. The initial training program ~~should~~ *shall* provide an opportunity for the volunteer to observe actual court proceedings similar to those in which he would be involved as a CASA volunteer. This observation is above and beyond the hours included in the initial training.

D. CASA volunteers in training should be provided an opportunity to visit community agencies and institutions relevant to their work as a volunteer.

E. The CASA program should provide volunteers in training with the following written materials:

1. Copies of pertinent laws, regulations, and policies;
2. A statement of commitment form clearly stating the minimum expectations of the volunteer once trained; and
3. A training manual which is easy to update and revise.

F. Trainers and faculty for the initial training program and any ongoing training or continuing education should be persons with substantial knowledge, training and experience in the subject matter which they present and should also be

competent in the provision of technical training to lay persons.

G. CASA program staff and others responsible for the initial training program should be attentive to the participation and progress of each trainee and be able to objectively evaluate his abilities according to criteria developed by the CASA program for that purpose. CASA directors should use the Comprehensive Training Curriculum for CASA from the National CASA Association and training curricula developed within the state as a reference in designing and developing their training program.

H. The CASA program ~~should~~ *shall* make available a minimum of 12 hours of ~~continuing-education in-service training~~ annually for volunteers who are accepted into the program. These ongoing training programs should be designed and presented to maintain and improve the volunteer's level of knowledge and skill. Special attention shall be given to informing volunteers of changes in the law, local court procedures, the practices of other agencies involved, CASA program policies and developments in the fields of child development, child abuse and child advocacy. Ongoing training may be provided directly by the CASA program, in conjunction with another agency or agencies, or through an outside agency. All training provided by outside agencies must have been reviewed and approved by the CASA program director for its suitability for the continuing education of the CASA volunteers.

I. ~~On an annual basis each CASA volunteer should participate in such continual education activities as determined by the program director~~ *volunteers shall attend 12 hours of continuing education annually.*

FORMS

~~Appendix A~~— CASA Quarterly Case Summary, eff. 3/26/92 (Form A).

~~Appendix B~~— CASA Annual Case Summary, eff. 3/26/92 (Form B).

~~Appendix C~~— CASA Annual Case Summary Narrative Form, eff. 3/26/92 (Form C).

~~Appendix D~~— CASA Annual Financial Status, eff. 3/26/92 (Form D).

CASA Annual Projected Program Budget, 5/97 (Form E).

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Appendix A

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Quarterly Case Summary

Program Name: _____
 Grant #: _____
 Localities Served: _____
 Reporting Person: _____
 Date/Quarter: _____

Case Volunteer Activity This Quarter

volunteers completing training: _____
 # volunteers active on cases: _____
 # volunteers unassigned: _____
 # volunteers inactive: _____
 Total case volunteer hours _____ X _____ hour
 Total case volunteer \$ equivalency \$ _____

Children Served This Quarter

Holdover children: _____
 # New children: _____
 # Total Children: _____
 # Total Children _____ / # active Volunteers _____ = _____
 New + Carry = Total - Closed = Balance Over
 # A/N _____
 # Custody _____
 # Chins _____
 # Other _____
 # Other _____
 New + Carry = Total - Closed = Balance Over
 # not yet assigned _____
 # denied (no vol.) _____
 # denied (inappr.) _____

Cases Closed this Quarter

total days assigned _____ / # cases closed _____
 = AVERAGE CASE ASSIGNMENT LENGTH: _____
 # total days out-of-home _____ / # cases closed _____
 = AVERAGE LENGTH OF PLACEMENT: _____

Client Characteristics

AGE	New +	Carry =	Total -	Closed =	Balance
					Over
0-24 mon.	_____	_____	_____	_____	_____
2-5 yrs.	_____	_____	_____	_____	_____
6-10 yrs.	_____	_____	_____	_____	_____
11-14 yrs.	_____	_____	_____	_____	_____
15+	_____	_____	_____	_____	_____

GENDER	New +	Carry =	Total -	Closed =	Balance
					Over
Male	_____	_____	_____	_____	_____
Female	_____	_____	_____	_____	_____

RACE	New +	Carry =	Total -	Closed =	Balance
					Over
Black	_____	_____	_____	_____	_____
White	_____	_____	_____	_____	_____
Hispanic	_____	_____	_____	_____	_____
Asian	_____	_____	_____	_____	_____
Nat. Amer.	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____

(Eliminate Cases closed this quarter)

Total Volunteer Activity Hours

Administrative Hours: _____
 Other Program Hours: _____
 Total Other Volunteer Hours: _____
 Total Case Volunteer Hours: _____
 Total Other Volunteer Hours: _____
 = _____
 Total Volunteer Hours: _____

Appendix B

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Annual Case Summary

Volunteer Activity This Year

Volunteers completing training: _____
 Average # Volunteers active on cases: _____
 Total volunteer hours: _____ X _____ per hour
 Total volunteer \$ equivalency: _____
 * Multiply the total number of volunteer hours this year by the hourly rate to arrive at the total volunteer \$ equivalency.

Cases This Year

Holdover cases: _____ # Abuse/Neglect cases: _____
 + # New cases: _____ # Custody cases: _____
 = # Total cases: * _____ # CHINs cases: _____
 # Other cases: * _____
 * Add the cases held over from last year to the new cases this year to arrive at the total number of active cases this year. * Specify _____
 # Total Cases: _____ = # Cases per volunteer: * _____
 # Volunteers: _____
 * Divide the total number of active cases this year by the average number of active volunteer this year to arrive at the average number of cases per volunteer.

Program Name: _____
 Localities Served: _____
 Reporting Person: _____
 Date: _____
 Year: _____
 Grant #: _____

Children Served This Year

Age	
# 0 - 24 mos.:	_____
# 2 - 5 yrs.:	_____
# 6 - 10 yrs.:	_____
# 11 - 14 yrs.:	_____
# 15 + yrs.:	_____

Sex	
# Male:	_____
# Female:	_____

Race	
# Black:	_____
# White:	_____
# Hispanic:	_____
# Asian:	_____
# Native American:	_____
# Other:	_____

Closed Cases This Year

Total days assigned: _____ = Average assignment length: * _____
 # Cases closed: _____
 * For cases closed this year, divide the sum of the total number of days open for cases closed this year by the total number of cases closed to arrive at the average assignment length.
 # Total days out-of-home: _____ = Average length of placement: * _____
 # Cases closed: _____
 * For cases closed this year, divide sum of the total duration of out-of-home placement for all closed cases by the number of closed cases to arrive at the average length of out-of-home placement.

2/92 (Form A)

3/92 (Form B)

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Appendix D

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Annual Financial Status

Please attach a letter from the program's fiscal agent or accountant identifying who is responsible for the fiscal records and stating where they are routinely kept. Also, attach a statement, prepared in accordance with generally accepted accounting practices, showing the total cash receipts and disbursements for the past year.

Program Name: _____
Grant #: _____
Localities Served: _____
Reporting Person: _____
Date/Year: _____

Attach to annual CASA Summary Form and return to:
Virginia Department of Criminal Justice Services
805 East Broad Street, 10th Floor
Richmond, Virginia, 23231
Attn: CASA Program Coordinator

3/92 (Form D)

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Appendix C

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Annual Case Summary Narrative Form

Use this sheet to detail the major accomplishments of the program and any major changes in program policy or operation during the past year.

Program Name: _____
Grant #: _____
Localities Served: _____
Reporting Person: _____
Date/Year: _____

Attach to annual CASA Summary Form and return to:
Virginia Department of Criminal Justice Services
805 East Broad Street, 10th Floor
Richmond, Virginia, 23231
Attn: CASA Program Coordinator

3/92 (Form C)

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Annual Projected Program Budget

Please attach a projected budget which contains expenditures and income projections, the sources of income, and the amount of income from each source.

Program Name: _____
 Grant #: _____
 Localities Served: _____
 Reporting Person: _____
 Date/Year: _____

Attach to annual CASA Summary Form and return to:
 Virginia Department of Criminal Justice Services
 805 East Broad Street, 10th Floor
 Richmond, Virginia 23231
 Attn: CASA Program Coordinator

5/17 (Form E)

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14:4.1 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4 VAC 15-330-10 et seq. Fish: Trout Fishing (amending 4 VAC 15-330-150; adding 4 VAC 15-330-171).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Notice to the Public:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened May 5 and remains open until July 17, 1997. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Send comments to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, to be received no later than July 10, 1997, in order to be assured that the board will have opportunity to review them before taking final action.

A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any parts thereof, will be held during a meeting of the board at the Department of Game and Inland Fisheries to take place in Richmond, Virginia, at an address to be announced, beginning at 9 a.m. on Thursday, July 17, 1997, at which time any interested citizen present shall be heard. At the board meeting staff will also present the results of a meeting held for the purpose of providing the public with opportunities to review and comment on the proposed regulation amendments.

If the board is satisfied that the proposed regulations, or any parts thereof, are advisable, in the form in which published or as amended after receipt of the public's comments, the board may adopt regulations as final at the July 17-18 meeting. The regulations or regulation amendments adopted may be either more liberal or more restrictive than those proposed and being advertised under this notice.

Summary:

The proposed amendments (i) remove the portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County from the list of trout streams on which catch and release, artificial lures only trout fishing is allowed and (ii) make it unlawful to creel or possess trout on this portion of the Jackson River.

4 VAC 15-330-150. Special provision applicable to Stewarts Creek Trout Management Area; certain portions of Dan, Jackson, Rapidan, South Fork Hoiston and Staunton rivers, the East Fork of Chestnut Creek, Roaring Fork, and their tributaries.

It shall be lawful year around to fish for trout using only artificial lures with single hooks within the Stewarts Creek Trout Management Area in Carroll County, in the Rapidan and Staunton rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County, in the Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County and, ~~in the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County,~~ in the East Fork of Chestnut Creek (Farmer's Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll counties, and in Roaring Fork and its tributaries upstream from the southwest boundary of Beartown Wilderness Area in Tazewell County and in that section of the South Fork Holston River and its tributaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County. All trout caught in these waters must be immediately returned to the water. No trout may be in possession at any time in these areas.

4 VAC 15-330-171. Special provisions applicable to certain portion of Jackson River.

It shall be unlawful to creel or possess trout on that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County.

VA.R. Doc. No. R97-490; Filed May 7, 1997, 11 a.m.

VIRGINIA RACING COMMISSION

Title of Regulation: 11 VAC 10-20-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (amending 11 VAC 10-20-10, 11 VAC 10-20-260 through 11 VAC 10-20-310 and 11 VAC 10-20-330).

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public Hearing Date: June 18, 1997 - 9:30 a.m.

Public comments may be submitted until July 25, 1997. (See Calendar of Events section for additional information)

Basis: The Virginia Racing Commission derives its statutory authority to promulgate regulations from the provisions of § 59.1-369 of the Code of Virginia. The code states, in part in subdivision 3, "The Commission shall promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter."

Purpose: The commission has promulgated this regulation to achieve its statutory function of maintaining horse racing in the Commonwealth of the highest quality. The proposed regulation amends the existing regulation relating to pari-mutuel wagering and places Virginia in accord with procedures in the major racing states on the eastern

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seaboard, namely, Maryland, New Jersey and New York. The proposed regulation will protect the public safety, health and welfare by enhancing regulatory control over pari-mutuel wagering and strengthening the native industry of horse breeding.

The proposed regulation will allow Colonial Downs to offer comparable pari-mutuel wagering pools to those in neighboring jurisdictions as well as those pools offered to patrons in the major racing states around the nation, namely, New York, California, and Florida. Furthermore, the amended regulations incorporate the latest uniform procedures as found in the Model Rules of the Association of Racing Commissioners International. The model rules further the effort to bring about uniformity of procedures from state to state.

Substance: The proposed regulation provides additional pari-mutuel wagering pools, namely, the quinella double, pick (n), twin trifecta and superfecta, which are extremely popular with patrons. The quinella double requires selection of the first two finishers, irrespective of order, in each of two specific races. The pick (n) allows for flexibility in the number of races, i.e., pick three or pick six, or the pick seven on the Breeders' Cup races. The superfecta requires the selection of the first four finishers, in their exact order, for a single race. The twin trifecta requires the selection of the first three finishers in their exact order in each of two designated races.

Issues: The main advantage of the proposed regulation relating to pari-mutuel wagering is that it will provide the pools which patrons have grown accustomed to utilizing in other jurisdictions currently through simulcast wagering as well as providing uniform procedures and protections to ensure the highest level of integrity. The uniform procedures were developed over a period of several years by a panel including industry representatives, vendors of pari-mutuel wagering hardware and software, auditors, and state racing commissions. This regulation creates no disadvantages to the Commonwealth or the public.

Estimated Impact: The patrons and licensees will be directly impacted by these regulations; however, this impact will be at their discretion as they are not required to offer all of the various pari-mutuel pools. The licensee submits a request for pari-mutuel wagering pools to the commission for its approval, designating those pools and their placement in the program. The implementation of these pools will ensure the positive trends associated with the development of the racetrack in New Kent County and the satellite facilities. Furthermore, it will strengthen the native industry of horse breeding as funds for the purses and incentives for the Virginia Breeders Fund are derived from the pari-mutuel wagering pools.

Estimated Economic Impact: The proposed regulation will likely maintain or increase the revenue generated from pari-mutuel wagering at the racetrack and satellite facilities. The revenue generated for the Commonwealth from the license tax on pari-mutuel wagering from the operation of two satellite facilities from February 18, 1996, to March 31, 1997, is \$1,031,350.73. The revenue generated for the Commonwealth and localities for the first quarter of 1997 is \$599,803, well in excess of the projected amount of \$456,036 specified in Colonial Downs' application for two satellite

facilities. The revenue figures reflect that the Chesapeake facility opened in February of 1996 and the Richmond facility opened in December of 1996. The proposed regulation will continue or enhance these positive trends.

Businesses and Entities Particularly Affected: The proposed regulation particularly affects the operations and profitability of the entities holding licenses to conduct horse race meetings with pari-mutuel wagering and satellite facilities.

Localities Particularly Affected: The proposed regulation particularly affects the localities where the racetrack and satellite facilities are located. These include New Kent County as well as cities of Richmond and Chesapeake and Henrico County. From February 18, 1996, to March 31, 1997, New Kent County has realized \$99,967.32 in license tax revenue while the City of Chesapeake has realized \$40,040.87 in license tax revenue. Because of the location of the Richmond facility, the City of Richmond and Henrico County each have realized \$29,963.23 in license tax revenue. The revenue figures reflect that the Chesapeake facility opened in February of 1996 and the Richmond facility opened in December of 1996. The proposed regulation will likely ensure that these positive revenue trends continue or increase.

Projected Impact on Employment: Each satellite facility licensed by the commission employs nearly 100 people in a full or part-time capacity and the racetrack will likely create several hundred more full-time and part-time jobs. The commission has licensed a third satellite facility to be located in Hampton and an application for a fourth satellite facility to be located in Brunswick has been approved by the commission. The continued positive trends for the horse racing in the Commonwealth will mean approximately a thousand full-time or part-time jobs have been created or will be created in the very near future.

Effects on the Use and Value of Private Property: The satellite facilities are located in areas zoned for business. They have brought patrons into these locales and there are indications of a ripple effect of increased business for restaurants and other shops in the surrounding areas. The Richmond satellite facility, for the first quarter of 1997, is attracting an average of 737 patrons per day while the Chesapeake facility's daily average attendance is 460 patrons. For instance, the first satellite facility was located in Chesapeake in a former grocery store which had been vacant for an extended period of time. The second satellite facility in Richmond was located in a restaurant that was in the process of closing.

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. The proposed regulation amends current regulations governing pari-mutuel wagering in Virginia. Many of the proposed amendments to the current regulation reflect procedures found in the Model Rules of the Association of Racing Commissioners International and are intended to enhance cross-state uniformity. The primary amendments contained in the proposed regulation are as follows:

1. The requirement that a copy of the "regulation shall be posted for the benefit of the public in not less than two places in the wagering areas" would be changed to "a general explanation of these regulations may be posted for the benefit of the public in the wagering areas";
2. A new provision contained in the proposed regulation would require that "the licensee shall only accept wagers placed in cash or vouchers" and that "it shall be the responsibility of the licensee to instruct the mutuel clerks to accept wagers on a "cash only" basis";
3. Language regarding public hearings dealing with VRC consideration of requests for approval or modification of pari-mutuel wagering pools would be deleted by the proposed regulation;
4. A list contained in the current regulation of 23 detailed factors that the VRC must consider before approving pari-mutuel wagering pools would be deleted by the proposed regulation;
5. The requirement that limits a licensee's obligation to cash winning tickets to "valid winning tickets ... presented for payment within 60 days of the date of their purchase" would be deleted by the proposed regulation;
6. The requirement that "there shall be no quinella wagering on any race with less than four wagering interests" would be changed to "the licensee ... may be allowed to prohibit quinella wagering on any race with three or fewer wagering interests scheduled to start";
7. Requirements regarding "pick three pools" and "pick six pools" would be replaced by new requirements for "pick (n) pools";
8. New requirements regarding "quinella double pools," "superfecta pools," and "twin trifecta pools" would be added by the proposed regulation.

Estimated economic impact. Some of the proposed amendments listed above are of a largely housekeeping nature and are unlikely to have economic consequences (e.g., deleting the overly prescriptive list of 23 factors that the VRC must consider before approving pari-mutuel wagering pools). Other proposed amendments are likely to have economic consequences however. These economic consequences can be grouped into three general categories: (i) regulatory compliance costs; (ii) economic activity; and (iii) fiscal consequences.

Compliance costs. Several of the proposed amendments listed above are likely to make the regulation less restrictive

and burdensome to licensees (e.g., removing the requirement that licensees publicly post the entire regulation and replacing rules for "pick three pools" and "pick six pools" with rules for "pick (n) pools"), thereby reducing regulatory compliance costs. Alternatively, at least one of the proposed amendments, removal of the requirement that limits a licensee's obligation to cash winning tickets to "valid winning tickets ... presented for payment within 60 days of the date of their purchase," is likely to increase regulatory compliance costs. The combined net effect of these proposed amendments is probably fairly small, however.

Economic activity. One of the main features of the proposed regulation is that it establishes procedures that would permit licensees to offer additional pari-mutuel wagering pools comparable to those offered in other major racing states. These additional offerings could potentially increase revenues generated at pari-mutuel wagering facilities licensed to operate in the Commonwealth. From the perspective of the state as a whole, however, it is difficult to know whether these revenues would represent "new" economic activity, or are simply displaced expenditures that would have been made somewhere else in Virginia's economy. The answer to this question is largely dependent on how much of the additional revenues will be drawn from out of state or from resource pools that would have otherwise remained stagnant.

Fiscal consequences. In the first quarter of 1997, the state and local license tax revenue generated by pari-mutuel wagering in Virginia were as follows: (i) Commonwealth of Virginia, \$399,869; (ii) New Kent County, \$99,967; (iii) City of Chesapeake, \$40,041; (iv) City of Richmond, \$29,963; and (v) County of Henrico, \$29,963. If the additional wagering pools permitted by the proposed regulation are instrumental in increasing revenues generated at pari-mutuel wagering facilities licensed to operate in the Commonwealth, they will also increase the state and local license tax revenue generated by those facilities. Here again, however, it is difficult to know whether such an increase in tax revenues would constitute "new" revenue, or are simply displaced revenues that would have still made their way to state and government coffers through other avenues, such as sales and use taxes or property taxes. In this case the answer would depend, not only on how much of the additional revenue is generated from out-of-state sources, but also the relative rate of taxation and the amount of associated direct and indirect government expenditures that would be required in either case.

Businesses and entities particularly affected. The proposed regulation particularly affects licensed pari-mutuel wagering facilities, patrons of those facilities, and the general public.

Localities particularly affected. The proposed regulation particularly affects those localities where pari-mutuel wagering facilities are located. These currently include Henrico County, New Kent County, and the cities of Chesapeake and Richmond.

Projected impact on employment. The proposed regulation may have a positive effect on employment.

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Effects 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. DPB anticipates that the proposed amendments to the current pari-mutuel wagering regulation will have two primary economic effects: (i) a potential increase in the revenue generated by pari-mutuel wagering facilities; and (ii) an associated increase in state and local license tax revenue from those facilities.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Racing Commission has reviewed the economic impact analysis prepared by the Department of Planning and Budget and the agency finds that it is in agreement with the analysis. However, the commission does believe the amendments are necessary to continue the current positive revenue trends for state and local governments as well as anticipating additional new revenue sources in the form of wagering from outside the state with the advent of live racing at Colonial Downs later this summer.

Statement of Mandates: The proposed regulation is not mandated by state or federal law or regulation.

Statement of Specific Minimum Requirements: Since the proposed regulation is not mandated by any state or federal mandate, then it does not exceed the specific minimum requirements.

Statement of Alternatives Considered: The proposed regulation avails the licensee and patrons of a mix of pari-mutuel wagering pools available in neighboring jurisdictions. Therefore, the regulation places no burden upon the licensee or patrons, and in no way is it intrusive. Furthermore, the regulation incorporates the latest regulations of the Association of Racing Commissioners International that were developed through the auspices of industry representatives and state racing commissions.

Statement of Review and Reevaluation: In addition to the commission's ongoing and almost continual review and reevaluation of its regulations, the commission will conduct such a review and reevaluation immediately following the closing of each race meeting at Colonial Downs with representatives of the horsemen, localities, horse breeders, and licensees.

Summary:

The regulation establishes the operating procedures of the mutuel department, manner of requesting the use of pools, the granting of approval of the pools by the commission, the calculation of straight and multiple wagers, and payment of prompt refunds to the patrons. The proposed amendments provide additional pari-mutuel wagering pools, namely, quinella double, pick (n), twin trifecta and superfecta.

11 VAC 10-20-10. Definitions.

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

"Act" means Chapter 29 (§§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.

"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of \$.10.

"Carryover" means the nondistributed pool moneys which are retained and added to a corresponding pool in accordance with this chapter.

"Commission" means the Virginia Racing Commission.

"Enclosure" means all areas of the property of a track to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials, and any additional areas designated by the commission.

"Entry" means two or more horses in a race that are treated as a single wagering interest for pari-mutuel wagering purposes.

"Expired ticket" means an outstanding ticket which was not presented for redemption within the required time period for which it was issued.

"Handle" means the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Horse owner" means a person owning an interest in a horse.

"Horse racing" means a competition on a set course involving a race among horses on which pari-mutuel wagering is permitted.

"Licensee" includes any person holding an owner's, operator's, limited or unlimited license, or any other license issued by the commission.

"Limited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with pari-mutuel wagering privileges, for a period not exceeding 14 days in any calendar year.

"Member" includes any person designated a member of a nonstock corporation, and any person who by means of a pecuniary or other interest in such corporation exercises the power of a member.

"Minus pool" means that the payout is in excess of the net pool.

"Mutuel field" means two or more horses are treated as a single wagering interest because the number of wagering interests exceeds the number that can be handled individually by the totalizator.

"Net pool" means the amount of gross pari-mutuel ticket sales less refundable wagers and retainage.

"Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards.

"Off time" means the moment at which the starter dispatches the field.

"Operator's license" means a license issued by the commission allowing the holder to conduct a horse race meeting with pari-mutuel wagering privileges.

"Outstanding ticket" means a winning or refundable pari-mutuel ticket which was not cashed during the program for which it was issued.

"Owner's license" means a license issued by the commission allowing the holder to construct a horse racing facility for the purpose of conducting a limited or unlimited race meeting with pari-mutuel wagering privileges.

~~*"Operator's license"* means a license issued by the commission allowing the holder to conduct a horse race meeting with pari-mutuel wagering privileges.~~

"Pari-mutuel wagering" means the system of wagering on horse racing in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, less deductions required or permitted by law.

"Permit holder" includes any person holding a permit to participate in horse racing subject to the jurisdiction of the commission or in the conduct of a race meeting where pari-mutuel wagering is offered thereon as provided in the Act.

"Person" includes a natural person, partnership, joint venture, association or corporation.

"Pool" means the amount wagered during a race meeting in straight wagering, in multiple wagering, or during a specified period thereof.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members, owns or controls, directly or indirectly, 5.0% or more of the stock of any person who is a licensee, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of 5.0% or more of any such stock.

"Profit" means the net pool after the deduction of the amount wagered on the winners.

"Profit split" means a division of profit among the separate wagering interests or winning combinations resulting in two or more payout prices.

"Program" means a schedule of races run consecutively at a racetrack or simulcast to a satellite facility.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Retainage" means the total amount deducted, from the pari-mutuel wagering pool in the percentages designated by statute for the Commonwealth of Virginia, purse money for the participants, Virginia Breeders Fund, and the operators.

"Single price pool" means an equal distribution of profit to winning wagering interests or winning wagering combinations through a single payout price.

"Stock" includes all classes of stock of an applicant or licensee corporation, and any debt or other obligation of such corporation or stockholder thereof or stock of any affiliated corporation if the commission finds that the holder of such obligation or stock derives therefrom such control of or voice in the operation of the applicant or licensee corporation that he should be deemed a stockholder.

"Totalizator" means an electronic data processing system for registering wagers placed on the outcomes of horse racing, deducting the retainage, calculating the mutuel pools and returns to ticket holders, and displaying approximate odds and payouts, including machines utilized in the sale and cashing of wagers.

"Unlimited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with pari-mutuel wagering privileges, for periods of 15 days or more in any calendar year.

"Virginia Breeders Fund" means the fund established to foster the industry of breeding racehorses in the Commonwealth of Virginia.

"Wagering interest" means one or more horses in a race which are identified by a single program number for wagering purposes.

11 VAC 10-20-260. Generally.

All permitted wagering shall be under a pari-mutuel wagering system whereby the holders of winning tickets divide the total amount wagered, less retainage, in proportion to the sums they have wagered individually. All other systems of wagering other than pari-mutuel, e.g., bookmaking and auction-pool selling, are prohibited and any person participating or attempting to participate in prohibited wagering shall be excluded from the enclosure or satellite facility.

A. Persons under the age of 18 are prohibited from wagering. No person under the age of 18 shall be permitted by any licensee to purchase or cash a pari-mutuel ticket. No employee of the licensee shall knowingly sell or cash any pari-mutuel ticket for a person under the age of 18.

B. Posted order of finish. Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as posted on the infield results board display devices and declared "official" by the stewards. Any subsequent change in the order of finish or award of purse money as may result from a ruling by the stewards or commission shall in no way affect the pari-mutuel payout.

~~Payments will be made only on the first three horses passing the finish line according to the official order of finish, except in the case of a dead heat for show, in which case payments will be made on the horses involved in the dead heat.~~

C. Errors in payment. The licensee shall be responsible for the correctness of all payouts posted as "official" on the infield results board display devices. If an error is made in posting the payout figures on the infield results board display devices, and discovered before any tickets are cashed, the error may shall be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error on the infield results board display devices.

1. The licensee shall compare the two independent final pool totals and payouts calculated by the totalizator prior to posting them on the infield results board display devices. In the event of a discrepancy between the two sets of pool totals and payouts and the inability of the

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totalizator to determine which of the sets is correct, the highest pool total and payouts shall be used.

2. If an error is made in posting the payout figures on the ~~infield results board~~ *display devices* and discovered after tickets have been cashed, where the public is underpaid, the amount of the underpayment shall be added to the same pool immediately following. Where the public is overpaid, the amount of the overpayment shall be absorbed by the licensee.

3. If any underpayment is discovered after the close of the horse race meeting or an opportunity does not exist to add the amount of the underpayment to the same pool, the total underpayment shall be paid to the Commonwealth of Virginia in a manner prescribed by the commission.

D. Minimum wagers. The minimum wager for straight wagering shall be \$2.00. The minimum wager for multiple wagering shall be \$1.00.

E. Minimum payouts. The licensee shall pay to the holder of any ticket entitling the holder to participate in the distribution of a pari-mutuel pool the amount wagered by the holder plus a minimum profit of 5.0%. If such a payout creates a deficiency in the pari-mutuel pool, the licensee shall make up the deficiency from its share of the pari-mutuel wagering.

The licensee, with the approval of the stewards, may bar wagering on a horse or entry in any or all pari-mutuel pools in a stakes race, handicap, futurity or other special event where the licensee has good and sufficient reason to believe that accepting wagers on the horse or entry may result in a deficiency or minus pool. The decision to bar wagering on a horse or entry shall be announced publicly before wagers are accepted on that race.

F. Posting of regulations. ~~Part III of these regulations shall~~ *A general explanation of this chapter may be posted for the benefit of the public in not less than two places in the wagering areas of the enclosure and a general explanation shall be printed in the daily program satellite facilities.*

~~The pari-mutuel regulations posted in the wagering areas or a general explanation printed in the daily program shall be preceded by the following statement:~~

~~"All payouts by the pari-mutuel departments of horse race meetings licensed by the Virginia Racing Commission are subject to the regulations of the United States Government, the Internal Revenue Service, and applicable statutes of the Commonwealth of Virginia."~~

G. Identification of holder. The licensee shall require positive identification of a holder of a valid winning pari-mutuel ticket before the payment when, in the stewards' discretion, circumstances warrant this action.

H. *Wagers placed in cash. The licensee shall only accept wagers placed in cash or vouchers and then only at the racetrack or satellite facilities. It shall be the responsibility of the licensee to instruct the mutuel clerks to accept wagers on a "cash only" basis.*

11 VAC 10-20-270. Request for types of pari-mutuel pools.

A. Generally. Each licensee shall submit a request in writing to the commission for approval of the types of pari-mutuel wagering pools that are to be offered to the public during the horse race meeting. The request for approval of types of pari-mutuel wagering pools shall be submitted to the commission in writing no less than 90 days before the scheduled opening day of the horse race meeting.

B. Where to file request. The licensee shall submit the request in writing to the *main general business* office of the commission.

~~1. A request to be sent by certified mail shall be addressed to:~~

~~Executive Secretary
Virginia Racing Commission
Post Office Box 1423
Richmond, VA 23248~~

~~2. A request to be hand-delivered shall be delivered to:~~

~~Executive Secretary
Virginia Racing Commission
1500 East Main Street
Suite 304
Richmond, VA 23219~~

~~3. 1. A request delivered by hand or by certified mail will be timely only if received at the main general business office of the commission by 5 p.m. on or before the date prescribed.~~

~~4. 2. Delivery to other than the commission's main general business office or to commission personnel by hand or by mail is not acceptable.~~

~~5. 3. The licensee assumes full responsibility for the method chosen to deliver the request.~~

C. Content of request. The licensee's request in writing shall include a statement of how the request will provide for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people, except that the commission, in its discretion, may waive the foregoing. ~~The request shall include the following:~~

~~1. A signed request for approval of pari-mutuel pools;~~

~~2. A statement of the precise nature and extent of pools requested, specifying the type of pari-mutuel wagering pools and their placement in the program;~~

~~3. A detailed statement of how the request meets each of the criteria in 11 VAC 10-20-280 C; and~~

~~4. Any other documentation the licensee deems necessary to ensure a complete understanding of the request.~~

D. Revision of request. A licensee may make a revision of a properly submitted request for types of pari-mutuel wagering pools.

11 VAC 10-20-280. Approval of types of pari-mutuel wagering pools.

A. Generally. The commission shall promptly consider a request for types of pari-mutuel wagering pools.

B. Consideration of requests. Upon receipt of a request for approval or modification of types of pari-mutuel wagering pools, the commission shall consider the request at its next regularly scheduled meeting, and may, in its discretion, approve the types of pari-mutuel wagering pools as requested, modify the request, or deny the request, or hold a public hearing pursuant to the following procedures:

~~1. If the commission deems a public hearing is appropriate, the commission shall send written notice of the request to all persons interested in participating in the public hearing. The notice must include a brief description of the request, a statement that persons wishing to comment may do so in writing, the time, and place of any public hearing on the request, and the earliest and latest date which the commission may act.~~

~~2. The licensee will be afforded the opportunity to make an oral presentation, and the licensee or its representative shall be available to answer inquiries by the commissioners.~~

~~3. Any affected parties, including horsemen, breeders, employees of the licensee, representatives of other state and local agencies, and the public will be afforded the opportunity to make oral presentations.~~

~~4. If, after a request is received, the commission determines that additional information from the licensee is necessary to fully understand the request, the commission shall direct the applicant to submit the additional information.~~

~~5. If the commission further determines it is necessary for a full understanding of a request, the commission shall request the licensee or a person submitting comments to appear before the commission. The commission shall request the appearance in writing at least five days in advance.~~

~~6. If a licensee fails to comply with the foregoing, the commission may deny the request for the types of pari-mutuel wagering pools.~~

~~7. A record of the proceedings shall be kept, either by electronic means or by court reporter, and the record shall be maintained until any time limits for any subsequent court appeals have expired.~~

~~8. Three or more members of the commission are sufficient to hear the presentations. If the chairman of the commission is not present, the commissioners shall choose one from among them to preside over the meeting.~~

C. Criteria for approval of types of pari-mutuel wagering pools. The commission, in making its determination, must consider the success and integrity of horse racing; the public health and safety, and welfare; and public interest, necessity, and convenience; as well as the following factors:

~~1. The integrity of the licensee;~~

~~2. The financial strength of the licensee;~~

~~3. The ability of the licensee to operate a racetrack and conduct horse racing, including the licensee's facilities, systems, policymakers, managers, and personnel;~~

~~4. Past compliance of the licensee with statutes, regulations, and orders regarding pari-mutuel horse racing;~~

~~5. The licensee's market, including area, population, and demographics;~~

~~6. The performance of the horse racing facility with previously approved pari-mutuel pools;~~

~~7. The impact approving the pari-mutuel pool will have on the economic viability of the horse race meeting, including attendance and handle;~~

~~8. The quantity and quality of economic activity and employment generated;~~

~~9. Commonwealth of Virginia tax revenues from racing and related economic activity;~~

~~10. The entertainment and recreational opportunities for Virginia citizens;~~

~~11. The variety of racing;~~

~~12. The quality of racing;~~

~~13. The availability and quality of horses;~~

~~14. The development of horse racing;~~

~~15. The quality of the horse racing facility;~~

~~16. Security;~~

~~17. Purses;~~

~~18. Benefits to Virginia breeders and horse owners;~~

~~19. Competition among licensees and with other providers of entertainment and recreation as well as its effects;~~

~~20. Social effects;~~

~~21. Community and government support;~~

~~22. Sentiment of horsemen; and~~

~~23. Any factors related to the types of pari-mutuel wagering pools which the commission deems crucial to its decision-making as long as the same factors are considered with regard to all horse race meetings.~~

D. Approving types of pari-mutuel *pari-mutuel* pools. The commission shall approve, deny or give its qualified approval to *modify* a request for types of pari-mutuel wagering pools within 45 days after a public hearing, if a public hearing is held.

E. Denial of request final. The denial of a request by the commission shall be final unless appealed by the licensee under the provisions of these regulations.

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11 VAC 10-20-290. Pari-mutuel tickets.

A. Generally. A valid pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the licensee and is evidence of the obligation of the licensee to pay to the holder the portion of the distributable amount of the pari-mutuel pool as is represented by the ticket. ~~The licensee shall cash all valid unmutated winning tickets when they are presented for payment within 60 days of the date of their purchase.~~

B. Valid pari-mutuel tickets. To be deemed a valid pari-mutuel ticket, the ticket must have been issued by a pari-mutuel ticket machine operated by the licensee and recorded as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as to:

- ~~1. The name of the horse racing facility;~~
- ~~2. The date of the wagering transaction;~~
- ~~3. A unique identifying number or code;~~
- ~~4. The race number for which the pool is conducted;~~
- ~~5. The type or types of wager or wagers represented;~~
- ~~6. The number or numbers representing the wagering interests for which the wager is recorded; and~~
- ~~7. The amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.~~

1. The name of the licensee;
2. A unique identifying number or code;
3. Identification of the terminal at which the ticket was issued;
4. A designation of the racing day for which the wagering transaction was issued;
5. The race number for which the pool was conducted;
6. The types or types of wagers represented;
7. The number or numbers representing the wagering interests for which the wager was made; and
8. The amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

C. ~~Incorrect ticket issuance. Any claim by a person that he has been issued a ticket other than that which he requested, must be made before the person leaves the window and before the totalizator is locked. Ticket cancellation. All tickets with a total value of \$250 or less on live or simulcast races may be cancelled at any window at any time prior to post time for that race. All tickets exceeding \$250 may also be cancelled at any time prior to post time for the race on which the wager was made. However, this cancellation requires the approval of the mutuel manager or his designee. It shall be the responsibility of the mutuel manager or his designee to determine if the approval of the cancellation will considerably alter or manipulate the pari-mutuel pool.~~

D. ~~Invalid claims. After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to make a claim for an incorrect ticket or claim refund or~~

~~payment for tickets discarded, lost or destroyed or mutilated beyond identification. There shall be no refunds or payouts for lost or destroyed tickets, or tickets which have been mutilated beyond identification.~~

E. Identification of tickets. The responsibility for identifying valid pari-mutuel tickets rests with the licensee.

F. Limits on cashing tickets. Payment on valid pari-mutuel tickets, including tickets where refunds are ordered, shall be made only upon presentation and surrender of valid pari-mutuel tickets to the licensee within ~~60~~ 180 days after the purchase of the ticket. Failure to present any valid pari-mutuel ticket to the licensee within ~~60~~ 180 days after the purchase of the ticket shall constitute a waiver of the right to payment.

11 VAC 10-20-300. Operations of the mutuel department.

A. Generally. Each licensee shall strive to keep the daily program of racing progressing as expeditiously as possible with due regard for the health, safety, and comfort of the public and participants. The licensee shall provide a sufficient number of mutuel windows and clerks so that the public will be conveniently accommodated.

B. Post time. Post time for the first race on each racing day shall be approved by the commission upon written request by the licensee. Post time for subsequent races on the same program shall be fixed by the mutuel manager. Where heat racing is utilized in harness racing, the time between separate heats of a single race shall not be less than 40 minutes.

C. Termination of wagering. The pari-mutuel machines shall be locked by a steward immediately upon the start of the race through an electrical control in the stewards' stand or before the start of a race through a method subject to the approval of the commission.

D. Unwarranted delays. If the start of the race is delayed two minutes or more beyond the official post time, as shown on the ~~infield results board display devices~~, for no good reason, the stewards may, in their discretion, lock the ticket-issuing machines.

E. Commencement of wagering. Mutuel windows shall open no less than 30 minutes before the first race. Cashing of tickets shall begin, and selling shall resume, as soon as possible after the official results of a race have been posted on the ~~infield results board display devices~~.

F. Interruptions of wagering. If, for any reason, including a malfunction of the totalizator, the ticket-issuing machines are locked during the wagering on a race before the start, they shall remain locked until after the race. Wagering shall cease on that race, and the payout for that race shall be computed on the sums then wagered in each pool. However, in the event the ticket-issuing machines are inadvertently locked through some human error or mechanical problem, the ticket-issuing machines shall be reopened only on the approval of the stewards, if the system balances when it is again operational.

G. Conclusion of wagering. No pari-mutuel tickets may be sold after the totalizator has been locked, and the licensee shall not be responsible for pari-mutuel ticket sales entered

into but not completed by issuance of a ticket before the totalizator has been locked.

H. Designated windows. No pari-mutuel tickets shall be sold except by the licensee, and pari-mutuel tickets shall only be sold at regular windows properly designated by signs and freestanding self-service or ticket issuing machines devices.

I. Compliance with tax regulations. All payouts on winning tickets shall be subject to withholding of federal and state taxes when the amount of the payout exceeds the dollar threshold set by the U.S. Internal Revenue Service. In those cases where the payouts require identification and deduction of withholding taxes prior to cashing pari-mutuel tickets to holders, the licensee shall comply with the applicable regulations of the Internal Revenue Service and the statutes of the Commonwealth of Virginia requiring identification and deduction of withholding taxes.

J. Emergency situations. If any emergency arises in connection with the operation of the mutuel department at a racetrack or satellite facility and the emergency is not covered by these regulations and an immediate decision is necessary, the mutuel manager shall make the decision, and make a prompt report of the facts to the stewards and the commission.

K. Simulcast pools. When wagers are commingled at a racetrack in another jurisdiction, the licensee shall make payouts on winning wagers at the price posted at the racetrack where the live race took place. However, once wagering has commenced and circumstances prevent commingling of the wagers to the racetrack in the other jurisdiction, there shall be a refund of all wagers:

1. If an announcement is made not less than two minutes prior to the post time that commingling cannot be accomplished and the circumstances involves only one race; or
2. If the wager involves more than one race and an announcement that commingling cannot be accomplished by the start of the first race or not more than 10 minutes after the finish of the first race of the wager, unless there is a payout due a wager as a result of the first race.

11 VAC 10-20-310. Wagering interests.

A. Generally. The licensee shall be responsible for the coupling of horses for wagering purposes in accordance with these regulations and shall provide wagering opportunities in accordance with the success and integrity of horse racing as well as the public interest.

B. Coupled entries. When two or more horses run in a race and are coupled for wagering purposes, a wager on one of the horses shall be a wager on all of them. The horses so coupled are called "an entry."

C. Mutuel field. When the individual horses competing in a race exceed the numbering capacity of the infield results board display devices, the highest numbered horses within the capacity of the infield results board display devices and all horses of a higher number shall be grouped together and

called the "mutuel field," and a wager on one of them shall be a wager on all of them.

~~D. Straight wagering opportunities. Unless the commission approves a prior written request from a licensee to alter wagering opportunities for a specific race, the licensee shall offer Pools dependent upon wagering interests. Unless the commission otherwise provides, at the time the pools are opened for wagering, the licensee:~~

- ~~1. Win, place, and show wagering on all scheduled races that include six or more wagering interests;~~
- ~~2. If horses representing five or fewer wagering interests are scheduled to start in a race, then the licensee may prohibit show wagering on that race; and~~
- ~~3. If horses representing four or fewer wagering interests are scheduled to start in a race, then the licensee may prohibit place wagering as well as show wagering.~~

~~E. Trifecta wagering opportunities. Trifecta wagering shall not be scheduled on a race unless at least six wagering interests are programmed. In the event of a horse being excused by the stewards, trifecta wagering on a race in which five wagering interests remain is permissible. However, there shall be no trifecta wagering on any race with less than five wagering interests.~~

~~F. Perfecta or quinella wagering opportunities. Perfecta or quinella wagering shall not be scheduled on a race unless at least five wagering interests are programmed. In the event of a horse being excused by the stewards, perfecta or quinella wagering on a race in which four wagering interests remain is permissible, if perfecta or quinella wagering on the race had begun before the stewards excused the horse. There shall be no perfecta or quinella wagering on any race with less than four wagering interests.~~

1. May offer win, place and show wagering on all races with six or more wagering interests;
2. May be allowed to prohibit show wagering on any race with five or fewer wagering interests scheduled to start;
3. May be allowed to prohibit place wagering on any race with four or fewer wagering interests scheduled to start;
4. May be allowed to prohibit quinella wagering on any race with three or fewer wagering interests scheduled to start;
5. May be allowed to prohibit exacta wagering on any race with three or fewer wagering interests scheduled to start;
6. Shall prohibit twin trifectas wagering on any race with seven or fewer wagering interests scheduled to start; and
7. Shall prohibit twin superfecta wagering on any race with seven or fewer wagering interests scheduled to start.

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G. E. Extraordinary circumstances. In extraordinary circumstances, discretion is vested in the stewards to cancel any trifecta, perfecta, quinella, or any other multiple wager pool, and assign multiple wagering pools to other races when the stewards believe it would best maintain in horse racing complete honesty and integrity.

H. F. Stake races and special events. In the case of stake races, handicaps, futurities, and other special events, the licensee may offer any straight and multiple wagering pools regardless of the number of wagering interest upon submission of a request in writing to the commission and approval from the commission or its executive secretary.

11 VAC 10-20-330. Multiple wagering.

A. Generally. Daily double, quinella, perfecta, trifecta, pick three, and pick six quinella double, pick (n), twin trifecta, and superfecta pari-mutuel wagering pools shall be considered "multiple wagering." In any race or races, the daily double, quinella, perfecta, trifecta, pick three, and pick six quinella double, pick (n), twin trifecta, and superfecta pools are treated separately and the distribution of the pools are calculated independently of each other. The "net pool" to be distributed shall be all sums wagered in the pool, less retainage and breakage, as defined elsewhere.

B. Daily double pools. The daily double wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first in the two races specified as the daily double. If either of the selections fails to win, the pari-mutuel ticket is void, except as otherwise provided. The amount wagered on the winning combination, the horse or wagering interest which finishes first in the first race coupled with the horse or wagering interest finishing first in the second race of the daily double, is deducted from the net pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning daily double. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to daily double pools:

1. If there is a dead heat for first including two different wagering interests in one of the two daily double races, the daily double pool is distributed as if it were a place pool, with one-half of the net pool allocated to wagers combining the single winner of one daily double race and one of the wagering interests involved in the dead heat in the other daily double race, and with the other one-half of the net pool allocated to the wagers combining the single winner of one daily double race and the other wagering interest involved in the dead heat in the other daily double race.

2. If there are dead heats for first involving different wagering interests in each of the daily double races which result in winning combinations, the net pool shall be allocated equally to the winning combinations after first deducting from the net pool the amount wagered on all winning combinations for proportionate allocation to the winning daily double combinations.

3. If no daily double ticket is sold combining the horse or wagering interest which finishes first in one of the daily double races, the daily double pool is distributed as if it

were a win pool, with the net pool allocated to wagering combinations which include the horse or wagering interest which finished first in one of the daily double races.

4. If no daily double ticket is sold combining the horses or wagering interests which finish first in both the first and second race of the daily double, then the winning combinations for distribution of the daily double profit shall be that combining the horses or wagering interests which finished second in each of the daily double races.

5. If, after daily double wagering has begun, a horse not coupled with another as a wagering interest in the first race of the daily double is excused by the stewards or is prevented from obtaining a fair start, then daily double wagers combining the horse shall be deducted from the daily double pool and shall be promptly refunded.

6. If, after the first race of the daily double has been run, a horse not coupled with another as a wagering interest in the second race of the daily double is excused by the stewards or prevented from obtaining a fair start, then daily double wagers combining the winner of the first daily double race with the horse, which was excused or was prevented from obtaining a fair start, shall be allocated a consolation daily double.

7. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or wagering interest scheduled to start in the second daily double race, the quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with the horse prevented from racing in the second daily double race. The return to the holder includes the amount wagered and the profit. The consolation payoff shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

8. If for any reason the first race of the daily double is cancelled and declared "no contest" a full and complete refund shall be promptly made of the daily double pool.

9. If for any reason the second race of the daily double is cancelled and declared "no contest," the net daily double pool shall be paid to the holders of daily double tickets which include the winner of the first race. If no such ticket is sold, then the net daily double pool shall be paid to the holders of daily double tickets which include the second place horse. If no daily double tickets were sold on the second place horse, then the licensee shall make a prompt refund.

C. Quinella pools. The quinella wager is the purchase of a pari-mutuel ticket to select the first two horses to finish in the race. The order in which the horses finish is immaterial. The amount wagered on the winning combination, the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit. The net pool is divided by the amount wagered on the winning combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the quinella pools:

1. If there is a dead heat for first between horses including two different wagering interests, the net quinella pool is distributed as if no dead heat occurred. If there is a dead heat among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and the pool is allocated to wagers combining any of the three horses finishing in the dead heat for first.

2. If there is a dead heat for second between horses including two different wagering interests, the net quinella pool is distributed as if it were a place pool and it is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second. If the dead heat is among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining the first horse with each of the three horses finishing in a dead heat for second.

3. If horses representing a single wagering interest finish first and second, the net quinella pool shall be allocated to wagers combining the single wagering interest with the horse or wagering interest with the horses or wagering interest which finishes third.

4. If no quinella ticket is sold combining the first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second.

5. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.

6. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, or combining the two horses which finished in a dead heat for second, the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining any of the first three finishers with any other horses.

7. If no quinella ticket is sold combining the first two finishers, then the net quinella pool shall be distributed as if it were a place pool and it is allocated to wagers combining the first finisher with any other horses and to wagers combining the second finisher with any other horse.

8. If no quinella ticket is sold combining horses or wagering interests as would require distribution, a full and complete refund shall be made of the entire quinella pool.

9. If a horse is excused by the stewards, no further quinella tickets shall be issued designating that horse, and all quinella tickets previously issued designating that horse shall be refunded and deducted from the gross pool.

D. Perfecta pools. The perfecta wager is the purchase of a pari-mutuel ticket to select the two horses that will finish

first and second in a race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first and the horse finishing second, in exact order, is the amount to be deducted from the net perfecta pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning perfecta combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the perfecta pool:

1. If no ticket is sold on the winning combination of a perfecta pool, the net perfecta pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and holders of tickets selecting the second place horse to finish second.

2. If there is a dead heat between two horses for first place, the net perfecta pool shall be calculated and distributed as a place pool, one-half of the net perfecta pool being distributed to holders of tickets selecting each of the horses in the dead heat to finish first with the other horse to finish second.

In case of a dead heat between two horses for second place, the net perfecta pool shall be calculated as a place pool, one-half of the net perfecta pool being distributed to holders of tickets selecting the horse to finish first and one horse in the dead heat, and the other one-half being distributed to holders selecting the horse to finish first and the other horse in the dead heat.

3. If there is a dead heat for second place and if no ticket is sold on one of the two winning combinations, the entire net perfecta pool shall be calculated as a win pool and distributed to holders of the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net perfecta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

4. If an entry finishes first and second, or mutuel field horses finish first and second, the net pool shall be distributed to holders of tickets selecting the entry to win combined with the horses having finished third.

5. If no ticket is sold that would require distribution of a perfecta pool, the licensee shall make a complete and full refund of the perfecta pool.

6. If a horse is excused by the stewards, no further perfecta tickets shall be issued designating that horse, and all perfecta tickets previously issued designating that horse shall be refunded and deducted from the gross pool.

E. Trifecta pools. The trifecta wager is purchase of a pari-mutuel ticket to select the three horses that will finish first, second, and third in a race. Payment of the ticket shall be made only to the holder who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first, the horse finishing second, and the horse finishing third, in exact order, is deducted from the pool to determine the profit. The profit

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is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning combination. The return to the holder includes the amount wagered and the profit.

1. If no ticket is sold on the winning combination, the net trifecta pool shall be distributed equally among holders of tickets designating the first two horses in order.
2. If no ticket is sold designating, in order, the first two horses, the net trifecta pool shall be distributed equally among holders of tickets designating the horse to finish first.
3. If no ticket is sold designating the first horse to win, the net trifecta pool shall be distributed equally among holders of tickets designating the second and third horses in order. If no such ticket is sold, then the licensee shall make a prompt refund.
4. If less than three horses finish, the payout shall be made on tickets selecting the actual finishing horses, in order, ignoring the balance of the selection.
5. If there is a dead heat, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position involved in the dead heat, shall be winning tickets. The net trifecta pool shall be calculated as a place pool.
6. The uncoupling for betting wagering purposes of horses having common ties is prohibited in races upon which trifecta wagering is conducted.
7. If a horse is excused by the stewards, no further trifecta tickets shall be issued designating that horse, and all trifecta tickets previously issued designating the horse shall be refunded and deducted from the gross pool.

F. ~~Pick three pools. The pick three wager is the purchase of a pari-mutuel ticket to select the winners of three races designated by the licensee for pick three wagering. Payment of the ticket shall be made to holder who has selected the winners of the three different races designated for pick three wagering, unless otherwise provided for in these regulations.~~

1. ~~Those horses constituting an entry of coupled horses or those coupled to comprise the mutuel field in a race comprising the pick three wager shall race as a single wagering interest for the purpose of pool calculation and payment. However, if any part of a coupled entry or the mutuel field racing as a single wagering interest is a starter in a race, the entry or field selection shall remain as the designated wagering interest to win in that race for the pick three calculation, and the selection shall not be deemed a scratch.~~
2. ~~The entire net pick three pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the three races comprising the pick three wager.~~
3. ~~In the event there is no pari-mutuel ticket which correctly designates the official winner in each of the three races comprising the pick three wager, the major share (75%) shall not be distributed but shall be carried~~

~~over to the next racing day and shall be added to the pick three pool for distribution among holders of pick three tickets which correctly designate the official winner in each of the three races comprising the pick three wager. The minor share (25%) will be distributed among holders of pick three tickets which correctly designate the most official winners, but fewer than three, of the races comprising the pick three wager.~~

4. ~~In the event a pick three pari-mutuel ticket designates a selection in any one or more of the races comprising the pick three and that selection is excused by the stewards or is prevented from obtaining a fair start, the actual favorite(s) as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payouts to the holders.~~

5. ~~In the event of a dead heat for win between two or more horses in any pick three race, all horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.~~

6. ~~No pick three ticket shall be refunded except when all three races are cancelled or declared "no contests." The refund shall apply to the pick three pool established on that racing card. Any "net pool" accrued from a carryover from a previous pick three shall further be carried over to the next pick three pool scheduled by the licensee conducting the race meeting.~~

7. ~~In the event that any number of races less than three comprising the pick three are completed, 100% of the net pool for the pick three shall be distributed among holders of tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick three pool in which less than three races have been completed. Any net pool carryover from a previous pick three pool shall be further carried over to the next pick three scheduled by the licensee.~~

8. ~~Should no distribution be made pursuant to these regulations on the last day of the horse race meeting in which pick three wagering is offered, then that portion of the distributable pool and all moneys accumulated shall be distributed to the holders of tickets correctly designating the most winning selections of the three races comprising the pick three that day.~~

9. ~~In the event that a licensee is unable to distribute the retained distributable amount carried over from any prior pick three pool established pursuant to this rule by the end of its race meeting due to cancellation of the final program of racing or any other reason, the retained distributable amount shall be invested with interest, in a manner approved by the commission. The principal and interest shall be carried forward to the next race meeting having a pick three at the same location and of the same breed of horses that generated the retained distributable amount.~~

10. ~~In the event a race meeting is not conducted at that location, with the same breed of horses that generated the net pick three pool with interest, the net pick three pool shall be remitted to the commission. A retained undistributed pick three carryover pool shall not for any~~

purpose be considered as part of the unclaimed tickets pool.

11. No pari-mutuel ticket for pick three wagering shall be sold, exchanged or cancelled after the time of closing of wagering in the first of the three races comprising the pick three, except for refunds on pick three tickets as required by these regulations. No person shall disclose the number of tickets sold in the pick three pool, or the number or amount of tickets selecting winners of the pick three races until the stewards have declared the last pick three race each day to be "official."

G. Pick six pools. The pick six wager is the purchase of a pari-mutuel ticket to select the winners of six races designated by the licensee for pick six wagering. Payment of the ticket shall be made to holder who has selected the winners of the six different races designated for pick six wagering, unless otherwise provided for in this chapter.

1. Those horses constituting an entry of coupled horses or those horses coupled to comprise the mutuel field in a race comprising the pick six wager shall race as a single wagering interest for the purpose of pool calculation and payment. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated to win in that race for the pick six calculation, and the selection shall not be deemed a scratch.

2. The entire net pick six pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the pick six wager.

3. In the event there is no pari-mutuel ticket which correctly designates the official winner in each of the six races comprising the pick six, the major share (75%) shall not be distributed but shall be carried over to the next racing day and be added to the pick six pool for distribution among holders of pick six tickets which correctly designate the official winner in each of the six races comprising the pick six wager. The minor share (25%) shall be distributed among holders of pick six tickets which correctly designate the most official winners, but fewer than six, of the races comprising the pick six wager.

4. In the event a pick six pari-mutuel ticket designates a selection in any one or more of the races comprising the pick six and that selection is excused by the stewards or is prevented from obtaining a fair start, the actual favorites(s) as evidenced by the amounts wagered in the "win pool" at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payouts to the holders.

5. In the event of a dead heat for win between two or more horses in any pick six race, all horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

6. No pick six ticket shall be refunded except when all six races are cancelled or declared "no contests." The refund shall apply to the pick six pool established on that racing card. Any "net pool" accrued from a carryover

from a previous pick six shall further be carried over to the next pick six pool scheduled by the licensee conducting the race meeting.

7. In the event that any number of races less than six comprising the pick six are completed, 100% of the net pool for the pick six shall be distributed among holders of tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick six pool in which less than six races have been completed. Any net pool carryover from a previous pick six pool shall be further carried over to the next pick six scheduled by the licensee.

8. Should no distribution be made pursuant to this chapter on the last day of the horse race meeting in which pick six wagering is offered, then that portion of the distributable pool and all moneys accumulated shall be distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the pick six that day.

9. In the event that a licensee is unable to distribute the retained distributable amount carried over from any prior pick six pool established pursuant to this rule by the end of its race meeting due to cancellation of the final program of racing or any other reason, the retained distributable amount shall be invested with interest, in a manner approved by the commission. The principle and interest shall be carried forward to the next race meeting having a pick six at the same location and of the same breed of horses that generated the retained distributable amount.

10. In the event a race meeting is not conducted at that location, with the same breed of horses that generated the net pick six pool with interest, the net pick six pool shall be remitted to the commission. A retained undistributed pick six carryover pool shall not for any purpose be considered as part of the unclaimed tickets pool.

11. No pari-mutuel ticket for pick six wagering shall be sold, exchanged or cancelled after the time of closing of wagering in the first of the six races comprising the pick six, except for refunds on pick six tickets as required by this chapter. No person shall disclose the number of tickets sold in the pick six pool or the number or amount of tickets selecting winners of the pick six races until the stewards have declared the last pick six race each day to be "official."

F. Quinella double pools. The quinella double requires selection of the first two finishers, irrespective of order, in each of two specified races.

1. The net quinella double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

a. If a coupled entry or mutuel field finishes as the first two contestants in either race, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate wagering interest in the official order of finish for that race, as well as the

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first two finishers in the alternate quinella double race; otherwise

b. As a single price pool to those who selected the first two finishers in each of the two quinella double races; but if there are no such wagers, then

c. As a profit split to those who selected the first two finishers in either of the two quinella double races; but if there are no such wagers on one of those races, then

d. As a single price pool to those who selected the first two finishers in the one covered quinella double race; but if there were no such wagers, then

e. The entire pool shall be refunded on quinella double wagers for those races.

2. If there is a dead heat for first in either of the two quinella double races involving:

a. Horses representing the same wagering interest, the quinella double pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate wagering interest in the official order of finish for that race.

b. Horses representing two wagering interests, the quinella double pool shall be distributed as if no dead heat occurred.

c. Horses representing three or more wagering interests, the quinella double pool shall be distributed as a profit split.

3. If there is a dead heat for second in either of the quinella double races involving horses representing the same wagering interest, the quinella double pool shall be distributed as if no dead heat occurred.

4. If there is a dead heat for second in either of the quinella double races involving horses representing two or more wagering interests, the quinella double pool shall be distributed as profit split.

5. Should a wagering interest in the first half of the quinella double be scratched prior to the first quinella pool race being declared official, all money wagered on combinations including the scratched wagering interest shall be deducted from the quinella double pool and refunded.

6. Should a wagering interest in the second half of the quinella double be scratched prior to the close of wagering on the first quinella double contest, all money wagered on combinations including the scratched wagering interest shall be deducted from the quinella double pool and refunded.

7. Should a wagering interest in the second half of the quinella double be scratched after the close of wagering on the first quinella double race, all wagers combining the winning combination in the first race with a combination including the scratched wagering interest in the second race shall be allocated a consolation payout. In calculating the consolation payout, the net quinella

double pool shall be divided by the total amount wagered on the winning combination in the first race and an unbroken consolation price obtained. The unbroken consolation price is multiplied by the dollar value of wagers on the winning combination in the first race combined with a combination including the scratched wagering interest in the second race to obtain the consolation payout. Breakage is not declared in this calculation. The consolation payout is deducted from the net quinella double pool before calculation and distribution of the winning quinella double payout. In the event of a dead heat involving separate wagering interests, the net quinella double pool shall be distributed as a profit split.

8. If either of the quinella double races is cancelled prior to the first quinella double race or the first quinella double race is declared "no contest," the entire quinella double pool shall be refunded on quinella double wagers for those races.

9. If the second quinella double race is cancelled or declared "no contest" after the conclusion of the first quinella double race, the net quinella double pool shall be distributed as a single price pool to wagers selecting the winning combination in the first quinella double race. If there are no wagers selecting the winning combination in the first quinella double race, the entire quinella double pool shall be refunded on quinella double wagers for those races.

G. Pick (n) pools. The pick (n) pool requires selection of the first-place finisher in each of a designated number of races. The licensee must obtain approval from the commission or its executive secretary concerning the scheduling of pick (n) contests, the designation of one of the methods prescribed in subdivision 1 of this subsection and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission or its executive secretary.

1. The pick (n) pool shall be apportioned under one of the following methods:

a. Method 1, pick (n) with carryover. The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the remainder shall be added to the carryover.

b. Method 2, pick (n) with minor pool and carryover. The major share of the net pick (n) pool and carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-

place finisher of all pick (n) contests, the minor share of the pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the major share shall be added to the carryover.

c. Method 3, pick (n) with no minor pool and no carryover. The net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races, based upon the official order of finish. If there are no winning wagers, the pool is refunded.

d. Method 4, pick (n) with minor pool and no carryover. The major share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the greatest number of pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If the greatest number of first-place finishers selected is one, the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.

e. Method 5, pick (n) with minor pool and no carryover. The major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) races, based on the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all pick (n) races, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) races. If there are no winning wagers, the pool is refunded.

f. Method 6, pick (n) with minor pool, jackpot, major carryover and jackpot carryover. Predetermined percentages of the net pick (n) pool shall be set aside as a major pool, minor pool, and jackpot pool. The major share of the net pick (n) pool and the major carryover, if any, shall be distributed to those who selected the first-place finisher of each of the pick (n) races, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the pick (n) races, the major net pool shall be added to the major carryover. If there is only one single ticket selecting the first-place finisher of each of the pick (n)

races, based on the official order of finish, the jackpot share of the net pick (n) pool and the jackpot carryover, if any, shall be distributed to the holder of that single ticket, along with the major net pool and the major carryover, if any. If more than one ticket selects the first-place finisher of each of the pick (n) races, the jackpot net pool shall be added to the jackpot carryover. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher of the second greatest number of pick (n) races, based on the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) races, the minor net pool of the pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher of the greatest number of pick (n) races.

2. If there is a dead heat for first in any of the pick (n) races involving:

a. Horses representing the same wagering interest, the pick (n) pool shall be distributed as if no dead heat occurred.

b. Horses representing two or more wagering interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

3. Should a wagering interest in any of the pick (n) races be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the host track for the race at the close of wagering on that race, shall be substituted for the scratched wagering interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the wagering interest with the lowest program number. The totalizator shall produce reports showing each of the wagering combinations with substituted wagering interests which became winners as a result of the substitution, in addition to the normal winning combination.

4. The pick (n) pool shall be cancelled and pick (n) wagers for the individual performance shall be refunded if:

a. At least two races included as part of a pick three are cancelled or declared "no contest."

b. At least three races included as part of a pick four, pick five or pick six are cancelled or declared "no contest."

c. At least four races included as part of a pick seven, pick eight or pick nine are cancelled or declared "no contest."

d. At least five races included as part of a pick 10 are cancelled or declared "no contest."

5. If at least one race included as part of a pick (n) is cancelled or declared "no contest," but not more than the number specified in subdivision 4 of this subsection, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest

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number of pick (n) races for that program. The distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.

6. The pick (n) carryover may be capped at a designated level approved by the commission so that if, at the close of any program, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this chapter. After the pick (n) carryover is frozen, 100% of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of pick (n) races for that program.

7. A licensee may request permission from the commission to distribute the pick (n) carryover on a specific program. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and program for the distribution.

8. Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick (n) races, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races. The pick (n) carryover shall be designated for distribution on a specified date and program only under the following circumstances:

- a. Upon approval from the commission as provided in subdivision 7 of this subsection;
- b. Upon approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another, or when the pick (n) is discontinued;
- c. On the closing program of a race meeting.

9. If, for any reason, the pick (n) carryover must be held to the corresponding pick (n) pool to a subsequent race meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool on a date and program of the race meeting designated by the commission.

10. With the approval of the commission, a licensee may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.

11. Providing information to any person regarding the covered combinations, amounts wagered on specific combinations, number of tickets sold or number of live tickets remaining is strictly prohibited. This chapter shall not prohibit necessary communication between totalizator and mutuel employees for processing of pool data.

12. The licensee may suspend previously approved pick (n) wagering with the approval of the commission. Any

carryover shall be held until the suspended pick (n) wagering is reinstated. The licensee may request approval of a pick (n) wager or separate wagering pool for specific programs.

H. Superfecta pools. The superfecta pool requires selection of the first four finishers, in their exact order, for a single race.

1. The net superfecta pool shall be distributed to winning wagers in the following precedence based upon the official order of finish:

- a. As a single price pool to those whose combination finished in correct sequence as the first four wagering interests; but if there are no such wagers, then
- b. As a single price pool to those whose combination included, in correct sequence, the first three wagering interests; but if there are no such wagers, then
- c. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there are no such wagers, then
- d. As a single price pool to those whose combination correctly selected the first-place wagering interest only; but if there are no such wagers, then
- e. The entire pool shall be refunded on superfecta wagers for that race.

2. If less than four wagering interests finish and the race is declared official, payouts will be made based upon the order of finish of those wagering interests completing the race. The balance of any selection beyond the number of wagering interests completing the race shall be ignored.

3. If there is a dead heat for first involving:

- a. Horses representing four or more wagering interests, all of the wagering combinations selecting four wagering interests which correspond with any of the wagering interests involved in the dead heat shall share in a profit split.
- b. Horses representing three wagering interests, all of the wagering combinations selecting the three dead-heated wagering interests, irrespective of order, along with the fourth-place wagering interest shall share in a profit split.
- c. Horses representing two wagering interests, both of the wagering combinations selecting the two dead-heated wagering interests, irrespective of order, along with the third and fourth-place wagering interests shall share in a profit split.

4. If there is a dead heat for second involving:

- a. Horses representing three or more wagering interests, all of the wagering combinations correctly selecting the winner combined with any of the three wagering interests involved in the dead heat for second shall share in a profit split.

b. Horses representing two wagering interests, all of the wagering combinations correctly selecting the winner, the two dead-heated wagering interests, irrespective of order, and the fourth-place wagering interest shall share in a profit split.

5. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the wagering interests involved in the dead heat for fourth shall share in a profit split.

6. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the wagering interests involved in the dead heat for fourth shall share in a profit split.

7. Coupled entries and mutuel fields shall be prohibited in superfecta races.

1. Twin trifecta pools. The twin trifecta pool requires selection of the first three finishers in their exact order, in each of two designated races. Each winning ticket for the first twin trifecta race must be exchanged for a free ticket on the second twin trifecta race in order to remain eligible for the second-half twin trifecta pool. The tickets may be exchanged only at attended windows prior to the second twin trifecta race. Winning first-half twin trifecta wagers will receive both an exchange and a monetary payout. Both of the designated twin trifecta races shall be included in only one twin trifecta pool.

1. After wagering closes for the first-half of the twin trifecta and retainage has been deducted from the pool, the net pool shall then be divided into separate pools: the first-half twin trifecta pool and the second-half twin trifecta pool.

2. In the first twin trifecta race only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin trifecta race:

a. As a single price pool to those whose combination finished in correct sequence as the first three wagering interests; but if there is no winning wager, then

b. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there is no winning wager, then

c. As a single price pool to those whose combination correctly selected the first-place wagering interest only; but if there is no winning wager, then

d. The entire twin trifecta pool shall be refunded to twin trifecta wagers for that race and the second-half race shall be cancelled.

3. If no first-half twin trifecta ticket selects the first three finishers of that race in exact order, winning ticket holders shall not receive any exchange tickets for the second-half twin trifecta pool. In this case, the second-half twin trifecta pool shall be retained and added to any existing twin trifecta carryover pool.

4. Winning tickets from the first-half of the twin trifecta shall be exchanged for tickets selecting the first three finishers of the second-half of the twin trifecta. The second-half twin trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin trifecta race:

a. As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first three wagering interests; but if there are no winning tickets, then

b. The entire second-half twin trifecta pool for that race shall be added to any existing carryover moneys and retained for the corresponding second-half twin trifecta pool of the next consecutive program.

5. If a winning first-half twin trifecta ticket is not presented for cashing and exchange prior to the second-half twin trifecta race, the ticket holder may still collect the monetary value associated with the first-half twin trifecta pool but forfeits all rights to any distribution of the second-half twin trifecta pool.

6. Coupled entries and mutuel fields shall be prohibited in twin trifecta races.

7. Should a wagering interest in the first-half of the twin trifecta be scratched, those twin trifecta wagers including the scratched wagering shall be refunded.

8. Should a wagering interest in the second-half of the twin trifecta be scratched, announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched wagering interest. If tickets have not been exchanged prior to the close of wagering of the second twin trifecta race, the ticket holder forfeits all rights to the second-half twin trifecta pool. However, if the scratch in the second-half of the twin trifecta occurs five minutes or less prior to post time, then the licensee shall have discretion to cancel all twin trifecta wagers and make a prompt refund.

9. If, due to a late scratch, the number of wagering interests in the second-half of the twin trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half twin trifecta pool for that contest as a single price pool, but not the twin trifecta carryover.

10. If there is a dead heat or multiple dead heats in either the first or second-half of the twin trifecta, all twin trifecta wagers selecting the correct order of finish, counting a wagering interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

a. The first-half of the twin trifecta, the payout shall be calculated as a profit split; and

b. The second-half of the twin trifecta, the payout shall be calculated as a single price pool.

11. If either of the twin trifecta races are cancelled prior to the first twin trifecta race or the first twin trifecta race is

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declared "no contest," the entire twin trifecta pool shall be refunded in twin trifecta wagers for that race and the second-half shall be cancelled.

12. If the second-half twin trifecta race is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning twin trifecta tickets shall be entitled to the net twin trifecta pool for that race as a single price pool, but not twin trifecta carryover. If there are no such tickets, the net twin trifecta pool shall be distributed as described in subdivision 3 of this subsection.

13. The twin trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any program, the amount in the twin trifecta carryover equals or exceeds the designated cap, the twin trifecta carryover will be frozen until it is won or distributed under other provisions of this chapter. After the twin trifecta carryover is frozen, 100% of the net twin trifecta pool for each individual race shall be distributed to winners of the first-half of the twin trifecta pool.

14. A written request for permission to distribute the twin trifecta carryover on a specific program may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and program for the distribution.

15. Should the twin trifecta carryover be designated for distribution on a specified date and program, the following precedence will be followed in determining winning tickets for the second-half of the twin trifecta after completion of the first-half of the twin trifecta:

- a. As a single price pool to those whose combination finished in correct sequence as the first three wagering interests; but if there are no such wagers, then
- b. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there are no such wagers, then
- c. As a single price pool to those whose combination correctly selected the first-place wagering interest only; but if there are no such wagers, then
- d. As a single price pool to holders of valid exchange tickets.
- e. As a single price pool to holders of outstanding first-half winning tickets.

16. During a program designated by the commission to distribute the twin trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of wagering interests in their correct order of finish for the first-half of the twin trifecta. If there are no wagers correctly selecting the first, second or third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first and second-place wagering interests. If there are no wagers correctly selecting the first and second place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-

place wagering interest only. If there are no wagers selecting the first-place wagering interest only in the first-half of the twin trifecta, all first-half tickets will become winners and will receive 100% of that day's net twin trifecta pool and any existing twin trifecta carryover.

17. The twin trifecta carryover shall be designated for distribution on a specified date and program only under the following circumstances:

- a. Upon written approval from the commission as provided in subdivision 14 of this subsection.
- b. Upon written approval from the commission when there is a change in the carryover cap or when the twin trifecta is discontinued.
- c. On the closing program of the race meeting.

18. If, for any reason, the twin trifecta carryover must be held over to the corresponding twin trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The twin trifecta carryover plus accrued interest shall then be added to the second-half twin trifecta pool of the following meet on a date and program so designated by the commission.

19. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

20. The licensee must obtain written approval from the commission concerning the scheduling of twin trifecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved twin trifecta format require prior approval from the commission.

VA.R. Doc. No. R97-488; Filed May 7, 1997, 10:47 a.m.

DEPARTMENT OF TAXATION

WITHDRAWAL OF PROPOSED REGULATIONS

As a result of Executive Orders 13 (94) and 15 (94) mandated by Governor Allen, the Department of Taxation wishes to withdraw the following proposed regulatory actions currently on record with the Virginia Code Commission. It is the department's intention to begin its regulatory revision project from the beginning upon approval by the Governor's Office.

PROPOSED REGULATIONS

<u>Title of Regulation</u>	<u>Date of Publication</u>
VR 630-3-302. Corporate Income Tax: Definitions.	10:8 VA.R. 2064 January 10, 1994.

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VR 630-3-302.2. Corporate Income Tax: Foreign Source Income.	10:8 VA.R. 2068 January 10, 1994.	VR 630-3-445. Corporate Income Tax: Consolidation of Accounts.	10:8 VA.R. 2157 January 10, 1994.
VR 630-3-311. Corporate Income Tax: Report of Change of Federal Taxable Income.	10:8 VA.R. 2077 January 10, 1994.	VR 630-3-446.1. Corporate Income Tax: Foreign Sales Corporations.	10:8 VA.R. 2160 January 10, 1994.
VR 630-3-312. Corporate Income Tax: Limitations on Assessments.	10:8 VA.R. 2079 January 10, 1994.	VR 630-3-449. Corporate Income Tax: Supplemental Accounts.	10:8 VA.R. 2161 January 10, 1994.
VR 630-3-323. Corporate Income Tax: Excess Cost Recovery: Taxable Years Beginning before January 1, 1988.	10:8 VA.R. 2081 January 10, 1994.	VR 630-3-453. Corporate Income Tax: Extension of Time for Filing Returns.	10:8 VA.R. 2162 January 10, 1994.
VR 630-3-323.1. Corporate Income Tax: Excess Cost Recovery.	10:8 VA.R. 2085 January 10, 1994.	VR 630-3-500. Corporate Income Tax: Declaration of Estimated Income Tax Required.	10:8 VA.R. 2164 January 10, 1994.
VR 630-3-400.1. Corporate Income Tax: Telecommunications Companies.	10:8 VA.R. 2096 January 10, 1994.	VR 630-3-503. Corporate Income Tax: Instructions for Filing Estimated Taxes.	10:8 VA.R. 2166 January 10, 1994.
VR 630-3-402. Corporate Income Tax: Determination of Virginia Taxable Income.	10:8 VA.R. 2110 January 10, 1994.	VR 630-3-504. Corporate Income Tax: Failure to Pay Estimated Tax.	10:8 VA.R. 2168 January 10, 1994.
VR 630-3-402.1. Corporate Income Tax: Additions in Determining Virginia Taxable Income.	10:8 VA.R. 2120 January 10, 1994.	VR 630-10-33. Retail Sales and Use Tax: Dentists, Dental Laboratories and Dental Supply Houses.	10:4 VA.R. 622 November 15, 1993.
VR 630-3-402.2. Corporate Income Tax: Subtractions and Adjustments in Determining Virginia Taxable Income.	10:8 VA.R. 2124 January 10, 1994.	VR 630-10-47. Retail Sales and Use Tax: Hospitals, Nursing Homes and Other Medical-Related Facilities.	10:4 VA.R. 630 November 15, 1993.
VR 630-3-402.3. Corporate Income Tax: Net Operating Losses.	10:8 VA.R. 2132 January 10, 1994.	VR 630-10-64.1. Retail Sales and Use Tax: Medical Equipment and Supplies.	10:4 VA.R. 632 November 15, 1993.
VR 630-3-403. Corporate Income Tax: Additional Modifications for Savings and Loan Associations, Railroad Companies and Telecommunication Companies.	10:8 VA.R. 2142 January 10, 1994.	VR 630-10-65. Retail Sales and Use Tax: Medicine and Drugs.	10:4 VA.R. 637 November 15, 1993.
VR 630-3-409. Corporate Income Tax: Property Factor.	10:8 VA.R. 2145 January 10, 1994.	VR 630-10-73. Retail Sales and Use Tax: Newspapers, Magazines, Periodicals and Other Publications.	9:11 VA.R. 1715 February 22, 1993.
VR 630-3-411. Corporate Income Tax: Average Value of Property.	10:8 VA.R. 2148 January 10, 1994.	VR 630-10-74.1. Retail Sales and Use Tax: Nonprescription Drugs and Proprietary Medicines.	8:6 VA.R. 853 December 16, 1991.
VR 630-3-420. Corporate Income Tax: Railroad Companies; Apportionment.	10:8 VA.R. 2150 January 10, 1994.	VR 630-10-83. Retail Sales and Use Tax: Physicians, Surgeons and Other Practitioners of the Healing Arts.	10:4 VA.R. 643 November 15, 1993.
VR 630-3-431. Corporate Income Tax: Energy Income Tax Credit.	10:8 VA.R. 2150 January 10, 1994.	VR 630-10-85.1. Retail Sales and Use Tax: Prescription Medical Appliances - Visual and Audio.	10:4 VA.R. 644 November 15, 1993.
VR 630-3-440. Corporate Income Tax: Accounting.	10:8 VA.R. 2153 January 10, 1994.		
VR 630-3-443. Corporate Income Tax: Prohibition of Worldwide Consolidation or Combination.	10:8 VA.R. 2156 January 10, 1994.		

VA.R. Doc. Nos. R97-441 through R97-473; Filed May 1, 1997, 1:16 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

STATE AIR POLLUTION CONTROL BOARD

REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulations: Regulations for the Control and Abatement of Air Pollution (Rev. M97)

9 VAC 5-10-10 et seq. General Definitions (adding 9 VAC 5-10-30; repealing Appendices A, B, C, D, E, F, G, H, I, J, N, O, P, Q, R, S, and T of 9 VAC 5-10-20).

9 VAC 5-20-10 et seq. General Provisions (amending 9 VAC 5-20-130; adding 9 VAC 5-20-121, 9 VAC 5-20-200 through 9 VAC 5-20-203, 9 VAC 5-20-206, and 9 VAC 5-20-210 through 9 VAC 5-20-212).

9 VAC 5-40-10 et seq. Existing Stationary Sources (adding 9 VAC 5-40-21, 9 VAC 5-40-22, 9 VAC 5-40-41, 9 VAC 5-40-311, 9 VAC 5-40-5631 and 9 VAC 5-40-5641)

9 VAC 5-50-10 et seq. New and Modified Stationary Sources (amending chapter title only).

9 VAC 5-60-10 et seq. Hazardous Air Pollutant Sources (amending chapter title only).

9 VAC 5-70-10 et seq. Air Pollution Episode Prevention (amending chapter title only).

9 VAC 5-80-10 et seq. Permits for Stationary Sources (adding 9 VAC 5-80-11).

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

Effective Date: July 1, 1997.

Summary:

The regulation amendments convert the remaining appendices to the Regulations for the Control and Abatement of Air Pollution from individual appendices to sections. This has been accomplished by renumbering the appendices and incorporating them into appropriate chapters of the regulations with no changes to the content. Revising the appendices in this manner is being done in order to make them consistent with Virginia Administrative Code (VAC) format and numbering. The chapter titles have been revised to more accurately reflect their contents.

Agency Contact: Copies of the regulation may be obtained from Alma Jenkins, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070.

9 VAC 5-10-10 et seq. General Definitions.

APPENDIX A: ABBREVIATIONS.

9 VAC 5-10-30. Abbreviations.

A - ampere

act - actual

AQCR - Air Quality Control Region

AQMA - Air Quality Maintenance Area

ASTM - American Society for Testing and Materials

avg - average

Be - Beryllium

Btu - British thermal unit

°C - degree Celsius (centigrade)

cal - calorie

cc - cubic centimeter

CdS - cadmium sulfide

cfm - cubic feet per minute

CFR - Code of Federal Regulations (40 CFR 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means Section 35.20 in Part 35 of Title 40 of the Code of Federal Regulations)

CO - carbon monoxide

CO₂ - carbon dioxide

COH - Coefficient of Haze (unit of measure for the soiling index)

cu ft - cubic feet

d - day

dcf - dry cubic feet

dcm - dry cubic meter

dscf - dry cubic feet at standard conditions

dscm - dry cubic meter at standard conditions

EPA - U.S. Environmental Protection Agency

eq - equivalents

°F - degree Fahrenheit

FR - Federal Register (36 FR 1492, May 3, 1971 means page 1492, dated May 3, 1971, of Volume 36 of the Federal Register - the page indicated is the first page of the referenced material)

ft - feet	mV - millivolt = 10^{-3} volt
ft ² - square feet	N - normal
ft ³ - cubic feet	n - newton
g - gram	N ₂ - nitrogen
gal - gallon	ng - nanogram = 10^{-9} gram
GEP - good engineering practice	nm - nanometer = 10^{-9} meter
g-eq - gram equivalents	NO - nitric oxide
gr - grain	NO ₂ - nitrogen dioxide
HCl - hydrochloric acid	NO _x - nitrogen oxides
Hg - mercury	O ₂ - oxygen
hp - horse power	O.D. - outside diameter
hr - hour	oz - ounce
H ₂ O - water	Pa - pascal
H ₂ S - hydrogen sulfide	ppb - parts per billion
H ₂ SO ₄ - sulfuric acid	ppm - parts per million
Hz - hertz	psi - pounds per square inch
I.D. - inside diameter	psia - pounds per square inch absolute
in - inch	psig - pounds per square inch gauge
inHg - inches of mercury	°R - degree Rankine
inH ₂ O - inches of water	s - second
J - joule	scf - cubic feet at standard conditions
K - Kelvin	scfh - cubic feet per hour at standard conditions
k - 1,000	scm - cubic meter at standard conditions
kg - kilogram = 10^3 gram	sec - second
l - liter	SO ₂ - sulfur dioxide
lb - pound	SO ₃ - sulfur trioxide
lpm - liter per minute	SO _x - sulfur oxides
M - molar	sq ft - square feet
m - meter	std - at standard conditions or standard
m ³ - cubic meter	µg - microgram = 10^{-6} gram
meq - milliequivalent	µl - microliter = 10^{-6} liter
Mg - megagram = 10^6 gram	USC - United States Code
mg - milligram = 10^{-3} gram	V - volt
min - minute	v/v - volume per volume
ml - milliliter = 10^{-3} liter	VOC - volatile organic compound
mm - millimeter = 10^{-3} meter	W - watt
mol - mole	w.g. - water gauge
mol.wt. - molecular weight	yd ² - square yard
MSA - Metropolitan Statistical Area	yr - year

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% - percent

Ω - ohm

§ - section

9 VAC 5-20-10 et seq. General Provisions.

APPENDIX S.

AIR QUALITY PROGRAM POLICIES AND PROCEDURES.

PART I. ADMINISTRATIVE.

9 VAC 5-20-10 through 9 VAC 5-20-120. [No change.]

9 VAC 5-20-121. Air quality program policies and procedures.

I. A. General.

A. 1. In order for the Commonwealth to fulfill its obligations under the federal Clean Air Act, some provisions of these regulations are required to be approved by the U.S. Environmental Protection Agency as part of the State Implementation Plan, and when approved, those provisions become federally enforceable.

B. 2. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing or specifically provide for decisions to be made by the board or department, it may also be necessary to have such actions (approvals, determinations, exemptions, exclusions, or decisions) approved by the U.S. Environmental Protection Agency as part of the State Implementation Plan in order to make them federally enforceable. In accordance with U.S. Environmental Protection Agency regulations and policy, it has been determined that it is necessary for the procedures listed in ~~Section II of this appendix~~ *subsection B of this section* to be approved as part of the State Implementation Plan.

C. 3. Failure to include in this ~~appendix~~ *section* any procedure mentioned in the regulations shall not invalidate the applicability of the procedure.

D. 4. Copies of materials listed in this ~~appendix~~ *section* may be examined by the public at the ~~headquarters~~ *central* office of the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

II. B. Specific documents.

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

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

C. 3. Procedures for the Measurement of Capture Efficiency for Determining Compliance with Volatile

Organic Compound Emission Standards Covering Surface Coating Operations, AQP-3, April 1, 1996.

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

E. 5. Procedures for Preparing and Submitting Emission Statements for Stationary Sources, AQP-8, January 1, 1993.

F. 6. Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities, AQP-9, January 1, 1993.

9 VAC 5-20-130. Delegation of authority.

A. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the executive director such administrative, enforcement, and decision making powers as are set forth in ~~Appendix F~~ *this section*.

APPENDIX F. DELEGATION OF AUTHORITY.

I. B. Restrictions upon delegation of authority. The delegation of authority specified within ~~this appendix~~ *subsection C of this section* is subject to the following restrictions.

A. 1. The board reserves the right to exercise its authority in any of the following delegated powers should it choose to do so.

B. 2. A party significantly affected by any decision of the executive director may request that the board exercise its authority for direct consideration of the issue. The request shall be filed within 30 days after the decision is rendered and shall contain reasons for request.

C. 3. The submittal of the request by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.

II. C. Substance of delegation of authority.

A. 1. The executive director is delegated the authority to act within the scope of the Virginia Air Pollution Control Law and these regulations and for the board when it is not in session except for the authority to:

1. a. Control and regulate the internal affairs of the board;

2. b. Approve proposed regulations for the public comment and adopt final regulations;

3. c. Grant variances to regulations;

4. d. Issue orders and special orders, except for consent orders and emergency special orders;

5. e. Determine significant ambient air concentrations under 9 VAC 5-40-190 and 9 VAC 5-50-190;

6. f. Approve amendments to any policy or procedure approved by the board, except as may be provided in it;

7. *g.* Appoint persons to the State Advisory Board on Air Pollution;

8. *h.* Create local air pollution control districts and appoint representatives; and

9. *i.* Approve local ordinances.

B. 2. The board may exercise its authority for direct consideration of permit applications in cases where one or more of the following issues is involved in the evaluation of the application: (i) the stationary source generates public concern relating to air quality issues; (ii) the stationary source is precedent setting; or (iii) the stationary source is a major stationary source or major modification expected to impact on any nonattainment area or class I area.

C. 3. The executive director shall notify the board chairman of permit applications falling within the categories specified in subsection B subdivision C 2 of this section and the board chairman shall advise the executive director of those permits the board wishes to consider directly.

D. 4. The executive director has final authority to adjudicate contested decisions of subordinates delegated powers by him prior to appeal of such decisions to the circuit court or consideration by the board.

**APPENDIX B.
AIR QUALITY CONTROL REGIONS.**

**PART II.
AIR QUALITY PROGRAMS.**

9 VAC 5-20-160 through 9 VAC 5-20-190. [No change.]

9 VAC 5-20-200. Air quality control regions.

Region 1 - Eastern Tennessee-Southwestern Virginia Interstate Air Quality Control Region (Virginia).

The Eastern Tennessee-Southwestern Virginia Interstate Air Quality Control Region (Virginia portion) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all localities geographically located within the outermost boundaries of the area so delimited):

COUNTIES

Bland	Lee	Washington
Buchanan	Russell	Wise
Carroll	Scott	Wythe
Dickenson	Smyth	
Grayson	Tazewell	

CITIES

Bristol	Galax	Norton
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Region 2 - Valley of Virginia Intrastate Air Quality Control Region.

The Valley of Virginia Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all localities geographically located within the outermost boundaries of the area so delimited):

COUNTIES

Alleghany	Floyd	Pulaski
Augusta	†Frederick	Roanoke
Bath	Giles	Rockbridge
Botetourt	Highland	Rockingham
†Clarke	Montgomery	†Shenandoah
Craig	†Page	†Warren

CITIES

Buena Vista	Lexington	Staunton
Clifton Forge	Radford	Waynesboro
Covington	Roanoke	†Winchester
Harrisonburg	Salem	

† These localities are administratively under Region 7

Region 3 - Central Virginia Intrastate Air Quality Control Region.

The Central Virginia Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all localities geographically located within the outermost boundaries of the area so delimited):

COUNTIES

Amelia	Campbell	Lunenburg
Amherst	Charlotte	Mecklenberg
Appomattox	Cumberland	Nottoway
Bedford	Franklin	Patrick
Brunswick	Halifax	Pittsylvania
Buckingham	Henry	Prince Edward

CITIES

Bedford	Lynchburg	South Boston
Danville	Martinsville	

Region 4 - Northeastern Virginia Intrastate Air Quality Control Region.

The Northeastern Virginia Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all localities geographically located within the outermost boundaries of the area so delimited):

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COUNTIES

Accomack	King and Queen	Northampton
Albemarle	King George	Northumberland
Caroline	King William	Orange
Culpeper	Lancaster	Rappahannock
Essex	Louisa	Richmond
Fauquier	Madison	Spotsylvania
Fluvanna	Mathews <i>Mathews</i>	Stafford
Gloucester	Middlesex	Westmoreland
Greene	Nelson	

CITIES

Charlottesville	Fredericksburg
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Region 5 - State Capital Intrastate Air Quality Control Region

The State Capital Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all localities geographically located within the outermost boundaries of the area so delimited):

COUNTIES

Charles City	Henrico
Chesterfield	New Kent
Dinwiddie	Powhatan
Goochland	Prince George
Greenville <i>Greensville</i>	Surry
Hanover	Sussex

CITIES

Colonial Heights	Petersburg
Emporia	Richmond
Hopewell	

Region 6 - Hampton Roads Intrastate Air Quality Control Region

The ~~Hampton~~ *Hampton* Roads Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all localities geographically located within the outermost boundaries of the area so delimited):

COUNTIES

Isle of Wight	Southampton
James City	York

CITIES

Chesapeake	Poquoson
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Franklin	Portsmouth
Hampton	Suffolk
Newport News	Virginia Beach
Norfolk	Williamsburg
Region 7 - National Capital Interstate Air Quality Control Region (Virginia).	

The National Capital Interstate Air Quality Control Region (Virginia portion) consists of the territorial area encompassed by the boundaries of the following jurisdictions (including the territorial area of all localities geographically located within the outermost boundaries of the area so delimited):

COUNTIES

Arlington	Loudoun
Fairfax	Prince William

CITIES

Alexandria	Manassas
Fairfax	Manassas Park
Falls Church	

NOTE: In addition to the air quality control regions delineated here which form the geographic basis for the legal applicability of the regulations and air quality programs, there are administrative regions for all types of administrative actions (such as permit processing and responding to public inquires). This is done because it is necessary for administrative purposes that certain localities be in regions other than those listed above. This administrative delineation in no way alters the applicability of the regulations. Maps showing boundaries for both air quality control regions and administrative regions, followed by and lists showing the assignment of localities for both, may be found in the preface to these regulations are available from the department upon request.

APPENDIX C. URBAN AREAS.

9 VAC 5-20-201. Urban areas.

Urban areas are geographically defined as follows:

Title	Geographical Area
Lynchburg Urban Area	Lynchburg City Campbell County
Newport News - Hampton Urban Area	Hampton City Newport News City Poquoson City Williamsburg City James City County York County
Norfolk - Portsmouth Urban Area	Chesapeake City Norfolk City Portsmouth City Suffolk City Virginia Beach City

Petersburg - Colonial Heights Urban Area	Colonial Heights City Hopewell City Petersburg City	Richmond-Petersburg MSA	Richmond City Colonial Heights City Hopewell City Petersburg City Charles City County Chesterfield County Goochland County Hanover County Henrico County New Kent County Powhatan County Prince George County Dinwiddie County
Richmond Urban Area	Richmond City Chesterfield County Hanover County Henrico County		
Roanoke Urban Area	Roanoke City Salem City †Roanoke County		
National Capital Urban Area	Alexandria City Fairfax City Falls Church City Manassas City Manassas Park City Arlington County Fairfax County Loudoun County Prince William County	Roanoke MSA	Roanoke City Salem City Botetourt County Roanoke County
		National Capital MSA	Alexandria City Fairfax City Falls Church City Manassas City Manassas Park City Arlington County Fairfax County Loudoun County Prince William County Stafford County

† Does not include those portions of the county designated as rural village or rural preserve in the Roanoke County Comprehensive Development Plan approved by the Roanoke County Board of Supervisors on June 25, 1985.

**APPENDIX G.
METROPOLITAN STATISTICAL AREAS.**

9 VAC 5-20-202. Metropolitan statistical areas.

Metropolitan Statistical Areas are geographically defined as follows:

Title	Geographical Area
Bristol MSA	Bristol City Scott County Washington County
Charlottesville MSA	Charlottesville City Albemarle County Fluvanna County Greene County
Danville MSA	Danville City Pittsylvania County
Lynchburg MS MSA	Lynchburg City Amherst County Campbell County
Norfolk-Virginia Beach- Newport News MSA	Chesapeake City Norfolk City Portsmouth City Suffolk City Virginia Beach City Hampton City Newport News City Poquoson City Williamsburg City Gloucester County James City County York County

**APPENDIX H.
AIR QUALITY MAINTENANCE AREAS.**

9 VAC 5-20-203. Air quality maintenance areas.

Air Quality Maintenance Areas are geographically defined as follows:

Title	Geographical Area
Lynchburg AQMA	Lynchburg City Amherst County Appomattox County Campbell County
Newport News-Hampton AQMA	Hampton City Newport News City Poquoson City Gloucester County James City County York County
Norfolk-Portsmouth-Virginia Beach AQMA	Chesapeake City Norfolk City Portsmouth City Suffolk City Virginia Beach City
Petersburg-Colonial Heights- Hopewell AQM	Colonial Heights City Hopewell City Petersburg City Prince George County Dinwiddie County
Richmond AQMA	Richmond City Charles City County

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Roanoke AQMA
 Chesterfield County
 Goochland County
 Hanover County
 Henrico County
 Powhatan County

National Capital AQMA
 Roanoke City
 Salem City
 Botetourt County
 Craig County
 Roanoke County

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

APPENDIX P.

~~VOLATILE ORGANIC COMPOUND AND NITROGEN OXIDES EMISSIONS CONTROL AREAS.~~

9 VAC 5-20-206. Volatile organic compound and nitrogen oxides emissions control areas.

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

A. 1. Volatile Organic Compounds.

1. a. Northern Virginia Emissions Control Area.

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

2. b. Richmond Emissions Control Area.

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

3. c. Hampton Roads Emissions Control Area.

James City County*	Poquoson City*
York County*	Portsmouth City
Chesapeake City	Suffolk City
Hampton City	Virginia Beach City
Newport News City	Williamsburg City*
Norfolk City	

B. 2. Nitrogen Oxides.

1. a. Northern Virginia Emissions Control Area.

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

2. b. Richmond Emissions Control Area.

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

3. c. Hampton Roads Emissions Control Area.

James City County	Poquoson City
York County	Portsmouth City
Chesapeake City	Suffolk City
Hampton City	Virginia Beach City
Newport News City	Williamsburg City
Norfolk City	

*Emission standards for volatile organic compounds prescribed in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) of these regulations shall not be applicable in localities marked by an asterisk.

APPENDIX E.

PUBLIC PARTICIPATION PROCEDURES.

PART III.

PUBLIC PARTICIPATION IN REGULATORY DEVELOPMENT.

I. 9 VAC 5-20-210. Definitions.

A. For the purpose of these regulations and subsequent amendments of 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 appendix part, all terms not defined here shall have the meaning given them in this section 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Formal hearing" means department processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

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

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the department, or (iv) any combination thereof in the formation and development of regulations for department consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

"Public hearing" means an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held in conjunction with the Notice of Public Comment to afford persons an opportunity to submit views and data

relative to regulations on which a decision of the board is pending.

"Public meeting" means an informal proceeding conducted by the department in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

II. 9 VAC 5-20-211. General.

A. The procedures in ~~§ 3 of this appendix~~ 9 VAC 5-20-212 shall be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This ~~appendix part~~ does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

B. The failure of any person to receive any notice or copies of any documents provided under these procedures shall not affect the validity of any regulation.

C. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The board shall provide a written response to such petition within 180 days from the date the petition was received.

III. 9 VAC 5-20-212. Public participation procedures.

A. The department shall establish and maintain a list consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the department. In addition, the department, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual and organization, or at the discretion of the department when mail is returned as undeliverable.

B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.
2. Include in the Notice of Intended Regulatory Action a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from at least five persons during the associated comment period indicating that the department should use the participatory approach, the department will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The department shall issue a Notice of Intended Regulatory Action whenever it considers the adoption, amendment or repeal of any regulation.

1. The Notice of Intended Regulatory Action shall include at least the following:
 - a. A description of the subject matter of the planned regulation.
 - b. A description of the intent of the planned regulation.
 - c. A brief statement as to the need for regulatory action.
 - d. A brief description of alternatives available, if any, to meet the need.
 - e. A request for comments on the intended regulatory action, to include any ideas to assist the department in the development of any proposal.
 - f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.
 - g. A statement of the department's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.
 - h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of any proposal. Including this statement shall only be required when the department makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The department shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the board specifically authorizes the department to proceed without holding a public meeting.

In those cases where public meetings will be held, the Notice of Intended Regulatory Action shall also include the date, not to be less than 30 days after publication in

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The Virginia Register of Regulations, time and place of the public meetings.

3. The public comment period for Notices of Intended Regulatory Action under this section shall be no less than 30 days after publication of the notice of intended regulatory action in The Virginia Register of Regulations.

E. The department shall disseminate the Notice of Intended Regulatory Action to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.
2. Distribution by mail to persons on the list established under subsection A of this section.

F. After consideration of public input, the department may complete the draft proposed regulation and any supporting documentation required for review. If the participatory approach is being used, the draft proposed regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the Notice of Intended Regulatory Action shall be distributed to the participants during the development of the draft proposed regulation. This summary or copies of the comments received in response to the Notice of Intended Regulatory Action shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the department shall publish a Notice of Public Comment and the proposal for public comment.

H. The Notice of Public Comment shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the proposal may be obtained, and the name, address, and telephone number of the individual to contact for further information about the proposed regulation.
2. A request for comments on the costs and benefits of the proposal.
3. The identity of any locality particularly affected by the proposed regulation.
4. A statement that an analysis of the following has been conducted by the department and is available to the public upon request:
 - a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.
 - b. A statement of estimated impact:
 - (1) Projected number and types of regulated entities or persons affected.
 - (2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the

regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

(4) Beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses, as defined in § 9-199 of the Code of Virginia, or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated entities that fully meets the stated purpose of the proposed regulation.

g. A schedule setting forth when, after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Administrative Process Act to receive comments on the proposed regulation. The public hearings may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearings may be held in such locations as the department determines will best facilitate input from interested persons. In those cases in which the department elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.

i. The public comment period shall close no less than 60 days after publication of the Notice of Public Comment in The Virginia Register of Regulations.

J. The department shall disseminate the Notice of Public Comment to the public via the following:

1. Distribution to the Registrar of Regulations for:
 - a. Publication in The Virginia Register of Regulations.
 - b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate.
2. Distribution by mail to persons on the list established under subsection A of this section.

K. The department shall prepare a summary of comments received in response to the Notice of Public Comment and the department's response to the comments received. The department shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The department shall submit the summary and the department response and, if requested, submit the full comments to the board. The summary, the department response, and the comments shall become a part of the department file and after final action on the regulation by the board, made available, upon request, to interested persons.

L. If the department determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

IV. 9 VAC 5-20-213. Transition.

A. All regulatory actions for which a Notice of Intended Regulatory Action has been published in The Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with Appendix E of VR 120-01 as revised by the emergency amendments in effect from June 29, 1993, to June 28, 1994, unless sooner modified or superseded by permanent regulations.

B. This appendix part shall supersede and repeal Appendix E of VR 120-01 as revised by the emergency amendments which became effective on June 29, 1993. All regulatory actions for which a Notice of Intended Regulatory Action has not been published in The Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with this appendix part.

CHAPTER 40.
~~APPLICABILITY OF AND COMPLIANCE WITH AIR
 QUALITY STANDARDS. EXISTING STATIONARY
 SOURCES.~~

APPENDIX N.
 COMPLIANCE SCHEDULES.

9 VAC 5-40-21 Compliance schedules.

I. A. The provisions of this appendix section are a supplement to and shall be applied in context with the provisions of 9 VAC 5-40-20 H 2.

II. B. Compliance by process and emission control equipment installations.

A. 1. Owners proposing to comply with an emission standard by the installation and operation of emission control equipment or replacement process equipment or both shall adhere to the increments of progress contained in the following schedule:

4. a. Final plans for the installation and operation of emission control equipment or process equipment or

both shall be submitted within six months of the effective date of the applicable emission standard.

2. b. Contracts for the installation of emission control equipment or process equipment shall be awarded, or orders shall be issued for purchase of component parts to accomplish installation, within 16 months of the effective date of the applicable emission standard.

3. c. Initiation of on-site construction for the installation of the emission control equipment or process equipment or both shall begin within 22 months of the effective date of the applicable emission standard.

4. d. On-site construction or installation of the emission control equipment or process equipment or both shall be completed within 30 months of the effective date of the applicable emission standard.

5. e. Final compliance, determined in accordance with test methods acceptable to the board, shall be achieved within 32 months of the effective date of the applicable emission standard.

B. 2. Owners of sources subject to the compliance schedule in ~~Section II A of this appendix subsection B 1 of this section~~ shall certify to the board within five days after deadline for each increment of progress, whether the required increment of progress has been met.

III. C. Compliance by process equipment modification.

A. 1. Owners proposing to comply with an emission standard by the modification of existing processing equipment shall adhere to the increments of progress contained in the following schedule.

4. a. Final plans for the process equipment modification shall be submitted within six months of the effective date of the applicable emission standard.

2. b. Contracts for the process equipment modification shall be awarded, or orders shall be issued for the purchase of component parts to accomplish the process equipment modification, within 15 months of the effective date of the applicable emission standard.

3. c. Initiation of on-site construction for the modification of the process equipment shall begin within 18 months of the effective date of the emission standard.

4. d. On-site construction or installation of process modifications shall be completed within 22 months of the effective date of the applicable emission standard.

5. e. Final compliance, determined in accordance with test methods acceptable to the board, shall be achieved within 24 months of the effective date of the applicable emission standard.

B. 2. Owners of sources subject to the compliance schedule in ~~Section III A of this appendix subdivision C 1 of this section~~ shall certify to the board within five days after the deadline for each increment of progress,

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whether the required increment of progress has been met.

~~IV. D.~~ Compliance by use of process materials modification.

~~A. 1.~~ Except as provided under ~~Section IV C of this appendix subdivision D 3 of this section~~, owners proposing to comply with an emission standard by the use of new process materials shall adhere to the increments of progress contained in the following schedule:

~~1. a.~~ Final plans for the use of new process materials shall be submitted within six months of the effective date of the applicable emission standard.

~~2. b.~~ Research and development of new process materials shall be completed within 18 months of the effective date of the applicable emission standard.

~~3. c.~~ Evaluation of new process materials product quality and commercial acceptance shall be completed within 24 months of the effective date of the applicable emission standard.

~~4. d.~~ Purchase orders shall be issued for new process materials and process modifications within 26 months of the effective date of the applicable emission standard.

~~5. e.~~ Initiation of process modifications shall begin within 28 months of the effective date of the applicable emission standard.

~~6. f.~~ Process modifications shall be completed and use of new process materials shall begin within 34 months of the effective date of the applicable emission standard.

~~7. g.~~ Final compliance, determined in accordance with test methods acceptable to the board, shall be achieved within 36 months of the effective date of the applicable emission standard.

~~B. 2.~~ Owners of sources subject to the compliance schedule in ~~Section IV A of this appendix subdivision D 1 of this section~~ shall certify to the board within five days after the deadline for each increment of progress, whether the required increment of progress has been met.

~~C. 3.~~ Where the board determines that the use of new process materials has been sufficiently researched and developed for a particular application, owners proposing to comply with an emission standard by the use of new process materials shall adhere to the increments of progress contained in the following schedule:

~~1. a.~~ Final plans for the use of new process materials shall be submitted within six months of the effective date of the applicable emission standard.

~~2. b.~~ Evaluation of new process materials product quality and commercial acceptance shall be completed within 16 months of the effective date of the applicable emission standard.

~~3. c.~~ Purchase orders shall be issued for new process materials and process modifications within 18 months of the effective date of the applicable emission standard.

~~4. d.~~ Initiation of process modifications shall begin within 22 months of the effective date of the applicable emission standard.

~~5. e.~~ Process modifications shall be completed and use of new process materials shall begin within 30 months of the effective date of the applicable emission standard.

~~6. f.~~ Final compliance, determined in accordance with test methods acceptable to the board, shall be achieved within 32 months of the effective date of the applicable emission standard.

~~D. 4.~~ Owners of sources subject to the compliance schedule in ~~Section IV C of this appendix subdivision D 3 of this section~~ shall certify to the board within five days after deadline for each increment of progress, whether the required increment of progress has been met.

APPENDIX Q.

INTERPRETATION OF EMISSION STANDARDS BASED ON PROCESS WEIGHT RATE TABLES.

9 VAC 5-40-22. Interpretation of emission standards based on process weight rate tables.

~~I. A.~~ General. Unless otherwise approved by the board, interpretation of emission standards based on process weight rate tables shall be in accordance with this ~~appendix section~~.

~~II. B.~~ Definitions.

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

~~B. 2.~~ As used in this ~~appendix section~~, all terms not defined here shall have the meaning given them in *9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.)*, unless otherwise required by context.

~~C. 3.~~ Terms defined.

"Manufacturing operation" means any process operation or combination of physically connected dissimilar process operations which is operated to effect physical or chemical changes, or both, in an article.

"Materials handling equipment" means any equipment used as a part of a process operation or combination of process operations which does not effect a physical or chemical change in the material or in an article, such as, but not limited to, conveyors, elevators, feeders or weighers.

"Physically connected" means any combination of process operations connected by materials handling equipment and designed for simultaneous complementary operation.

"Process operations" means any method, from, action, operation or treatment of manufacturing or processing, including any storage or handling of materials or products before, during or after manufacturing or processing.

"Process unit" means any step in a manufacturing or process operation which results in the emission of pollutants to the atmosphere.

"Process weight" means total weight of all materials introduced into any process unit which may cause any emission of pollutants. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air for all fuels.

"Process weight rate" means a rate established as follows:

a. (1) For continuous or long-run steady-state process operations, the total process weight for the entire period of continuous operation or for a typical portion of it, divided by the number of hours of such period or portion of it.

b. (2) For cyclical or batch process operations, the total weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

"Production rate" means the weight of final product obtained per hour of operation. If the rate of product going to storage can vary, the production rate shall be determined by calculation from the feed rates of raw material.

III. C. Interpretation of standards.

A. 1. The total process weight rate for each individual process unit at a plant or premises shall be used for determining the maximum allowable emission rate of particulate that passes through a stack or stacks.

B. 2. Unless otherwise specified, the allowable particulate mass emission rate shall be determined for individual units of equipment.

C. 3. Unless otherwise specified or unless an equation is provided, the particulate emission limit above the maximum process weight rate shall be determined by linear interpolation. For interpolation between two values on a process weight rate table the following equation should be used:

$$E = [E_G - E_L] \left[\frac{P - P_L}{P_G - P_L} \right] + E_L$$

where: E = emission rate being calculated.

E_L = emission rate for P_L as determined from the process weight rate table.

E_G = emission rate for P_G as determined from the process weight rate table.

P = process weight rate of the unit.

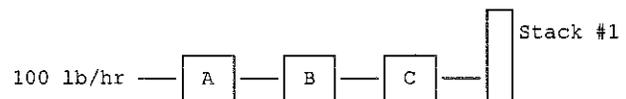
P_L = process weight rate in the process weight rate table which is closest to but less than the process weight rate of the unit.

P_G = process weight rate listed in the process weight rate table which is closest to but greater than the process weight rate of the unit.

D. 4. Where the nature of any process or design of any equipment is such as to permit more than one interpretation of a regulation, the interpretation that results in the minimum value for allowable emissions shall apply.

E. 5. The following are examples that illustrate how the requirements apply to similar units manifolded to a common stack and a number of process units that are combined in a row. (For the purposes of this illustration an emission rate of 0.551 pounds per hour for a process weight rate of 100 pounds per hour was used.)

EXAMPLE 1



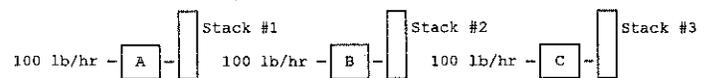
where:

A = Process A (does not emit)
 B = Process B (does not emit)
 C = Process C (emits)

Process weight rate = 100 lb/hr

Allowable emission rate for stack #1 = 0.551 lb/hr

EXAMPLE 2



where:

A = Process A (emits)
 B = Process B (emits)
 C = Process C (emits)

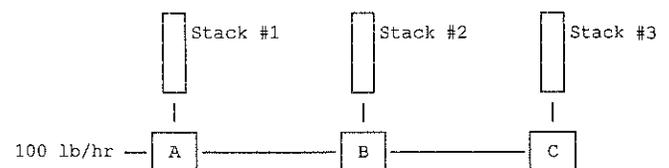
Process weight rate = 100 lb/hr

Allowable emission rate for stack #1 = 0.551 lb/hr

Allowable emission rate for stack #2 = 0.551 lb/hr

Allowable emission rate for stack #3 = 0.551 lb/hr

EXAMPLE 3



where:

A = Process A (emits)
 B = Process B (emits)

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C = Process C (emits)

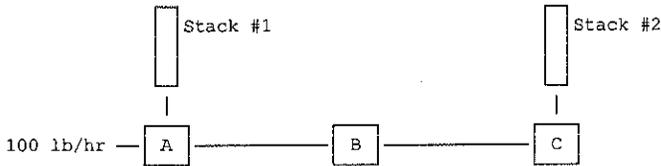
Process weight rate = 100 lb/hr

Allowable emission rate for stack #1 = 0.551 lb/hr

Allowable emission rate for stack #2 = 0.551 lb/hr

Allowable emission rate for stack #3 = 0.551 lb/hr

EXAMPLE 4



where:

A = Process A (emits)

B = Process B (does not emit)

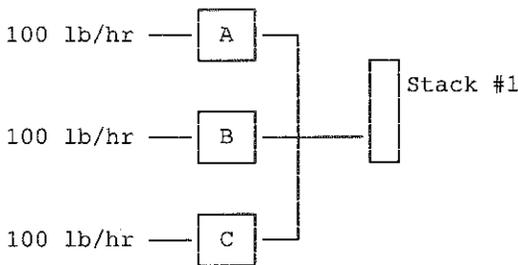
C = Process C (emits)

Process weight rate = 100 lb/hr

Allowable emission rate for stack #1 = 0.551 lb/hr

Allowable emission rate for stack #2 = 0.551 lb/hr

EXAMPLE 5



where:

A = Process A (emits)

B = Process B (emits)

C = Process C (emits)

Process weight rate = 100 lb/hr

0.551 lb/hr

0.551 lb/hr

0.551 lb/hr

Allowable emission rate for stack #1 = 1.653 lb/hr

APPENDIX J.

EMISSION MONITORING PROCEDURES FOR EXISTING SOURCES.

9 VAC 5-40-41. Emission monitoring procedures for existing sources.

† A. The provisions of this appendix section shall apply to existing sources. These provisions may also apply, at the discretion of the board, to new and modified sources if the source type is not subject to Article 5 (9 VAC 5-50-400 et seq., Environmental Protection Agency Standards for

Performance for New Stationary Sources) of 9 VAC 5 Chapter 50.

† B. General procedures.

A. 1. Continuous monitoring system performance evaluations shall be conducted in accordance with the requirements and procedures contained in the applicable performance specification in Appendix B of 40 CFR 60 as follows:

4. a. Continuous monitoring systems for measuring opacity of emissions shall comply with performance specification 1.

2. b. Continuous monitoring systems for measuring nitrogen oxides emissions shall comply with performance specification 2.

3. c. Continuous monitoring systems for measuring sulfur dioxide emissions shall comply with performance specification 2.

4. d. Continuous monitoring systems for measuring oxygen content or carbon dioxide content of effluent gases shall comply with performance specification 3.

B. 2. Owners of all continuous monitoring systems installed in accordance with the provisions of this appendix section shall check the zero and span drift at least once daily in accordance with the method prescribed by the manufacturer of such systems unless the manufacturer recommends adjustments at shorter intervals, in which case such recommendations shall be followed. The zero and span shall, as a minimum, be adjusted whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in Appendix B of 40 CFR 60 are exceeded. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero or span drift adjustment except that for systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds 4% opacity. Unless otherwise approved by the board, the following procedures, as applicable, shall be followed:

4. a. For extractive continuous monitoring systems measuring gases, minimum procedures shall include introducing applicable zero and span gas mixtures into the measurement system as near the probe as is practical. Span and zero gases certified by their manufacturer to be traceable to National Bureau of Standards reference gases shall be used whenever these reference gases are available. The span and zero gas mixtures shall be the same composition as specified in Appendix B of 40 CFR 60. Every six months from date of manufacturer, span and zero gases shall be reanalyzed by conducting triplicate analyses with Reference Methods 6 for SO₂, 7 for NO_x, and 3 for O₂ and CO₂, respectively. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.

2. b. For nonextractive continuous monitoring systems measuring gases, minimum procedures shall include upscale checks using a certified calibration gas cell or test cell which is functionally equivalent to a known gas concentration. The zero check may be performed by computing the zero value from upscale measurements or by mechanically producing zero condition.

3. c. For continuous monitoring systems measuring opacity of emissions, minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

G. 3. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under ~~subsection B subdivision B 2~~ of this section, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

4. a. All continuous monitoring systems for measuring opacity of emissions shall complete a minimum of one cycle of sampling and analyzing for each successive 15-second period and one cycle of data recording for each successive six-minute period.

2. b. All continuous monitoring systems for measuring nitrogen oxides, sulfur dioxide, carbon dioxide or oxygen shall complete a minimum of one cycle of operation (sampling, analyzing and data recording) for each successive 15-minute period.

D. 4. All continuous monitoring systems or monitoring devices shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous monitoring systems contained in the applicable performance specifications in Appendix B of 40 CFR 60 shall be used.

E. 5. When the effluents from a single affected facility or two or more affected facilities subject to the same standards are combined before being released to the atmosphere, the owner may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner shall install applicable continuous monitoring systems on each separate effluent unless the installation of fewer systems is approved by the board.

F. 6. Owners of all continuous monitoring systems for measurement of opacity shall reduce all data to six-minute averages for six-minute periods and for systems other than opacity to one-hour averages for one-hour

periods. Six-minute opacity averages shall be calculated from 24 or more data points spaced at approximately equal intervals over each six-minute period. For systems other than opacity, one-hour averages shall be computed from four or more data points spaced at approximately equal intervals over each one-hour period. Data recorded during periods of system breakdowns, repairs, calibration checks and zero and span adjustments shall not be ~~intended~~ *included* in the data averages computed under this subsection *subdivision*. An arithmetic or integrated average of all data may be used. The data output of all continuous monitoring systems may be recorded in reduced or nonreduced form (e.g., ppm pollutant and percent O₂ of lb or pollutant per million Btu). All excess emissions should be converted into units of the standard using the applicable conversion procedures specified in the applicable standard. After conversion into units of the standard, the data may be rounded to the same number of significant digits used to specify the applicable standard (e.g., rounded to the nearest one percent opacity).

III. C. Specific procedures. Specific procedures for emission monitoring may be found in the rule covering the source type in question.

APPENDIX T.

REASONABLY AVAILABLE CONTROL TECHNOLOGY GUIDELINES FOR STATIONARY SOURCES OF NITROGEN OXIDES.

9 VAC 5-40-311. *Reasonably available control technology guidelines for stationary sources of nitrogen oxides.*

I. A. General. Unless otherwise approved by the board, this appendix section defines reasonably available control technology for the purposes of compliance with 9 VAC 5-40-310 A for the source types specified here.

II. B. Definitions.

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

B. 2. As used in this appendix section, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

G. 3. Terms defined.

"Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to be the capacity rating of the machine or equipment.

"Combustion modification" means any change to the configuration of the burners or the firing method or mechanism of any combustion equipment for the purpose of reducing the emissions of nitrogen oxides. Acceptable combustion equipment changes within the context of this term include, but are not limited to, reburning, burners out of service, flue gas

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recirculation, fuel substitution, engine adjustments, engine modifications, fuel modifications and the addition of over fire air and low nitrogen oxides burner systems.

"*Combustion unit*" means any furnace, with fuel burning equipment appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat to be utilized by direct heat transfer. This includes, but is not limited to, the following facilities: drying ovens, burnout ovens, annealing furnaces, melting furnaces, holding furnaces, and space heaters.

"*Fossil fuel*" means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials for the purpose of creating useful heat.

"*Fuel burning equipment*" means any furnace, with fuel burning equipment appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat to be utilized by indirect heat transfer or producing power. This includes facilities that are designed as boilers to produce steam or heated water and are designed to burn either fossil fuel or refuse derived fuel. It does not include such facilities if designed primarily to burn raw refuse.

"*Fuel burning equipment installation*" means all fuel burning equipment units within a stationary source in operation prior to January 1, 1993.

"*Gas turbine*" means a rotary internal combustion engine fueled by liquid or gaseous fuel.

"*Heat input*" means the total gross calorific value of all fuels burned.

"*Incinerator*" means any device, apparatus, equipment, or structure using combustion or pyrolysis for destroying, or reducing the volume of any material or substance.

"*Internal combustion engine*" means a reciprocating engine which is fueled by liquid or gaseous fuel.

"*Process heater*" means any fuel burning equipment which is used to produce heat for use in a manufacturing process. This term includes boilers which use a heat transfer medium other than water, but does not include drying ovens, steam generating units, or other drying apparatus.

"*Rated capacity*" means the capacity as stipulated in the purchase contract for the condition of 100% load, or such other capacities as mutually agreed to by the board and owner using good engineering judgment.

"*Refuse derived fuel (RDF)*" means fuel produced from solid or liquid waste (includes materials customarily referred to as refuse and other discarded materials) or both which has been segregated and classified, with the useable portions being put through a size reduction and classification process which results in a relatively homogeneous mixture.

"*Steam generating unit*" means any furnace, boiler or other device used for combusting fuel for the purpose of producing steam.

"*Total capacity*" means, with reference to a fuel burning equipment installation, the sum of the rated capacities (expressed as heat input) of all units of the installation which must be operated simultaneously under conditions of 100% use load.

III. C. Definition of reasonably available control technology.

A. 1. For the source types listed below, reasonably available control technology is defined as the emission limits specified below based upon the application of combustion modification; however, owners may elect to use any alternative control technology, provided such alternative is capable of achieving the prescribed emission limits.

4. a. Steam generating units and process heaters.

TABLE T-1 4-4C

Maximum Allowable Emission Rates for Nitrogen Oxides Emissions from Steam Generating Units and Process Heaters (pounds per million BTU *Btu* heat input)

Fuel Type	Firing Method		
	Face* and Tangential	Cyclone	Stokers
Coal -- wet bottom	1.0	.55	N/A
Coal -- dry bottom	.38	N/A	0.4
Oil or Gas or both	.25	.43	N/A
Gas only	.20	N/A	N/A

* Includes wall, opposed and vertical firing methods.

2. b. Gas turbines. The maximum allowable emission rate for nitrogen oxides from gas turbines is as follows:

TABLE T-2 4-4D

Maximum Allowable Emission Rates for Nitrogen Oxides Emissions from Gas Turbines (parts per million by dry volume corrected to 15% oxygen)

Fuel Type	Turbine Type	
	Simple Cycle	Combined Cycle
Gas	42	42
Oil	65/77*	65/77*

* Limit shall be 65 ppm for fuel bound nitrogen (FBN) less than 0.015% and 77 ppm for FBN greater than or equal to .015%

B. 2. Any demonstration of compliance with the limits in subsection A subdivision C 1 of this section shall be on a daily basis.

G. 3. For the source types and sizes listed below, a demonstration of reasonably available control technology is not required as provided in 9 VAC 5-40-310 B.

4. a. Any steam generating unit, process heater or gas turbine with a rated capacity of less than 100,000,000 BTUs *Btu* per hour.

2. b. Any steam generating unit, process heater or gas turbine with an annual capacity factor of less than 5.0%, except that three months following any calendar year during which the capacity factor is 5.0% or greater, the facility shall be subject to 9 VAC 5-40-310 A or B, as applicable, and the owner shall comply with 9 VAC 5-40-310 D or E, as applicable, except the compliance date shall be two years after approval of the schedule by the board. Time periods during which a stand-by unit is used to provide replacement services for a unit being altered to comply with the provisions of 9 VAC 5-40-310 A or B shall not be used as the basis for a determination that the stand-by unit exceeded the annual capacity factor criteria of 5.0%.

3. c. Any combustion unit with a rated capacity of less than 50,000,000 BTUs per hour.

4. d. Any stationary internal combustion engine with a rated capacity of less than 450 hp of output power.

6. e. Any incinerator or thermal or catalytic oxidizer used exclusively as air pollution control equipment.

7. f. Any generator used solely to supply emergency power to buildings during periods when normal power supplies are interrupted and during periods of scheduled maintenance.

IV. D. Emission allocation system.

A. 1. This section *subsection* applies only to steam generating units and gas turbines within fuel burning equipment installations not exempted from the requirements of 9 VAC 5-40-310 B by Section III-C of this appendix *subdivision C 3 of this section*.

B. 2. The maximum allowable nitrogen oxides emissions, expressed as pounds per hour, for a fuel burning equipment installation shall be the product of the total capacity and the applicable emission limit specified in Section III-A-1 *subdivision C 1 a of this section*.

C. 3. The allowable nitrogen oxides emissions for a fuel burning equipment installation when operating at less than total capacity, shall be the product of the percent load and emission allocation. The percent load shall be the quotient of the actual load and the rated capacity. The emission allocation shall be determined using procedures set forth in *subsection D subdivision D 4 of this section*.

D. 4. The emission allocation for each of the fuel burning equipment units of the fuel burning equipment installation shall be its designated portion of the maximum allowable nitrogen oxides emissions from the fuel burning equipment installation when operating at total capacity. The portions shall be proposed by the owner initially and determined in a manner mutually

mutually acceptable to the board and the owner. Once accepted by the board, the portions may not be changed without the consent of the board.

APPENDIX D: FOREST MANAGEMENT AND AGRICULTURE PRACTICES.

9 VAC 5-40-5631. *Forest management and agricultural practices.*

I. A. Open burning is permitted in accordance with Sections II and III of this appendix *subsections B and C of this section* provided the provisions of subsections B through G of 9 VAC 5-40-5620 are met.

II. B. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan:

A. 1. To reduce forest fuels and minimize the effect of wild fires.

B. 2. To control undesirable growth of hardwoods.

C. 3. To control disease in pine seedlings.

D. 4. To prepare forest land for planting or seeding.

E. 5. To create a favorable habitat for certain species.

F. 6. To remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.

III. C. In the absence of other means of disposal, open burning may be used for the following agricultural practices:

A. 1. To destroy undesirable vegetation.

B. 2. To clear orchards and orchard prunings.

C. 3. To destroy fertilizer and chemical containers.

D. 4. To denature seed and grain which may no longer be suitable for agricultural purposes.

E. 5. To prevent loss from frost or freeze damage.

F. 6. To create a favorable habitat for certain species.

G. 7. To destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.

APPENDIX I: LOCAL ORDINANCES ON OPEN BURNING.

9 VAC 5-40-5641. *Local ordinances on open burning.*

I. A. General.

A. 1. If the governing body of any locality wishes to adopt an ordinance governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

B. 2. In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in section III of this appendix *subsection C of this section* is offered as a model.

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~~C. 3.~~ If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.

~~D. 4.~~ If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

~~E. 5.~~ Local ordinances which have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

~~II. B.~~ Establishment and approval of local ordinances varying from the model.

~~A. 1.~~ Any local governing body proposing to adopt or amend an ordinance relating to open burning which differs from the model local ordinance in section ~~III of this appendix subsection C of this section~~ shall first obtain the approval of the board for the ordinance or amendment as specified in section ~~IV of this appendix subdivision A 4 of this section~~. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

~~1. a.~~ The local ordinance shall provide for intergovernmental cooperation and exchange of information.

~~2. b.~~ Adequate local resources will be committed to enforcing the proposed local ordinance.

~~3. c.~~ The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

~~4. d.~~ If a waiver from any provision of *Article 40* (9 VAC 5-40-5600 et seq.) of 9 VAC 5 Chapter 40 has been requested under 9 VAC 5-40-5640, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.

~~B. 2.~~ Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.

~~C. 3.~~ If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.

~~D. 4.~~ Local ordinances are a supplement to state regulations. Any provisions of local ordinances which have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails

to enforce its own ordinance, the board reserves the right to enforce state regulations.

~~E. 5.~~ A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

~~1. a.~~ A public hearing is held prior to granting the variance;

~~2. b.~~ The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and

~~3. c.~~ The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

~~F. 5.~~ 9 VAC 5-20-60 shall not apply to local ordinances concerned solely with open burning.

~~III. C.~~ Model Ordinance.

ORDINANCE NO. (000)

Section (000-1). Title. This article shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose. The purpose of this article is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions. For the purpose of this article and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

A. "Automobile graveyard" means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

B. "Clean burning waste" means waste which does not produce dense smoke when burned and is not prohibited to be burned under this ordinance.

C. "Construction waste" means solid waste which is produced or generated during construction of structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and

the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

D. "Debris waste" means stumps, wood, brush, and leaves from land clearing operations.

E. "Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

F. "Garbage" means rotting animal and vegetable matter accumulated by a household in the course of ordinary day to day living.

G. "Hazardous waste" means refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

H. "Household refuse" means waste material and trash normally accumulated by a household in the course of ordinary day to day living.

I. "Industrial waste" means all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills.

J. "Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

K. "Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further definitions of these terms.

L. "Local landfill" means any landfill located within the jurisdiction of a local government.

M. "Open burning" means the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney.

N. "Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

O. "Refuse" means trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial,

industrial, institutional, trade, construction, land clearing, forest management and emergency operations.

P. "Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

Q. "Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, and nonhazardous industrial solid waste. See Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further definitions of these terms.

R. "Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

S. "Special incineration device" means a pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, the regulations of the Virginia Waste

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Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in ~~Part VII of the Regulations for the Control and Abatement of Air Pollution 9 VAC 5 Chapter 70 (9 VAC 5-70-10 et seq.)~~ or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions. The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Section (000-6). Permissible open burning.

A. Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the conditions are met:

1. The burning takes place on the premises of the private property; (and)
2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and)
3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road¹).

B. Open burning is permitted for the disposal of household refuse by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;
2. Animal carcasses or animal wastes are not burned;
3. Garbage is not burned; (and)
4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and)
5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road²).

C. Open burning is permitted for disposal of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations which may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);
2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
4. The burning shall be conducted at the greatest distance practicable from highways and air fields,
5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;
6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and
7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for disposal of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill which meets the provisions of the regulations of the Virginia Waste Management Board,
2. The burning shall be attended at all times;

¹ This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.

² This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning construction waste, clean burning debris waste, or clean burning demolition waste;
4. All reasonable effort shall be made to minimize the amount of material that is burned;
5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board.

The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

E. (Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during June, July, or August.³)

Section (000-7). Permits.

A. When open burning of debris waste (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions which are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met which are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

6. The use of special incineration devices shall be allowed only for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste.

7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (designated local official).

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of \$-----⁴.)

Section (000-8). Penalties for violation.

A. Any violation of this ordinance is punishable as a Class I misdemeanor. (See § 15.1-901 of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

~~CHAPTER 50. APPLICABILITY OF AND COMPLIANCE WITH AIR QUALITY STANDARDS; NEW AND MODIFIED STATIONARY SOURCES.~~

~~CHAPTER 60. APPLICABILITY OF AND COMPLIANCE WITH AIR QUALITY STANDARDS; EXISTING, NEW, AND MODIFIED SOURCES. HAZARDOUS AIR POLLUTANT SOURCES.~~

~~CHAPTER 70. APPLICABILITY OF AND COMPLIANCE WITH AIR QUALITY STANDARDS; NONATTAINMENT AREAS. AIR POLLUTION EPISODE PREVENTION.~~

³ This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

⁴ The fee stipulation in this section is optional at the discretion of the jurisdiction.

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CHAPTER 80. PERMITS FOR NEW AND MODIFIED STATIONARY SOURCES.

PART I. PERMITS FOR NEW AND MODIFIED SOURCES.

PART II. OPERATING PERMITS.

APPENDIX R. STATIONARY SOURCE PERMIT EXEMPTION LEVELS.

9 VAC 5-80-11. Stationary source permit exemption levels.

I. A. General.

A. 1. In determining whether a facility is exempt from the requirements of 9 VAC 5-80-10, the provisions of ~~Sections II through VIII of this appendix subsections B through H of this section~~ are independent from the provisions of ~~Section IX of this appendix subsection I of this section~~. A facility must be determined to be exempt both under the provisions of ~~Sections II through VIII subsections B through H taken as a group and under the provisions of Section IX subsection I~~ to be exempt from 9 VAC 5-80-10.

~~B. 2. In determining whether a facility is exempt from the requirements of 9 VAC 5-80-10 under the provisions of Sections II and III of this appendix subsections B and C of this section, the definitions in the rule in Part IV 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.~~

~~H. B. New source exemption levels by size. Facilities as specified below shall be exempt from the requirements of 9 VAC 5-80-10 as they pertain to construction, reconstruction or relocation.~~

A. 1. Fuel burning equipment.

~~1. a. Any unit using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.~~

~~2. b. Any unit using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.~~

~~3. c. Any unit using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.~~

~~4. d. Any unit using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour, unless subject to a new source performance standard in Article 5 (9 VAC 5-50-400 et seq., Environmental Protection Agency Standards of Performance for New Stationary Sources) of 9 VAC 5 Chapter 50.~~

~~5. e. Any unit that powers a mobile source but is removed for maintenance or repair and testing.~~

~~B. 2. Solvent metal cleaning operations. Any solvent metal cleaning operation with an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~G. 3. Volatile organic compound storage and transfer operations. Any storage or transfer operation involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:~~

~~1. a. Volatile organic compound transfer operations.~~

~~a. (1) Any tank of 2,000 gallons or less storage capacity.~~

~~b. (2) Any operation outside the volatile organic compound emissions control areas designated in 9 VAC 5-40-20, Appendix P 9 VAC 5-20-206.~~

~~2. b. Volatile organic compound storage operations. Any tank of 40,000 gallons or less storage capacity.~~

~~D. 4. Large appliance coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~E. 5. Magnet wire coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~F. 6. Automobile and light duty truck coating application systems.~~

~~1. a. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~2. b. Any vehicle refinishing operation.~~

~~G. 7. Can coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~H. 8. Metal coil coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~I. 9. Paper and fabric coating application system. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~J. 10. Vinyl coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~K. 11. Metal furniture coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven~~

tons per year, 40 pounds per day and eight pounds per hour.

~~L~~ 12. Miscellaneous metal parts and products coating application systems.

1. a. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

2. b. Any vehicle customizing coating operation, if production is less than 20 vehicles per day.

3. c. Any vehicle refinishing operation.

4. d. Any fully assembled aircraft or marine vessel exterior coating operation.

~~M~~ 13. Flatwood paneling coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

~~N~~ 14. Graphic arts (printing processes). Any printing process if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.

~~O~~ 15. Petroleum liquid storage and transfer operations. Any storage or transfer operation involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of 9 VAC 5-80-10 when used or stored at ambient temperatures); and any operation specified below:

1. a. Bulk terminals - gasoline bulk loading operations. Any operation outside volatile organic compound emissions control areas designated in 9 VAC 5-10-20, Appendix P 9 VAC 5-20-206.

2. b. Gasoline dispensing facilities. Any gasoline dispensing facility.

3. c. Bulk plants - gasoline bulk loading operations.

a. (1) Any facility with an expected daily throughput of less than 4,000 gallons.

b. (2) Any operation outside volatile organic compound emissions control areas designated in 9 VAC 5-10-20, Appendix P 9 VAC 5-20-206.

4. d. Account/tank trucks. No permit is required for account/tank trucks, but permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

5. e. Petroleum liquid storage operations.

a. (1) Any tank of 40,000 gallons or less storage capacity.

b. (2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer.

e. (3) Any tank storing waxy, heavy pour crude oil.

~~P~~ 16. Dry cleaning plants. Any petroleum dry cleaning plant with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9 VAC 5-50-410.

~~Q~~ 17. Wood product manufacturing plants. Any addition of, relocation of or change to a woodworking machine within a plant provided the system air movement capacity, expressed as the cubic feet per minute of air, and maximum control efficiency of the control system are not decreased.

~~R~~ 18. Wood sawmills. Any wood sawmill.

~~III~~ C. New sources with no exemptions. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9 VAC 5-80-10 as they pertain to construction, reconstruction or relocation.

A. 1. Petroleum refineries.

B. 2. Asphalt plants.

G. 3. Chemical fertilizer manufacturing plants.

D. 4. Kraft pulp mills.

E. 5. Sand and gravel processing facilities.

F. 6. Coal preparation plants.

G. 7. Stone quarrying and processing facilities.

H. 8. Portland cement plants.

I. 9. Wood product manufacturing plants.

J. 10. Secondary metal operations.

K. 11. Lightweight aggregate process operations.

L. 12. Feed manufacturing plants.

M. 13. Incinerators.

N. 14. Coke ovens.

O. 15. Sulfuric acid production units.

P. 16. Sulfur recovery operations.

Q. 17. Primary metal operations.

R. 18. Nitric acid production units.

S. 19. Concrete batching plants.

T. 20. Pharmaceutical products manufacturing plants.

U. 21. Rubber tire manufacturing plants.

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~~IV. D.~~ New source exemption levels by emission rate. Facilities not covered by ~~Section II or III of this appendix subsection B or C of this section~~ with uncontrolled emission rates less than all of the significant emission rates specified below shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to construction, reconstruction or relocation.

EMISSION RATES.

Carbon monoxide - 100 tons per year.

Nitrogen dioxide - 40 tons per year.

Sulfur dioxide - 40 tons per year.

Particulate matter (PM₁₀) - 15 tons per year.

Volatile organic compounds - 25 tons per year.

Lead - 0.6 ton per year.

~~V. E.~~ Modified source exemption levels by emission rate. Facilities with increases in uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to modification.

EMISSION RATES.

Carbon monoxide - 100 tons per year.

Nitrogen dioxide - 10 tons per year.

Sulfur dioxide - 10 tons per year.

Particulate matter (PM₁₀) - 10 tons per year.

Volatile organic compounds - 10 tons per year.

Lead - 0.6 ton per year.

~~VI. F.~~ New source performance standards and national emission standards for hazardous air pollutants. Regardless of the provisions of Sections II, IV and V of this appendix ~~subsections B, D and E of this section~~, affected facilities subject to ~~Article 5 (9 VAC 5-50-400 et seq., Environmental Protection Agency Standards of Performance for New Stationary Sources) of 9 VAC 5 Chapter 50 or subject to Article 1 (9 VAC 5-60-60 et seq., Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants) of 9 VAC 5 Chapter 60~~ shall not be exempt from the provisions of 9 VAC 5-80-10, with the exception of those facilities which would be subject only to recordkeeping or reporting requirements or both under ~~Article 5 (9 VAC 5-50-400 et seq., Environmental Protection Agency Standards of Performance for New Stationary Sources) of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq., Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants) of 9 VAC 5 Chapter 60~~.

~~VII. G.~~ Relocation of portable facilities. Regardless of the provisions of ~~Sections II, III, IV, V and VI of this appendix subsections B, C, D, E and F of this section~~, a permit will not be required for the relocation of a portable emissions unit for which a permit has been previously granted under 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.) provided that:

1. The emissions of the unit at the new location would be temporary;

2. The emissions from the unit would not exceed its allowable emissions;

3. The unit would not undergo modification or reconstruction;

4. The unit is suitable to the area in which it is to be located; and

5. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

~~VIII. H.~~ Requirements for exempted facilities. Any facility exempted from the provisions of 9 VAC 5-80-10 by ~~Section II of this appendix subsection B of this section~~ shall be subject to the provisions of any rule which would apply to the facility if it were an existing source unless specifically exempted by that rule.

~~IX. I.~~ Exemption levels for toxic pollutants.

~~A. 1.~~ Facilities with an increase in the uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV® in ~~subsection D subdivision 1 4 of this section~~ shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to modification, provided the increase in the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

~~B. 2.~~ Facilities with an uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV® in ~~subsection D subdivision 1 4 of this section~~ shall be exempt from the requirements of 9 VAC 5-80-10 pertaining to construction, reconstruction or relocation, provided the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.

~~C. 3.~~ If more than one exemption formula applies to a toxic pollutant emitted by a facility, the uncontrolled emission rate of that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV® has been established.

~~D. 4.~~ Exemption formulas.

~~4. a.~~ For toxic pollutants with a TLV-C®, the following exemption formula applies:

Exempt Emission Rate (pounds per hour) =

$$\text{TLV-C® (mg/m}^3\text{) x 0.033}$$

~~2. b.~~ For toxic pollutants with both a TLV-STEL® and a TLV-TWA®, the following exemption formulas apply:

Exempt Emission Rate (pounds per hour) =

$$\text{TLV-STEL} \textcircled{\text{R}} (\text{mg}/\text{m}^3) \times 0.033$$

Exempt Emission Rate (tons per year) =

$$\text{TLV-TWA} \textcircled{\text{R}} (\text{mg}/\text{m}^3) \times 0.145$$

3. c. For toxic pollutants with only a TLV-TWA $\textcircled{\text{R}}$, the following exemption formulas apply:

Exempt Emission Rate (pounds per hour) =

$$\text{TLV-TWA} \textcircled{\text{R}} (\text{mg}/\text{m}^3) \times 0.066$$

Exempt Emission Rate (tons per year) =

$$\text{TLV-TWA} \textcircled{\text{R}} (\text{mg}/\text{m}^3) \times 0.145$$

E. 5. Exemption from the requirements of 9 VAC 5-80-10 for any facility which has an uncontrolled emission rate of any toxic pollutant without a TLV $\textcircled{\text{R}}$ shall be determined by the board using available health effects information.

F. 6. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in 9 VAC 5-50-200.

G. 7. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9 VAC 5-80-10 as they pertain to modification, construction, reconstruction or relocation.

1. a. Incinerators, unless the incinerator is used exclusively as air pollution control equipment.

2. b. Ethylene oxide sterilizers.

3. c. Boilers or industrial furnaces burning hazardous waste fuel for energy recovery or destruction, or processing for materials recovery or as an ingredient. For the purposes of this section subsection, hazardous waste fuel means (i) hazardous waste that is burned for energy recovery or (ii) fuel produced from hazardous waste by processing, blending or other treatment (see Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.). Hazardous waste means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness, or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (§ 10.1-1400 of the Virginia Waste Management Act). This subsection subdivision shall not apply to boilers or industrial furnaces burning used oil, which is defined as any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities (Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.).

APPENDIX O.

Reserved.

VA.R. Doc. No. R97-514; Filed May 7, 1997, 12:01 p.m.

Title of Regulation: 9 VAC 5-20-10 et seq. General Provisions (amending 9 VAC 5-20-21).

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

Effective Date: July 1, 1997.

Summary:

9 VAC 5-20-21 lists documents that are incorporated by reference into the Regulations for the Control and Abatement of Air Pollution. In addition to federal documents (which include portions of the Code of Federal Regulations as listed in Rules 5-5 and 6-1), a number of technical documents are listed. These documents include materials from the American Society for Testing and Materials, the American Petroleum Institute, and the National Fire Prevention Association. The regulation amendments update the documents to include the most current version available.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Alma Jenkins, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070.

9 VAC 5-20-21. Documents incorporated by reference.

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 nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

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

C. Failure to include in this 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 section may be examined by the public at the headquarters

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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.

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

1. Code of Federal Regulations.

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

(1) 40 CFR Part 50 - National Primary and Secondary Ambient Air Quality Standards.

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

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

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

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

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

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

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

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

(i) Appendix I - Reserved.

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

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

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

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

(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 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.

(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 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.

(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 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.

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

2. U.S. Environmental Protection Agency.

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

(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.

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

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.

3. U.S. government.

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).

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

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

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

(1) D323-82 94, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)"

from Section 5, Volume 05.01 of the 1985 Annual Book of ASTM Standards.

(2) D97-87 93, "Standard 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 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.

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

5. American Petroleum Institute (API).

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.

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

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

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).

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

7. National Fire Prevention Association (NFPA).

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

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 4985 1990 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 4987 1993 Edition.

(3) NFPA 30A, Automotive and Marine Service Station Code, 4987 1993 Edition.

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

VA.R. Doc. No. R97-517; Filed May 7, 1997, 11:58 a.m.

REGISTRAR'S NOTICE: Section 9-6.14:4.1 C 11 of the Code of Virginia excludes from Article 2 of the Administrative Process Act general permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia if the board proceeds under the following conditions: (i) provides a Notice of Intended Regulatory Action (NOIRA) in conformance with the provisions of § 9-6.14:7.1 B; (ii) no less than 30 days from publication of the NOIRA, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 9-6.14:7.1 F; and (iv) conducts at least one public hearing on the proposed general permit. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 5-500-10 et seq. Exclusionary General Permit for Federal Operating Permit Program.

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

Effective Date: July 1, 1997.

Summary:

The general permit provides a legally enforceable mechanism for major sources subject to the federal operating permit program (Article 1 (9 VAC 5-80-50 et seq.) of Part II of 9 VAC 5 Chapter 80), promulgated to meet the requirements of Title V of the Clean Air Act, to be excluded from the program provided they (i) apply for coverage under the general permit and (ii) maintain their actual annual emissions at a level that is 50% of the major source potential to emit applicability thresholds for the federal operating permit program. The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the stationary source meets the 50% of the threshold criteria and all other requirements of the regulation.

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Sources that operate under the general permit are excluded from the federal operating permit program as long as their actual emissions are kept below levels that represent 50% of the major source thresholds for the federal operating permit program. Sources choosing to operate under the general permit must submit annual emissions data, along with a compliance certification, to confirm that their emissions remain below the 50% emissions level. Should a source exceed the 50% emissions level, there would be no enforcement actions or penalties; however, the source would be subject to the federal operating permit program unless their potential to emit could be limited by a state operating permit.

The substantial change to the proposal is as follows: the proposed provisions allowing sources that are subject to the federal operating permit program to be excluded if their actual emissions are kept below levels that represent 75% of the major source applicability thresholds have been changed to levels that reflect 50% of the major source applicability thresholds.

Agency Contact: Copies of the regulation may be obtained from Alma Jenkins, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070.

CHAPTER 500.

EXCLUSIONARY GENERAL PERMIT FOR FEDERAL OPERATING PERMIT PROGRAM.

PART I. DEFINITIONS.

9 VAC 5-500-10. General.

A. For the purpose of this chapter or any orders issued by the board, the words or terms shall have the meanings given them in 9 VAC 5-500-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law (§ 10.1-1300 of the Code of Virginia) or in this chapter, terms used shall have the meaning given them by 9 VAC 5-80-60 (definitions, federal operating permit), 9 VAC 5-10-20 (general definitions, Regulations for the Control and Abatement of Air Pollution), or commonly ascribed to them by recognized authorities, in that order of priority.

9 VAC 5-500-20. Terms defined.

"Actual emissions" means the actual emissions of a pollutant from a stationary source or emissions unit reflecting the rate, in tons per year, at which the source or unit actually emitted the pollutant during the most recent annual period. Actual emissions shall be calculated using the source or unit's actual operating hours; production rates; and types of materials processed, stored, or combusted during the annual period. Valid continuous emission monitoring data or source test data shall be preferentially used to determine actual emissions. In the absence of valid continuous emissions monitoring data or source test data, the basis for determining actual emissions shall be any or all of the following as may be determined by the department: throughputs of process materials; throughputs of materials stored; usage of materials; data provided in manufacturer's product

specifications, material volatile organic compound content reports or laboratory analyses; other information required by this chapter and other regulations of the board; or information requested in writing by the department. All calculations of actual emissions shall use U.S. Environmental Protection Agency or department approved methods, including emission factors and assumptions.

"Annual period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Federal operating permit" means a permit issued pursuant to Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80.

"General permit" means the terms and conditions in Part IV (9 VAC 5-500-150 et seq.) of this chapter that meet the requirements of Part III (9 VAC 5-500-90 et seq.) of this chapter.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or emissions units or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110(a)(2)(C) (42 USC § 7410(a)(2)(C)), 165 (42 USC § 7475) and 173 (42 USC § 7503) of the federal Clean Air Act.

"Nonattainment pollutant" means volatile organic compounds or nitrogen oxides (NO_x).

"Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5-10-10 et seq. through 9 VAC 5-80-10 et seq.

"State operating permit" means a permit issued pursuant to 9 VAC 5-80-40.

PART II. GENERAL PROVISIONS.

9 VAC 5-500-30. Purpose.

A. The purpose of the exclusionary general permit is to provide a legally enforceable mechanism for major sources subject to the federal operating permit program (Article 1 (9 VAC 5-80-50 et seq.) [or Article 3 (9 VAC 5-80-360 et seq.)] of Part II of 9 VAC 5 Chapter 80) to be excluded from the program provided they maintain their actual annual emissions at a specified level that is less than the potential to emit applicability thresholds for the federal operating permit program. This is one of two alternative permit mechanisms the State Air Pollution Control Board has to accomplish this purpose; the other is a state operating permit program (9 VAC 5-80-40).

B. This chapter does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the stationary source meets the criteria in 9 VAC 5-500-90 A and all other requirements of this chapter.

9 VAC 5-500-40. *Applicability.*

A. Except as provided in subsection E of this section, this chapter applies to any major source.

B. This chapter applies throughout the Commonwealth of Virginia.

C. This chapter applies only to regulated air pollutants.

D. This chapter shall not apply to the following stationary sources:

1. Any stationary source that has applied for a federal operating permit in a timely manner and in conformance with Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80 and is awaiting final action by the board.

2. Any stationary source required to obtain a federal operating permit under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80 for any reason other than being a major source. This includes, but is not limited to, the following: any source, including an area source, subject to any standard or other requirement adopted pursuant to § 111 or § 112 of the federal Clean Air Act (42 USC § 7411 or 42 USC § 7412).

3. Any stationary source which has a valid federal operating permit.

4. Any stationary source which has a valid state operating permit with federally enforceable conditions or other federally enforceable limits limiting its potential to emit below the applicable thresholds for a major source.

E. Notwithstanding subdivisions D 1 and D 3 of this section, nothing in this section shall prevent any stationary source which has had a federal operating permit from obtaining an authorization to operate under the general permit in lieu of maintaining an application for a federal operating permit or upon rescission of a federal operating permit if the owner demonstrates that the stationary source meets the criteria in 9 VAC 5-500-90 A for two annual periods (24 consecutive months).

F. Notwithstanding subdivision D 4 of this section, nothing in this section shall prevent any stationary source which has had a state operating permit from obtaining an authorization to operate under the general permit in lieu of maintaining an application for a state operating permit or upon rescission of a state operating permit if the owner demonstrates that the stationary source meets the criteria in 9 VAC 5-500-90 A for two annual periods (24 consecutive months).

9 VAC 5-500-50. *General.*

A. Any owner or other person shall operate the stationary source in conformance with all applicable regulations of the board.

B. Sources desiring authority to operate under the general permit shall register with the department as required under 9 VAC 5-20-160 and certify that they will operate in compliance with the provisions of this chapter. All emissions units or

groups of emissions units, other than those units identified in 9 VAC 5-80-720, shall be registered.

C. Sources authorized to operate under the general permit shall be exempt from the requirements of 9 VAC 5-80-40 and Articles 1 (9 VAC 5-80-50 et seq.), 2 (9 VAC 5-80-310 et seq.) and 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80.

D. No provision of this chapter shall limit the power of the board to issue an operating permit pursuant to 9 VAC 5-80-40.

E. This chapter shall not relieve any stationary source from complying with requirements of (i) any otherwise applicable permit issued pursuant to the new source review program, (ii) any condition or term of any new source review program permit, or (iii) any provision of a new source review permit program. This chapter shall not preclude issuance of any new source review permit with conditions or terms necessary to ensure compliance with this chapter.

[F. This chapter shall not relieve any stationary source from complying with any applicable requirement.

G. In cases where the provisions of Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of 9 VAC 5 Chapter 80 conflict with those of this section, the provisions of Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of 9 VAC 5 Chapter 80 shall prevail.]

[~~F. H.~~] By the adoption of this chapter, the board confers upon the department the administrative, enforcement and decision making authority enumerated therein.

[~~G. The act of granting or denying an application for authority to operate under the general permit shall not be subject to judicial review.~~]

[~~H. I.~~] Except as provided in subsection J of this section, any decisions of the board or department made pursuant to this chapter may be appealed pursuant to 9 VAC 5-20-90 or 9 VAC 5-20-130 B 2.

[J. The act of granting or denying an application for authority to operate under the general permit shall not be subject to judicial review.]

9 VAC 5-500-60. *Existence of permit no defense.*

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

9 VAC 5-500-70. *Circumvention.*

A. No owner or other person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants which would otherwise violate this chapter. Such concealment includes, but is not limited to, either of the following:

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1. The use of gaseous diluents to achieve compliance with a visible emissions standard or with a standard which is based on the concentration of a pollutant in gases discharged to the atmosphere.

2. The piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

B. This section does not prohibit the construction of a stack.

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

9 VAC 5-500-80. Enforcement of a general permit.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any term or condition of the general permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. Authorization to operate under the general permit may be revoked or terminated if the owner does any of the following:

- a. Knowingly makes material misstatements in the application for coverage 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 chapter.

3. The department may suspend, under such conditions and for such period of time as the department may prescribe, any authorization to operate under the general permit for any of the grounds for revocation or termination contained in subdivision 2 of this subsection or for any other violations of the regulations of the board.

B. The following requirements apply with respect to penalties:

1. An owner who violates, fails, neglects or refuses to obey any provision of this chapter or the Virginia Air Pollution Control Law, any applicable requirement, or any permit term or 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 chapter or the Virginia Air Pollution Control Law, any applicable requirement, or any permit term or 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 department shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate the authorization to operate under the general permit in accordance with the Administrative Process Act [(§ 9-6.14:1 et seq. of the Code of Virginia)].

2. Appeal from any decision of the department 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.

D. 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 general permit.

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 department 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 department shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

E. The board may enforce the general permit 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.

PART III.

GENERAL PERMIT ADMINISTRATIVE PROCEDURES.

9 VAC 5-500-90. Requirements for department issuance of authority to operate under the general permit.

A. The department may issue an authorization to operate under the general permit for a stationary source that does not exceed any of the following levels of actual emissions in the two annual periods (24 consecutive months) preceding submittal of an application under 9 VAC 5-500-100:

1. [75 50] tons per year of any regulated air pollutant (excluding nonattainment pollutants in serious nonattainment areas and hazardous air pollutants).
2. [37.5 25] tons per year of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area.
3. [7.5 5] tons per year of a single hazardous air pollutant.
4. [48.75 12.5] tons per year of any combination of hazardous air pollutants.

B. Stationary sources or emissions units subject to the general permit shall comply with all requirements applicable to other permits issued under 9 VAC 5-80-10 et seq.

C. The general permit shall be issued in accordance with § 9-6.14:4.1 C 11 of the Administrative Process Act.

9 VAC 5-500-100. Applications for coverage under the general permit.

A. Stationary sources that qualify for the general permit may apply to the department for coverage under the terms and conditions of the general permit. Stationary sources that do not qualify for the general permit shall apply for a permit issued under the provisions of 9 VAC 5-80-40 or Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80.

B. A single application is required identifying each emissions unit or groups of emissions units to be covered by the general permit. The application shall be submitted according to the requirements of this section, 9 VAC 5-500-110 and procedures approved by the department. Where several emissions units are included in one stationary source, a single application covering all units in the source shall be submitted. A separate application is required for each stationary source subject to this chapter.

C. The application shall meet the requirements of this chapter and include all information necessary to determine qualification for and to assure compliance with the general permit.

D. Any application form, report, compliance certification, or other document required to be submitted to the department under this chapter shall be signed by a responsible official and shall include the following certification signed by the responsible official:

"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."

E. Subsection D of this section shall be interpreted to mean that the signer must have some form of direction or supervision over the persons gathering the data and preparing the document (the preparers), although the signer need not personally nor directly supervise these activities. The signer need not be in the same line of authority as the preparers, nor do the persons gathering the data and preparing the form need to be employees (e.g., outside contractors can be used). It is sufficient that the signer has authority to assure that the necessary actions are taken to prepare a complete and accurate document.

F. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

9 VAC 5-500-110. Required application information.

A. The department shall furnish application forms to applicants. The information required by this section shall be determined and presented according to procedures and methods acceptable to the department.

B. Each application for coverage under the general permit shall include, but not be limited to, the information listed in subsections C through G 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).
3. Identification of each emissions unit or group of emission units at the stationary source for which the application is submitted.

D. Emissions related information as follows shall be included:

1. All emissions of regulated air pollutants for which the stationary source qualifies as a major source.
 - a. An application shall describe all emissions units or groups of emissions units. This requirement shall not apply to emissions units listed in 9 VAC 5-80-720.

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b. Emissions shall be determined as provided in the application form or other instructions from the department.

c. Fugitive emissions shall be included in the application to the extent that the emissions are necessary to determine if the stationary source qualifies as a major source.

2. Calculations on which the information in subdivision 1 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of the calculations and to enable the department to verify the actual emissions and potential to emit for the stationary source. This may include, but not be limited to, the following:

a. Actual and potential emissions in tons per annual period for each emissions unit or group of emission units.

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

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

E. Additional information that the department deems necessary to implement and enforce other requirements of the regulations of the board or to determine the applicability of such requirements.

F. Any additional information or documentation that the department deems necessary to review and analyze the air pollution aspects of the source.

G. Compliance certification information as follows shall be included: a certification of compliance with all applicable requirements by a responsible official.

9 VAC 5-500-120. General permit content.

A. The general permit issued under this chapter shall include the elements listed in subsections B through H of this section.

B. The general permit shall contain terms and conditions setting forth the applicable emissions levels and requirements sufficient to assure compliance with the criteria in 9 VAC 5-500-90 A and the regulations of the board.

C. The general permit shall contain terms and conditions setting forth the following requirements with respect to emission testing sufficient to assure compliance with the emissions levels and requirements of the permit:

1. Requirements providing that owners of stationary sources subject to the general permit may conduct emission tests, establish and maintain records, and make periodic emission reports as necessary to determine the actual emissions for the stationary source.

2. For cases where the owner elects to use the emission testing to determine the actual emissions for the

stationary source, the permit shall prescribe the procedures for the conduct of the emission tests.

D. The general permit shall contain terms and conditions setting forth the following requirements with respect to emission monitoring sufficient to assure compliance with the emissions levels and requirements of the permit:

1. Requirements providing that owners of stationary sources subject to the general permit may install, calibrate, operate and maintain equipment for continuously monitoring and recording emissions or process parameters or both, and establish and maintain records, and make periodic emission reports as necessary to determine the actual emissions for the stationary source.

2. For cases where the owner elects to use the emission monitoring to determine the actual emissions for the stationary source, the permit shall prescribe the procedures for the installation, calibration, operation and maintenance of equipment for continuously monitoring and recording emissions or process parameters or both.

E. The general permit shall contain terms and conditions setting forth the following requirements concerning recordkeeping and reporting sufficient to assure compliance with the emissions levels and requirements of the permit:

1. Requirements providing that owners of stationary sources subject to the general permit shall establish and maintain records, provide notifications and reports, revise reports, report emission tests or monitoring results in a manner and form and using procedures as the general permit may prescribe.

2. The permit shall prescribe the procedures for providing notifications and reports, revising reports, maintaining records or reporting emission test or monitoring result.

3. The recordkeeping and reporting provisions in this subsection shall not apply to stationary sources with actual emissions less than or equal to all of the following for every annual period:

a. 20 tons per year of a regulated air pollutant (excluding nonattainment pollutants in a serious nonattainment area and hazardous air pollutants).

b. 10 tons per year of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area.

c. 2 tons per year of a single hazardous air pollutant.

d. 5 tons per year of any combination of hazardous air pollutants.

4. Within 30 days of a written request by the department, the owner of a stationary source not maintaining records pursuant to subdivision 3 of this subsection shall demonstrate that the stationary source's emissions are not in excess of the applicable quantities set forth in subdivision 3 of this subsection.

F. The general permit shall contain terms and conditions with respect to enforcement sufficient to assure compliance with the emissions levels and requirements of the permit.

G. The general permit shall contain terms and conditions setting forth the following requirements with respect to compliance sufficient to assure compliance with the terms and conditions of the permit:

1. Requirements providing for compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

2. Requirements providing for inspection and entry sufficient to assure compliance with the terms and conditions of the permit. At a minimum the permit shall require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the department 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.

H. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with the regulations of the board, the Virginia Air Pollution Control Law and the federal Clean Air Act.

9 VAC 5-500-130. Issuance of an authorization to operate under the general permit.

A. The department shall grant authorization to operate under the conditions and terms of the general permit to stationary sources that meet the criteria set forth in 9 VAC 5-500-90 A.

B. The issuance of an authorization to operate under the general permit to a stationary source covered by the general permit shall not require compliance with the public participation procedures under § 9-6.14:4.1 C 11 of the Administrative Process Act.

C. A response to each application for coverage under the general permit shall be provided. The general permit may specify a reasonable time period after which a stationary source that has submitted an application shall be deemed to be authorized to operate under the general permit.

D. Stationary sources covered under a general permit shall be issued a letter, a certificate, or any other document

which would attest that the stationary source is authorized to operate under the general permit. The document shall be accompanied by a copy of the general permit and the application submitted by the permittee.

E. The letter, certificate or other document, along with the copy of the general permit and application, shall be retained by the department and at the stationary source.

9 VAC 5-500-140. Transfer of authorizations to operate under the general permit.

A. No person shall transfer an authorization to operate under the general permit from one stationary source to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall comply with any permit issued to the previous owner. The new owner shall notify the department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall comply with any permit issued under the previous source name. The owner shall notify the department of the change in source name within 30 days of the name change.

PART IV.

GENERAL PERMIT TERMS AND CONDITIONS.

9 VAC 5-500-150. Emissions levels and requirements.

A. Sources operating under this permit shall meet the emissions levels in 9 VAC 5-500-160 in order to continue to operate under the authority of this permit.

B. Sources operating under this permit shall operate in compliance with the standards set in 9 VAC 5-40-10 et seq., 9 VAC 5-50-10 et seq. and 9 VAC 5-60-10 et seq. and other applicable provisions of the regulations of the board.

C. The permittee shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the emissions levels specified in 9 VAC 5-500-160.

9 VAC 5-500-160. Emissions levels.

In order to operate under the authority of this permit, a stationary source shall not exceed any of the following levels of actual emissions in any annual period:

1. [~~75~~ 50] tons per year of any regulated air pollutant (excluding nonattainment pollutants in serious nonattainment areas and hazardous air pollutants).

2. [~~37.5~~ 25] tons per year of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area.

3. [~~7.5~~ 5] tons per year of a single hazardous air pollutant.

4. [~~18.75~~ 12.5] tons per year of any combination of hazardous air pollutants.

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9 VAC 5-500-170. Compliance determination and verification by emission testing.

A. The permittee may conduct emission tests, establish and maintain records, and make periodic emission reports as necessary to determine the actual emissions for the stationary source.

B. Upon request of the department, the permittee shall conduct emission tests as are necessary to determine the type or amount or both of the pollutants emitted from the source or whether the source will be in compliance with 9 VAC 5-500-160 or any other provisions of any regulation of the board.

C. The emission testing conducted under this section shall be carried out in accordance with the provisions of 9 VAC 5-40-10 et seq., 9 VAC 5-50-10 et seq. and 9 VAC 5-60-10 et seq., as applicable, or by other means acceptable to the department.

9 VAC 5-500-180. Compliance determination and verification by emission monitoring.

A. The permittee may install, calibrate, operate and maintain equipment for continuously monitoring and recording emissions or process parameters or both, and establish and maintain records, and make periodic emission reports as necessary to determine the actual emissions for the stationary source.

B. Upon request of the department, the permittee shall install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both as are necessary to determine the type or amount or both of the pollutants emitted from the source or whether the source will be in compliance with 9 VAC 5-500-160 or any other provisions of any regulation of the board.

C. The emission monitoring conducted under this section shall be carried out in accordance with the provisions of 9 VAC 5-40-10 et seq., 9 VAC 5-50-10 et seq. and 9 VAC 5-60-10 et seq., as applicable, or by other means acceptable to the department.

D. Where the applicable requirement cited in subsection C of this section 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 general permit, as reported pursuant to 9 VAC 5-500-190 C 1. 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 subsection.

9 VAC 5-500-190. Recordkeeping requirements.

A. The permittee, unless exempted under 9 VAC 5-500-120 E 3, shall comply with the recordkeeping requirements in this section. The recordkeeping requirements of this permit shall not replace any recordkeeping requirement contained in other state or federal rules or regulations.

B. The permittee shall keep and maintain records for each emission unit or groups of emission units sufficient to determine the actual emissions of the stationary source. Such information shall be summarized in a monthly log, maintained on site for five years, and be made available to the department upon request. Any records, notifications, reports, or tests providing the basis for the summary shall be retained by the permittee for at least five years following the date of such records, notifications, reports or tests.

C. To meet the requirements of 9 VAC 5-500-180 with respect to recordkeeping, the permittee shall comply with the following:

1. Records of monitoring information shall include the following:

- a. The date, place as defined in the permit, and time of sampling or measurements.
- b. The date(s) analyses were performed.
- c. The company or entity that performed the analyses.
- d. The analytical techniques or methods used.
- e. The results of such analyses.
- f. The operating conditions existing at the time of sampling or measurement.

2. Records of all monitoring data and support information shall be retained 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.

D. The recordkeeping requirements under this section shall be carried out in accordance with the provisions of 9 VAC 5-40-10 et seq., 9 VAC 5-50-10 et seq. and 9 VAC 5-60-10 et seq., as applicable, or by other means acceptable to the department.

9 VAC 5-500-200. Reporting requirements.

A. The permittee, unless exempted under 9 VAC 5-500-120 E 3, shall comply with the reporting requirements in this document (including reports) required by a permit term or condition to be submitted to the department shall contain a certification by a responsible official that meets the requirements of 9 VAC 5-500-100 D.

B. The permittee shall submit, according to procedures established by the department, an annual emissions update. Any additional information requested by the department under this subsection shall be submitted to the department within 30 days of the date of request.

C. To meet the requirements of 9 VAC 5-500-180 with respect to reporting, the permittee shall submit reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports.

D. If a stationary source or emissions unit is shut down, the permittee shall notify the board within six months of the date the stationary source or emissions unit is shut down.

9 VAC 5-500-210. Compliance certifications.

A. The department shall evaluate a stationary source's compliance with the emissions levels in 9 VAC 5-500-160 as part of the department's annual compliance process. In performing the evaluation, the department shall consider any annual emission update submitted pursuant to 9 VAC 5-500-200.

B. Upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department to perform the following:

1. 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.
2. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.
3. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.
4. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

C. The permittee shall submit, along with the annual emissions update, to the department an annual compliance certification containing 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. 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 information as the department may require to determine the compliance status of the source.

9 VAC 5-500-220. Consequences of failure to remain below emissions levels.

A. A stationary source subject to the general permit shall be subject to applicable federal requirements for a major source, including 9 VAC 5-80-40 (state operating permit) and Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80 (federal operating permit), when either of the following conditions occur:

1. Commencing on the first day following any annual period in which the stationary source exceeds an emissions levels specified in 9 VAC 5-500-160.

2. Commencing on the first day following any annual period in which the owner can not demonstrate that the stationary source is in compliance with the emissions levels specified in 9 VAC 5-500-160.

B. Any stationary source who becomes subject to federal applicable requirements for a major source as provided in subsection A of this section may continue to operate under the authority of the permit until a state operating permit or federal operating permit is issued provided the following conditions are met:

1. At least 30 days prior to the end of any annual period during which the actual emissions of the stationary source is expected to exceed the emissions levels in 9 VAC 5-500-160, the owner has notified the department that he will submit an application for a federal operating permit or state operating permit, and
2. A complete federal operating permit application is received by the department, or the permit action to obtain a state operating permit is completed, within 12 months of the date of notification.

9 VAC 5-500-230. Enforcement.

A. Violation of this permit is subject to the enforcement provisions including, but not limited to, those contained in 9 VAC 5-20-10 et seq. and §§ 10.1-1309, 10.1-1311 and 10.1-1316 of the Virginia Air Pollution Control Law.

B. 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.

C. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds (i) for enforcement action or (ii) for termination, revocation and reissuance, or modification of the authorization to operate under the general permit.

D. 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.

E. The authorization to operate under the general permit may be revoked and reissued or terminated for cause as specified in 9 VAC 5-500-80. The filing of a request by the permittee for authorization revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

F. The owner of the stationary source shall be subject to enforcement action under 9 VAC 5-500-80 for operation without a permit if the stationary source is later determined by the department not to qualify for the conditions and terms of the general permit.

G. The general permit does not convey any property rights of any sort, or any exclusive privilege.

H. The permittee shall furnish to the department, within a reasonable time, any information that the department may

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request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the authorization to operate under the general permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department 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 department along with a claim of confidentiality.

9 VAC 5-500-240. Review and evaluation of regulation.

A. Prior to [~~three years after effective date of regulation~~ July 1, 2000], the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter, or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

VA.R. Doc. No. R97-516; Filed May 7, 1997, 11:59 a.m.

BOARD FOR CONTRACTORS

Title of Regulation: 18 VAC 50-30-10 et seq. Tradesman Rules and Regulations.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: July 1, 1997.

Summary:

This regulation establishes criteria for board certification of electrical, plumbing, heating, ventilation, and air-conditioning tradesmen. This regulatory authority was transferred by statute from the Department of Housing and Community Development to the Department of Professional and Occupational Regulation as of July 1, 1995. The regulation replaces an emergency regulation that became effective on that date. The proposed regulation was amended to reduce the fee for application processing and licensure renewal.

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 Steven L. Arthur, Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-6166.

CHAPTER 30. TRADESMAN [~~CERTIFICATION PROGRAM RULES AND~~] REGULATIONS.

PART I. GENERAL.

18 VAC 50-30-10. Definitions.

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

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the [Virginia] Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).

"Approved" means approved by the Department of Professional and Occupational Regulation.

"Board" means the Board for Contractors.

"Building official/inspector" is an employee of the state, a local building department or other political subdivision who enforces the Virginia Uniform Statewide Building Code.

[~~"Certified tradesman" means an individual who meets the requirements for certification that relate to the trade which he practices.]~~

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

"Division" means a limited [certification] subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration or removal of electrical systems [~~under~~ in accordance with] the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal

training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations.

"Gasfitter" means a tradesman who does gasfitting related work [usually as a division within the HVAC or plumbing trades] in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement or removal of gas piping, propane tanks, and appliances [~~—(excluding hot water systems and central heating systems which require an HVAC heating, ventilation, and air conditioning or plumbing certification)~~] annexed to real property.

"Helper" or "laborer" means a person who assists a [licensed] tradesman [~~certified according to this chapter~~].

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, and mechanical refrigeration systems, including tanks, incidental to the system.

"Journeyman" means a person who possesses the necessary ability, proficiency and qualification to install, repair and maintain specific types of materials and equipment, utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

["Licensed tradesman" means an individual who meets the requirements for licensure that relate to the trade which he practices.]

"Master" means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code.

"Nonparticipating localities" means those cities, towns and counties in Virginia that did not participate in the Department of Housing and Community Development's Tradesman Certification Program prior to July 1, 1995.

"Participating localities" means those cities, towns and counties in Virginia that participated in the Department of Housing and Community Development's Tradesman Certification Program prior to July 1, 1995, by reviewing applications, examining candidates, and issuing journeyman and master cards to qualified tradesmen.

"Plumber" means a tradesman who does plumbing work in accordance with the Virginia Uniform Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;
2. Boilers;

3. Domestic sprinklers;

4. Hot water baseboard heating systems;

[~~5. Water heaters;~~

~~6. Hydronic~~ 5. Hydronic] heating systems;

[~~7. 6.] Process piping;~~

[~~8. 7.] Public/private water supply systems within or adjacent to any building, structure or conveyance;~~

[~~9. 8.] Sanitary or storm drainage facilities;~~

[~~10. 9.] Steam heating systems;~~

[~~11. 10.] Storage tanks incidental to the installation of related systems; [or~~

~~12. 11.] Venting systems [; or~~

12. Water heaters.]

These plumbing tradesmen may also install, maintain, extend or alter the following:

1. Liquid waste systems;
2. Sewerage systems;
3. Storm water systems; and
4. Water supply systems.

"Reinstatement" means having a tradesman [~~certification card license~~] restored to effectiveness after the expiration date has passed.

"Regulant" means tradesman [~~certification-card license~~] holder.

"Renewal" means continuing the effectiveness of a tradesman [~~certification-card license~~] for another period of time.

"Supervisor" means the [~~certified licensed~~] master or journeyman tradesman who has the responsibility to ensure that the final installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code [, one of whom must be on the job site at all times during installation].

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: plumbing; heating, ventilation and air conditioning (HVAC); or electrical work, and divisions within them.

"Tradesman" means a person who engages in or offers to engage in, for the general public for compensation, any of the trades covered by this chapter.

PART II. ENTRY.

18 VAC 50-30-20. Requirements for [~~certification licensure~~] as a journeyman or master tradesman engaging in the trades of plumbing, [plumbing gas-fitting] HVAC (heating,

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ventilation and air conditioning), [HVAC] gas-fitting, or electrical.

Each tradesman who engages in, or offers to engage in, electrical, plumbing, or HVAC work for the general public for compensation shall complete an application furnished by the Department of Professional and Occupational Regulation and shall meet or exceed the requirements set forth below prior to issuance of the [~~certification-card~~ license]. The application shall contain the applicant's name, home address, place of employment, and business address; information on the knowledge, skills, abilities and education or training of the applicant; and an affidavit stating that the information on the application is correct.

[~~If the application is satisfactory to the board,~~] The applicant shall be required to take an oral or written examination to determine [~~the his~~] general knowledge of the trade in which he desires [~~certification licensure~~]. If the applicant successfully completes the examination, a tradesman [~~certification-card~~ application] shall be [~~issued completed~~]. [~~If the application is satisfactory to the board, a tradesman license shall be issued.~~]

18 VAC 50-30-30. General qualifications for [~~certification licensure~~].

Every applicant to the Board for Contractors for [~~certification licensure~~] as a tradesman shall meet the requirements and have the qualifications provided in this section.

1. The applicant shall be at least 18 years old.
2. Unless otherwise exempted, the applicant shall meet the current educational requirements by passing all required courses prior to the time the applicant sits for the examination and applies for [~~certification licensure~~].
3. Unless exempted, the applicant [~~, within 12 months of making application for certification,~~] shall have passed [~~a the applicable~~] written examination provided by the board or by a testing service acting on behalf of the board. [~~Complete applications must be received within the 12-month period.~~]
4. The applicant shall meet the experience requirements as set forth in 18 VAC 50-30-40 [and or] 18 VAC 50-30-50.
5. In those instances where the applicant is required to take the [~~certification~~ license] examination, the applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and the testing service with regard to conduct at the examination shall be grounds for denial of application.
6. The applicant shall disclose his physical home address; a post office box alone is not acceptable.

7. Each nonresident applicant for a tradesman [~~certification-card~~ license] shall file and maintain with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth [; .] In those instances where service is required, the director of the department will mail the court document to the individual at the address [~~filed by them on their certification of record~~].

8. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia Tradesman [~~Certification~~] law (§ 5.1-1128 et seq. of the Code of Virginia) and the regulations of the board.

9. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview with the applicant. 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.

10. [~~The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, or any felony, regardless of the adjudication. Any pleas of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose a conviction, in any jurisdiction, of any misdemeanor or felony. Any plea of "nolo contendere" shall be considered a conviction for the purpose of this subdivision. The record of conviction received from a court shall be accepted as "prima facie" evidence of a conviction or finding of guilt. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~]

11. [~~The applicant shall be in good standing as a tradesman in every jurisdiction where certified; the applicant may not have had a certificate or a certification card which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for certification in Virginia. The applicant shall report any suspensions, revocations, or surrendering of certificate/license in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The board, at its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or surrender of certifications/licenses based on disciplinary action by any jurisdiction.~~]

~~[12. Applicants for certification who do not meet the requirements set forth in subdivisions 10 and 11 of this section may be approved for certification following consideration of their application by the board.]~~

18 VAC 50-30-40. Evidence of ability and proficiency.

A. Applicants for examination to be [certified licensed] as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade, and 240 hours of formal vocational training in the trade; however, experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;

[2. An associate degree or a certificate of completion from at least a two-year program in a tradesman related field from an accredited community college or technical school and two years of practical experience in the trade for which licensure is desired;]

~~[2. 3.]~~ A bachelor degree received from an accredited college or university in an engineering curriculum related to the trade [for which certification is desired] and one year of practical experience in the trade for which [certification licensure] is desired; or

~~[3. 4.]~~ On or after July 1, 1995, an applicant with 10 years of practical experience in the trade as verified by [a sworn statement from a local building official] reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients] attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be [certified licensed] as a master shall furnish evidence that one of the following experience standards has been attained:

1. ~~[Applicants for examination to be certified as a master shall furnish]~~ Evidence that they have one year of experience as a certified journeyman; or

2. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade, as verified by ~~[a sworn statement from a building official]~~ reference letters of experience from any of the following: building officials, building inspectors, current or former employees, contractors, engineers, architects or current or past clients,] attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

18 VAC 50-30-50. Exemptions from examination.

A. An individual certified or licensed by any one of the following agencies shall not be required to fulfill the examination requirement:

1. The Department of Housing and Community Development prior to July 1, 1995; or

2. Any local governing body prior to July 1, 1978.

B. Other methods of exemption from examination are as follows:

1. Successful completion of an apprenticeship program which is approved by the Virginia Apprenticeship Council as evidenced by providing a certificate of completion or other official document.

2. Any tradesman who [has] had a Class B registration in the trade prior to January 1, 1991 [, and has been continuously licensed as a Class B contractor]. Candidates for this exemption must submit documentation from the Board for Contractors [or a local building official who can provide an affidavit which attests to the candidate's performance of the trade or trades prior to January 1, 1991].

3. Individuals residing in nonparticipating localities applying for masters tradesman [certification licenses] between July 1, 1995, and July 1, 1998, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate 10 years of discipline-free experience as set forth in this chapter. Those individuals shall provide the following information with their application:

a. An affidavit from a building official [or building inspector] attesting to the required number of years of experience and competency in the trade, on a form provided by the department; and

b. Three reference letters of experience from any of the following: building officials, [building inspectors,] current or former employers, contractors, engineers, architects or current or past clients, on a form provided by the department.

4. Individuals residing in nonparticipating localities applying for journeyman tradesman [certification licensure] between July 1, 1995, and July 1, 1998, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate six years of discipline-free experience as set forth in this chapter. Those individuals shall provide the following information with their application:

a. An affidavit from a building official [or building inspector] attesting to the required number of years of experience and competency in the trade, on a form provided by the department; and

b. Three reference letters of experience from any of the following: building officials, [building inspectors,] current or former employers, contractors, engineers, architects or current or past clients, on a form provided by the department.

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5. Individuals residing in nonparticipating localities applying for masters tradesman [~~certification~~ license] between July 1, 1995, and July 1, 1998, who are currently employed by a Class A or B contractor as the "Qualified Individual" (QI) in the licensed classification held by the firm, shall qualify for [~~certification~~ licensure] as a master without having to sit for the examination. Upon the QI's leaving the employment of that firm, the contractor shall name another full-time QI in accordance with the then current Board for Contractor regulations (18 VAC 15-22-10 et seq.).

6. Individuals applying for masters or journeyman tradesman [~~certification~~ license] between July 1, 1995, and July 1, 1998, who were certified prior to July 1, 1995, by any locality as a "gas-fitter" only, shall qualify for [~~certification~~ licensure] without having to sit for the examination.

C. Exemptions from [~~certification~~ licensure] are as follows:

1. Helpers or laborers who assist [~~certified~~ licensed] tradesmen [~~are not required to have journeyman or master certification.~~ ;]

2. Any person who performs plumbing, [~~plumbing gas-fitting,~~] HVAC, [~~HVAC~~] gas-fitting, or electrical work not for the general public for compensation[- ;]

3. Any person who installs television or telephone cables, [~~or~~] lightning arrestor systems [- , or wiring or equipment operating at less than 50 volts;]

4. Installers of wood stove equipment, masonry chimneys or prefabricated fireplaces shall be exempt from certification as a HVAC tradesman.

18 VAC 50-30-60. Application and issuance of tradesman [~~certification~~ cards licenses].

A. All applicants for [~~certification~~ licensure] as a tradesman must make application with the department to obtain the required tradesman [~~certification~~ card license].

B. Unless otherwise exempted, an applicant must successfully complete an examination to be issued a tradesman [~~card~~ license] and deemed [~~certified~~ qualified].

C. The board shall receive and review applications and forward approved applications to the national testing organizations designated by the board. At its discretion, the board may delegate the application receipt and review process to the testing organization.

D. The applicant shall present to the board evidence of successful completion of a board approved examination.

18 VAC 50-30-70. Other recognized programs.

Individuals certified [or licensed] as journeyman or master by governing bodies located outside the Commonwealth of Virginia shall be considered to be in compliance with this chapter if the board or its designee has determined the certifying system to be substantially equivalent to the Virginia system. These individuals must meet the following requirements:

1. The applicant shall be at least 18 years of age.

2. The applicant shall have received the tradesman certification [or license] by virtue of having passed in the jurisdiction of original certification [or licensing] a written or oral examination deemed to be substantially equivalent to the Virginia examination.

3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia Tradesman [~~Certification~~] laws (§ 54.1-1127 et seq. of the Code of Virginia) and the Board for Contractors' Tradesman [~~Certification~~] Regulations (18 VAC 50-30-10 et seq.).

4. The applicant shall be in good standing as a certified [or licensed] tradesman in every jurisdiction where certified [or licensed] and the applicant shall not have had a certificate as a tradesman which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for [~~certification~~ licensure] in Virginia.

5. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution or physical injury, or any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

6. Applicants for [~~certification~~ licensure] who do not meet the requirements set forth in subdivisions 4 and 5 of this subsection may be approved for [~~certification~~ licensure] following consideration by the board.

18 VAC 50-30-80. Revocation of [~~certification~~ licensure].

A. [~~Certification~~ Licensure] may be revoked for misrepresentation or a fraudulent application, or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.

B. Any building official [or building inspector] who finds that an individual is practicing as a tradesman without a tradesman [~~certification~~ license] as required by state law shall file a report [on a form provided by the board] to such effect with the Board for Contractors, 3600 West Broad Street, Richmond, Virginia 23230.

C. Any building official [or building inspector] who has reason to believe that a tradesman is performing incompetently as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code shall file a report [on a form provided by the board] to such effect with the board.

D. The department shall have the power to require remedial education and to suspend, revoke or deny renewal of the tradesman [~~certification~~ license] of any individual who is found to be in violation of the statutes or regulations governing the practice of [~~certified~~ licensed] tradesmen in the Commonwealth.

18 VAC 50-30-90. Fees for [certification licensure] and examination.

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board nonrefundable and the date of receipt by the [board department] or its agent is the date which will be used to determine whether or not it is on time. [Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.] In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge of \$25.

B. Tradesman [certification license] - original [certificate] fee - [certification] by examination. The fee for an initial tradesman [certification-card license] shall be [\$65 \$45].

C. Tradesman [certification license] - original [certificate] fee - without [an] examination, through successful completion of an appropriate apprenticeship program offered through the Virginia Voluntary Apprenticeship Act. The fee for an initial tradesman [certification-card license] shall be [\$65 \$45].

D. Tradesman [certification license] - original [certification] fee - through the "grandfather" clause of § 54.1-1131 of the Code of Virginia. The fee for an initial tradesman [Certification-card license] shall be [\$65 \$50].

E. Commencing July 1, 1995, the Department of Professional and Occupational Regulation will institute a program of issuing tradesmen's cards. Those tradesmen who hold valid tradesmen cards issued by local governing bodies prior to July 1, 1978, or by the Department of Housing and Community Development prior to July 1, 1995, must replace the old cards with new cards issued by the Board for Contractors.

In order to obtain the tradesman card issued by the Board for Contractors, the individual must use the current application form provided by the Department of Professional and Occupational Regulation. The fee for card exchange application and processing is \$10. [The term of the initial certification period shall be determined by the board. The initial term of the license certification will be for a period of at least 12 months, but not to exceed 24 months.] As a matter of administrative necessity, the department will assign expiration dates in a manner that will stagger renewals for these applicants. Once [this the] initial [certification] period ends, all [certification] renewals will be for a period of 24 months.

18 VAC 50-30-100. Fees for examinations.

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 \$100 for

the journeyman exam and \$125 for the master exam for any of the trades.

18 VAC 50-30-110. Fees for duplicate cards.

The fee for a duplicate card shall be as follows:

First request	\$10
Second request	\$20
Third request	\$40 and a report sent to the Enforcement Section.

Any request for the issuance of such a card must be in writing to the board.

PART III. RENEWAL AND REINSTATEMENT.

18 VAC 50-30-120. Renewal.

A. [A] tradesman [certification-card license] issued under this chapter shall expire two years from the last day of the month in which [they were it was] issued as indicated on the tradesman [certification-card license].

B. The application fee for renewal of a tradesman [certification license] is [\$50 \$25]. All fees required by the board are nonrefundable and shall not be prorated.

The board will mail a renewal notice to the [tradesman certification-card holder regulant] outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the [tradesman certification-card holder regulant] of the obligation to renew. If the [tradesman certification-card holder regulant] fails to receive the renewal notice, a photocopy of the tradesman [certification-card license] may be submitted with the required fee as an application for renewal within 30 days of the expiration date [of the tradesman certification-card].

The date on which the renewal fee is received by the department or its agent will determine whether the [tradesman certification-card holder regulant] is eligible for renewal or required to apply for reinstatement.

The board may deny renewal of a tradesman [certification card license] for the same reasons as it may refuse initial [certification issuance] or discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 9-6.14:4.1 et seq. of the Code of Virginia).

Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

18 VAC 50-30-130. Reinstatement.

A. Should the Department of Professional and Occupational Regulation fail to receive [a tradesman certification-card holder's the] renewal application or fees within 30 days of the [tradesman certification-card] expiration date, the [tradesman certification-card holder

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regulant] will be required to reinstate the tradesman [certification-card license].

B. The application fee for reinstatement of a tradesman [certification-card license] (all designations) is [\$65 \$50] (this is in addition to the [\$50 \$25] renewal fee which makes the total fee for reinstatement [\$115 \$75]). All fees required by the board are nonrefundable and shall not be prorated.

Applicants for reinstatement shall meet the requirements of [18 VAC 50-30-120 18 VAC 50-30-30].

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent will determine whether the [tradesman-certification-card license] is reinstated or a new application [for certification] is required.

In order to ensure that tradesman [certification-card license] holders are qualified to practice as tradesmen, no reinstatement will be permitted once one year from the expiration date [of the tradesman-certification-card] has passed. After that date the applicant must apply for a new tradesman [certification-card license] and meet the then current entry requirements.

Any tradesman activity conducted subsequent to the expiration of the [certification-card license] may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

C. The board may deny reinstatement of a tradesman [certification-card license] for the same reasons as it may refuse initial [certification issuance] or discipline a [tradesman-certification-card-holder regulant]. The [tradesman-certification-card-holder regulant] has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 9-6.14:4.1 et seq. of the Code of Virginia).

Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

18 VAC 50-30-140. Status of [tradesman-certification-card holder regulant] during the period prior to reinstatement.

A. When a [tradesman-certification-card regulant] is reinstated, the [tradesman-certification-card-holder individual] shall continue to have the same [tradesman-certification-card] number and shall be assigned an expiration date two years from the previous expiration date [of the tradesman certification-card].

B. A [tradesman-certification-card-holder regulant] who reinstates his tradesman [certification-card license] shall be regarded as having been continuously [certified licensed] without interruption. Therefore, the [tradesman-certification-card-holder regulant] shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period. Nothing in these regulations shall divest the board of its authority to discipline a [tradesman-certification-card-holder regulant] for

a violation of the law or regulations during the period of [certification licensure].

PART IV.

STANDARDS OF PRACTICE.

18 VAC 50-30-150. Changes, additions, or deletions to trade designations of tradesman [certificate license] holders.

A [tradesman-certification-card-holder regulant] may change a designation or obtain additional designations by demonstrating, on a form provided by the board, acceptable evidence of experience, and examination if appropriate, in the designation sought. The experience, and successful completion of examinations, must be demonstrated by meeting the requirements found in Part II (18 VAC 50-30-20 et seq.) of this chapter.

The fee for each change or addition is \$25. All fees required by the board are nonrefundable.

While a tradesman may have multiple trade designations on his [certification-card license], the renewal date [for the tradesman-card] will be based upon the date the card was originally issued to the individual by the board, not the date of the most recent trade designation addition [to the certification-card].

If a [tradesman-certification-card-holder regulant] is seeking to delete a designation, then the individual must provide a signed statement listing the designation to be deleted. There is no fee for the deletion of a designation. (If the [tradesman-certification-card-holder regulant] only has one trade or level designation, the deletion of that designation will result in the termination of the [tradesman certification-card license].)

18 VAC 50-30-160. Change of address.

Any change of address shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the [tradesman-certification-card-holder's regulant's] failure to receive notices or correspondence due to the [tradesman-certification-card-holder's regulant's] failure to report a change of address. A post office address alone is not acceptable.

18 VAC 50-30-170. Transfer of tradesman [certification-card license] prohibited.

No tradesman [certification-card license] issued by the board shall be assigned or otherwise transferred.

PART V.

STANDARDS OF CONDUCT.

18 VAC 50-30-180. Filing of complaints.

All complaints against [tradesmen regulants] may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

18 VAC 50-30-190. Prohibited acts.

The following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia or the regulations of the board;
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a tradesman [certification card license];
3. Where the [tradesman regulant] has failed to report to the board, in writing, the suspension or revocation of a tradesman [license,] certificate or card by another state or their conviction in a court of competent jurisdiction of a building code violation;
4. Gross negligence in the practice of a trade;
5. Misconduct in the practice of a trade;
6. A finding of improper or dishonest conduct in the practice of the trade by a court of competent jurisdiction;
7. For [certified licensed] tradesmen performing jobs under \$1,000, abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);
8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;
9. Aiding or abetting an [uncertified/] unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed [Auncertified] contractor; or allowing one's [certification license] to be used by an [uncertified unlicensed] individual;
10. Where the [tradesman regulant] has offered, given or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;
11. Where the [tradesman regulant] has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

12. Having failed to inform the board in writing, within 30 days, that the tradesman has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Uniform Statewide Building Code, as amended; and

15. Practicing in a classification or specialty service for which the tradesman is not [certified licensed].

PART VI. SCHOOLS/PROFESSIONAL EDUCATION.

18 VAC 50-30-200. Professional education.

Pursuant to § 54.1-1130 of the Code of Virginia, unless certified through exemption, candidates for [certification licensure] as journeymen are required to [(i)] complete 240 hours classroom hours of tradesman educational courses in their specialty and four years of practical experience in the trade for which [certification licensure] is desired to qualify to sit for the licensing examination, [or (ii)] have [an associate degree or a certificate of completion from at least a two-year program in a tradesman related field from an accredited community college or technical school and two years of practical experience in the trade for which licensure is desired, or (iii)] have [a bachelor degree received from an accredited college or university in an engineering curriculum related to the trade [for which certification is desired,] and one year of practical experience in the trade for which [certification licensure] is desired (see Part II, 18 VAC 50-30-20 et seq., of this chapter).

Tradesman [certification] courses must be completed through accredited colleges, universities, junior and community colleges, adult distributive, marketing and vocational technical programs, Virginia Apprenticeship Council programs [and or] proprietary schools approved by the Virginia Department of Education.

VA.R. Doc. No. R97-440; Filed May 2, 1997, 11:52 a.m.

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CRIMINAL JUSTICE SERVICES BOARD

REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Criminal Justice Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 6 VAC 20-90-10 et seq. Rules Relating to Regional Criminal Justice Training Academies (amending 6 VAC 20-90-20, repealing 6 VAC 20-90-50).

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

Effective Date: July 1, 1997.

Summary:

This amendment reflects legislative changes of the 1997 General Assembly which added a tenth regional criminal justice training academy. The Piedmont Regional Criminal Justice Training Academy will serve the counties of Patrick, Henry and Pittsylvania, and the cities of Martinsville and Danville.

Agency Contact: Copies of the regulation may be obtained from Ron Bessent, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone (804) 786-7802.

6 VAC 20-90-20. Designation.

A. The regional academies set forth below are designated as regional academies and are eligible to receive allocated funds from the department.

Cardinal Criminal Justice Academy
Salem, Virginia

Central Shenandoah Criminal Justice Training Academy
Waynesboro, Virginia

Central Virginia Criminal Justice Academy
Lynchburg, Virginia

Crater Criminal Justice Academy
Petersburg, Virginia

Hampton Roads Regional Academy of Criminal Justice
Hampton Newport News, Virginia

New River Criminal Justice Training Academy
Radford, Virginia

Northern Virginia Criminal Justice Academy
Arlington Ashburn, Virginia

Rappahannock Regional Criminal Justice Academy
Fredericksburg, Virginia

Southwest Law Enforcement Academy
Richlands Bristol, Virginia

*Piedmont Regional Criminal Justice Training Academy
Martinsville, Virginia*

B. Jurisdictions may operate their own independent training academies; however, no department state funds will be available for such academies. A jurisdiction, within or without the Commonwealth, may join a regional academy at any time subject to complying with the policies established by the board.

C. A regional academy site may be changed by the academy governing body, with the approval of the board.

D. Training, where practical, shall be conducted at designated satellite locations throughout the geographical confines of the regional academy to ensure minimum travel for student officers.

E. The board shall define geographical boundaries of designated regional academies.

6 VAC 20-90-50. Effective date. (Repealed.)

~~These rules shall be effective on and after April 1, 1991, and thereafter until amended or repealed.~~

VA.R. Doc. No. R97-486; Filed May 7, 1997, 9:57 a.m.

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

REGISTRAR'S NOTICE: The Department of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14:4.1 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulations: 4 VAC 15-20-10 et seq. Definitions and Miscellaneous: In General (amending 4 VAC 15-20-150, 4 VAC 15-20-160, and 4 VAC 15-20-200; repealing 4 VAC 15-20-170).

4 VAC 15-30-10 et seq. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4 VAC 15-30-40).

4 VAC 15-40-10 et seq. Game: In General (amending 4 VAC 15-40-60, 4 VAC 15-40-70 and 4 VAC 15-40-240).

4 VAC 15-50-10 et seq. Game: Bear (amending 4 VAC 15-50-70, 4 VAC 15-50-120; adding 4 VAC 15-50-25).

4 VAC 15-70-10 et seq. Game: Bobcat (amending 4 VAC 15-70-20 and 4 VAC 15-70-30).

4 VAC 15-90-10 et seq. Game: Deer (amending 4 VAC 15-90-20, 4 VAC 15-90-70, 4 VAC 15-90-80, 4 VAC 15-90-90, 4 VAC 15-90-110, 4 VAC 15-90-160, 4 VAC 15-90-170, 4 VAC 15-90-190, 4 VAC 15-90-200, 4 VAC 15-90-210, 4 VAC 15-90-220, 4 VAC 15-90-250 and 4 VAC 15-90-280; adding 4 VAC 15-90-195 and 4 VAC 15-90-290).

4 VAC 15-110-10 et seq. Game: Fox (amending 4 VAC 15-110-10, 4 VAC 15-110-50, 4 VAC 15-110-75, and 4 VAC 15-110-90; repealing 4 VAC 15-110-40).

4 VAC 15-130-10 et seq. Game: Mink (repealing 4 VAC 15-130-30).

4 VAC 15-140-10 et seq. Game: Muskrat (repealing 4 VAC 15-140-30).

4 VAC 15-160-10 et seq. Game: Opossum (adding 4 VAC 15-160-31; repealing 4 VAC 15-160-30 and 4 VAC 15-160-40).

4 VAC 15-180-10 et seq. Game: Pheasant (repealing 4 VAC 15-180-20 and 4 VAC 15-180-30).

4 VAC 15-190-10 et seq. Game: Quail (amending 4 VAC 15-190-10; repealing 4 VAC 15-190-50).

4 VAC 15-210-10 et seq. Game: Raccoon (adding 4 VAC 15-210-51; repealing 4 VAC 15-210-50 and 4 VAC 15-210-60).

4 VAC 15-230-10 et seq. Game: Squirrel (amending 4 VAC 15-230-40).

4 VAC 15-240-10 et seq. Game: Turkey (amending 4 VAC 15-240-20 and 4 VAC 15-240-60).

4 VAC 15-280-10 et seq. Game: Pelts and Furs (amending 4 VAC 15-280-30).

4 VAC 15-290-10 et seq. Game: Permits (amending 4 VAC 15-290-130; adding 4 VAC 15-290-115).

4 VAC 15-310-10 et seq. Game: Woodchuck (repealing 4 VAC 15-310-10).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 1997, with the exception of 4 VAC 15-30-40 F, which will become effective January 1, 1998.

Summary:

The amendments are a result of the board's regular biennial review of regulations for game; nonreptilian terrestrial and avian nongame wildlife; and hunting and trapping, including the length of seasons, bag limits, and methods of take for game.

The amendments to 4 VAC 15-20-10 et seq., Definitions And Miscellaneous: In General (i) prohibit the construction of tree stands on Department of Conservation and Recreation lands; (ii) add sika deer (Cervus nippon), feral hog (Sus scrofa), nutria (Myocastor coypus), and woodchuck (Marmota monax) to those species designated as nuisance species; (iii) repeal the section which allows taking and possession of most species of native rodents for private use; and (iv) consolidate three types of permits (commercial, private, and shooting preserve propagation) into one for a reduced fee at \$12.50 and remove the reference to deer farming permits.

The amendments to 4 VAC 15-30-10 et seq., Definitions and Miscellaneous: Importation, Possession, Sale, Etc. of Animals, limit the importation, possession, and sale of prairie dogs (Cynomys spp.) by adding them to the department's list of predatory or undesirable nonnative (exotic) animals.

The amendments to 4 VAC 15-40-10 et seq., Game: In General (i) allow the use of dogs for chasing or training between September 1 and March 31 on national forest lands or department-owned lands during raccoon hound field trials sanctioned by nationally recognized kennel clubs and permitted by the department and the U.S. Forest Service; (ii) allow the possession of a bow or gun which is either unloaded or cased, rather than both unloaded and cased, or dismantled; (iii) exempt department employees from the prohibition on possessing loaded firearms while engaged in official duties; (iv) allow the possession of handguns by individuals possessing a concealed handgun permit on national forest lands or department-owned lands; (v) clarify the type of captive waterfowl to be used in dog training; (vi) allow the training of dogs on rabbit and nonmigratory game birds on the Weston Wildlife Management Area from September 1 through March 31; and (vii) allow special permits for animal population control to be issued during closed season.

The amendments to 4 VAC 15-50-10 et seq., Game: Bear (i) expand the hunting season on black bear in the cities of Chesapeake and Suffolk by moving the opening

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day from the fourth Monday in November to the first Monday in November; (ii) allow disabled hunters to use crossbows to hunt bear on private property during the early special archery season; and (iii) allow bear hound training season in the counties of Bland, Pulaski and Wythe and change the season dates to allow the training of bear hounds from the last Saturday in August through the last Saturday in September.

The amendments to 4 VAC 15-70-10 et seq., Game: Bobcat (i) change the closing date of the bobcat trapping season from January 31 to the last day of February to coincide with other recommended furbearer trapping season dates and (ii) change the bag limit from six to 12 bobcats taken by hunting and trapping combined.

The amendments to 4 VAC 15-90-10 et seq., Game: Deer (i) remove the G. Richard Thompson Wildlife Management Area from the two-week west of the Blue Ridge general firearms deer season into the eastern seven-week general firearms deer season; (ii) standardize language on the use of crossbows by disabled hunters to hunt deer on private property during the early special archery season; (iii) reduce the special early muzzleloading season from two weeks to one week beginning the second Monday in November, and allow either-sex deer to be taken on the second Monday in November during the special early muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties, and west of the Blue Ridge Mountains except in nine counties and on national forest lands in five counties. Other amendments to 4 VAC 15-90-10 et seq., Game: Deer (iv) reduce the daily bag limit for deer from two per day to one per day west of the Blue Ridge Mountains, limit the number of antlered deer to be taken per hunter to one during the special early muzzleloading season west of the Blue Ridge Mountains; (v) allow for the use of bonus deer permits on public lands, such as state parks, state forests, national wildlife refuges, military areas, etc. as authorized by the managing agency (use of bonus deer permits will continue to be prohibited on department-owned and national forest lands); limit the number of bonus permits to one per person per license year; (vi) allow two days of either-sex deer hunting during the general firearms season on the G. R. Thompson Wildlife Management Area; (vii) establish full season either-sex deer hunting during the general firearms season in the cities of Hampton and Newport News, the Town of Chincoteague, Prince William County and on the Pocahontas State Park; (viii) remove the Pocahontas State Park from the one day either-sex deer hunting category during the general firearms season; (ix) remove the Powhatan Wildlife Management Area from the first Saturday and last six hunting days either-sex deer hunting day category and into 4 VAC 15-90-191 (first two Saturdays and the last six hunting days category), and remove the reference to Warren and York counties; (x) add a section to have the first two Saturdays and the last six hunting days as either-sex deer hunting days during the general firearms season in Amelia, Appomattox, Brunswick, Buckingham, Charlotte, Chesterfield, Cumberland, Dinwiddie,

Fluvanna, Goochland, Lunenburg, Mecklenburg, Nottoway, Powhatan, Prince Edward, and Prince George counties; (xi) include the Town of Chincoteague in the exception to Accomack County removing it from the first three Saturdays and last 24 hunting days either-sex deer hunting day category so it can be added to 4 VAC 15-90-160 (full season either-sex category); (xii) remove the counties of Amelia, Appomattox, Brunswick, Buckingham, Charlotte, Chesterfield, Cumberland, Dinwiddie, Fluvanna, Goochland, Lunenburg, Mecklenburg, Nottoway, Powhatan, Prince Edward, and Prince George from the first two Saturdays and last 12 hunting days either-sex deer hunting category and add them to 4 VAC 15-90-191 (first two Saturdays and last six days), a total reduction of six either-sex deer hunting days; and the County of Prince William and the cities of Newport News and Hampton from this category to 4 VAC 15-90-160 (full season); (xiii) remove the prohibition on bucks only hunting in that portion of Dickenson County closed to hunting and allow deer hunting in the entire county; and remove the Thompson Wildlife Management Area from the buck only hunting category; (xiv) remove the prohibition of deer hunting in a portion of Dickenson County; (xv) allow the sale of deer hooves of legally taken deer; and (xvi) establish a special quality deer management area.

The amendments to 4 VAC 15-110-10 et seq., Game: Fox (i) remove the prohibition on hunting fox with dogs in the City of Newport News and the counties of Loudoun and parts of Fairfax and Fauquier; (ii) repeal the section allowing the trapping of foxes in Albemarle County during the month of November allowing the fox trapping season in Albemarle County to fall within the general statewide season which opens November 15, and with the amendment to 4 VAC 15-110-50, will run through the last day of February; (iii) change the closing date of the fox trapping season from January 31 to the last day of February to coincide with other furbearer trapping season dates; (iv) remove the sunset clause which would cause the provisions of 4 VAC 15-110-75 to expire after May 25, 2001, unless reenacted; 4 VAC 15-110-75 allows foxhound training preserve permittees or licensed trappers designated by a permittee to live-trap and transport red and gray foxes from September 1 through the last day of February for the purpose of stocking permitted foxhound training preserves; and (v) remove the prohibition on hunting fox with dogs in 17 counties to be consistent with § 29.1-516 of the Code of Virginia, which provides for a continuous open season for hunting fox with dogs; the prohibition on hunting fox with dogs in the George Washington/Jefferson National Forest and on the Gathright, Goshen, Highland, and Little North Mountain Wildlife Management Areas remains in effect.

The amendment to 4 VAC 15-130-10 et seq., Game: Mink, repeals the section allowing mink to be trapped from December 15 through March 10 in certain counties, thus resulting in the mink trapping season in these counties falling within the general statewide season of December 1 through the last day of February.

The amendment to 4 VAC 15-140-10 et seq., Game: Muskrat, repeals the section allowing muskrat to be trapped from December 15 through March 10 in certain counties, thus resulting in the muskrat trapping season in these counties falling within the general statewide season of December 1 through the last day of February.

The amendments to 4 VAC 15-160-10 et seq., Game: Opossum, establish a statewide trapping season for opossum from November 15 through the last day of February and repeal the sections providing for seasons of different time periods east and west of the Blue Ridge Mountains.

The amendments to 4 VAC 15-180-10 et seq., Game: Pheasant, repeal the section setting a bag limit and cock bird only restriction, and repeal the section prohibiting the hunting or shooting of pheasants in Lancaster, Northumberland, Richmond and Westmoreland counties.

The amendments to 4 VAC 15-190-10 et seq., Game: Quail, move the season opening date from the fourth Monday in November to the second Monday in November, and repeal the section prohibiting the hunting of quail in the snow.

The amendments to 4 VAC 15-210-10 et seq., Game: Raccoon, establish a statewide trapping season for raccoon from November 15 through the last day of February, and repeal the sections providing for seasons of different time periods east and west of the Blue Ridge Mountains.

The amendment to 4 VAC 15-230-10 et seq., Game: Squirrel, allows disabled hunters to use crossbows to hunt squirrel on private property during the early special archery season.

The amendments to 4 VAC 15-240-10 et seq., Game: Turkey, remove Camp Peary from the two-week fall season category thus allowing it to be included in the six-week fall season, and allow disabled hunters to use crossbows to hunt turkey on private property during the early special archery season.

The amendment to 4 VAC 15-280-10 et seq., Game: Pelts and Furs, clarifies the recording requirements and establishes a reporting interval for holders of permits to breed fur-bearing animals.

The amendments to 4 VAC 15-290-10 et seq., Game: Permits (i) establish a time period from August 1 to May 31 when permits may be issued by the department for field trials with dogs, and (ii) include permit holders engaged in the propagation, exhibition, or rehabilitation of any wild bird, animal, or fish under the existing "duty to comply with permit conditions" regulation and further set forth the penalty for violation of this section.

The amendment to VAC 15-310-10 et seq., Game: Woodchuck, repeals the section that allows a continuous season on taking woodchuck (*Marmota monax*).

Agency Contact: Copies of the regulation may be obtained from Phil Smith, Department of Game and Inland Fisheries,

4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341.

4 VAC 15-20-150. Structures on department-owned lands and national forest lands.

A. It shall be unlawful to construct, maintain or occupy any permanent structure, except by permit, on department-owned lands and national forest lands. This provision shall not apply to structures, stands or blinds provided by the department.

B. It shall be unlawful to maintain any temporary dwelling on department-owned lands for a period greater than 14 consecutive days. Any person constructing or occupying any temporary structure shall be responsible for complete removal of such structures when vacating the site.

C. It shall be unlawful to construct, maintain or occupy any tree stand on department-owned lands and national forest lands; and on Department of Conservation and Recreation owned or controlled lands, provided, that portable tree stands which are not permanently affixed may be used.

4 VAC 15-20-160. Nuisance species designated.

A. The board hereby designates the following species as nuisance species pursuant to § 29.1-100 of the Code of Virginia.

1. Mammals.

- a. House mouse (*Mus musculus*);
- b. Norway rat (*Rattus norvegicus*);
- c. Black rat (*Rattus rattus*); and
- d. Coyote (*Canis latrans*);
- e. Sika deer (*Cervus nippon*);
- f. Feral hog (*Sus scrofa*);
- g. Nutria (*Myocastor coypus*); and
- h. Woodchuck (*Marmota monax*).

2. Birds.

- a. European starling (*Sturnus vulgaris*);
- b. English (house) sparrow (*Passer domesticus*);
- c. Pigeon (Rock Dove) (*Columba livia*); and
- d. Mute swan (*Cygnus olor*).

B. It shall be unlawful to take, possess, transport, or sell all other wildlife species not classified as game, furbearer or nuisance, or otherwise specifically permitted by law or regulation.

4 VAC 15-20-170. ~~Taking and possession of certain rodents for private use. (Repealed.)~~

~~Except as otherwise provided for in the Code of Virginia and regulations of the board, it shall be lawful to take and possess no more than three individuals of any single species of rodents (order Rodentia) for private use except for those species listed as game or furbearers, endangered or~~

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threatened (§ 29.1-568 of the Code of Virginia), or listed as special concern, including the following:

1. Allegheny woodrat (*Neotoma floridana*);
2. Punga mouse (*Peromyscus leucopus easti*);
3. Rock vole (*Microtus chrotorrhinus carolinensis*); and
4. Cotton mouse (*Peromyscus gossypinus gossypinus*).

4 VAC 15-20-200. Fees for miscellaneous permits.

A. Pursuant to §§ 29.1-417, 29.1-418, 29.1-422, 29.1-743 and other applicable provisions of the Code of Virginia, except as provided by this chapter the following fees shall be paid by applicants for the specified permits before any such permit may be issued.

Boat Ramp Special Use

- Nonprofit Public Use \$10
- Private/Commercial Use \$50

Boat Regattas/Tournaments \$50/day

Collect and Sell \$50

Commercial Nuisance Animals \$25

Deer Farming \$350

Exhibitors

- Commercial Use \$50
- Educational/Scientific Use \$20

Exotic Importation and Holding \$10

Field Trial \$25

Foxhound Training Preserves \$50

Hold for Commercial Use \$10

Propagation \$12.50

Commercial Use \$50

Private Use \$20

Licensed Shooting Preserves \$20

Rehabilitation \$10

Scientific Collection \$20

Special Hunting Permit \$10

Striped Bass Tournament \$10

Threatened & Endangered Species \$20

Trout Catch-Out Pond \$50

B. Veterinarians shall not be required to pay a permit fee or to obtain a permit to hold wildlife temporarily for medical treatment.

4 VAC 15-30-40. Importation requirements, possession and sale of nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia:

AMPHIBIANS:

Order	Family	Genus/Species	Common Name
Anura	Bufoiidae	<i>Bufo marinus</i>	Giant or marine toad*
	Pipidae	<i>Xenopus</i> spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	<i>Ambystoma tigrum mavortium</i>	Barred tiger salamander
		<i>A. t. diaboli</i>	Gray tiger salamander
		<i>A. t. melanostictum</i>	Blotched tiger salamander

BIRDS:

Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	<i>Myiopsitta monachus</i>	Monk parakeet*

FISH:

Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	<i>Ictiobus bubalus</i>	Smallmouth buffalo*
		<i>I. cyprinellus</i>	Bigmouth buffalo*
		<i>I. niger</i>	Black buffalo*
	Characidae	<i>Pygopristis</i> spp.	Piranhas
		<i>Pygocentrus</i> spp.	
		<i>Rooseveltiella</i> spp.	
		<i>Serrasalmo</i> spp.	
		<i>Serrasalmus</i> spp.	
		<i>Taddya</i> spp.	
		<i>Taddya</i> spp.	
	Cyprinidae	<i>Aristichthys nobilis</i>	Bighead carp*
		<i>Ctenopharyngodon idella</i>	Grass carp or white amur
		<i>Cyprinella lutrensis</i>	Red shiner
<i>Hypophthalmichthys molitrix</i>		Silver carp*	
<i>Mylopharyngodon piceus</i>		Black carp	
<i>Scardinius erythrophthalmus</i>		Rudd	
<i>Tinca tinca</i>		Tench*	

Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tubenose goby
		Neogobius melanostomus	Round goby
Perciformes	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*
Siluriformes	Clariidae	All Species	Air-breathing catfish

MAMMALS:

Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs*, Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
		Ursidae	All Species
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species	Weasels, Badgers,* Skunks and Otters
		(except Mustela putorius furo)	Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas*
	Protelidae	Proteles cristatus	Aardwolf*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Leporidae	Lepus europeaeus	European hare
		Oryctolagus cuniculus	European rabbit
Rodentia	Sciuridae	Cynomys spp.	Prairie dogs

MOLLUSKS:

Order	Family	Genus/Species	Common Name
Veneroida	Dreissenidae	Dreissena polymorpha	Zebra Mussel

REPTILES:

Order	Family	Genus/Species	Common Name
Squamata	Alligatoridae	All Species	Alligators, Caimans*
	Colubridae	Boiga irregularis	Brown tree snake*
	Crocodylidae	All Species	Crocodiles*
	Gavialidae	All Species	Gavials*

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not

transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A that may be used in the manufacture of products or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for certain mammals. Nonnative (exotic) mammals listed in subsection A that are imported or possessed by dealers, exhibitors, transporters, and researchers who are licensed or registered by the United States Department of Agriculture under the Animal Welfare Act (7 USC §§ 2131 et seq.) will be deemed to be permitted pursuant to this section, provided that those individuals wanting to import such animals notify the department 24 hours prior to importation with a list of animals to be imported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a copy of the current license or licenses or registration or registrations from the U.S. Department of Agriculture, and further provided that such animals shall not be liberated within the Commonwealth.

F. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

F. G. All other nonnative (exotic) animals. All other nonnative (exotic) animals, not listed in subsection A of this section may be possessed and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

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4 VAC 15-40-60. Hunting with dogs or possession of weapons in certain locations during closed season.

A. National forests and department-owned lands. It shall be unlawful to have in possession a bow or a gun which is not unloaded [and ,] cased or dismantled, in the national forests and on department-owned lands and on lands managed by the department under cooperative agreement except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl, in all counties west of the Blue Ridge Mountains and on national forest lands east of the Blue Ridge Mountains and migratory game birds in all counties east of the Blue Ridge Mountains. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the above-mentioned lands. The use of firearms and bows in such ranges during the closed season period will be restricted to the area within established range boundaries. Such weapons shall be required to be unloaded [and ,] cased or dismantled in all areas other than the range boundaries. The use of firearms or bows during the closed hunting period in such ranges shall be restricted to target shooting only and no birds or animals shall be molested.

B. Certain counties. Except as otherwise provided in 4 VAC 15-40-70, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the counties of Augusta, Clarke, Frederick, Page, Shenandoah and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

C. Meaning of "possession" of bow or firearm. For the purpose of this section the word "possession" shall include, but not be limited to, having any bow or firearm in or on one's person, vehicle or conveyance.

D. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands *or during raccoon hound field trials on these lands between September 1 and March 31, both dates inclusive, that are sanctioned by bona fide national kennel clubs and authorized by permits required and issued by the department and the U.S. Forest Service.*

E. It shall be unlawful to possess or transport a loaded gun in or on any vehicle at any time on national forest lands or department-owned lands. For the purpose of this section a "loaded gun" shall be defined as a firearm in which ammunition is chambered or loaded in the magazine or clip, when such magazine or clip is found engaged or partially engaged in a firearm. The definition of a loaded muzzleloading gun will include a gun which is capped or has a charged pan.

F. *The provisions of this section shall not prohibit the possession, transport and use of loaded firearms by employees of the Department of Game and Inland Fisheries while engaged in the performance of their authorized and official duties [, nor shall it prohibit possession of handguns*

where the individual possesses a concealed handgun permit as defined in § 18.2-308 of the Code of Virginia].

4 VAC 15-40-70. Open dog training season.

A. Private lands and certain military areas. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on private lands, Fort A.P. Hill, Fort Pickett, and Quantico Marine Reservation. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting and no game shall be taken; provided, however, that weapons may be in possession when training dogs on captive waterfowl *raised and properly marked mallards* and pigeons so that they may be immediately shot or recovered, except on Sunday.

B. Designated portions of certain department-owned lands. It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area, and Dick Cross Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

C. *Designated department-owned [land(s) lands] . It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on the Weston Wildlife Management Area from September 1 to March 31, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.*

4 VAC 15-40-240. Animal population control.

Whenever biological evidence suggests that populations of game animals may exceed or threaten to exceed the carrying capacity of a specified range, or whenever the health or general condition of a species, [or] the threat of human public health and safety [or significant economic loss that] indicates the need for population reduction, the director is authorized to issue special permits to obtain the desired reduction ~~during the open season~~ by licensed hunters on areas prescribed by wildlife biologists. Designated game species may be taken in excess of the general bag limits on special permits issued under this section under such conditions as may be prescribed by the director.

4 VAC 15-50-25. Open season; cities of Chesapeake and Suffolk.

It shall be lawful to hunt bear from the first Monday in November through the first Saturday in January, both dates inclusive, in the cities of Chesapeake and Suffolk.

4 VAC 15-50-70. Bow and arrow hunting.

A. Season. It shall be lawful to hunt bear with bow and arrow from the second Saturday in October through the

Saturday prior to the second Monday in November, both dates inclusive.

B. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow.

C. Requirements for bow and arrow. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

D. Use of dogs prohibited during bow season. It shall be unlawful to use dogs when hunting with bow and arrow from the second Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

E. *It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4 VAC 15-40-20 B, to hunt bear subject to the provisions of subsections A through D of this section. For the purpose of the application of subsections A through D to this subsection the phrase "bow and arrow" includes crossbow.*

4 VAC 15-50-120. Bear hound training season.

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to chase black bear with dogs, without capturing or taking, in all counties or in portions of counties in which bear hunting is permitted (except in the counties of Bland, Pulaski, Russell, Smyth, Tazewell, and Washington and Wythe) from the first Saturday in [~~September 1 through the first Saturday in October~~ ~~September 30, both dates inclusive the last Saturday in August through the last Saturday in September~~]. It shall be unlawful to have in immediate possession a firearm, bow or any weapon or device capable of taking a black bear.

4 VAC 15-70-20. Open season for trapping.

It shall be lawful to trap bobcat from November 15 through ~~January 31~~ the last day of February, both dates inclusive.

4 VAC 15-70-30. Bag limit.

The bag limit for hunting bobcat shall be two per hunting party, taken between noon of one day and noon the following day. The season bag limit shall be six 12 bobcats in the aggregate, taken by hunting and trapping combined.

4 VAC 15-90-20. Open season; cities and counties west of Blue Ridge Mountains and certain cities and counties or parts thereof east of Blue Ridge Mountains.

It shall be lawful to hunt deer on the third Monday in November and for 11 consecutive hunting days following in the cities and counties west of the Blue Ridge Mountains (except on the Radford Army Ammunition Plant in Pulaski County), and in the counties (including cities within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad except in the City of Lynchburg), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad), and on the Chester F. Phelps and ~~G. Richard Thompson~~ Wildlife Management Areas Area.

4 VAC 15-90-70. Bow and arrow hunting.

A. Early special archery. It shall be lawful to hunt deer with bow and arrow from the first Saturday in October through the Saturday prior to the third Monday in November, both dates inclusive, except where there is a closed general hunting season on deer.

B. Late special archery season west of Blue Ridge Mountains and certain cities and counties east of Blue Ridge Mountains. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer with bow and arrow from the Monday following the close of the general firearms season on deer west of the Blue Ridge Mountains through the first Saturday in January, both dates inclusive, in all cities and counties west of the Blue Ridge Mountains and in the counties of (including cities within) Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

C. Either-sex deer hunting days. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section.

D. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery season.

E. Requirements for bow and arrow. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. Use of dogs prohibited during bow season. It shall be unlawful to use dogs when hunting with bow and arrow from the first Saturday in October through the Saturday prior to the third Monday in November, both dates inclusive.

~~G. Crossbows permitted for persons with permanent physical disabilities. As provided in 4 VAC 15-40-20 B, it shall be lawful for persons whose with permanent physical disabilities prevent them from hunting with conventional archery equipment to hunt deer with a crossbow on their own property or on private property of another with the written permission of the landowner as provided in subsections A, B, C, D, and F of this section, who are in full compliance with the requirements of 4 VAC 15-40-20 B, to hunt deer subject to the provisions of subsections A through G of this section. For the purpose of the application of subsections A through G to this subsection the phrase "bow and arrow" includes crossbow.~~

4 VAC 15-90-80. Muzzleloading gun hunting.

A. Early special muzzleloading season. It shall be lawful to hunt deer with muzzleloading guns from the first Monday in November through the Saturday prior to the third Monday in November, both dates inclusive, in all cities and counties where hunting with a rifle or muzzleloading gun is permitted east of the Blue Ridge Mountains, except on national forest lands in Amherst, Bedford and Nelson counties and in the

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cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach.

It shall be lawful to hunt deer with muzzleloading guns from the second Monday in November through the Saturday prior to the third Monday in November, both dates inclusive, in all cities and counties where hunting with a rifle or muzzleloading gun is permitted west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties.

B. Late special muzzleloading season west of Blue Ridge Mountains and in certain cities and counties east of Blue Ridge Mountains. It shall be lawful to hunt deer with muzzleloading guns from the third Monday in December through the first Saturday in January, both dates inclusive, in all cities and counties west of the Blue Ridge Mountains, and east of the Blue Ridge Mountains in the counties of (including the cities within) Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad).

C. Either-sex deer hunting days [*east and west of the Blue Ridge Mountains*]. Deer of either sex may be taken during the entire early special muzzleloading season in all cities and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands, department-owned lands and Philpott Reservoir) and on the first Saturday only in ~~all cities and counties west of the Blue Ridge (except Buchanan, Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise and on national forest lands in Frederick, Page, Rockingham, Shenandoah, and Warren) and east of the Blue Ridge Mountains on national forest lands, state forest lands, state park lands, department-owned lands and on Philpott Reservoir. [It shall be unlawful to hunt antlerless deer during the early special muzzleloading season west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties.~~

Deer of either sex may be taken during the early special muzzleloading season in all cities and counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise and on national forest lands in Frederick, Page, Rockingham, Shenandoah, and Warren) and on national forest lands in Amherst, Bedford, and Nelson counties on the second Monday in November only.] It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all cities and counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise and in the counties (including cities within) or portions of counties east of the Blue Ridge Mountains listed in subsection B of this section. Provided further it shall be lawful to hunt deer of either sex during the last day only of the last special muzzleloading season in the cities and counties within Lee, Russell, Scott, Smyth, Tazewell, and Washington.

D. Use of dogs prohibited. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

E. Muzzleloading gun defined. A muzzleloading gun, for the purpose of this section, means a single shot flintlock or percussion weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single [lead] projectile or sabot (with a .38 caliber or larger [nonjacketed lead] projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent).

F. Unlawful to have other firearms in possession. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4 VAC 15-90-90. Bag limit; generally; bonus deer permits and tag usage.

A. The bag limit for deer *statewide east of the Blue Ridge Mountains* shall be two a day, three a license year, one of which must be antlerless. [~~Only one antlered buck may be taken during the special early muzzleloading season per hunter.~~] Antlerless deer may be taken only during designated either-sex deer hunting days during the special archery season, special muzzleloading seasons, and the general firearms season.

B. *The bag limit for deer west of the Blue Ridge Mountains shall be one a day, three a license year, one of which must be antlerless. Only one antlered buck may be taken during the special early muzzleloading season per hunter. Antlerless deer may be taken only during designated either-sex deer hunting days during the special archery seasons, the [late] special muzzleloading [season seasons], and the general firearms season.*

C. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted ~~and on Fort Belvoir and other special deer problem and harvest management areas identified and so posted by the Department of Game and Inland Fisheries during the special archery, special muzzleloading gun and the general firearms seasons during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized in writing for wildlife management areas by the department, or for national forest lands by the U. S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits will be limited to one set per person per license year. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.~~

4 VAC 15-90-110. General firearms season either-sex deer hunting days; Saturday following third Monday in November and last hunting day.

During the general firearms season, deer of either sex may be taken on the Saturday immediately following the third Monday in November and the last hunting day on *the G.R. Thompson Wildlife Management Area and on national forest and department-owned lands in Alleghany, Augusta, Bath,*

Bland, Carroll, Craig, Giles, Highland, Montgomery, Pulaski, Roanoke, Rockbridge, and Wythe.

4 VAC 15-90-160. General firearms season either-sex deer hunting days; full season.

During the general firearms season, deer of either sex may be taken full season, in the counties of (including cities within) Amherst (west of U.S. Route 29, except on national forest lands), Bedford, Botetourt (except on national forest lands), Campbell (west of Norfolk Southern Railroad and in the City of Lynchburg only on private lands for which a special permit has been issued by the chief of police), Clarke, Fairfax (restricted to certain parcels of land by special permit), Floyd, Franklin (except Philpott Reservoir and Turkeycock Mountain Wildlife Management Area), Frederick (except on national forest lands), Greenville, Grayson (except on national forest lands and portions of Grayson Highland State Park open to hunting), Henry (except on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area), Isle of Wight, Loudoun, Nelson (west of Route 151, except on national forest lands), Patrick (except on Fairystone Farms Wildlife Management Area, Fairystone State Park and Philpott Reservoir), Pittsylvania (west of Norfolk Southern Railroad), *Prince William*, Roanoke (except on national forest and department-owned lands), ~~Southampton~~ *Southampton*, Surry (except on the Carlisle Tract of the Hog Island Wildlife Management Area), Sussex, Warren (except on national forest lands) *and in the cities of Hampton and Newport News, the Town of Chincoteague*, and on Back Bay National Wildlife Refuge, Fort A.P. Hill, Caledon Natural Area, Camp Peary, Cheatham Annex, Chincoteague National Wildlife Refuge, Chippoles State Park, Dahlgren Surface Warfare Center Base, Dam Neck Amphibious Training Base, Dismal Swamp National Wildlife Refuge, Eastern Shore of Virginia National Wildlife Refuge, False Cape State Park, Fentress Naval Auxiliary Landing Field, Fisherman's Island National Wildlife Refuge, Fort Belvoir, Fort Eustis, Fort Lee, Fort Pickett, Harry Diamond Laboratory, Langley Air Force Base, Naval Air Station Oceana, Northwest Naval Security Group, *Pocahontas State Park*, Presquille National Wildlife Refuge, Quantico Marine Corps Reservation, Radford Army Ammunition Plant, Sky Meadows State Park, York River State Park, Yorktown Naval Weapons Station.

4 VAC 15-90-170. General firearms season either-sex deer hunting days; Saturday following third Monday in November.

During the general firearms season, deer of either sex may be taken the Saturday immediately following the third Monday in November in the counties (including cities within) of Lee (except on national forest lands), Russell, Scott (except on national forest lands), Smyth, Tazewell, Washington, and on the Buckingham-Appomattox State Forest, Cumberland State Forest and ~~Pocahontas State Forest~~, Prince Edward State Forest and on national forest lands in Frederick, Grayson, Page, Shenandoah, Rockingham and Warren counties and on portions of Grayson Highlands State Park open to hunting.

4 VAC 15-90-190. General firearms season either-sex deer hunting days; first Saturday immediately following third Monday in November and last six days.

During the general firearms season, deer of either sex may be taken on the first Saturday immediately following the third Monday in November and the last six hunting days, in the counties of (including cities within) Middlesex, Mathews, ~~Warren and York (except on Camp Peary, Cheatham Annex and Naval Weapons Station)~~ and on the Horsepen Lake Wildlife Management Area, James River Wildlife Management Area, Occoneechee State Park, Amelia Wildlife Management Area, Briery Creek Wildlife Management Area, Dick Cross Wildlife Management Area, White Oak Mountain Wildlife Management Area and ~~Powhatan Wildlife Management Area~~ and on national forest lands in Amherst, Botetourt and Nelson counties.

4 VAC 15-90-195. General firearms season either-sex deer hunting days; first two Saturdays immediately following third Monday in November and last six hunting days.

During the general firearms season, deer of either sex may be taken on the first two Saturdays immediately following the third Monday in November and on the last six hunting days, in the counties of (including the cities within) *Amelia (except Amelia Wildlife Management Area)*, Appomattox (except Buckingham-Appomattox State Forest), Brunswick (except Fort Pickett), Buckingham (except on Buckingham-Appomattox State Forest and Horsepen Lake Wildlife Management Area), Charlotte, Chesterfield (except Pocahontas State Park and Presquille National Wildlife Refuge), Cumberland (except on Cumberland State Forest), Dinwiddie (except on Fort Pickett), Fluvanna, Goochland, Lunenburg, Mecklenburg (except Dick Cross Wildlife Management Area, Occoneechee State Park), Nottoway (except on Fort Pickett), Powhatan, Prince Edward (except on Prince Edward State Forest and Briery Creek Wildlife Management Area), Prince George (except on Fort Lee).

4 VAC 15-90-200. General firearms season either-sex deer hunting days; first three Saturdays following third Monday in November and last 24 hunting days.

During the general firearms season, deer of either sex may be taken on the first three Saturdays immediately following the third Monday in November and on the last 24 hunting days, in the counties of (including cities within) Accomack (except Chincoteague National Wildlife Refuge, *and the Town of Chincoteague*), Northampton (except on Eastern Shore of Virginia National Wildlife Refuge and Fisherman's Island National Wildlife Refuge), and in the City of Suffolk (except on the Dismal Swamp National Wildlife Refuge).

4 VAC 15-90-210. General firearms season either-sex deer hunting days; first two Saturdays immediately following third Monday in November and last 12 hunting days.

During the general firearms season, deer of either sex may be taken on the first two Saturdays immediately following the third Monday in November and on the last 12 hunting days, in the counties of (including the cities within) Albemarle, Amelia

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(except Amelia Wildlife Management Area), Amherst (east of U.S. Route 29), Appomattox (except Buckingham-Appomattox State Forest), Brunswick (except Fort Pickett), Buckingham (except on Buckingham-Appomattox State Forest and Horsepen Lake Wildlife Management Area), Campbell (east of Norfolk Southern Railroad except City of Lynchburg), Caroline (except Fort A.P. Hill), Charles City (except on Chickahominy Wildlife Management Area), Charlotte, Chesterfield (except Pocahontas State Forest and Presquile National Wildlife Refuge), Culpeper (except on Chester F. Phelps Wildlife Management Area), Cumberland (except on Cumberland State Forest), Dinwiddie (except on Fort Pickett), Essex, Fauquier (except on the G. Richard Thompson and Chester F. Phelps Wildlife Management Areas, Sky Meadows State Park and Quantico Marine Reservation), Fluvanna, Gloucester, Goochland, Greene, Halifax, Hampton (except on Langley Air Force Base), Hanover, Henrico (except Presquile National Wildlife Refuge), James City (except York River State Park), King and Queen, King George (except Caledon Natural Area and Dahlgren Surface Warfare Center), King William, Lancaster, Louisa, Lunenburg, Madison, Mecklenburg (except Dick Cross Wildlife Management Area, Occoneechee State Park), Nelson (east of Route 151 except James River Wildlife Management Area), New Kent, Newport News (except Fort Eustis), Northumberland, Nottoway (except on Fort Pickett), Orange, Pittsylvania (east of Norfolk Southern Railroad except White Oak Mountain Wildlife Management Area), Powhatan (except Powhatan Wildlife Management Area), Prince Edward (except on Prince Edward State Forest and Briery Creek Wildlife Management Area), Prince George (except on Fort Lee), Prince William (except on Harry Diamond Laboratory and Quantico Marine Reservation), Rappahannock, Richmond, Spotsylvania, Stafford (except on Quantico Marine Reservation), Westmoreland, and York (except on Camp Peary, Cheatham Annex and Yorktown Naval Weapons Station).

4 VAC 15-90-220. General firearms season; bucks only.

During the general firearms season, only deer with antlers visible above the hairline may be taken in the counties of (including the cities within) Dickenson in that portion lying north of the Pound River and west of the Russell Fork River, Wise and on national forest lands in Lee and Scott and on the Chester F. Phelps Wildlife Management Area, G. Richard Thompson Wildlife Management Area, Chickahominy Wildlife Management Area and on the Carlisle Tract of Hog Island Wildlife Management Area.

4 VAC 15-90-250. Hunting prohibited in certain counties.

It shall be unlawful to hunt deer at any time in the counties of Arlington, and Buchanan and in that portion of Dickenson County south of the Pound River and east of the Russell Fork River.

4 VAC 15-90-280. Sale of hides.

It shall be lawful to sell hides and hooves from any legally taken deer.

4 VAC 15-90-290. Special quality deer management areas.

A. The board hereby designates the following areas posted by the Department of Game and Inland Fisheries as special quality deer management areas with special antlered buck harvest.

B. Special Fairystone quality deer management area. It shall be unlawful to kill an antlered deer on the special Fairystone quality deer management area unless the deer has at least four antler points, each greater than one inch in length, on either the right or left antler.

4 VAC 15-110-10. Closed season in certain areas.

A. February 1 through September 30. It shall be unlawful to hunt foxes with dogs only in the City of Newport News from February 1 through September 30, both dates inclusive.

B. February 1 through October 31. It shall be unlawful to hunt foxes on the George Washington/Jefferson National Forest and on the Gathright, Goshen, G. Richard Thompson, Highland, Little North Mountain and Rapidan Wildlife Management Areas from February 1 through October 31, both dates inclusive.

C. April 1 through August 31. It shall be unlawful to hunt foxes with dogs only in the counties of Clarke, Fairfax (except that portion closed to all hunting), Fauquier (except within the confines of the Quantico Marine Reservation) and Loudoun from April 1 through August 31, both dates inclusive.

4 VAC 15-110-40. Open season — Albemarle County. (Repealed.)

It shall be lawful for any person to trap foxes in the County of Albemarle during the month of November.

4 VAC 15-110-50. Open season.

Except as otherwise specifically provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be lawful to trap foxes from November 15 through January 31 the last day of February, both dates inclusive.

4 VAC 15-110-75. Foxhound training preserves; live-trapping for release.

It shall be lawful for any foxhound training preserve permittee or those licensed trappers designated in writing by the permittee to live-trap and transport red (*Vulpes vulpes*) and gray (*Urocyon cinereoargenteus*) foxes from September 1 through the last day of February, both dates inclusive, only for the purpose of stocking foxhound training preserves covered by permits authorized by the board and issued by the department. For the purpose of this section, foxes may be live-trapped on private land with landowner permission or on public lands designated by the department. Foxes may be live-trapped only within a 50-mile radius of the foxhound training preserve in which they will be released unless a specific exception is granted by the department for good cause. Unless reenacted, the provisions of this section shall expire after May 25, 2004.

4 VAC 15-110-90. Use of dogs in hunting fox during deer season in certain counties and national forests.

It shall be unlawful to use dogs for the hunting of foxes during the open season for hunting deer in the counties of Alleghany, Amherst (west of U.S. Route 29), Augusta, Bath, Bedford, Botetourt, Campbell (west of Norfolk Southern Railroad), Clarke (except west of the Shenandoah River), Frederick, Highland, Nelson (west of Route 151), Page, Pittsylvania (west of Norfolk Southern Railroad), Rockbridge, Rockingham, Shenandoah and Warren (except between the Shenandoah River and the Norfolk Southern Railroad track); on the Gathright, Goshen, Highland and Little North Mountain Wildlife Management Areas and within the boundaries of the national forests George Washington/Jefferson National Forest.

4 VAC 15-130-30. Open season for trapping; certain counties and areas. (Repealed.)

It shall be lawful to trap mink from December 15 through March 10, both dates inclusive, in the counties of Accomack, Charles City, Essex, Gloucester, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Richmond, Southampton, Surry, Westmoreland and York; and in the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk (area formerly constituting Nansemond County) and Virginia Beach; and east of U.S. Route 95 in the counties of Caroline, Chesterfield, Fairfax, Greensville, Hanover, Henrico, Prince George, Prince William, Spotsylvania, Stafford and Sussex.

4 VAC 15-140-30. Open season for trapping; certain counties and areas. (Repealed.)

It shall be lawful to trap muskrat from December 15 through March 10, both dates inclusive, in the counties of Accomack, Charles City, Essex, Gloucester, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Richmond, Southampton, Surry, Westmoreland and York; and in the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk (area formerly constituting Nansemond County) and Virginia Beach; and east of U.S. Route 95 in the counties of Caroline, Chesterfield, Fairfax, Greensville, Hanover, Henrico, Prince George, Prince William, Spotsylvania, Stafford and Sussex.

4 VAC 15-160-30. Open season; counties east of Blue Ridge Mountains. (Repealed.)

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to trap opossum in all counties east of the Blue Ridge Mountains from November 15 through the last day of February, both dates inclusive.

4 VAC 15-160-31. Open season for trapping; generally.

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to trap opossum from November 15 through the last day of February, both dates inclusive.

4 VAC 15-160-40. Open season; counties west of Blue Ridge Mountains. (Repealed.)

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to trap opossum in all counties west of the Blue Ridge Mountains from November 15 through January 31, both dates inclusive.

4 VAC 15-180-20. Bag limit. (Repealed.)

The bag limit for pheasant shall be one a day, two a license year, cocks only.

4 VAC 15-180-30. Continuous closed season in certain counties. (Repealed.)

There shall be a continuous closed season for the hunting or shooting of pheasant in the counties of Lancaster, Northumberland, Richmond and Westmoreland.

4 VAC 15-190-10. Open season; generally.

Except as otherwise specifically provided by the sections appearing in this chapter, it shall be lawful to hunt quail from the fourth second Monday in November through January 31, both dates inclusive.

4 VAC 15-190-50. Hunting in snow prohibited. (Repealed.)

It shall be unlawful to hunt quail in the snow.

4 VAC 15-210-50. Open season for trapping; counties east of the Blue Ridge Mountains. (Repealed.)

Except as otherwise specifically provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be lawful to take raccoon by trapping in all counties east of the Blue Ridge Mountains from November 15 through March 10, both dates inclusive.

4 VAC 15-210-51. Open season for trapping; generally.

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to trap raccoon from November 15 through the last day of February, both dates inclusive.

4 VAC 15-210-60. Open season for trapping; counties west of the Blue Ridge Mountains. (Repealed.)

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to take raccoon by trapping in all counties west of the Blue Ridge Mountains from November 15 through January 31, both dates inclusive.

4 VAC 15-230-40. Bow and arrow hunting.

A. Season. It shall be lawful to hunt squirrel with bow and arrow from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

B. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons.

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C. Use of dogs prohibited during bow season. It shall be unlawful to use dogs when hunting with bow and arrow from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

D. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4 VAC 15-40-20 B, to hunt squirrel subject to the provisions of subsections A, B, and C of this section. For the purpose of the application of subsections A, B, and C to this subsection the phrase "bow and arrow" includes crossbow.

4 VAC 15-240-20. Open season; certain counties and areas; last Monday in October and for 11 hunting days following.

It shall be lawful to hunt turkeys on the last Monday in October and for 11 consecutive hunting days following in the counties of Charles City, Chesterfield, Gloucester, Greensville, Henrico, Isle of Wight, James City, King George, Lancaster, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton (north of U.S. Route 58), Surry, Sussex, Westmoreland and York; and on Camp Peary (except on Camp Peary).

4 VAC 15-240-60. Bow and arrow hunting.

A. Season. It shall be lawful to hunt turkey with bow and arrow in those counties and areas open to fall turkey hunting from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

B. Bag limit. The daily and seasonal bag limit for hunting turkey with bow and arrow shall be the same as permitted during the general turkey season in those counties and areas open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow during special archery season.

D. Requirements for bow and arrow. Arrows used for hunting turkey must have a minimum width head of 7/8 of an inch, and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

E. Use of dogs prohibited during bow season. It shall be unlawful to use dogs when hunting with bow and arrow from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

F. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4 VAC 15-40-20 B, to hunt turkey subject to the provisions of subsections A through E of this section. For the purpose of the application of subsections A through E to this subsection the phrase "bow and arrow" includes crossbow.

4 VAC 15-280-30. Fur farming; records.

A holder of a permit to breed fur-bearing animals shall keep a record of the number of animals raised or required acquired, and the number of animals, furs or carcasses sold or disposed of and the number of animals on hand at the close of the fiscal year. The permittee shall provide reports to the agency at an interval specified on the permit.

4 VAC 15-290-115. Field trials; authorized dates.

In accordance with § 29.1-422 of the Code of Virginia, permits for field trials with dogs may be authorized by the department during the period between [September August] 1 to May 31, both dates inclusive, under conditions and for the species specified in the permit.

4 VAC 15-290-130. Duty to comply with permit conditions.

A permit holder shall comply with all terms and conditions of any permit issued by the Department of Game and Inland Fisheries pursuant to Title 29.1 of the Code of Virginia and the regulations of the board pertaining to hunting, fishing, trapping, taking, attempting to take, possession, sale, offering for sale, transporting or causing to be transported, importing or exporting, propagating, exhibiting, and rehabilitating of any wild bird, wild animal or fish. The penalty for violation of this section is prescribed by § 29.1-505 of the Code of Virginia.

4 VAC 15-310-10. Continuous open season. (Repealed.)

~~There shall be a continuous open season for the taking of woodchuck (Marmota monax).~~

VA.R. Doc. No. R97-491; Filed May 7, 1997, 11 a.m.

Title of Regulations: 4 VAC 15-40-10 et seq. Game: In General (repealing 4 VAC 15-40-10, 4 VAC 15-40-90, and 4 VAC 15-40-180).

4 VAC 15-60-10 et seq. Game: Beaver (amending 4 VAC 15-60-10).

4 VAC 15-90-10 et seq. Game: Deer (repealing 4 VAC 15-90-50 and 4 VAC 15-90-270).

4 VAC 15-110-10 et seq. Game: Fox (amending 4 VAC 15-110-80).

4 VAC 15-130-10 et seq. Game: Mink (repealing 4 VAC 15-130-10).

4 VAC 15-140-10 et seq. Game: Muskrat (repealing 4 VAC 15-140-10).

4 VAC 15-150-10 et seq. Game: Nutria (repealing 4 VAC 15-150-10 and 4 VAC 15-150-20).

4 VAC 15-170-10 et seq. Game: Otter (repealing 4 VAC 15-170-10).

4 VAC 15-200-10 et seq. Game: Rabbits and Hares (repealing 4 VAC 15-200-40).

4 VAC 15-230-10 et seq. Game: Squirrel (repealing 4 VAC 15-230-80).

4 VAC 15-250-10 et seq. Game: Falconry (amending 4 VAC 15-250-50, 4 VAC 15-250-70, and 4 VAC 15-250-110).

4 VAC 15-290-10 et seq. Game: Permits (amending 4 VAC 15-290-30 and 4 VAC 15-290-40; repealing 4 VAC 15-290-10, 4 VAC 15-290-90 and 4 VAC 15-290-100).

4 VAC 15-300-10 et seq. Game: Weasel (amending 4 VAC 15-300-10; repealing 4 VAC 15-300-20 and 4 VAC 15-300-30).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 1997.

Notice to the Public:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened March 21 and remains open until May 5, 1997. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Comments should be sent to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, and need to be received no later than April 28, 1997, in order to be assured that the board will have opportunity to review them before taking final action.

A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any parts thereof, will be held during a meeting of the board at the Department of Game and Inland Fisheries to take place at the Comfort Inn, 3200 West Broad Street, Richmond, Virginia, beginning at 9 a.m. on Monday, May 5, 1997, at which time any interested citizen present shall be heard. At the board meeting staff will also present the results of a series of meetings held around the state for the purpose of providing the public with opportunities to review and comment on the proposed regulation amendments.

If the board is satisfied that the proposed regulations, or any parts thereof, are advisable in the form in which published or as amended after receipt of the public's comments, the board may adopt regulations as final at the May 5-6 meeting. All regulations for game, nonreptilian terrestrial and avian nongame wildlife, permitting, hunting and trapping, including the length of seasons, bag limits and methods of take for game are open for consideration; the board may amend any such wildlife regulation at the May 5-6 meeting. The regulations or regulation amendments adopted may be either more liberal or more restrictive than those proposed and being advertised under this notice.

Summary:

The amendments were developed as recommendations in 1995-1996 during the department's review of the regulations it administers in compliance with Executive Order Number 15 (94), "Comprehensive Review Of All Existing Agency Regulations."

The amendments to 4 VAC 15-40-10 et seq., Game: In General (i) repeal the section that expressly permits the hunting of game birds, except quail, and game animals in the snow; (ii) repeal the section prohibiting hunting after sunset on the Quantico Marine Reservation; and (iii) repeal the section pertaining to the trapping of fur-bearing animals doing damage to crops or other property during the closed seasons.

The amendment to 4 VAC 15-60-10 et seq., Game: Beaver, repeals the section allowing a landowner or their agent to shoot beaver on private lands or waters at any time when beavers are causing damage since this activity requires a kill permit to be issued by a game warden as directed by § 29.1-518 of the Code of Virginia.

The amendments to 4 VAC 15-90-10 et seq., Game: Deer (i) repeal the designation of deer hunting season dates for the Back Bay National Wildlife Refuge and False Cape State Park and (ii) repeal the section prohibiting the use of dogs or organized drives for the purpose of deer hunting on the Quantico Marine Reservation.

The amendment to 4 VAC 15-110-10 et seq., Game: Fox, removes the reference to owner or tenant and specifies a landowner as the party who may kill or have killed foxes on his own land.

The amendments to 4 VAC 15-130-10 et seq., Game: Mink, 4 VAC 15-140-10 et seq., Game: Muskrat, 4 VAC 15-170-10 et seq., Game: Otter, and 4 VAC 15-200-10 et seq., Game: Rabbits and Hares, repeal those sections of each respective regulation that (i) prohibit the hunting of mink, (ii) prohibit the hunting or shooting of muskrat or otter, and prohibit the hunting, shooting, or trapping of Varying (snowshoe) hares. These sections are unnecessary since § 29.1-512 of the Code of Virginia already prohibits these activities unless specifically allowed by law or regulation.

The amendments to 4 VAC 15-150-10 et seq., Game: Nutria (i) repeal the section on the prohibition of hunting nutria with the aid of a watercraft on Back Bay and (ii) repeal the section prohibiting the trapping of nutria.

The amendment to 4 VAC 15-230-10 et seq., Game: Squirrel, repeals the section prohibiting the selling or buying of fox squirrel.

The amendments to 4 VAC 15-250-10 et seq., Game: Falconry, bring the state falconry regulation into conformity with, yet make it no more restrictive than, the applicable federal regulations. The amendments (i) reduce or simplify requirements for marking, acquiring, possessing, transferring, or disposing of a raptor, and (ii) amend the documentation requirements for temporary maintenance and care of a raptor by a person other than the permittee under a department-issued falconry permit.

The amendments to 4 VAC 15-290-10 et seq., Game: Permits (i) repeal the section authorizing the department to issue permits for the placing of poison for the purpose of killing wild birds and wild animals where they are destructive to crops or other property; (ii) clarify the designation of game birds to be propagated as captive bred birds and not wild birds and add language to allow the sale and shipment of propagated captive bred game birds for use as food; (iii) clarify the designation of game birds to be captive bred birds and not wild birds; (iv) repeal the section requiring a permit holder breeding pheasants in captivity to maintain records since the amendments to 4 VAC 15-290-30 will take its place; and

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~~(v) repeal the section requiring the packaging and labeling of pheasants.~~

~~The amendments to 4 VAC 15-300-10 et seq., Game: Weasel (i) allow the taking of any species of weasel during the open season; (ii) repeal the section prohibiting the taking or selling of the pelt of the least weasel; and (iii) repeal the section allowing the taking of weasels committing depredation by the landowner or tenant.~~

Agency Contact: Copies of the regulation may be obtained from Phil Smith, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341.

~~4 VAC 15-40-10. Hunting in the snow. (Repealed.)~~

~~Except as otherwise provided in 4 VAC 15-190-50, it shall be lawful to hunt game birds and game animals in the snow.~~

~~4 VAC 15-40-90. Quantico Marine Reservation; hunting after sunset prohibited. (Repealed.)~~

~~It shall be unlawful to hunt with any firearm or bow and arrow after sunset on any day within the confines of Quantico Marine Reservation.~~

~~4 VAC 15-40-180. Trapping fur-bearing animals damaging property during closed season. (Repealed.)~~

~~When fur-bearing animals are doing damage to crops or other property, the game warden of the county may issue a permit to the landowner or his lessee to trap such fur-bearing animals as are doing damage. Where such a permit is obtained by a landowner or a lessee, it shall be lawful during the closed season to trap such animals as are doing damage.~~

~~4 VAC 15-60-10. Hunting or shooting of beaver.~~

~~A. Public lands or waters. There shall be a continuous closed season for the hunting or shooting of beaver on all public lands and waters of the Commonwealth.~~

~~B. Private lands or waters. There shall be a continuous open season on private lands and waters for a landowner or their designated agent to shoot beaver when beaver are causing damage on the private landowner's property.~~

~~4 VAC 15-90-50. Open season; Back Bay National Wildlife Refuge and False Cape State Park. (Repealed.)~~

~~It shall be lawful to hunt deer on the Back Bay National Wildlife Refuge and on False Cape State Park from October 1 through October 31.~~

~~4 VAC 15-90-270. Hunting with dogs or drives prohibited on Quantico Marine Reservation. (Repealed.)~~

~~It shall be unlawful to use dogs or to organize drives for the purpose of hunting deer within the confines of Quantico Marine Reservation.~~

~~4 VAC 15-110-80. Killing by owner or tenant. [(Repealed.) Killing by landowner.]~~

~~The owner or tenant may kill or have killed foxes at any time on his own land or land under his control. [A landowner may kill or have killed foxes at any time on his own land.]~~

~~4 VAC 15-130-10. Continuous closed hunting season. (Repealed.)~~

~~There shall be a continuous closed season for hunting mink.~~

~~4 VAC 15-140-10. Continuous closed hunting season. (Repealed.)~~

~~There shall be a continuous closed season for the hunting or shooting of muskrat.~~

~~4 VAC 15-150-10. Hunting with watercraft restricted. (Repealed.)~~

~~It shall be unlawful to hunt nutria with the aid of watercraft on Back Bay and its tributaries between October 1 and March 31, both dates inclusive.~~

~~4 VAC 15-150-20. Closed season for trapping. (Repealed.)~~

~~It shall be unlawful to trap nutria from March 11 through December 14, both dates inclusive.~~

~~4 VAC 15-170-10. Continuous closed season for hunting or shooting. (Repealed.)~~

~~There shall be a continuous closed season for the hunting or shooting of otter.~~

~~4 VAC 15-200-40. Continuous closed season for Varying hare. (Repealed.)~~

~~There shall be a continuous closed season for the hunting, shooting or trapping of Varying (snowshoe) hare (*Lepus americanus*).~~

~~4 VAC 15-230-80. Sale Prohibited. (Repealed.)~~

~~It shall be unlawful to sell, buy or offer for sale any fox squirrel.~~

~~4 VAC 15-250-50. Marking.~~

~~A. An inventory report shall be made to the department within 90 days of the effective date of this chapter (October 1, 1976) indicating numbers and descriptions of all raptors held in captivity, except those held for scientific or zoological purposes, regardless of whether the owners of such raptors intend to submit an application for a falconry permit pursuant to this chapter.~~

~~B. No raptor may be lawfully acquired after the inventory report required by A, above, is submitted unless the person acquiring the raptor first obtains a marker from the United States Fish and Wildlife Service and attaches it to the raptor immediately upon acquisition.~~

~~A. All peregrine falcons (*Falco peregrinus*), gyrfalcons (*Falco rusticolus*), and Harris hawks (*Parabuteo unicinctus*), except a captive bred raptor lawfully marked by a numbered, seamless band issued by the U.S. Fish and Wildlife Service, must be banded with a permanent, nonreusable, numbered band supplied by the U.S. Fish and Wildlife Service.~~

~~C. B. It shall be unlawful for any person to alter, counterfeit or deface a raptor marker furnished by the United States Fish and Wildlife Service, except that falconry permittees may~~

remove the rear tab on markers furnished, and may smooth any imperfect surface provided the integrity of the marker and numbering are not affected.

D. C. A permittee may replace the numbered seamless band on a captive bred bird with a standard adjustable yellow marker furnished by the Fish and Wildlife Service; however, once the seamless marker is removed, the bird may no longer be purchased, sold, or bartered.

4 VAC 15-250-70. Possession of raptors.

A. A person who possesses a lawfully acquired raptor before the enactment of this chapter and who fails to meet the permit requirements shall be allowed to retain the raptors. All such birds shall be identified with markers supplied by the United States Fish and Wildlife Service and cannot be replaced if death, loss, release, or escape occurs.

B. A person who possesses raptors before the enactment of this chapter, in excess of the number allowed under his class permit, shall be allowed to retain the extra raptors. All such birds shall be identified with markers supplied by the United States Fish and Wildlife Service and no replacement can occur, nor may an additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.

C. A falconry permit holder shall obtain written authorization from the department before any species not indigenous to Virginia is intentionally released to the wild, at which time the marker from the released bird shall be removed and surrendered to the department. The marker from an intentionally released bird which is indigenous shall also be removed and surrendered to the department. A standard federal bird band shall be attached to such birds by a state or United States Fish and Wildlife Service authorized federal bird bander whenever possible.

D. ~~Another person may care for the birds of a permittee if written authorization from the permittee accompanies the birds when they are transferred; provided, that if the period of care will exceed 30 days, the department shall be informed in writing by the permittee of this action within three days of the transfer and informed where the birds are being held, the reason for the transfer, who is caring for them, and approximately how many days they will be in the care of the second person. A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee for maintenance and care for a period not to exceed 30 days. The raptor must be accompanied at all times by a properly executed U.S. Fish and Wildlife Service authorization (currently USFWS form 3-186A) designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing temporary possession.~~

E. Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping purposes.

4 VAC 15-250-110. Reports by permit holders; inspections.

~~Holders of permits issued under Code of Virginia § 29.1-419 to permit the taking, trapping, holding, transportation, carriage and shipment of live falcons, hawks and owls shall report to the department by July 31 of each year, listing:~~

- ~~1. All raptors in possession on June 30 preceding, by species, marker numbers, sex (if known), age (if known), and date and where or from whom acquired; and~~
- ~~2. All raptors possessed or acquired at any time since the previous annual report but no longer possessed, by species, marker numbers, sex (if known), age (if known), date and where or from whom acquired or given to, whether escaped, died or released, and when event occurred.~~

~~No permittee may take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless such permittee submits a properly executed U.S. Fish and Wildlife Service authorization (currently USFWS form 3-186A) to the issuing office within five calendar days of any transaction. Falcons, hawks and owls held under permit shall be open to inspection by representatives of the department at all times.~~

4 VAC 15-290-10. Poisoning of wild birds and wild animals destroying crops or property. (Repealed.)

~~Notwithstanding the provisions of 4 VAC 15-40-50, the department may issue permits authorizing the putting out of poison for the purpose of killing wild birds and wild animals where they are destructive to crops or other property. Where such permits are issued, the poisoning shall be under the supervision of employees of the department.~~

4 VAC 15-290-30. Breeding game birds and game animals for propagation and stocking; records.

Holders of permits issued under § 29.1-417 of the Code of Virginia to breed and rear wild *captive bred* game birds and wild animals in captivity and to sell and ship them alive for propagation or stocking ~~or to kill, sell and ship the same for use as food~~ shall keep a record showing the number of each species on hand, the number raised or acquired and the number sold.

4 VAC 15-290-40. Breeding game birds and game animals for propagation and stocking; labeling packages.

Packages containing wild *captive bred* game birds and wild animals raised under a permit for propagation purposes shall bear labels showing the name and address of the breeder and the contents of the package.

4 VAC 15-290-90. Breeding pheasants; records. (Repealed.)

~~The holder of a permit provided for by §§ 29.1-417 and 29.1-514 of the Code of Virginia to breed pheasants in captivity and to sell and ship the same alive for breeding, or to kill, sell and ship the same for use as food shall keep a record of the number raised or acquired, number sold and the number on hand.~~

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4 VAC 15-290-100. ~~Breeding pheasants; labeling packages. (Repealed.)~~

~~Packages containing pheasants raised under a permit from the department shall bear a label giving the name and address of the breeders and the contents of the package.~~

4 VAC 15-300-10. Open season for long-tailed weasel.

It shall be lawful to take long-tailed weasels (*Mustela frenata*) weasels from December 1 through the last day of February, both dates inclusive.

4 VAC 15-300-20. ~~Sale, etc., of pelts of least weasel. (Repealed.)~~

~~It is unlawful to take or sell the pelt of the least weasel (*Mustela nivalis*).~~

4 VAC 15-300-30. ~~Taking of weasels committing depredation. (Repealed.)~~

~~A landowner or tenant may take, on his own land or land under his control, weasels committing or about to commit depredation.~~

V.A.R. Doc. No. R97-489, Filed May 7, 1997, 11 a.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

REGISTRAR'S NOTICE: The Department of Housing and Community Development has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Housing and Community Development will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 13 VAC 5-111-10 et seq. Virginia Enterprise Zone Program Regulations (amending 13 VAC 5-111-10, 13 VAC 5-111-40, 13 VAC 5-111-60, 13 VAC 5-111-70, 13 VAC 5-111-90, 13 VAC 5-111-110, 13 VAC 5-111-120, 13 VAC 5-111-140 through 13 VAC 5-111-170, 13 VAC 5-111-200, 13 VAC 5-111-290, 13 VAC 5-111-300, 13 VAC 5-111-310, and 13 VAC 5-111-330; and adding 13 VAC 5-111-85 and 13 VAC 5-111-400).

Statutory Authority: § 59.1-273 of the Code of Virginia.

Effective Date: July 1, 1997.

Summary:

The amendments address changes made during the 1997 General Assembly session to the Virginia Enterprise Zone Program. As a result of the 1997 action, the general tax credit requirement that new jobs be filled by a low-income person or a zone resident was reduced from 40% to 25%. When businesses apportion their taxable income attributable to zone locations, they can now use a factor involving payroll and property and will no longer be required to use the sales factor. The definition of a permanent full-time position was expanded

to include persons working a minimum of 1,680 hours per year and receiving standard fringe benefits provided by the firm. Previously only rural enterprise zones could have noncontiguous areas and now any locality with an enterprise zone can have one zone with up to two noncontiguous areas. A distinction was made between small and large qualified businesses and how the allocation of both the \$3 million and \$5 million credit pool can be allocated in any one fiscal year. Finally, the tax information provided to the Department of Housing and Community Development will be afforded the same protection as tax information provided the Department of Taxation. These regulations provide greater flexibility for enterprise zone businesses qualifying for state incentives.

Agency Contact: Copies of the regulation may be obtained from M. Shea Hollifield, Department of Housing and Community Development, 501 North 2nd Street, Richmond, VA 23219, telephone (804) 371-7030.

13 VAC 5-111-10. Definitions.

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

"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal work days during the payroll period. Paid leave time may be counted as work time.

2. For a business firm which uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

"Base taxable year" (for purposes of qualifying for the general tax credit) means the taxable year preceding the first taxable year for which a firm qualifies for state tax incentives under this program. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995. The following definition applies to businesses applying for enterprise zone incentives on or after July 1, 1995: "Base taxable year" (for purposes of qualifying for the general tax credit) means the lower of two taxable years immediately preceding the first year of qualification, at the choice of the business firm.

"Base year" (for purposes of qualifying for enterprise zone incentive grants) as provided in Part VI (13 VAC 5-111-210 et seq.) means either of the two calendar years immediately preceding a business firm's first year of grant eligibility, at the choice of the business firm.

"Business firm" means any business entity, incorporated or unincorporated, which is authorized to do business in the

~~Commonwealth of Virginia and which is subject to state individual income tax, state corporate income tax, state franchise or license tax on gross receipts, or state bank franchise tax on net taxable capital corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia.~~

~~1. The term "business firm" includes partnerships and small business corporations electing to be taxed under Subchapter S of the federal Internal Revenue Code, and which are not subject to state income tax as partnerships or corporations, but the taxable income of which is passed through to and taxed as income of individual partners and shareholders.~~

2. The term "business firm" does not include organizations which are exempt from state income tax on all income except unrelated business taxable income as defined in the federal Internal Revenue Code, § 512, nor does it include homeowners associations as defined in the federal Internal Revenue Code, § 528.

"Business tax credit" means a credit against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia due from a business firm.

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

"Department" means the Department of Housing and Community Development.

"Develop" means to make improvements to land through the construction, conservation, repair, restoration, rehabilitation, conversion, alteration, enlargement or remodeling of a structure or structures to accommodate the principal use to which the land is or will be put. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995. Businesses applying for enterprise zone tax credits on or after July 1, 1995, shall use the term qualified zone improvements for purposes of qualification for credits under § 59.1-280 of the Code of Virginia.

"Employee of a zone establishment" means a person employed by a business firm who is on the payroll of the firm's establishment or establishments within the zone. In the case of an employee who is on the payroll of two or more establishments of the firm, both inside and outside the zone, the term "employee of a zone establishment" refers only to such an employee assigned to the firm's zone establishment or establishments for at least one-half of his normally scheduled work days.

"Enterprise zone incentive grant" or "grant" means a grant provided for creating permanent full-time positions pursuant to § 59.1-282.1 of the Code of Virginia.

"Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.

2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm.

"Existing business firm" means one that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations.

"Family" means (i) one or more persons living in a single residence who are related by blood, marriage or adoption. A stepchild or stepparent shall be considered to be related by marriage; (ii) one or more persons not living in the same residence but who were claimed as a dependent on another person's federal income tax return for the previous year shall be presumed, unless otherwise demonstrated, part of the other person's family; or (iii) an individual 18 or older who receives less than 50% of his support from the family, and who is not the principal earner nor the spouse of the principal earner, shall not be considered a member of the family. Such an individual shall be considered a family of one.

"Family income" means all income actually received by all family members over 16 from the following sources:

1. Gross wages and salary (before deductions);
2. Net self-employment income (gross receipts minus operating expenses);
3. Interest and dividend earnings; and
4. Other money income received from net rents, Old Age and Survivors Insurance (OASI), social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from family income:

1. Noncash benefits such as food stamps and housing assistance;
2. Public assistance payments;
3. Disability payments;
4. Unemployment and employment training benefits;
5. Capital gains and losses; and
6. One-time unearned income.

When computing family income, income of a spouse or other family members or both shall be counted for the portion of the income determination period that the person was actually a part of the family.

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"Family size" means the largest number of family members during the income determination period.

"First year of grant eligibility" means the first calendar year for which a business firm was both eligible and applied for an enterprise zone incentive grant.

"Full-time employee" means a person employed by a business firm who is normally scheduled to work at least 35 hours per week during the firm's payroll period or two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. The term "full-time employee" does not include unpaid volunteer workers, leased employees or contract labor. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995. Businesses applying for enterprise zone tax credits on or after July 1, 1995, shall use the term permanent full-time position for purposes of qualification pursuant to 13 VAC 5-111-90.

"Grant year" means the calendar year for which a business firm applies for an enterprise zone incentive grant pursuant to § 59.1-282.1 of the Code of Virginia.

"Gross receipts attributable to the active conduct of trade or business within an Enterprise Zone" means all receipts of the business firm arising from the firm's activities or from the investment and use of the firm's capital in its establishment or establishments within the zone. The proportion of gross receipts arising from the firm's activities or from its investment and use of capital within the zone shall be calculated by dividing the total expenses of the firm's establishment or establishments within the zone by the firm's total expenses both inside and outside the zone.

1. This calculation must be used to allocate and apportion taxable gross receipts against which state franchise or license tax credits may be claimed (see 13 VAC 5-111-50 C).

2. This calculation may not be used to allocate and apportion Virginia Taxable Income against which state corporate and individual income tax credits may be claimed or taxable net capital against which state franchise tax credits may be claimed.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for state tax incentives and grants under this program.

"Jurisdiction" means the county, city or town which made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$25 million when such qualified zone investments result in the creation of at least 100 permanent full-time positions.

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of \$100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions.

"Local zone administrator" means the chief executive of the county, city, or town in which an enterprise zone is located, or his designee.

"Low-income person" means a person who is employed in a permanent full-time position with a business firm in an enterprise zone that is seeking qualification for enterprise zone incentives and whose family income was less than or equal to 80% of area median family income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident.

"Median family income" means the dollar amount, adjusted for family size, as determined annually by the department for the city or county in which the zone is located.

"Metropolitan central city" means a city so designated by the U.S. Office of Management and Budget.

"Net loss" means (i) that the gross permanent full-time employment of a business firm located in the Commonwealth was greater than the gross permanent full-time employment of the business firm after relocating within an enterprise zone or zones; or (ii) after the business firm expands a trade or business into an enterprise zone the gross permanent full-time employment of a business firm's locations outside of an enterprise zone or zones in the Commonwealth has been reduced.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.

"Number of eligible permanent full-time positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time position" means a job of indefinite duration at a business firm located in an enterprise zone, and requiring either (i) a minimum of 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, or (ii) a minimum of 35 hours of an employee's time a week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal, temporary, leased or contract labor positions, or a

position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"Placed in service" means: (i) the final certificate of occupancy has been issued by the local jurisdiction for real property improvements; or (ii) the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or (iii) in the case of tools and equipment it means the first moment they are used in the performance of duty or service.

"Qualified business firm" means a business firm meeting the business firm requirements in ~~43 VAC 5-111-50~~ 13 VAC 5-111-30 or 13 VAC 5-111-90 and designated a qualified business firm by the department.

"Qualified zone improvements" means the amount of property chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include, but are not limited to, the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning and clean-up.

2. Qualified zone improvements do not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees, (iii) loan fees; points or capitalized interest; (iv) legal, accounting, realtor, sales and marketing or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, inspection fees; (vi) bids insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings or; (ix) the cost of any well, septic, or sewer system; or (x) cost of acquiring land or an existing building.

3. In the case of new construction, qualified zone improvements also do not include land, land improvements, paving, grading, driveway, and interest.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools, and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, tools, and real property that are leased through a capital lease and that are being depreciated by the lessee or that are transferred from out-of-state to a zone location by a business firm may be included as qualified zone investment. Such leased or transferred machinery, equipment, tools, and real property shall be valued using the depreciable basis for

federal income tax purposes. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) which was previously placed in service in Virginia by the taxpayer, a related party, as defined by Internal Revenue Code § 267(b), or a trade or business under common control; as defined by Internal Revenue Code § 52(b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired, or Internal Revenue Code § 1014(a).

"Qualified zone resident" means an owner or tenant of real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" means the partnership, limited liability company or S corporation.

"Real property improvements tax credit" means a credit provided to a small qualified zone resident pursuant to § 59.1-280.1 C of the Code of Virginia.

"Redetermined base year" means the base year for calculation of the number of eligible permanent full-time positions in a second or subsequent three-year grant period. If a second or subsequent three-year grant period is requested within two years after the previous three-year period, the redetermined base year will be the last grant year. The calculation of this redetermined base year will be determined by the number of positions in the preceding base year, plus the number of threshold positions, plus the number of permanent full-time positions receiving grants in the final year of the previous grant period. If a business firm applies for subsequent three-year periods beyond the two years immediately following the completion of a three-year grant period, the firm shall use one of the two preceding calendar years as the base year, at the choice of the business firm.

~~"Real property improvements tax credit" means a credit provided to a qualified zone resident pursuant to § 59.1-280.4 B of the Code of Virginia.~~

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Seasonal employment" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a CPA firm during the tax return season in order to process returns and who work full-time over a three-month period are seasonal employees.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident.

"Surplus public land" means land within a zone which is owned by the Commonwealth or a unit of local government and which meets the following standards.

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1. In the case of land owned by a unit of local government (i) the land is not being used for a public purpose nor designated or targeted for a specific public use in an adopted land use plan, facilities plan, capital improvements plan or other official public document; (ii) no tangible harm would be incurred by the unit of local government if the land were eliminated from its holdings; and (iii) sale of the land would not violate any restriction stated in the deed.

2. In the case of land owned by agencies of the Commonwealth, except land acquired by the Virginia Department of Transportation for the construction of highways, the land has been determined to be surplus to the Commonwealth in accordance with criteria and procedures established pursuant to §§ 2.1-504 through 2.1-512 of the Code of Virginia.

3. In the case of land acquired by the Virginia Department of Transportation for the construction of highways, the land has been determined to be surplus to the needs of the State Highway Commission and the Commonwealth in accordance with criteria and procedures established pursuant to 33.1-93, 33.1-149 and 33.1-154 of the Code of Virginia. The Commonwealth Transportation Commissioner, prior to determining that land surplus to its needs is also surplus to the Commonwealth, may make such land available to other state agencies in accordance with procedures established pursuant to §§ 2.1-504 through 2.1-512 of the Code of Virginia.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission.

"Tax year" means the year in which the assessment is made.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts or state taxable net capital is accrued.

"Threshold number" means 110% of the number of permanent full-time positions in the base year for the first three-year period in which a business firm is eligible for an enterprise zone incentive grant. For a second and any subsequent three-year period of eligibility, the threshold means 120% of the number of permanent full-time positions in the applicable base year as redetermined for the subsequent three-year period. If such number would include a fraction, the threshold number shall be the next highest integer. Where there are no permanent full-time positions in the base year, the threshold will be zero.

"Transferred employee" means an employee of a firm in the Commonwealth that is relocated to an enterprise zone facility owned or operated by that firm.

"Unit of local government" means any county, city or town. Special purpose political subdivisions, such as redevelopment and housing authorities and industrial development authorities, are not units of local government.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone investment tax credit" means a credit provided to a large qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia.

"Zone resident" means a person whose principal place of residency is within the boundaries of a given locality's any enterprise zone or zones. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually.

13 VAC 5-111-40. Procedures for becoming a qualified business firm.

A. In order to become qualified for the purpose of receiving state tax incentives under this program, a new business firm must submit to the department Form EZ-4N stating that it meets the requirements of 13 VAC 5-111-30 B. An existing business firm must submit Form EZ-4E stating that it meets the requirements of 13 VAC 5-111-30 C. These forms must be prepared by an independent certified public accountant (CPA) licensed by the Commonwealth.

B. Proof of qualification. Form EZ-4N or Form EZ-4E, when completed and signed by an independent CPA, shall be prima facie evidence that a business firm is qualified to receive state tax incentives: *but the evidence of eligibility shall be subject to rebuttal. The department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to this section.*

C. Determination of employee low-income status. In determining whether a business firm meets the requirements of 13 VAC 5-111-30 B or C, an independent CPA may accept a signed statement from an employee affirming that he meets the definition of a low-income person.

D. Annual submission of form. A business firm must submit either Form EZ-4N or Form EZ-4E for each year in which state tax incentives are requested. Form EZ-4N or Form EZ-4E must be submitted to the department no later than 30 calendar days prior to the firm's normal or extended deadline for filing a return for state corporate income tax, state individual income tax, state franchise or license tax on gross receipts, or state franchise tax on net capital.

E. Certification by the department. Within 14 calendar days of receipt of Form EZ-4N or Form EZ-4E, the department will:

1. Review the form;
2. Certify to the Commissioner of the Virginia Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credits requested by the firm; and
3. Forward three copies of the certification to the firm (one copy for the firm's records and two copies to be filed with the applicable state tax returns) or notify the firm

that it fails to qualify for state tax incentives under 13 VAC 5-111-30.

F. Submission of state tax returns. A business firm, upon receipt from the department of copies of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

G. Denial of tax credit. Any certification by the department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or the State Corporation Commission shall notify the department in writing upon determining that a business firm is ineligible for such a tax credit.

H. Time limits for receiving Virginia state tax incentives. Businesses that began operations before July 1, 1992, are eligible to receive five years of tax incentives beginning with the first taxable year in which the firm qualifies. Businesses that began operations after July 1, 1992, are eligible to receive tax incentives for 10 years beginning with the first taxable year in which they qualify. If a firm fails to become qualified for any taxable year during its qualification period, it forfeits the right to request state tax incentives for that year. However, the firm is eligible to become qualified for any remaining years of its five- or 10-year cycle.

I. Prohibition on requalification due to reorganization of a firm. A business firm may not qualify for state tax incentives for more than its qualification period by reorganizing or changing its form in a manner that does not alter the basis of the firm's assets or result in a taxable event.

13 VAC 5-111-60. Allowance for business firms qualified prior to July 1, 1995, to use other enterprise zone incentives.

Business firms already qualified prior to July 1, 1995, may apply for both the real property tax credits provided by Part V (13 VAC 5-111-140 et seq.) and enterprise zone incentive grants provided in Part VI (13 VAC 5-111-210 et seq.), provided the appropriate provisions are met. However, businesses qualified prior to July 1, 1995, are not eligible for additional general tax credit periods other than those previously qualified for. *In addition, these businesses shall not be subject to inclusion in the \$5 million limitation set forth in 13 VAC 5-111-85 A or \$3 million limitation set forth in 13 VAC 5-111-85 B.*

13 VAC 5-111-70. Effective dates.

Beginning on and after July 1, 1995, but before January 1, 2005, a *small* qualified business firm shall be allowed a credit against taxes imposed by Articles 2 (Individuals; § 58.1-320 et seq.) and 10 (Corporations; § 58.1-400 et seq.) of Chapter 3; Chapter 12 (Bank Franchise; § 58.1-1200 et seq.) Article 1 (Insurance Companies; § 58.1-2500 et seq.) of Chapter 25, or Article 2 (Telegraph, Telephone, Water, Heat, Light, Power and Pipeline Companies; § 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia as provided in this regulation for 10 consecutive years in an amount equaling up to 80% of the tax due the first tax year, and up to 60% of the tax due for the second through tenth tax years.

13 VAC 5-111-80. Calculation of credit.

A. The amount of credit allowed shall not exceed the tax imposed for such taxable year. An unused tax credit may not be applied to future years. Any credit not useable for the taxable year the credit was allowed shall not be carried back to a preceding taxable year. The credit is not refundable.

B. If, due to adjustments, the amount of actual tax liability as reported on the application changes, the amount of credit that the qualified business firm will be eligible to receive will not exceed the amount of credit authorized by the department. However, if, as a result of adjustments, the tax liability decreases from the amount stated on the application, the qualified business firm will receive a lower credit amount based on the new tax liability.

~~C. If a *For large* qualified business firms makes qualified zone investments in excess of \$25 million dollars, and such qualified zone investments result in the creation of at least 400 full-time positions, the percentage amounts of the income tax credits available to such qualified business firms under 13 VAC 5-111-70 shall be determined by agreement between the department and the qualified business firm. The negotiated percentage amount shall not exceed the percentages specified in 13 VAC 5-111-70.~~

D. ~~Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone. Any qualified business firm having taxable income from business activity both within and without the enterprise zone, shall allocate and apportion its Virginia taxable income attributable to the conduct of business in accordance with the procedures contained in 58.1-406 through 58.1-420 of the Code of Virginia, as follows:~~

1. ~~The portion of a qualified business firm's Virginia taxable income allocated and apportioned to business activities within an enterprise zone shall be determined by multiplying its Virginia taxable income by a fraction, the numerator of which is the sum of the property factor and the payroll factor, and the denominator of which is two.~~

~~a. The property factor is a fraction. The numerator is the average value of real and tangible personal property of the business firm which is used in the enterprise zone. The denominator is the average~~

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value of real and tangible personal property of the business firm used everywhere in the Commonwealth.

b. The payroll factor is a fraction. The numerator is the total amount paid or accrued within the enterprise zone during the taxable period by the business firm for compensation. The denominator is the total compensation paid or accrued everywhere in the Commonwealth during the taxable period by the business firm for compensation.

2. The property factor and the payroll factor shall be determined in accordance with the procedures established in §§ 58.1-409 through 58.1-413 of the Code of Virginia for determining the Virginia taxable income of a corporation having income from business activities which is taxable both within and without the Commonwealth, *mutatis mutandis*.

3. If a qualified business firm believes that the method of allocation and apportionment hereinbefore prescribed as administered has operated or will operate to allocate or apportion to an enterprise zone a lesser portion of its Virginia taxable income that is reasonably attributable to a business conducted within the enterprise zone, it shall be entitled to file with the Department of Taxation a statement of its objections and of such alternative method of allocation or apportionment as it believes to be appropriate under the circumstances with such detail and proof and within such time as the Department of Taxation may reasonable prescribe. If the Department of Taxation concludes that the method of allocation or apportionment employed is in fact inequitable or inapplicable, it shall redetermine the taxable income by such other method of allocation or apportionment as best seems calculated to assign to an enterprise zone the portion of the qualified business firm's Virginia taxable income reasonably attributable to business conducted within the enterprise zone.

E. The credit provided for in 13 VAC 5-111-70 and 13 VAC 5-111-150 are subject to annual fiscal limitations based on the Commonwealth's fiscal year ending June 30th as provided for in § 59.1-280 A of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation each taxpayer shall be granted a pro rata amount as determined by the department. The amount of such prorated credit shall be determined by applying a fraction, the numerator of which shall be the gross credits requested by the taxpayer for such year, and the denominator of which shall be the total gross credits requested by all taxpayers for such year, to the Commonwealth's annual financial limitation. The credit which may be requested each year shall be subject to the limitations provided by 13 VAC 5-111-70 and 13 VAC 5-111-170 A.

F. In the event that a taxpayer who is subject to the annual fiscal limitation imposed pursuant to subsection E of this section and is also allowed another credit pursuant to another section of the Code of Virginia, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carry forward provision, and then any credit which

is carried forward from a preceding taxable year, prior to utilization of any credit granted pursuant to this section.

13 VAC 5-111-85. Annual fiscal limitations.

A. Except as provided in subdivision B 1 of § 59.1-280.2 of the Code of Virginia, the total amount of (i) business tax credits granted to small qualified business firms in 13 VAC 5-111-70 and (ii) real property investment tax credits granted to small qualified zone residents in 13 VAC 5-111-150 for the Commonwealth's fiscal year ending June 30 as provided for in § 59.1-280 A of the Code of Virginia shall not exceed \$5 million.

B. Except as provided in subdivision B 1 of § 59.1-280.2 of the Code of Virginia, the total amount of (i) business tax credits granted to large qualified business firms in 13 VAC 5-111-80 C and (ii) real property investment tax credits granted to large qualified zone residents in 13 VAC 5-111-170 for the Commonwealth's fiscal year ending June 30 as provided for in § 59.1-280 A of the Code of Virginia shall not exceed \$3 million.

C. If the total amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 of the Code of Virginia and small qualified zone residents are eligible under subsection C of § 59.1-280.1 of the Code of Virginia exceeds \$5 million in any fiscal year in which the amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 of the Code of Virginia and large qualified zone residents are eligible under subsection D of § 59.1-280.1 of the Code of Virginia is less than three million dollars, then the amount of tax credits available to such small qualified business firms and small qualified zone residents shall be increased by the amount by which the tax credits for such large qualified business firms and large qualified zone residents are eligible is less than \$3 million.

D. If the total amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 of the Code of Virginia and large qualified zone residents are eligible under subsection D of § 59.1-280.1 of the Code of Virginia exceeds three million dollars in any fiscal year in which the amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 of the Code of Virginia and small qualified zone residents are eligible under subsection C of § 59.1-280.1 of the Code of Virginia is less than \$5 million, then the amount of tax credits available to such large qualified business firms and large qualified zone residents shall be increased by the amount by which the tax credits for such small qualified business firms and small qualified zone residents are eligible is less than \$5 million.

13 VAC 5-111-90. Qualified business.

Qualification for the credit can occur by satisfying the criteria in subdivisions 1 through 3 of this section. Any business firm may be designated a qualified business for the purpose of this credit if it meets the following criteria:

1. A business firm establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth of Virginia by such taxpayer, and at least

40% 25% or more (except for businesses qualifying prior to July 1, 1997, when it shall be at least 40% or more) of the permanent full-time employees employed at the business firm's establishment or establishments located within the enterprise zone must either have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. Zone residency will be subject to annual verification, while low-income status verification is only required upon initial employment. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.

2. A business firm is actively engaged in the conduct of a trade or business in the Commonwealth of Virginia, and increases the average number of permanent full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least 10% over the lower of the two preceding taxable years' employment with no less than 40% 25% (except for businesses qualifying prior to July 1, 1997, when it shall be no less than 40%) of such increase being employees who have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. In the event that a company has activities both inside and outside the enterprise zone, the business firm may not aggregate activity from outside the zone for calculation of employment increase. Other employment positions that shall not be used in the calculation of the 10% employment increase are referred to in subdivision 3 of this section and 13 VAC 5-111-120.

3. A business firm is actively engaged in the conduct of a trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone and increases the average number of permanent full-time employees by at least 10% over the lower of two preceding taxable years' employment with no less than 40% 25% or more (except for businesses qualifying prior to July 1, 1997, when it shall be at least 40% or more) of such increase being employees who have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of permanent full-time employees by the business firm within the enterprise zone.

4. A business firm that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations must meet the requirements for qualification described in subdivision 3 of this section and 13 VAC 5-111-120.

5. A business firm located within a locality's enterprise zone or zones that moves to another location within that locality's enterprise zone or zones must meet the

requirements for qualification described in subdivisions 1, 2, and 3 of this section, 13 VAC 5-111-100, and 13 VAC 5-111-120.

6. A business firm moving from one locality's enterprise zone to another locality's enterprise zone prior to being qualified shall be subject to the requirements described in subdivision 3 of this section and 13 VAC 5-111-120.

7. A business firm that has already qualified for enterprise zone incentives and moves from one locality's enterprise zone into another locality's enterprise zone shall no longer be qualified unless the firm increases its permanent full-time employment by an additional 10% over the last year of qualification.

8. The business firm must certify annually to the Department of Housing and Community Development on prescribed form or forms, and other documentation as required by the department, that the firm has met the criteria for qualification prescribed in subdivisions 1 through 7 of this section. The form or forms referred to in this subdivision must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the definition of a qualified business; but the evidence of eligibility shall be subject to rebuttal. The department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit pursuant to 13 VAC 5-111-70.

13 VAC 5-111-110. Certification to Tax Commissioner in accordance with § 59.1-280 A of the Code of Virginia.

A. The department shall certify to the Commissioner of the Virginia Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credits requested by the firm; and forward two copies of the certification to the firm, one copy for the firm's records and one copy to be filed with the applicable state tax return or returns, or notify the firm that it fails to qualify for state tax incentives under this part.

B. Submission of state tax returns. A business firm, upon receipt from the department of copies of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

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C. *Denial of tax credit.* Any certification by the department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or the State Corporation Commission shall notify the department in writing upon determining that a business firm is ineligible for such a tax credit.

13 VAC 5-111-120. Anti-churning.

A. A permanent full-time position shall not include any employee:

1. For which a credit under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267(b) or a trade or business under common control;
2. Who was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. Whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;
4. Whose previous job function previously qualified for a credit in connection with a different enterprise zone location on behalf of the taxpayer, a related party, or a trade or business under common control;
5. Whose job function counted for purposes of determining a 10% increase by an existing business firm and credited in an earlier taxable year on behalf of the taxpayer, a related party, or a trade or business under common control; or
6. Whose job function was filled in the Commonwealth and the trade or business where this job function was located was acquired or assumed by another taxpayer.

B. A new *permanent* full-time position which otherwise qualifies for the credit will not be disqualified for purposes of the credit where the employer chooses to use more than one individual to fill the position. This exception is limited to those situations where no more than two employees are used to fill a position, such employees are eligible for essentially the same benefits as full-time employees, and each employee works at least 20 hours per week for at least 48 weeks per year.

13 VAC 5-111-140. Effective dates.

For taxable years beginning on and after July 1, 1995, but before January 1, 2005, a taxpayer qualified small zone resident shall be allowed a *real property improvement tax credit* against taxes imposed by Articles 2 (Individuals; § 58.1-320 et seq.) and 10 (Corporations; § 58.1-400 et seq.) of Chapter 3; Chapter 12 (Bank Franchise; § 58.1-1200 et seq.); Article 1 (Insurance Companies; § 58.1-2500 et seq.) of Chapter 25, or Article 2 (Telegraph, Telephone, Water, Heat, Light, Power and Pipeline Companies; § 58.1-2620 et

seq.) of Chapter 26 of Title 58.1 of the Code of Virginia, as provided in this chapter.

13 VAC 5-111-150. Computation of credit.

A. For any *small* qualified zone resident, the amount of credit earned shall be equal to 30% of the qualified zone improvements *and shall be refundable.* However, in no event shall the cumulative credit allowed to a *small* qualified zone resident exceed \$125,000 dollars in any five-year period. An unused tax credit may not be applied to future years. Any credit not useable for the taxable year the credit was allowed shall not be carried back to a preceding taxable year. Any credit determined in accordance with this subsection that exceeds the tax liability for the taxable year it is requested shall be refunded to the taxpayer subject to the limitations contained in subsection C of this section.

B. Qualified zone improvements shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party, or a trade or business under common control; or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).

C. The credit credits provided for in this section is *and in 13 VAC 5-111-70 for small qualified businesses* are subject to annual fiscal limitations based on the Commonwealth's fiscal year ending June 30th as provided for in §§ ~~59.1-280-A and 59.1-280.1-J~~ 59.1-280.1 C and 59.1-280.2 B 1 of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation, the taxpayer shall be granted a pro rata amount by the department, determined in accordance with ~~13 VAC 5-111-80 E~~ 13 VAC 5-111-85 A.

D. *If the total amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 of the Code of Virginia and small qualified zone residents are eligible under subsection C of § 59.1-280.1 of the Code of Virginia exceeds \$5 million in any fiscal year in which the amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 of the Code of Virginia and large qualified zone residents are eligible under subsection D of § 59.1-280.1 of the Code of Virginia is less than \$3 million, then the amount of tax credits available to such small qualified business firms and small qualified zone residents shall be increased by the amount by which the tax credits for such large qualified business firms and large qualified zone residents are eligible is less than \$3 million.*

13 VAC 5-111-160. Eligibility.

A. A business firm is eligible to receive a credit for real property improvements provided:

1. The total amount of the rehabilitation or expansion of depreciable real property placed in service during the taxable year within the enterprise zone equals or exceeds \$50,000 and the assessed value of the original facility immediately prior to rehabilitation or expansion.

2. The cost of any newly constructed depreciable nonresidential real property (as opposed to rehabilitation or expansion) is at least \$250,000 with respect to a single facility. For purposes of this subdivision, land, land improvements, paving, grading, driveway and interest shall not be deemed to be qualified zone improvements.

B. The business firm must certify to the Department of Housing and Community Development on the prescribed form or forms, and other documents as prescribed by the department, that the firm has met the criteria for qualification prescribed in this section. The form or forms referred to in this subsection must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the qualifications, but the evidence of eligibility shall be subject to rebuttal. The department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to 13 VAC 5-111-150 A.

13 VAC 5-111-170. Zone investment tax credits.

A. ~~In the event that a qualified zone resident makes a qualified zone investment in excess of \$400 million and such qualified zone investments result in the creation of at least 200 permanent full-time positions, then the~~ A large qualified zone resident shall be eligible for a credit in an amount of up to 5.0% of the qualified zone investments in lieu of the credit provided for in 13 VAC 5-111-150 A. The zone investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any tax credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.

B. The percentage amount of the zone investment tax credit granted to a large qualified zone resident shall be determined by agreement between the department and the large qualified zone resident, provided such percentage amount does not exceed 5.0%.

C. The percentage amounts of the business income tax credit provided in ~~13 VAC 5-111-80 A~~ 13 VAC 5-111-80 C which may be granted to a large qualified business firm is also subject to agreement between the department in the event that a large qualified zone resident is also a large qualified business firm, provided such percentage amounts shall not exceed the percentage amounts otherwise provided in ~~13 VAC 5-111-80 A~~ 13 VAC 5-111-80 C.

D. ~~The credit provided for in § 59.1-280.1 J of the Code of Virginia (and any credit that is available to a qualified zone resident that is also a qualified business firm pursuant to § 59.1-280) is subject to annual fiscal limitations based on the Commonwealth's fiscal year ending June 30th as provided for in § 59.1-280.1 J of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation, each taxpayer shall be granted a pro rata credit as determined by the department. The credits provided for in this section and in 13 VAC 5-111-80 C for large qualified businesses are subject to annual fiscal limitations based on~~

~~the Commonwealth's fiscal year ending June 30th as provided for in §§ 59.1-280.1 D and 59.1-280.2 B 2 of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation the taxpayer shall be granted a pro rata amount by the department, determined in accordance with 13 VAC 5-111-85 B. The amount of such prorated grant shall be determined by applying a fraction, the numerator of which shall be the gross credit requested by the taxpayer for such year, and the denominator of which shall be the total gross credits requested by all taxpayers for such year to the Commonwealth's annual fiscal limitation. The credit which may be requested each year shall be subject to the limitation provided by subsection A of this section.~~

~~E. If the total amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 of the Code of Virginia and large qualified zone residents are eligible under subsection D of § 59.1-280.1 of the Code of Virginia exceeds three million dollars in any fiscal year in which the amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 of the Code of Virginia and small qualified zone residents are eligible under subsection C of § 59.1-280 of the Code of Virginia is less than five million dollars, then the amount of tax credits available to such large qualified business firms and large qualified zone residents shall be increased by the amount by which the tax credits for such small qualified business firms and small qualified zone residents are eligible is less than five million dollars.~~

~~E. F. In the event that a taxpayer who is subject to the annual fiscal limitation imposed pursuant to subsection D of this section and is also allowed another credit pursuant to another section of the Code of Virginia, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carry forward provision, and then any credit which is carried forward from a preceding taxable year, prior to utilization of any credit granted pursuant to this section.~~

~~G. The business firm must certify to the Department of Housing and Community Development on prescribed form or forms and other documents as prescribed by the department that the firm has met the criteria for qualification prescribed in this section. The form or forms referred to in this subsection must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the qualifications, but the evidence of eligibility shall be subject to rebuttal. The department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to 13 VAC 5-111-170 A.~~

13 VAC 5-111-200. Certification to Tax Commissioner in accordance with § 59.1-280.1 G-59.1-208 B of the Code of Virginia.

A. The department shall certify to the Commissioner of the Virginia Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the

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tax credits requested by the firm; and forward two copies of the certification to the firm; one copy for the firm's records and one copy to be filed with the applicable state tax return or returns or notify the firm that it fails to qualify for state tax incentives under Part IV (13 VAC 5-111-70 et seq.).

B. Submission of state tax returns. A business firm, upon receipt from the department of copies of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

C. Any certification by the department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or the State Corporation Commission shall notify the department in writing upon determining that a business firm is ineligible for such a tax credit.

13 VAC 5-111-290. Zone eligibility requirements.

A. To be eligible for consideration, an application for an enterprise zone must meet the requirements set out in this section.

B. For counties, cities and towns the proposed zone must consist of an area made up of contiguous United States Census tracts or block groups or any part thereof. However, ~~counties with a population density of 150 or fewer persons per square mile at the most recent decennial census may have one zone which contains no more than two noncontiguous areas of at least one square mile each. one enterprise zone in any county, city, or town may consist of two noncontiguous zone areas. The size of the enterprise zone shall consist of the total of the two noncontiguous zone areas. The two noncontiguous zone areas shall not be considered as separate zones for the purpose of calculating the maximum number of zone designations. The maximum combined land area cannot exceed maximum size guidelines set forth in subdivisions D 1, 2, 3 and 4 of this section.~~

C. The proposed zone must meet at least one of the following distress criteria as enumerated in the most current U.S. Census or current data from the Center for Public Service or local planning district commission: (i) 25% or more of the households must have had incomes below 80% of the median household income of the county or city; (ii) the unemployment rate must have been at least 1.5 times the state average; or (iii) demonstrate a floor area vacancy rate of industrial and/or commercial properties of 20% or more.

D. All proposed zones shall conform to the following size guidelines:

1. Metropolitan Central Cities - Minimum: 1/2 square mile (320 acres); Maximum: one square mile (640 acres) or 7.0% of the jurisdiction's land area or population, whichever is largest.

2. Towns and cities other than Metropolitan Central Cities - Minimum: 1/4 square mile (160 acres); Maximum: 1/2 square mile (320 acres) or 7.0% of the jurisdiction's land area or population, whichever is largest.

3. Unincorporated areas of counties - Minimum: 1/2 square mile (320 acres); Maximum: six square miles (3,840 acres).

~~4. Counties with a population density of 150 or fewer persons per square mile at the most recent decennial census may have one zone which contains no more than two noncontiguous areas and each area must be at least one square mile (640 acres). The maximum combined land area cannot exceed six square miles (3,840 acres).~~

~~5.~~ 4. Consolidated cities. Zones in cities the boundaries of which were created through the consolidation of a city and county or the consolidation of two cities, shall conform substantially to the minimum and maximum size guidelines for unincorporated areas of counties as set forth in subdivision 3 of this subsection.

~~6.~~ 5. In no instance shall a zone consist only of a site for a single business firm.

13 VAC 5-111-300. Procedures for zone application and designation.

A. Up to 50 enterprise zones may be designated by the Governor in accordance with the procedures and requirements set out in this section.

B. Applications for zone designation will be solicited by the department in accordance with the following procedures and requirements:

1. An application for zone designation must be submitted on Form EZ-1 to the Director, Virginia Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia 23219, on or before the submission date established by the department.

2. The local governing body must hold at least one public hearing on the application for zone designation prior to its submission to the department. Notification of the public hearing is to be in accordance with § 15.1-431 of the Code of Virginia relating to advertising of public hearings. An actual copy of the advertisement must be included in the application as Attachment A.

3. In order to be considered in the competitive zone designation process an application from a jurisdiction must include all the requested information, be accompanied by a resolution of the local governing body and be signed by the chief administrator or the clerk to the town council or county board of supervisors where there is no chief administrator. The chief administrator or

clerk, in signing the application, must certify that the local governing body held the public hearing required in subdivision 2 of this subsection.

4. As part of its application a locality may propose local incentives including but not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) special subclassifications and rates for business professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221 of the Code of Virginia; (v) infrastructure improvements; and (vi) crime reduction measures ; and (vii) adoption of a local enterprise zone development taxation program pursuant to § 58.1-3245 of the Code of Virginia. When making an application jurisdictions may also make proposals for regulatory flexibility, including, but not limited to: (i) special zoning districts; (ii) permit process reform; (iii) exemptions from local ordinances; (iv) removal of regulatory barriers to affordable housing; and (v) other public incentives proposed. A jurisdiction may also create a local enterprise zone association to assist in the planning process and future management of the enterprise zone to assure that major decisions affecting the zone's future take into account the needs of both the public and private sector, including citizens of the involved zone communities.

5. The likely impact of proposed local incentives in offsetting identified barriers to private investment in the proposed zone, together with the projected impact of state tax incentives, will be factors in evaluating applications.

6. A locality may establish eligibility criteria for local incentives for business firms that are the less than, the same as, or more stringent than, the criteria for eligibility of grants or other benefits that the state provides.

7. Proposed local incentives may be provided by the local governing body itself or by an assigned agent such as a local redevelopment and housing authority, an industrial development authority, a private nonprofit entity or a private for-profit entity. In the case of a county which submits an application on behalf of an incorporated town, the county may designate the governing body of the town to serve as its assigned agent. In the case of a county which submits an application for a zone encompassing unincorporated county areas as well as portions of one or more towns, the county may designate the governing body of the town to serve as its assigned agent.

C. Within 60 days following the application submission date, the department shall review and the director shall recommend to the Governor those applications that meet a minimum threshold standard as set by the department and are competitively determined to have the greatest potential for accomplishing the purposes of the program.

D. The department, in consultation with the Virginia Economic Development Partnership, may allow up to five enterprise zone designations to be utilized in an open submission process for significant economic development opportunities in areas that are otherwise qualified under provisions of these regulations and meet minimum threshold

standards. The selection of these zones by the Governor shall be made upon recommendation and certification of consistency with the program regulations by the department.

E. The Governor shall designate, upon recommendation of the director, enterprise zones for a period of 20 years. The Governor's designation shall be final.

F. A local governing body whose application for zone designation is denied shall be notified and provided with the reasons for denial.

13 VAC 5-111-310. Procedures and requirements for joint applications.

A. Two or more adjacent jurisdictions submitting a joint application as provided for in 13 VAC 5-111-300 *C B* must meet the requirements set out in this section.

B. The applicants must designate one jurisdiction to act as program administrator. The jurisdiction so designated shall be responsible for filing a survey of zone business conditions and annual reports as provided for in 13 VAC 5-111-380 and 13 VAC 5-111-390.

C. In order to submit a joint application, Form EZ-1 must be completed and filed by the jurisdiction acting as program administrator in accordance with the procedures set forth in subdivisions B 1 through 4 of 13 VAC 5-111-300. In addition, a copy of Form EZ-1-JA must be completed by each of the other participating jurisdictions to certify that they are in agreement in filing the joint application. A copy of Form EZ-1-JA must be submitted to the department with Form EZ-1.

D. The applicants must meet all other requirements of these regulations pertaining to applicants. In the case of joint applications, all references to "applicant" and "local governing body" contained in the text of these regulations shall mean the governing body of each participating jurisdiction.

13 VAC 5-111-330. Amendment of approved applications.

A. A local governing body will be permitted to request amendments to approved applications for zone designation in accordance with the procedures and requirements set out in this section.

B. The local governing body must hold at least one public hearing on the requested amendment prior to its submission to the department. In the case of a boundary amendment that involves the elimination of an area or areas, the local governing body must separately notify each property owner and business located within the affected area of the proposed amendment prior to holding the public hearing.

C. A request for an amendment must be submitted to the department on Form EZ-2. This form must be accompanied by a resolution of the local governing body and must certify that the local governing body held the public hearing required in subsection B of this section prior to the adoption of the resolution. In the case of a joint application, a request for an amendment must be completed by the jurisdiction serving as program administrator and must be accompanied by Form EZ-2-JA. This form certifies that the other participating jurisdictions are in agreement in filing the request for amendment.

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D. Beginning on and after July 1, 1995, enterprise zone jurisdictions will be required to thoroughly examine their previously approved applications every five years. The jurisdiction shall review all aspects of the application boundaries, goals, objectives, strategies, actions and incentives, as well as barriers to development, and include as part of their annual report an explanation of why the application or sections of the application need or do not need to be amended to improve enterprise zone performance. Application amendments relating to these requirements will be required every five years if:

1. The jurisdiction has not yet developed goals, objectives, strategies and actions to overcome barriers to development within the zone.
2. The jurisdiction has incentives that have not been utilized during the five year period.

E. An enterprise zone application may be amended annually by the jurisdiction. Amendments may be to the entire application or individual sections such as the boundary, goals, objectives, strategies and actions, or incentives.

F. A proposed boundary amendment must meet the following requirements:

1. The area proposed for expansion must be contiguous to the existing zone, except for ~~a county with a population density of 150 or fewer persons per square mile~~ *one enterprise zone in any county, city, or town which may consist of two noncontiguous zone areas* (see 13 VAC 5-111-290 D-4 B).
2. The enlarged zone must meet at least one of the distress criteria outlined in 13 VAC 5-111-290 C.
3. Boundary amendments that involve the elimination of area or areas from a zone shall be reviewed on a case-by-case basis with the potential impact on affected businesses and property owners being given primary consideration. Such boundary changes cannot impact the zone's ability to meet the required distress criteria and cannot involve more than 15% of the total zone acreage.

G. The enlarged zone shall not exceed the maximum size guidelines outlined in 13 VAC 5-111-290 D. A zone boundary amendment may not consist of a site for a single business firm or be less than 10 acres.

H. The department will approve an amendment to local incentives only if the proposed local incentives are equal or superior to those in the application prior to the proposed amendment or if the proposed cumulative local incentive package is equal to or greater than those in the application prior to the proposed amendment. The department will approve an amendment to expand zone boundaries or the goals, objectives, strategies and actions only if the proposed amendment is deemed to be consistent with the purposes of the program as determined by the department.

I. A local governing body that is denied either a boundary, goals, objectives, strategies and actions, or local incentive amendment shall be provided with the reasons for denial.

13 VAC 5-111-400. Confidentiality of information.

A. Except in accordance with proper judicial order or as otherwise provided by law, any employee or former employee of the department shall not divulge any information acquired by him in the performance of his duties with respect to the tax liability, employment, property, or income of any business firm submitted to the department pursuant to Title 59.1 of the Code of Virginia. Any person violating this section shall be guilty of a Class 2 misdemeanor. The provisions of this section shall not be applicable, however, to:

1. Acts performed or words spoken or published in the line of duty under law;
2. Inquiries and investigations to obtain information as to the implementation of this chapter by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged;
3. Disclosures of information to the Department of Taxation or the State Corporation Commission as may be required to implement the provisions of this chapter; or
4. The publication of statistics so classified as to prevent the identification of particular business firms.

VA.R. Doc. No. R97-480; Filed May 6, 1997, 1:28 p.m.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Title of Regulation: 16 VAC 25-35-10 et seq. Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees.

Statutory Authority: §§ 40.1-22(5) and 40.1-51.20 of the Code of Virginia.

Effective Date: June 26, 1997.

Summary:

This regulation requires all certified lead contractors who engage in lead projects in Virginia with a contract value of \$2,000 or more to notify the department in writing at least 20 days before the beginning of such lead project. Such notification shall be provided on a department form accompanied by the payment of a lead project permit fee. The regulation also requires filing of amended notifications prior to changes in or cancellation of lead projects.

The revision of the proposed regulation reflects the position of the Department of Labor and Industry that the notification and permitting requirements shall apply only to those contractors required to be certified by the Department of Professional and Occupational Regulation when such contractors are performing lead-related activities. As a result, the definitions of the following terms have been revised to reference Virginia Board for Asbestos and Lead's Virginia Lead-Based Paint

Activities Regulations, 18 VAC 15-30-10 et seq.: "certified contractor," "lead project," and "residential building." Since the Department of Labor and Industry's regulation applies only to contractors performing lead-related activities which require certification or licensure by the Department of Professional and Occupational Regulation, a number of other definitions have been deleted. In addition, the term "lead abatement project" has been replaced by the term "lead project" or "lead-related activities." Hence, any changes that the Department of Professional and Occupational Regulation may make to its certification or licensure requirements will be incorporated into the Department of Labor and Industry's lead notification and permitting requirements. In addition, in response to public comments, the notification form has been revised to delete the request for information regarding the amount of lead not removed.

The regulation does not mandate the abatement of lead from any public or private property. It does mandate notification and issuance of a permit if a lead project is undertaken. A certified lead contractor who performs lead-related activities in certain residential buildings must provide notification to the department but is not required to pay a permit fee.

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 Bonnie H. Robinson, Department of Labor and Industry, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

CHAPTER 35.

REGULATION CONCERNING CERTIFIED LEAD CONTRACTORS NOTIFICATION, LEAD PROJECT PERMITS AND PERMIT FEES.

16 VAC 25-35-10. Definitions.

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

~~"Certified [lead] contractor" [means an individual, company, partnership, corporation, sole proprietorship, association, or other business entity that offers to perform lead-based paint activities which has been issued an authorization by the Department of Professional and Occupational Regulation permitting the individual or firm to enter into contracts to perform abatement activities is defined in the Virginia Board for Asbestos and Lead's Virginia Lead-Based Paint Activities Regulation, 18 VAC 15-30-10].~~

~~["Commercial building" means any building used primarily for commercial or industrial activity, which is generally not open to the public or occupied or visited by children, including but not limited to warehouses, factories, storage facilities, aircraft hangars, garages, and wholesale distribution facilities.~~

~~"Demolition" means the act of pulling down or destroying any building or structure.]~~

~~"Department" means the Department of Labor and Industry.~~

~~["Encapsulation" means a process that makes lead-based paint inaccessible by providing a barrier between the lead-based paint and the environment with this barrier being formed using a liquid applied coating or an adhesively bonded material and when the primary means of attachment is by the bonding of the product to the surface either by itself or through the use of an adhesive. This excludes painting unless abrasive surface preparation is performed.~~

~~"Facility" means a building or portion of a commercial building, or rooms in a residential dwelling or unit, or bare soil on residential real property that contains lead at or in excess of levels identified as hazardous under guidance issued by the United States Environmental Protection Agency pursuant to § 403 of the Toxic Substances Control Act (15 USC § 2683).~~

~~"Lead abatement project" is a project in which any measure or set of measures designed to permanently eliminate lead-based paint hazards is employed. A lead abatement project includes, but is not limited to:~~

- ~~1. The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures; and~~
- ~~2. All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.~~

~~Lead abatement projects include, but are not limited to, the following:~~

- ~~1. Projects for which there is a written contract stating that an individual or firm will be conducting activities in or to a residential dwelling unit that will permanently eliminate lead-based paint hazards;~~
- ~~2. Projects involving the permanent elimination of lead-based paint and conducted by firms or individuals certified in accordance with the regulations of the Department of Professional and Occupational Regulation;~~
- ~~3. Projects involving the permanent elimination of lead-based paint and conducted by firms or individuals who, through their company name, promotional literature, or otherwise, advertise or hold themselves out to be lead abatement professionals; or~~
- ~~4. Projects where abatement is conducted in response to state or local abatement orders.~~

~~Lead abatement projects do not include renovation and remodeling activities when the primary intent is not to permanently eliminate lead-based paint hazards, but is instead to repair, restore or remodel a given structure or dwelling even though these activities may incidentally result in a reduction in lead-based paint hazards.~~

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~~Furthermore, lead abatement projects do not include interim controls, operations and maintenance or other measures and activities designed to temporarily reduce lead-based paint hazards.~~

~~"Lead supervisor" means a person who has met the requirements of and is certified as a lead supervisor by the Virginia Department of Professional and Occupational Regulation.~~

~~"Lead project" means any lead-related activity which requires the contractor performing such activity to be licensed or certified by the Department of Professional and Occupational Regulation.]~~

~~"Residential building" [means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwellings consisting of four units or less which are currently in use or intended for use only for residential purposes is defined in the Virginia Board for Asbestos and Lead's Lead-Based Paint Activities Regulation, 18 VAC 15-30-10].~~

16 VAC 25-35-20. Authority and application.

A. This regulation is established in accordance with § 40.1-51.20 of the Code of Virginia.

B. This regulation shall apply to all [~~certified lead contractors who engage in lead abatement projects~~ contractors in the performance of lead-related activities which require such contractors to be licensed or certified by the Department of Professional and Occupational Regulation].

[~~C. The application of this regulation to contractors who work on federal property will be decided by the department based on a review of the facts in each case. The contractor shall contact the department to determine the applicability of the regulation to a specific project.~~

~~D. C.]~~ This regulation shall not affect the reporting requirements under § 40.1-51.20 C of the Code of Virginia or any other notices or inspection requirements under any other provision of the Code of Virginia.

16 VAC 25-35-30. Notification and permit fee.

A. Written notification of any lead [~~abatement~~] project, the contract price of which is \$2,000 or more, shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.

B. The department form shall include the following information:

1. Name, address, telephone number, and the certification number of each person intending to engage in a lead [~~abatement~~] project.

2. Name, address, and telephone number of the owner or operator of the facility in which the lead [~~abatement~~] project is to take place.

3. Type of notification: amended, emergency, renovation or demolition.

4. Description of facility in which the [~~abatement or demolition lead project~~] is to take place, including [~~present use or uses, prior use or uses, age, and~~] address [, size, and number of floors].

5. Estimate of amount of lead and method of estimation.

6. Amount of the lead project fee submitted.

7. Scheduled setup date, removal date or dates, and completion date [~~of lead abatement work~~] and times during which [~~abatement lead-related activity~~] will take place.

8. Name and certificate number of the [~~lead~~] supervisor on site.

9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site or sites where the lead-containing material will be disposed.

10. Detailed description of the [~~abatement~~] methods to be used [in performing the lead project].

11. Procedures and equipment used to control the emission of lead-contaminated dust, to contain or encapsulate lead-based paint, and to replace lead-painted surfaces or fixtures in order to protect public health during [~~abatement, removal, transit, loading and unloading~~] performance of the lead project].

12. If a facsimile transmission is to be made pursuant to subsection J of this section, the credit card number, expiration date, and signature of cardholder.

13. Any other information requested on the department form.

C. A lead [~~abatement~~] project permit fee shall be submitted with the completed project notification form. The fee shall be in accordance with the following schedule:

1. The greater of \$100 or 1.0% of the contract price, with a maximum of \$500.

2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program by at least [~~45% 10%~~], the commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for [a] lead [~~abatement project~~] on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in subsection A of this section to the department at least 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:

a. The dates of work required by subdivision B 7 of this section shall be every work day during the blanket notification period, excluding weekends and state holidays.

b. The estimate of lead to be removed required under subdivision B 5 of this section shall be signed by the owner and the owner's signature authenticated by a notary.

c. A copy of the contract shall be submitted with the notification.

2. The lead [~~abatement~~] project permit fee for blanket notifications shall be as set forth in subsection C of this section.

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be present at the site. The fee for each amended notification will be \$15.

4. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must include the actual amount of lead removed and the actual amount of payments made under the contract. The refund shall be the difference between the original lead permit fee paid and 1.0% of the actual amount of payments made under the contract.

E. Notification of fewer than 20 days may be allowed in case of an emergency involving protection of life, health or property. In such cases, notification and the lead permit fee shall be submitted within five working days after the start of the emergency [~~abatement~~ lead project]. A description of the emergency situation shall be included when filing an emergency notification.

F. A notification shall not be effective unless a complete form is submitted and the proper permit fee is enclosed with the completed form. A notification made by facsimile transmission pursuant to subsection J of this section shall not be effective if the accompanying credit card payment is not approved.

G. On the basis of the information submitted in the lead notification, the department shall issue a permit to the contractor within seven working days of the receipt of a completed notification form and permit fee.

1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.

H. Amended notifications may be submitted for modifications of subdivisions B 3 through B 11 of this section. No amendments to subdivision B 1 or B 2 of this section shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.

1. No amended notification shall be effective if an incomplete form is submitted or if the proper permit

amendment fee is not enclosed with the completed notification.

2. A permit amendment fee shall be submitted with the amended notification form. The fee shall be in accordance with the following schedule:

a. For modifications to subdivisions B 3, B 4, and B 6 through B 10 of this section, \$15.

b. For modifications to subdivision B 5 of this section, the difference between the permit fee in subsection C of this section for the amended amount of lead and the original permit fee submitted, plus \$15.

3. Modifications to the completion date may be made at any time up to the completion date on the original notification.

4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.

I. The department must be notified prior to any cancellation. A copy of the original notification form marked "canceled" must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the lead project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted.

The following amounts will be deducted from the refund payment: \$15 for processing of the original notification, \$15 for each amendment filed, and \$15 for processing the refund payment.

J. Notification for any lead [~~abatement~~] project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.

16 VAC 25-35-40. Exemption.

No lead [~~abatement~~] project fees will be required for residential buildings. Notification for lead projects shall otherwise be in accordance with applicable portions of this chapter.

PERMIT NUMBER: _____



LEAD PERMIT APPLICATION AND NOTIFICATION FOR DEMOLITION/RENOVATION

1. TYPE OF NOTIFICATION: ORIGINAL AMENDED CANCEL

2. FACILITY INFORMATION: (facility owner, removal, demolition & other contractors)

OWNER: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CONTACT: _____ TELEPHONE: () _____

REMOVAL CONTRACTOR: _____ LICENSE # _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CONTACT: _____ TELEPHONE: () _____

DEMOLITION CONTRACTOR: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CONTACT: _____ TELEPHONE: () _____

OTHER OPERATOR: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CONTACT: _____ TELEPHONE: () _____

3. TYPE OF OPERATION: DEMO RENO EMER-RENO ENCAPSULATE

4. FACILITY DESCRIPTION (INCLUDE BUILDING NAME, NUMBER AND FLOOR OR ROOM NUMBER):

BUILDING NAME: _____

STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SITE LOCATION: _____

BUILDING SIZE: _____ # FLOORS _____

5. SCHEDULED DATES, REMOVAL START: ___/___/___ FINISH: ___/___/___

REMOVAL TIMES: DAYS OF OPERATION: (MONDAY-SUNDAY) _____

WORKSHIFT HOURS: (MONDAY-FRIDAY) _____

(SATURDAY-SUNDAY) _____

LEAD PERMIT APPLICATION AND NOTIFICATION FOR DEMOLITION/RENOVATION

6. SCHEDULED DATES, DEMOLITION START: ___/___/___ FINISH: ___/___/___

7. LEAD TO BE REMOVED	AMOUNT
DESCRIPTION	
SURFACE AREA	
SOIL ABATEMENT	CUFT

9. DESCRIPTION OF PLANNED DEMOLITION OR RENOVATION WORK, AND METHOD(S) TO BE USED:

10. DESCRIPTION OF WORK PRACTICES AND ENGINEERING CONTROLS TO BE USED TO PREVENT EMISSIONS OF LEAD AT THE DEMOLITION OR RENOVATION SITE:

11. WASTE TRANSPORTER #1: NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CONTACT: _____ TELEPHONE: () _____

WASTE TRANSPORTER #2: NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CONTACT: _____ TELEPHONE: () _____

12. WASTE DISPOSAL SITE: NAME: _____

LOCATION: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE () _____ LANDFILL PERMIT #: _____

13. IF DEMOLITION ORDERED BY A GOVERNMENT AGENCY, IDENTIFY THE AGENCY BELOW:

NAME: _____ TITLE: _____

AUTHORITY: _____

DATE OF ORDER: DATE: ___/___/___ DATE ORDERED TO BEGIN: DATE: ___/___/___

LEAD PERMIT APPLICATION AND NOTIFICATION FOR DEMOLITION/RENOVATION

14. FOR EMERGENCY RENOVATIONS:

DATE AND HOUR OF EMERGENCY DATE: / / TIME: _____

DESCRIPTION OF THE SUDDEN, UNEXPECTED EVENT: _____

EXPLANATION OF HOW THE EVENT CAUSED UNSAFE CONDITIONS OR WOULD CAUSE EQUIPMENT DAMAGE: _____

15. DESCRIPTION OF PROCEDURES TO BE FOLLOWED IN THE EVENT THAT UNEXPECTED LEAD IS FOUND: _____

16. I CERTIFY THAT AN INDIVIDUAL CERTIFIED IN THE ABATEMENT OF LEAD HAZARDS WILL BE ON-SITE DURING THE DEMOLITION OR RENOVATION AND EVIDENCE THAT THE REQUIRED TRAINING HAS BEEN ACCOMPLISHED BY THIS PERSON WILL BE AVAILABLE AT THE PROJECT SITE FOR INSPECTION.

SUPERVISOR: _____ LICENSE # _____

SIGNATURE OF CONTRACTOR: _____ DATE: / / _____

17. I CERTIFY THAT THE INFORMATION SUBMITTED IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND THAT ACCREDITED PERSONS ARE BEING USED ON THIS PROJECT:

NAME: _____ TITLE: _____

SIGNATURE: _____ DATE: / / _____

18. AMOUNT OF LEAD FEE SUBMITTED: \$ _____ CONTRACT PRICE: \$ _____

A LEAD project permit fee shall be submitted with the completed project notification. The fee shall be in accordance with the following schedule:

1. The greater of \$100 or 1% of the contract price, with a maximum of \$500.
2. \$15 for each amended notification.

Address all notifications as described below:

LEAD PROGRAM
 DEPARTMENT OF ENVIRONMENTAL LABOR AND INDUSTRY
 POWERS-TAYLOR BUILDING
 13 SOUTH THIRTEENTH STREET
 RICHMOND, VA 23219
 FAX (804) 371-7634

CREDIT CARD TYPE (CHECK ONE):

VISA CARD # _____ EXPIRATION DATE: / / _____

MASTER CARD AUTHORIZED SIGNATURE: _____

Final Regulations

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of 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 Medicaid Eligibility for Aliens.

12 VAC 30-10-10 et seq. General Provisions (amending 12 VAC 30-10-580).

12 VAC 30-40-10 et seq. Eligibility Conditions and Requirements (amending 12 VAC 30-40-10).

12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-310).

12 VAC 30-110-10 et seq. Eligibility and Appeals (adding 12 VAC 30-110-1300).

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

Effective Date: July 1, 1997.

Summary:

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193 enacted on August 22, 1996, substantially changes the Medicaid entitlements for aliens who are currently receiving full Medicaid benefits. Section 431 of the Act defines "qualified aliens" for the purposes of determining eligibility for public benefits. Section 401 of the Act provides that aliens who are not "qualified aliens" as defined in § 431 are not eligible for any federal public benefit. Federal public benefits include, with a few exceptions, "any welfare, health, disability, or other similar benefit for which payments of assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States." One exception is emergency medical services defined under § 1903(v) of the Social Security Act. This change excludes from full Medicaid benefits numerous categories of aliens defined as "permanently residing under color of law" (PRUCOL) who are presently eligible for full Medicaid benefits. The previous categories of lawful permanent residents and aliens permanently residing in the United States under color of law no longer apply. After January 1, 1997, only "qualified aliens" may be eligible for full benefits. Other aliens may qualify for coverage of emergency services only.

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 30-10-580. Payment for services.

A. Medicaid agency meets the requirements of 42 CFR 447, Subpart C, and § 1902(a)(13) and 1923 of the Act with respect to payment for inpatient hospital services.

Chapter 70, 12 VAC 30-70-10 et seq., describes the methods and standards used to determine rates for payment for inpatient hospital services.

Inappropriate level of care days are not covered.

B. In addition to the services specified in paragraphs A, D, K, L and M, the Medicaid agency meets the following requirements:

1. Section 1902(a)(13)(E) of the Act regarding payment for services furnished by federally qualified health centers (FQHCs) under § 1905(a)(2)(C) of the Act. The agency meets the requirements of § 6303 of the State Medicaid Manual (HFCA-Pub. 45-6) regarding payment for FQHC services. Chapter 80, 12 VAC 30-80-10 et seq., describes the method of payment and how the agency determines the reasonable costs of the services (for example, cost reports, cost or budget reviews, or sample surveys).

2. Sections 1902(a)(13)(E) and 1926 of the Act, and 42 CFR 447, Subpart D, with respect to payment for all other types of ambulatory services provided by rural health clinics under the plan.

Chapter 80, 12 VAC 30-80-10 et seq., describes the methods and standards used for the payment of each of these services except for inpatient hospital, nursing facility services and services in intermediate care facilities for the mentally retarded that are described in other attachments.

12 VAC 30-80-170 describes the general methods and standards used for establishing payment for Medicare Part A and B deductible/coinsurance.

C. Payment is made to reserve a bed during a recipient's temporary absence from an inpatient facility, as described in 12 VAC 30-20-170.

D. 1. The Medicaid agency meets the requirements of 42 CFR 447, Subpart C, with respect to payments for skilled nursing and intermediate care facility services.

12 VAC 30-90-10 describes the methods and standards used to determine rates for payment for skilled nursing and intermediate care facility services.

2. The Medicaid agency does not provide payment for SNF skilled nursing facility services to a swing-bed hospital.

3. The Medicaid agency does not provide payment for ICF intermediate care facility services to a swing-bed hospital.

4. ~~Subsection—D~~ Subdivision 1 of this section subsection is applicable with respect to intermediate care facility services; such services are provided under this plan.

E. The Medicaid agency meets all requirements of 42 CFR 447.45 for timely payment of claims.

12 VAC 30-20-180 specifies, for each type of service, the definition of a claim for purposes of meeting these requirements.

F. The Medicaid agency limits participation to providers who meet the requirements of 42 CFR 447.15.

No provider participating under this plan may deny services to any individual eligible under the plan on account of the individual's inability to pay a cost sharing amount imposed by the plan in accordance with 42 CFR 431.55(g) and 447.53. This service guarantee does not apply to an individual who is able to pay, nor does an individual's inability to pay eliminate his or her liability for the cost sharing change.

G. The Medicaid agency assures appropriate audit of records when payment is based on costs of services or on a fee plus cost of materials.

H. The Medicaid agency meets the requirements of 42 CFR 447.203 for documentation and availability of payment rates.

I. The Medicaid agency's payments are sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general population.

J. The Medicaid agency meets the requirements of 42 CFR 447.205 for public notice of any changes in statewide method or standards for setting payment rates.

K. The Medicaid agency meets the requirements of § 1903(v) of the Act with respect to payment for medical assistance furnished to ~~an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law~~ *qualified aliens who entered the United States on or after August 22, 1996, who are not eligible for Medicaid for five years after their entry and nonqualified aliens, including illegal aliens and legal nonimmigrants who are otherwise eligible.* Payment is made only for care and services that are necessary for the treatment of an emergency condition, as defined in § 1903(v) of the Act.

L. The Medicaid agency meets the requirements of § 1903(i)(14) of the Act with respect to payment for physician services furnished to children under 21 and pregnant women. Payment for the physician services furnished by a physician to a child or pregnant woman is made only to physicians who meet one of the requirements listed under this section of the Act.

M. Medicaid reimbursement for administration of vaccines under the Pediatric Immunization Program.

A provider may impose a charge for the administration of a qualified pediatric vaccine as stated in § 1928(c)(2)(C)(ii) of the Act. Within this overall provision, Medicaid reimbursement to providers will be administered as follows:

1. The state sets a payment rate below the level of the regional maximum established by the DHHS *Department of Health and Human Services* Secretary.

The state pays \$11 per vaccine administration.

2. Medicaid beneficiary access to immunizations is assured through the following methodology:

The Commonwealth will demonstrate access to such services by the Commonwealth's fee per vaccine administration being higher than that of a major insurance company.

12 VAC 30-40-10. General conditions of eligibility.

Each individual covered under the plan:

1. Is financially eligible (using the methods and standards described in Parts II and III of this chapter) to receive services.

2. Meets the applicable nonfinancial eligibility conditions.

a. For the categorically needy:

(i) Except as specified under items (ii) and (iii) below, for AFDC-related individuals, meets the nonfinancial eligibility conditions of the AFDC program.

(ii) For SSI-related individuals, meets the nonfinancial criteria of the SSI program or more restrictive SSI-related categorically needy criteria.

(iii) For financially eligible pregnant women, infants or children covered under § 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), and 1902(a)(10)(A)(ii)(IX) of the Act, meets the nonfinancial criteria of § 1902(l) of the Act.

(iv) For financially eligible aged and disabled individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act, meets the nonfinancial criteria of § 1902(m) of the Act.

b. For the medically needy, meets the nonfinancial eligibility conditions of 42 CFR 435.

c. For financially eligible qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, meets the nonfinancial criteria of § 1905(p) of the Act.

d. For financially eligible qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, meets the nonfinancial criteria of § 1905(s).

3. Is residing in the United States and:

a. Is a citizen; or

~~b. Is an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, as defined in 42 CFR 435.408;~~

~~c. Is an alien granted lawful temporary resident status under § 245A and 210A of the Immigration and Nationality Act if the individual is aged, blind, or disabled as defined in § 1614(a)(1) of the Act, under 48 years of age or a Cuban/Haitian entrant as defined in § 501(e)(1) and (2)(A) of P.L. 96-422;~~

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~~d. Is an alien granted lawful temporary resident status under § 210 of the Immigration and Nationality Act not within the scope of c. above (coverage must be restricted to certain emergency services during the five-year period beginning on the date the alien was granted such status); or~~

b. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States prior to August 22, 1996;

c. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States on or after August 22, 1996, and whose coverage is mandated by Public Law 104-193;

e. d. Is an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law who is not a qualified alien, or who is a qualified alien who arrived in the United States on or after August 22, 1996, whose coverage is not mandated by Public Law 104-193 (coverage must be restricted to certain emergency services).

4. Is a resident of the state, regardless of whether or not the individual maintains the residence permanently or maintains it a fixed address.

The state has open agreement(s).

5. Is not an inmate of a public institution. Public institutions do not include medical institutions, nursing facilities and intermediate care facilities for the mentally retarded, or publicly operated community residences that serve no more than 16 residents, or certain child care institutions.

6. Is required, as a condition of eligibility, to assign rights to medical support and to payments for medical care from any third party, to cooperate in obtaining such support and payments, and to cooperate in identifying and providing information to assist in pursuing any liable third party. The assignment of rights obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid. The requirements of 42 CFR 433.146 through 433.148 are met.

An applicant or recipient must also cooperate in establishing the paternity of any eligible child and in obtaining medical support and payments for himself or herself and any other person who is eligible for Medicaid and on whose behalf the individual can make an assignment; except that individuals described in § 1902(1)(1)(A) of the Social Security Act (pregnant women and women in the post-partum period) are exempt from these requirements involving paternity and obtaining support. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

An applicant or recipient must also cooperate in identifying any third party who may be liable to pay for care that is covered under the state plan and providing information to assist in pursuing these third parties. Any individual may be exempt from the cooperation

requirements by demonstrating good cause for refusing to cooperate.

7. Is required, as a condition of eligibility, to furnish his/her social security account number (or numbers, if he/she has more than one number) except for aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) of the Social Security Act (§ 1137(f)).

8. Is not required to apply for AFDC benefits under Title IV-A as a condition of applying for, or receiving Medicaid if the individual is a pregnant women, infant, or child that the state elects to cover under § 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act.

9. Is not required, as an individual child or pregnant woman, to meet requirements under § 402(a)(43) of the Act to be in certain living arrangements. (Prior to terminating AFDC individuals who do not meet such requirements under a state's AFDC plan, the agency determines if they are otherwise eligible under the state's Medicaid plan.)

10. Is required to apply for enrollment in an employer-based cost-effective group health plan (as determined by the state agency), if such plan is available to the individual. Enrollment is a condition of eligibility except for the individual who is unable to enroll on his/her own behalf (failure of a parent to enroll a child does not affect a child's eligibility).

12 VAC 30-50-310. Emergency services for aliens.

A. No payment shall be made for medical assistance furnished to ~~an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law~~ *qualified aliens who entered the United States on or after August 22, 1996, who are not eligible for Medicaid for five years after their entry, and nonqualified aliens, including illegal aliens and legal nonimmigrants who are otherwise eligible, unless such services are necessary for the treatment of an emergency medical condition of the alien.*

B. Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;
2. Serious impairment of bodily functions; or
3. Serious dysfunction of any bodily organ or part.

For purposes of this definition, emergency treatment of a medical condition does not include care and services related to either an organ transplant procedure or routing prenatal or postpartum care.

C. Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need

for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

D. Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

12 VAC 30-110-1300. Medicaid eligibility for certain aliens and immigrants.

A. All aliens (qualified and unqualified) receiving Medicaid and residing in long-term institutional facilities or participating in home and community-based waivers on June 30, 1997, who are eligible for full Medicaid benefits on June 30, 1997, will continue to be eligible for full Medicaid benefits after June 30, 1997, at state expense if federal financial participation is not available.

B. All noncitizens ineligible for Medicaid because of alienage pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, shall be provided full medical assistance services, who

1. Are under age 19; and
2. Would be eligible for full Medicaid benefits if the alien requirements prior to the passage of Public Law 104-193 were still in effect.

VA.R. Doc. No. R97-482; Filed May 7, 1997, 9:39 a.m.

REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of 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 Anorexiant Drugs.
12 VAC 30-50-10 et seq. Narrative for the Amount, Duration and Scope of Services (amending 12 VAC 30-50-210 and 12 VAC 30-50-520).

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

Effective Date: July 1, 1997.

Summary:

The purpose of this action is to amend the plan for Medicaid assistance concerning coverage of anorexiant drugs due to action taken by the 1997 General Assembly. Prior to this legislative change, anorexiant drugs prescribed for weight loss were not covered by Medicaid. Coverage of anorexiants for other than weight loss required medical justification. This change will reverse this coverage policy to allow for coverage of

anorexiant drugs for recipients under very specific circumstances. The recipients must meet the strict disability standards for obesity established by the Social Security Administration, and must have a statement from their treating physician that certifies their condition is life threatening consistent with Department of Medical Assistance Services' medical necessity requirements. The legislation also requires preauthorization of the anorexiant drugs for coverage by Medicaid.

The Board of Medicine has recently promulgated regulations, effective December 25, 1996, that address pharmacotherapy for weight loss (18 VAC 85-20-90). The regulatory changes in this package do not appear to be inconsistent with the Board of Medicine regulations. In fact, the Board of Medicine regulations prescribe very clear standards for the appropriate use of anorexiant drugs, and providers must comply with both sets of regulations.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

12 VAC 30-50-210. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

A. Prescribed drugs.

1. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered.

2. Nonlegend drugs shall be covered by Medicaid in the following situations:

- a. Insulin, syringes, and needles for diabetic patients;
- b. Diabetic test strips for Medicaid recipients under 21 years of age;
- c. Family planning supplies;
- d. Designated categories of nonlegend drugs for Medicaid recipients in nursing homes;
- e. Designated drugs prescribed by a licensed prescriber to be used as less expensive therapeutic alternatives to covered legend drugs.

3. Legend drugs are covered with the exception of anorexiant drugs prescribed for weight loss and the drugs or classes of drugs identified in 12 VAC 30-50-520. Anorexiant drugs, when preauthorized, will be covered for recipients who meet the strict disability standards for obesity established by the Social Security Administration, and whose condition is certified as life threatening, consistent with Department of Medical Assistance Services' medical necessity requirements, by the treating physician.

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4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

7. Drug prior authorization.

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

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

b. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 11 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; one member shall be a consumer of mental health services; and one shall be a Medicaid recipient.

(1) A quorum for action of the committee shall consist of six members.

(2) The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

(3) The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society, the Psychiatric Society of Virginia, the Virginia Pharmaceutical Association, the Virginia Alliance for the Mentally Ill, and the Virginia Mental Health Consumers Association when making appointments to the committee.

(4) The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

c. Duties of the committee.

(1) The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.

(2) In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

(3) In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.

d. Prior authorization of prescription drug products, coverage.

(1) The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.

(2) Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.

(3) In formulating its recommendations to the board, the committee shall consider the potential impact on

patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy, physician, hospitalization and outpatient costs.

(4) The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.

(5) Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

e. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

f. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

B. Dentures. Dentures are provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

C. Prosthetic devices.

1. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

2. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

D. Eyeglasses. Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

12 VAC 30-50-520. Drugs or drug categories which are not covered.

A. Agents when used for anorexia or weight gain. Coverage of anorexiant for other than weight loss requires medical justification. *Anorexiant drugs, when preauthorized, will be covered for recipients who meet the strict disability standards for obesity established by the Social Security Administration, and whose condition is certified as life threatening, consistent with Department of Medical Assistance Services' medical necessity requirements, by the treating physician.*

B. Agents when used for cosmetic purposes or hair growth.

1. Minoxidil shall not be covered when prescribed for hair growth or other cosmetic purposes.

2. Agents containing hydroquinone or its derivatives which are used solely for depigmentation of the skin.

C. Agents used to promote fertility.

D. Expired drugs. Drugs dispensed past the labeled expiration date.

E. DESI Drugs. The Program shall not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

F. Nonlegend drugs. Nonlegend drugs, with those exceptions shown in 12 VAC 30-50-100 et seq., shall not be covered.

VA.R. Doc. No. R97-483; Filed May 7, 1997, 9:39 a.m.

Title of Regulations: State Plan for Medical Assistance Services Related to Diagnosis Related Groupings.

12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (printing 12 VAC 30-70-10 through 12 VAC 30-70-150; amending 12 VAC 30-70-140; adding 12 VAC 30-70-141 through 12 VAC 30-70-145 and 12 VAC 30-70-200 through 12 VAC 30-70-490).

12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care (repealing 12 VAC 30-80-140).

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 322 J of Chapter 912 of the 1996 Virginia Acts of Assembly.

Effective Date: July 1, 1997.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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Summary:

This regulation replaces an emergency regulation that became effective on July 9, 1996. This regulation is in fulfillment of a directive by the 1996 General Assembly to implement a prospective payment system for inpatient hospital services using a Diagnosis Related Group (DRG) method (Chapter 912, Item 322.J.), and the settlement terms of a case brought under the federal Boren Amendment which required DMAS and the then Virginia Hospital Association to jointly develop a replacement reimbursement method.

DRG prospective payment systems are not new. Following the federal Tax Equity and Fiscal Responsibility Act of 1982, Medicare shifted its method for reimbursing hospitals to a DRG system. The primary feature of a DRG system is that hospitals are reimbursed, not according to the number of days that a patient is treated, but rather the average cost associated with a patient's diagnosis related group.

Under the current per diem system used by DMAS to reimburse hospitals for Medicaid patients, hospitals face a disincentive regarding efficiency related reductions in medical costs. Efficiency generated reductions in the average length of patient stays are more likely to eliminate "low cost" patient days than "high cost" patient days. Because hospitals are reimbursed according to a flat per diem, however, such efficiency enhancements will tend to reduce Medicaid reimbursements by a greater proportion than Medicaid related costs. As a result, hospitals are actually penalized for efficiency enhancements that reduce the number of "low cost" patient days. Moreover, hospitals face a perverse incentive to increase Medicaid patient lengths of stay if doing so increases the number of "low cost" days associated with the stay.

The intention of DRG prospective payment systems is to correct these problems by providing a more rational incentive structure. Under a DRG system hospitals can keep any difference between the DRG rate and actual costs. This allows hospitals to profit from efficiency enhancing efforts and creates a strong incentive for cost containment. The specific DRG system put forward in the regulation contains one provision which alters this general incentive structure. That provision is a mechanism for providing hospitals additional reimbursement in the case of "outliers" (i.e., individuals whose cost of care significantly exceeds the average cost of care for their diagnosis related group).

CHAPTER 70.

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES; IN-PATIENT HOSPITAL CARE.

PART I. PER DIEM METHODOLOGY.

12 VAC 30-70-10. Effect of participation in Health Insurance for the Aged program.

For each hospital also participating in the Health Insurance for the Aged program under Title XVIII of the Social Security

Act, the state agency will apply the standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine service costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routine service charges or patient days as well as Title XVIII inpatient routine service cost.

12 VAC 30-70-20. Standards applied to nonparticipants in Title XVIII programs.

For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

12 VAC 30-70-30. Limitations of Medical Assistance Program payment; Medicare reimbursement principles.

For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services that the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2), and/or lesser of reasonable cost or customary charges in 42 CFR 447.250.

12 VAC 30-70-40. Payment of reasonable costs based on other methods.

The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the Secretary, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in 12 VAC 30-70-10 and 12 VAC 30-70-20.

12 VAC 30-70-50. Hospital reimbursement system.

The reimbursement system for hospitals includes the following components:

A. Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural - 0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban - 0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

B. Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982 were subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, based on available, allowable cost data for hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the

operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were re-adjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986 and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket (updated quarterly) determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

Effective on or after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two

percentage points, (200 basis points) to the then current allowance for inflation. The escalation factor shall be applied in accordance with the inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

C. Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator factor.

D. Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator factor, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (§ 400), shall be considered as pass throughs and not part of the calculation.

E. An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allowable Cost Per Day	Difference \$	% of Ceiling	Sliding Scale Incentive \$	% of Difference
\$230.00	\$230.00	-0-	-0-	-0-	-0-
230.00	207.00	23.00	10%	2.30	10%
230.00	172.00	57.50	25%	14.38	25%
230.00	143.00	76.00	33%	19.00	25%

F. There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

G. Hospitals which have a disproportionately higher level of Medicaid patients and which exceed the ceiling shall be allowed a higher ceiling based on the individual hospital's Medicaid utilization. This shall be measured by the percent of Medicaid patient days to total hospital patient days. Each hospital with a Medicaid utilization of over 8.0% shall receive an adjustment to its ceiling. The adjustment shall be set at a percent added to the ceiling for each percent of utilization up to 30%.

Disproportionate share hospitals defined.

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Effective July 1, 1988, the following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

1. Criteria

a. A Medicaid inpatient utilization rate in excess of 8.0% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

c. Subdivision A 2 does not apply to a hospital:

(1) At which the inpatients are predominantly individuals under 18 years of age; or

(2) Which does not offer nonemergency obstetric services as of December 21, 1987.

2. Payment adjustment.

a. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the number of utilization Medicaid inpatient days by the total number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment.

b. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times 11, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

c. No payments made under items 1 or 2 above shall exceed any applicable limitations upon such payments established by federal law or regulations.

H. Outlier adjustments.

1. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1,

1991, involving exceptionally high costs for individuals under one year of age.

2. DMAS shall pay to disproportionate share hospitals (as defined in paragraph G above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

3. The outlier adjustment calculation.

a. Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in H 1 or 2 above. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

b. Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in H 1 or 2 above. Any hospital which qualifies for the extensive neonatal care provision (as governed by paragraph F, above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in H 1 or 2 above.

c. Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in H 3 (ii) above.

d. DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital. Pursuant to 12 VAC 30-50-100, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

12 VAC 30-70-60. Establishment of reasonable and adequate payment rates; cost reporting.

In accordance with 42 CFR 447.250 through 447.272 which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of charges in financial position, and footnotes to the financial statements;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Home office cost report, if applicable; and
6. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.

12 VAC 30-70-70. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to A or B above.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with A. and B. above.

12 VAC 30-70-80. Refund of overpayments.

A. Lump sum payment. When the provider files a cost report [indicated *indicating*] that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

B. Offset. If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

C. Payment schedule. If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

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When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

D. Extension request documentation. In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

E. Interest charge on extended repayment. Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

12 VAC 30-70-90. Reimbursement of certified hospitals exempt from Medicare Prospective Payment system.

Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the 12 VAC 30-70-10 through 12 VAC 30-70-80, excluding 12 VAC 30-70-50 (6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which represents its

anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph.

12 VAC 30-70-100. Reimbursement of return on equity capital to proprietary providers.

Item 398D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

12 VAC 30-70-110. Group ceiling for state-owned university teaching hospitals.

A. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating cost shall be established for state-owned university teaching hospitals.

B. Effective July 1, 1994, the separate group ceiling for allowable operating costs for state-owned university teaching hospitals shall be calculated using cost report and other applicable data pertaining to facility fiscal year ending June 30, 1993.

12 VAC 30-70-120. Nonenrolled providers.

A. Hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the lesser of:

1. The DMAS average reimbursable inpatient cost-to-charge ratio, updated annually on September 30 of each year based on the most recent settled cost report, for enrolled hospitals less five percent. (The 5.0% is for the cost of additional manual processing of the claims.)

2. The DMAS average per diem, updated annually on September 30 of each year based on the most recent settled cost report, of enrolled hospitals excluding the state-owned teaching hospitals and disproportionate share adjustments.

B. Hospitals that are not enrolled shall submit claims using the required DMAS invoice formats. Such claims must be submitted within twelve months from date of services. A hospital is determined to regularly treat Virginia Medicaid recipients and shall be required by DMAS to enroll if it provides more than 500 days of care to Virginia Medicaid recipients during the hospitals' financial fiscal year. A hospital which is required by DMAS to enroll shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in 12 VAC 30-70-10 through 12 VAC 30-70-100. The hospital shall be placed in one of the DMAS peer groupings which most nearly reflects its licensed bed size and location (12 VAC 30-70-50 (1)). These hospitals shall be required to maintain separate cost accounting records, and to file separate cost reports annually, utilizing the applicable Medicare cost reporting forms, (HCFA 2552 Series) and the Medicaid forms (MAP-783 Series).

C. A newly enrolled facility shall have an interim rate determined using the provider's most recent filed Medicare

cost report or a pro forma cost report or detailed budget prepared by the provider and accepted by DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider shall be limited to the lesser of its actual operating costs or its peer group ceiling. Subsequent rates shall be determined in accordance with the current Medicaid Prospective Payment System as noted in subsection A.

D. Once a hospital has obtained the enrolled status, 500 days of care, the hospital must agree to become enrolled as required by DMAS to receive reimbursement. This status shall continue during the entire term of the provider's current Medicare certification and subsequent recertification or until mutually terminated with 30 days written notice by either party. The provider must maintain this enrolled status to receive reimbursement. If an enrolled provider elects to terminate the enrolled agreement, the non-enrolled reimbursement status will not be available to the hospital for future reimbursement, except for emergency care.

E. Prior approval must be received from the DMAS Health Services Review Division when a referral has been made for treatment to be received from a non-enrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

F. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for the services on an individually, negotiated rate basis.

12 VAC 30-70-130. Payment Adjustment Fund.

A. A Payment Adjustment Fund shall be created in each of the Commonwealth's fiscal years during the period July 1, 1992, to June 30, 1996. The Payment Adjustment Fund shall consist of the Commonwealth's cumulative addition of five million dollars in General funds and its corresponding federal financial participation for reimbursement to non-state owned hospitals in each of the Commonwealth's fiscal years during this period. Each July 1, or as soon thereafter as is reasonably possible, the Commonwealth shall, through a single payment to each non-state owned hospital, equitably and fully disburse the Payment Adjustment Fund for that year.

B. In the absence of any amendment to this section, for the Commonwealth's fiscal year after 1996, the Payment Adjustment Fund shall be continued at the level established in 1996 and shall be disbursed in accordance with the methodology described below.

C. The Payment Adjustment Fund shall be disbursed in accordance with the following methodology:

1. Identify each non-state owned hospital provider (acute, neonatal and rehabilitation) receiving payment based upon its peer group operating ceiling in May of each year.
2. For each such hospital identified in Paragraph 1, identify its Medicaid paid days for the 12 months ending each May 31.

3. Multiply each such hospital's days under Paragraph 2 by such hospital's May individual peer group ceiling (i.e., disregarding such hospital's actual fiscal year end ceiling) as adjusted by its then current disproportionate share factor.

4. Sum all hospital amounts determined in Paragraph 3.
5. For each such hospital, divide its amount determined in Paragraph 3 by the total of such amounts determined in Paragraph 4. This then becomes the hospital adjustment factor ("HAF") for each such hospital.

6. Multiply each such hospital's HAF times the amount of the Payment Adjustment Fund ("PAF") to determine its potential PAF share.

7. Determine the unreimbursed Medicaid allowable operating cost per day for each such hospital in Paragraph 1 for the most recent fiscal year on file at DMAS as of May 31, inflate such costs by DRI-V+2 from the mid-point of such cost report to May 31 and multiply such inflated costs per day by the days identified for that hospital in Paragraph 2 above, creating the "unreimbursed amount."

8. Compare each such hospital's potential PAF share to its unreimbursed amount.

9. Allocate to all hospitals, where the potential PAF share exceeds the unreimbursed amount, such hospital's unreimbursed amount as its actual PAF share.

10. If the PAF is not exhausted, for those hospitals with an unreimbursed amount balance, recalculate a new HAF for each such hospital by dividing the hospital's HAF by the total of the HAFs for all hospitals with an unreimbursed amount balance.

11. Recompute each hospital's new potential share of the undisbursed PAF by multiplying such finds by each hospital's new HAF.

12. Compare each hospital's new potential PAF share to its unreimbursed amount. If the unreimbursed amounts exceed the PAF shares at all hospitals, each hospital's new PAF share becomes its actual PAF share. If some hospitals' unreimbursed amounts are less than the new potential PAF shares, allocate to such hospitals their unreimbursed amount as their actual PAF share. Then, for those hospitals with an unreimbursed amount balance, repeat steps 10, 11, and 12 until each hospital's actual PAF share is determined and the PAF is exhausted.

13. The annual payment to be made to each non-state owned hospital from the PAF shall be equal to their actual PAF share as determined and allocated above. Each hospital's actual PAF share payment shall be made on July 1, or as soon thereafter as is reasonable feasible.

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PART II.

HOSPITAL APPEALS OF REIMBURSEMENT RATES.

12 VAC 30-70-140. [~~Hospital appeals of reimbursement rates. § 4.~~] Right to appeal and initial agency decision.

A. Right to appeal. Any hospital seeking to appeal its prospective payment rate for operating costs related to inpatient care or other allowable costs shall submit a written request to the Department of Medical Assistance Services within 30 days of the date of the letter notifying the hospital of its prospective rate unless permitted to do otherwise under [~~§ 5-E 12 VAC 30-70-144 E~~]. The written request for appeal must contain the information specified in [~~§ 4-B subsection B of this section~~]. The department shall respond to the hospital's request for additional reimbursement within 30 days or after receipt of any additional documentation requested by the department, whichever is later. Such agency response shall be considered the initial agency determination.

B. Required information. Any request to appeal the prospective payment rate must specify: (i) the nature of the adjustment sought; (ii) the amount of the adjustment sought; and (iii) current and prospective cost containment efforts, if appropriate.

C. Nonappealable issues. The following issues will not be subject to appeal: (i) the organization of participating hospitals into peer groups according to location and bed size and the use of bed size and the urban/rural distinction as a generally adequate proxy for case mix and wage variations between hospitals in determining reimbursement for inpatient care; (ii) the use of Medicaid and applicable Medicare Principles of Reimbursement to determine reimbursement of costs other than operating costs relating to the provision of inpatient care; (iii) the calculation of the initial group ceilings on allowable operating costs for inpatient care as of July 1, 1982; (iv) the use of the inflation factor identified in the State Plan as the prospective escalator; and (v) durational limitations set forth in the State Plan (the "21 day rule").

D. The rate which may be appealed shall include costs which are for a single cost reporting period only.

E. The hospital shall bear the burden of proof throughout the administrative process.

[~~§ 2- 12 VAC 30-70-141.~~] Administrative appeal of adverse initial agency determination.

A. General. The administrative appeal of an adverse initial agency determination shall be made in accordance with the Virginia Administrative Process Act, § 9-6.14:11 through § 9-6.14:14 of the Code of Virginia, as set forth below.

B. The informal proceeding.

1. The hospital shall submit a written request to appeal an adverse initial agency determination in accordance with § 9-6.14:11 of the Code of Virginia within 15 days of the date of the letter transmitting the initial agency determination.

2. The request for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia shall include the following information:

a. The adverse agency action appealed from;

b. A detailed description of the factual data, argument or information the hospital will rely on to challenge the adverse agency decision.

3. The agency shall afford the hospital an opportunity for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia within 45 days of the request.

4. The Director of the Division of Provider Reimbursement of the Department of Medical Assistance Services, or his designee, shall preside over the informal conference. As hearing officer, the director, or his designee, may request such additional documentation or information from the hospital or agency staff as may be necessary in order to render an opinion.

5. After the informal conference, the Director of the Division of Provider Reimbursement, having considered the criteria for relief set forth in [~~§§ 4 and 5 12 VAC 30-70-143 and 12 VAC 30-70-144~~], shall take any of the following actions:

a. Notify the provider that its request for relief is denied setting forth the reasons for such denial;

b. Notify the provider that its appeal has merit and advise it of the agency action which will be taken; or

c. Notify the provider that its request for relief will be granted in part and denied in part, setting forth the reasons for the denial in part and the agency action which will be taken to grant relief in part.

6. The decision of the informal hearing officer shall be rendered within 30 days of the conclusion of the informal conference.

[~~§ 3- 12 VAC 30-70-142.~~] The formal administrative hearing: procedures.

A. The hospital shall submit its written request for a formal administrative hearing under § 9-6.14:12 of the Code of Virginia within 15 days of the date of the letter transmitting the adverse informal agency decision.

B. At least 21 days prior to the date scheduled for the formal hearing, the hospital shall provide the agency with:

1. Identification of the adverse agency action appealed from, and

2. A summary of the factual data, argument and proof the provider will rely on in connection with its case.

C. The agency shall afford the provider an opportunity for a formal administrative hearing within 45 days of the receipt of the request.

D. The Director of the Department of Medical Assistance Services, or his designee, shall preside over the hearing. Where a designee presides, he shall make recommended findings and a recommended decision to the director. In such instance, the provider shall have an opportunity to file exceptions to the proposed findings and conclusions. In no case shall the designee presiding over the formal

administrative hearing be the same individual who presided over the informal appeal.

E. The Director of the Department of Medical Assistance Services shall make the final administrative decision in each case.

F. The decision of the agency shall be rendered within 60 days of the conclusion of the administrative hearing.

[§ 4-12 VAC 30-70-143.] The formal administrative hearing: necessary demonstration of proof.

A. The hospital shall bear the burden of proof in seeking relief from its prospective payment rate.

B. A hospital seeking additional reimbursement for operating costs relating to the provision of inpatient care shall demonstrate that its operating costs exceed the limitation on operating costs established for its peer group and set forth the reasons for such excess.

C. In determining whether to award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care, the Director of the Department of Medical Assistance Services shall consider the following:

1. Whether the hospital has demonstrated that its operating costs are generated by factors generally not shared by other hospitals in its peer group. Such factors may include, but are not limited to, the addition of new and necessary services, changes in case mix, extraordinary circumstances beyond the control of the hospital, and improvements imposed by licensing or accrediting standards.

2. Whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis.

a. In making such a determination, the director or his designee may require that an appellant hospital provide quantitative data, which may be compared to similar data from other hospitals within that hospital's peer group or from other hospitals deemed by the director to be comparable. In making such comparisons, the director may develop operating or financial ratios which are indicators of performance quality in particular areas of hospital operation. A finding that the data or ratios or both of the appellant hospital fall within a range exhibited by the majority of comparable hospitals, may be construed by the director to be evidence that the hospital has taken every reasonable action to contain costs in that particular area. Where applicable, the director may require the hospital to submit to the agency the data it has developed for the *Virginia Department of Health (formerly Virginia Health Services Cost Review Commission Council)*. The director may use other data, standards or operating screens acceptable to him. The appellant hospital shall be afforded an opportunity to rebut ratios, standards or comparisons utilized by the director or his designee in accordance with this section.

b. Factors to be considered in determining effective cost containment may include the following:

- Average daily occupancy
- Average hourly wage
- FTE's per adjusted occupied bed
- Nursing salaries per adjusted patient day
- Average length of stay
- Average cost per surgical case
- Cost (salary/nonsalary) per ancillary procedure
- Average cost (food/nonfood) per meal served
- Average cost per pound of laundry
- Cost (salary/nonsalary) per pharmacy prescription
- Housekeeping cost per square foot
- Maintenance cost per square foot
- Medical records cost per admission
- Current ratio (current assets to current liabilities)
- Age of receivables
- Bad debt percentage
- Inventory turnover
- Measures of case mix

c. In addition, the director may consider the presence or absence of the following systems and procedures in determining effective cost containment in the hospital's operation.

- Flexible budgeting system
- Case mix management systems
- Cost accounting systems
- Materials management system
- Participation in group purchasing arrangements
- Productivity management systems
- Cash management programs and procedures
- Strategic planning and marketing
- Medical records systems
- Utilization/Peer review systems

d. Nothing in this provision shall be construed to require a hospital to demonstrate every factor set forth above or to preclude a hospital from demonstrating effective cost containment by using other factors.

The director or his designee may require that an onsite operational review of the hospital be conducted by the department or its designee.

3. Whether the hospital has demonstrated that the Medicaid prospective payment rate it receives to cover operating costs related to inpatient care is insufficient to provide care and service to conforms to applicable state

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and federal laws, regulations and quality and safety standards.¹

D. In no event shall the Director of the Department of Medical Assistance Services award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care, unless the hospital demonstrates to the satisfaction of the director that the Medicaid rate it receives under the Medicaid prospective payment system is insufficient to ensure Medicaid recipients reasonable access to sufficient inpatient hospital services of adequate quality.²

In making such demonstration, the hospital shall show that:

1. The current Medicaid prospective payment rate jeopardizes the long-term financial viability of the hospital. Financial jeopardy is presumed to exist if, by providing care to Medicaid recipients at the current Medicaid rate, the hospital can demonstrate that it is, in the aggregate, incurring a marginal loss.³

For purposes of this section, marginal loss is the amount by which total variable costs for each patient day exceed the Medicaid payment rate. In calculating marginal loss, the hospital shall compute variable costs at 60% of total inpatient operating costs and fixed costs at 40% of total inpatient operating costs; however, the director may

¹ See 42 USC § 1396a(a)(13)(A). This provision reflects the Commonwealth's concern that she reimburse only those excess operating costs which are incurred because they are needed to provide adequate care. The Commonwealth recognizes that hospitals may choose to provide more than "just adequate" care and, as a consequence, incur higher costs. In this regard, the Commonwealth notes that "Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services ... that package of services has the general aim of assuring that individuals will receive necessary medical care, but the benefit provided remains the individual services offered -- not 'adequate health care.'" *Alexander v. Choate*, - U.S. - decided January 9, 1985, 53 L.W., 4072, 4075.

² In *Mary Washington Hospital v. Fisher*, the court ruled that the Medicaid rate "must be adequate to ensure reasonable access". *Mary Washington Hospital v. Fisher*, at p. 18. The need to demonstrate that the Medicaid rate is inadequate to ensure recipients reasonable access derives directly from federal law and regulation. In its response to comments on the NPRM published September 30, 1981, HCFA points out Congressional intent regarding the access issue:

The report on H.R. 3982 states the expectation that payment levels for inpatient services will be adequate to assure that a sufficient number of facilities providing a sufficient level of services actively participate in the Medicaid program to enable all Medicaid beneficiaries to obtain quality inpatient services. This report further states that payments should be set at a level that ensures the active treatment of Medicaid patients in a majority of the hospitals in the state. 46 FR 47970.

³ The Commonwealth believes that Congressional intent is threatened in situations in which a hospital is incrementally harmed for each additional day a Medicaid patient is treated -- and therefore has good cause to consider withdrawal from the program -- and where no alternative is readily available to the patient, should withdrawal occur. Otherwise, although the rate being paid a hospital may be less than that paid by other payors -- indeed, less than average cost per day for all patients -- it nonetheless equals or exceeds the variable cost per day, and therefore benefits the hospital by offsetting some amount of fixed costs, which it would incur even if the bed occupied by the Medicaid patient were left empty.

It should be emphasized that application of this marginal loss or "incremental harm" concept is a device to assess the potential harm to a hospital continuing to treat Medicaid recipients, and not a mechanism for determining the additional payment due to a successful appellant. As discussed below, once a threat to access has been demonstrated, the Commonwealth may participate in the full average costs associated with the circumstances underlying the appeal.

accept a different ratio of fixed and variable operating costs if a hospital is able to demonstrate that a different ratio is appropriate for its particular institution.

Financial jeopardy may also exist if the hospital is incurring a marginal gain but can demonstrate that it has unique and compelling Medicaid costs, which if unreimbursed by Medicaid, would clearly jeopardize the hospital's long-term financial viability and,

2. The population served by the hospital seeking additional financial relief has no reasonable access to other inpatient hospitals. Reasonable access exists if most individuals served by the hospital seeking financial relief can receive inpatient hospital care within a 30 minutes travel time at a total per diem rate which is less to Department of Medical Assistance Services than the costs which would be incurred by DMAS per patient day were the appellant hospital granted relief.⁴

E. In determining whether to award additional reimbursement to a hospital for reimbursable costs which are other than operating costs related to the provision of inpatient care, the director shall consider Medicaid and applicable Medicare rules of reimbursement.

[§-5- 12 VAC 30-70-144.] Available relief.

A. Any relief granted under [§§-4-4 12 VAC 30-70-140 through 12 VAC 30-70-143] shall be for one cost reporting period only.

B. Relief for hospitals seeking additional reimbursement for operating costs incurred in the provision of inpatient care shall not exceed the difference between:

1. The cost per allowable Medicaid day arising specifically as a result of circumstances identified in accordance with [§-4 12 VAC 30-70-143] (excluding plant and education costs and return on equity capital) and

2. The prospective operating costs per diem, identified in the Medicaid Cost Report and calculated by DMAS.⁵

C. Relief for hospitals seeking additional reimbursement for (i) costs considered as "pass-throughs" under the prospective payment system or (ii) costs incurred in providing care to a disproportionate number of Medicaid recipients or (iii) costs incurred in providing extensive neonatal care shall not exceed the difference between the payment made and the actual allowable cost incurred.

⁴ With regard to the thirty minute travel standard, this requirement is consistent with general health planning criteria regarding acceptable travel time for hospital care.

⁵ The Commonwealth recognizes that in cases where circumstances warrant relief beyond the existing payment rate, she may share in the cost associated with those circumstances. This is consistent with the existing policy, whereby payment is made on an average per diem basis. The Commonwealth will not reimburse more than her share of fixed costs. Any relief to an appellant hospital will be computed using patient days adjusted for the level of occupancy during the period under appeal. In no case will any additional payments made under this rule reflect lengths of stay which exceed the twenty-one day limit currently in effect.

D. Any relief awarded under [~~§§ 1-4~~ 12 VAC 30-70-140 through 12 VAC 30-70-143] shall be effective from the first day of the cost period for which the challenged rate was set. Cost periods for which relief will be afforded are those which begin on or after January 4, 1985. In no case shall this limitation apply to a hospital which noted an appeal of its prospective payment rate for a cost period prior to January 4, 1985.

E. All hospitals for which a cost period began or after January 4, 1985, but prior to the effective date of these regulations, shall be afforded an opportunity to be heard in accordance with these regulations if the request for appeal set forth in [~~§ 1A~~ 12 VAC 30-70-140 A] is filed within 90 days of the effective date of these regulations.

[~~§ 6-~~ 12 VAC 30-70-145]. Catastrophic occurrence.

A. Nothing in [~~§§ 1 through 5~~ this part] shall be construed to prevent a hospital from seeking additional reimbursement for allowable costs incurred as a consequence of a natural or other catastrophe. Such reimbursement will be paid for the cost period in which such costs were incurred and for cost periods beginning on or after July 1, 1982.

B. In order to receive relief under this section, a hospital shall demonstrate that the catastrophe met the following criteria:

1. One time occurrence;
2. Less than 12 months duration;
3. Could not have been reasonably predicted;
4. Not of an insurable nature;
5. Not covered by federal or state disaster relief;
6. Not a result of malpractice or negligence.

C. Any relief sought under this section must be calculable and auditable.

D. The agency shall pay any relief afforded under this section in a lump sum.

PART III. DISPUTE RESOLUTION FOR STATE-OPERATED FACILITIES.

12 VAC 30-70-150. Dispute resolution for state-operated providers.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated

provider. This shall be the sole procedure available to state-operated providers.

The appropriate DMAS division must receive the reconsideration request within 30 calendar days after the provider receives its Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review. The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought, the amount of the adjustment sought, and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action. The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review. A state-operated provider may, within 30 days after receiving the informal review decision of the division director, request that the DMAS director or his designee review the decision of the division director. The DMAS director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review. If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 days after receipt of the decision of the DMAS director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

PART IV. [Reserved.]

12 VAC 30-70-160 through 12 VAC 30-70-190. [Reserved.]

PART V. INPATIENT HOSPITAL PAYMENT SYSTEM.

Article 1.

Application of Payment Methodologies.

12 VAC 30-70-200. Application of payment methodologies.

The state agency will pay for inpatient hospital services under the methodologies and during the time periods specified in this part. During state fiscal years (SFY) 1997 and 1998, the state agency's methodology for inpatient hospital services in general acute care hospitals will transition from a per diem methodology to a DRG-based methodology. Article 2 (12 VAC 30-70-210) describes the special rules that apply during the transition period. Article 3 (12 VAC 30-70-220 et seq.) describes the DRG methodology that will apply (at a specified transition percentage) during the transition period and that will remain after the transition is over. Article 4 (12 VAC 30-70-400 et seq.) describes the revised per diem

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methodology that will apply in part during the transition, but that will cease to apply after the transition is over.

For inpatient hospital services in general acute care hospitals and rehabilitation hospitals occurring before July 1, 1996, reimbursement shall be based on the methodology described in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130), which language, until July 1, 1996, was Attachment 4.19-A of the State Plan for Medical Assistance Services. The provisions contained in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130) shall not be effective after June 30, 1996, except as otherwise provided in this part.

For inpatient hospital services that are psychiatric or rehabilitation services and that are provided in general acute care hospitals, distinct part units of general acute care hospitals, [~~licensed freestanding psychiatric hospitals freestanding psychiatric facilities licensed as hospitals~~], or rehabilitation hospitals on and after July 1, 1996, reimbursement shall be based on a methodology described in Articles 2, 3 and 4 of this part. This methodology implements a transition from revised per diem rates taken from the previous methodology (12 VAC 30-70-10 through 12 VAC 30-70-130) to different per diem rates that will be used in the context of the DRG methodology. These services shall not be reimbursed by means of DRG per case rates. For [~~licensed freestanding psychiatric hospitals freestanding psychiatric facilities licensed as hospitals~~] there shall be no transition period, but the new per diem rates are to be implemented effective July 1, 1996. Also effective for those services rendered on or after July 1, 1996, the professional component for the care rendered in such [~~licensed freestanding psychiatric hospitals freestanding psychiatric facilities licensed as hospitals~~] may be billed separately by the attending professional who is enrolled in Medicaid. Inpatient hospital services that are provided in long stay hospitals and state-owned rehabilitation hospitals shall be subject to the provisions of 12 VAC 30-70-10 through 12 VAC 30-70-130, which until July 1, 1996, was Attachment 4.19-A of the State Plan for Medical Assistance Services.

Transplant services shall not be subject to the provisions of this part. They shall continue to be subject to [~~42 VAC 30-50-95 12 VAC 30-50-100~~] through 12 VAC 30-50-310 [and 12 VAC 30-50-540].

Article 2. Transition Period.

12 VAC 30-70-210. Transition period reimbursement rules.

A. Effective July 1, 1996, the state agency's reimbursement methodology for inpatient hospital services shall begin a transition from a prospective per diem to a prospective diagnosis related groupings (DRG) methodology. During the transition period, reimbursement of operating costs shall be a blend of a prospective DRG methodology (described in Article 3 of this part) and a revised prospective per diem methodology (described in Article 4 of this part). The transition period shall be SFY1997 and 1998, after which a DRG methodology alone shall be used.

B. Tentative payment during the transition period. During the transition period claims will be tentatively paid on the basis of the revised per diem methodology only. Payment of claims based on DRG rates shall begin July 1, 1998.

C. Final operating reimbursement during the transition period. During the transition period settlement of each hospital fiscal year will be carried out as provided in 12 VAC 30-70-460. Each hospital's final reimbursement for services that accrue to each state fiscal year of the transition shall be based on a blend of the prospective DRG methodology and the revised per diem methodology. For services to patients admitted and discharged in SFY1997 the blend shall be 1/3 DRG and 2/3 revised per diem. For services to patients admitted after June 30, 1996, and discharged during SFY1998 the blend shall be 2/3 DRG and 1/3 revised per diem. Settlements shall be completed according to hospital fiscal years, but after June 30, 1996, changes in rates and in the percentage of reimbursement that is based on DRGs vs. per diem rates, shall be according to state fiscal year. Services in freestanding psychiatric facilities licensed as hospitals shall not be subject to the transition period phase-in of new rates, or to settlement at year end; the new system rates for these providers shall be fully effective on July 1, 1996. In hospital fiscal years that straddle the implementation date (years starting before and ending after July 1, 1996) operating costs must be settled partly under the old and partly under the new methodology:

1. Days related to discharges occurring before July 1, 1996, shall be settled under the previous reimbursement methodology (see 12 VAC 30-70-10 through 12 VAC 30-70-130).
2. Stays with admission date before July 1, 1996, and discharge date after June 30, 1996, shall be settled in two parts, with days before July 1, 1996, settled on the basis of the previous reimbursement methodology (see 12 VAC 30-70-10 through 12 VAC 30-70-130), and days after June 30, 1996, settled at 100% of the hospital's revised per diem rate as described in Article 4 (12 VAC 30-70-400 et seq.) of this part. The DRG reimbursement methodology shall not be used in the settlement of any days related to a stay with an admission date before July 1, 1996.
3. Stays with admission dates on and after July 1, 1996, shall be settled under the transition methodology. All cases admitted from July 1, 1996, onward shall be settled based on the rates and transition rules in effect in the state fiscal year in which the discharge falls. The only exception shall be claims for rehabilitation cases with length of stay sufficient that one or more interim claims are submitted. Such claims for rehabilitation cases shall be settled based on rates and rules in effect at the time of the end date ("through" date) of the claim, whether or not it is the final or discharge claim.

D. Capital cost reimbursement. During the transition period capital cost shall be reimbursed as a pass-through as described in 12 VAC 30-70-10 through 12 VAC 30-70-130, except that paid days and charges used to determine Medicaid allowable cost in a fiscal period for purposes of capital cost reimbursement shall be the same as those

accrued to the fiscal period for operating cost reimbursement. Effective July 1, 1998, capital cost shall be reimbursed as described in Article 4 (12 VAC 30-70-400 et seq.) of this part. Until capital costs are fully included in prospective rates the provisions of 12 VAC 30-70-70 regarding recapture of depreciation shall remain in effect. Reimbursement of capital cost for freestanding psychiatric facilities licensed as hospitals shall be included in their per diem rates as provided in Article 4 (12 VAC 30-70-400 et seq.) of this part, and shall not be treated as a pass-through during the transition period or afterward.

E. Disproportionate Share Hospital (DSH) payments during the transition. Effective July 1, 1996, DSH payments shall be fully prospective amounts determined in advance of the state fiscal year to which they apply, and shall not be subject to settlement or revision based on changes in utilization during the year to which they apply. Payments prospectively determined for each state fiscal year shall be considered payment for that year, and not for the year from which data used in the calculation was taken. Payment of DSH amounts determined under this methodology shall be made on a quarterly basis.

For patient days occurring before July 1, 1996, DSH reimbursement shall be determined under the previous methodology and settled accordingly (12 VAC 30-70-10 through 12 VAC 30-70-130). Effective for days occurring July 1, 1996, and after, DSH reimbursement made through prospective lump sum amounts as described in this section shall be final and not subject to settlement except when necessary due to the limit in subdivision 2 e of this subsection. After July 1, 1998, DSH reimbursement shall be as provided in Article 4 (12 VAC 30-70-400 et seq.) of this part.

1. Definition. A disproportionate share hospital shall be a hospital that meets the following criteria:

a. A Medicaid utilization rate in excess of 15%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

c. Subdivision 1 b of this subsection does not apply to a hospital:

- (1) At which the inpatients are predominantly individuals under 18 years of age; or
- (2) Which does not offer nonemergency obstetric services as of December 21, 1987.

2. Payment adjustment.

a. A disproportionate share hospital's additional payment shall be based on the type of hospital and on the hospital's Medicaid utilization percentage. There shall be two types of hospitals: (i) Type One, consisting of hospitals that were state-owned teaching hospitals on January 1, 1996, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization percentage is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days. Each eligible hospital with a Medicaid utilization percentage above 15% shall receive a disproportionate share payment.

b. For Type One hospitals, the disproportionate share payment shall be equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15%, times 11, times the hospital's Medicaid operating reimbursement, times 1.3186 in SFY1997, and 1.3782 in SFY1998 and (ii) the hospital's Medicaid utilization percentage in excess of 30%, times 11, times the hospital's Medicaid operating reimbursement, times 1.3186 in SFY1997, and 1.3782 in SFY1998.

c. For Type Two hospitals, the disproportionate share payment shall be equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 15%, times the hospital's Medicaid operating reimbursement, times 1.0964 in SFY1997, and 1.1476 in SFY1998 and (ii) the hospital's Medicaid utilization percentage in excess of 30%, times the hospital's Medicaid operating reimbursement, times 1.0964 in SFY1997, and 1.1476 in SFY1998.

d. For hospitals which do not qualify under the 15% inpatient Medicaid utilization rate, but do qualify under the low-income patient utilization rate, exceeding 25% in subdivision 1 a of this subsection, the disproportionate share payment amount for Type One hospitals shall be equal to the product of the hospital's low-income utilization in excess of 25%, times 11, times the hospital's Medicaid operating reimbursement. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

e. OBRA 1993 § 13621 Disproportionate Share Adjustment Limit.

(1) Limit on amount of payment. No payments made under subdivision E 2 of this section shall exceed any applicable limitations upon such payments established by federal law or regulations and OBRA 1993 § 13621. A payment adjustment during a fiscal year shall not exceed the sum of:

(a) Medicaid allowable costs incurred during the year less Medicaid payments, net of disproportionate share payment adjustments, for services provided during the year, and

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(b) Costs incurred in serving persons who have no insurance less payments received from those patients or from a third party on behalf of those patients. Payments made by any unit of the Commonwealth or local government to a hospital for services provided to indigent patients shall not be considered to be a source of third party payment.

(2) During state fiscal year 1995, the limit in this section shall apply only to hospitals which are owned or operated by a state or an instrumentality or unit of government within the state. During this year such a hospital, if it is one whose Medicaid inpatient utilization rate is at least one standard deviation above the mean inpatient utilization rate in the state or if it has the largest number of Medicaid days of any such hospital in the Commonwealth for the previous state fiscal year, shall be allowed a limit that is 200% of the limit described above which the Governor certifies to the Secretary of the U. S. Department of Health and Human Services that such amount (the amount by which the hospital's payment exceeds the limit described above) shall be used for health services during the year.

3. Source data for calculation of eligibility and payment adjustment. Each hospital's eligibility for DSH payment, and the amount of the DSH payment in state fiscal year 1997, shall be based upon Medicaid utilization in hospital fiscal years ending in calendar year 1994, and on projected operating reimbursement in state fiscal year 1997, estimated on the basis of 1994 utilization. After state fiscal year 1997, each new year's DSH payments shall be calculated using the most recent reliable utilization and projection data available. For the purpose of calculating DSH payments, each hospital with a Medicaid-recognized Neonatal Intensive Care Unit (NICU) (a unit having had a unique NICU operating cost limit under subdivision 6 of 12 VAC 30-70-60), shall have its DSH payment calculated separately for the NICU and for the remainder of the hospital as if the two were separate and distinct providers.

For [~~licensed freestanding psychiatric hospitals~~ freestanding psychiatric facilities licensed as hospitals], DSH payment shall be based on the most recent filed Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

F. Direct medical education (DMedEd). During the transition period (July 1996 through June 1998), DMedEd costs shall be reimbursed in the same way as under the previous methodology (12 VAC 30-70-10 through 12 VAC 30-70-130). This methodology does not and shall not include the [~~DME DMedEd~~] reimbursement limitation enacted for the Medicare program effective July 1, 1985. Reimbursement of DMedEd shall include an amount to reflect DMedEd associated with services to Medicaid patients provided in hospitals but reimbursed by capitated managed care providers. This amount shall be estimated based on the number of days of care provided by the hospital that are

reimbursed by capitated managed care providers. Direct medical education shall not be a reimbursable cost in [~~licensed freestanding psychiatric hospitals~~ freestanding psychiatric facilities licensed as hospitals]. DMedEd will be paid in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end settlement.

G. Final payment adjustment fund (PAF) payment for certain hospitals. Hospitals receiving payments for Medicaid patients from managed care providers enrolled in Medallion II shall be paid a separate lump sum amount, based on the continuation of capitation rates during July 1, 1996, through December 31, 1996, that do not reflect adjustments made to hospital per diem and DRG payments on July 1, 1996. Each of these hospitals shall be paid a final PAF amount. It shall be equal to a hospital specific PAF per diem times the number of Medallion II days that occur in the hospital in July 1, 1996, through December 31, 1996. The PAF per diem shall be based on a revision of the PAF calculation that was carried out for the SFY1996 PAF payment that was made in August 1995. The revision shall be the hospital ceiling, DSH per diem, and cost report data used in the calculation from the cost reports that would be used under the PAF methodology if a SFY1997 PAF calculation were to be done. The "paid days" data used in this calculation shall be the same as that used in the SFY1996 calculation. Pending the calculation of the final PAF payment in the settlement of the relevant time period for the affected hospitals, an interim payment shall be made. The interim payment shall be equal to 1/2 the PAF payment made to the same hospitals for SFY1996.

H. Adjusting DRG rates for length of stay (LOS) reductions from 1995 Appropriations Act. If it is demonstrated that there are savings directly attributable to LOS reductions resulting from utilization initiatives directed by the 1995 Appropriations Act as agreed to and evaluated by the Medicaid Hospital Payment Policy Advisory Council, these savings, up to a maximum of \$16.9 million in SFY1997, shall be applied as a reduction to SFY1997 and 1998 DRG rates used for settlement purposes.

I. Service limits during the transition period. The limit of coverage for adults of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply in the processing of claims and in the per diem portion of settlement during the transition period. This limit shall not apply in the DRG portion of reimbursement, except for covered psychiatric cases. Psychiatric cases are cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see [~~12 VAC 30-50-95~~ 12 VAC 30-50-100] through 12 VAC 30-50-310.

Article 3.

Diagnosis Related Groups (DRG) Reimbursement Methodology.

12 VAC 30-70-220. General.

A. Reimbursement of operating costs for cases which are subject to DRG rates shall be equal to the relative weight of the DRG in which the patient falls, times the hospital specific operating rate per case. Reimbursement of outliers, transfer

cases, cases still subject to per diem reimbursement, capital costs, and medical education costs shall be as provided in this article.

B. The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG reimbursement methodology. Effective July 1, 1996, and until notification of a change is given, Version 12 of this grouper shall be used. DMAS shall notify hospitals by means of a Medicaid memo when updating the system to later grouper versions.

12 VAC 30-70-230. Calculation of DRG weights and hospital case mix indices.

A. The relative weight measures the cost and, therefore, the reimbursement level of each DRG relative to all other DRGs. The hospital case mix index measures the hospital's average case mix complexity (costliness) relative to all other hospitals.

B. The relative weight for each DRG was determined by calculating the average standardized cost for cases assigned to that DRG, divided by the average standardized cost for cases assigned to all DRGs. For the purpose of calculating relative weights, groupable cases (cases having coding data of sufficient quality to support DRG assignment) and transfer cases (groupable cases where the patient was transferred to another hospital) were used. Ungroupable cases and rehabilitation, psychiatric, and transplant cases were not used. DMAS' hospital computerized claims history file for discharges in hospital fiscal years ending in calendar year 1993 was used. All available data from all enrolled, cost-reporting general acute care hospitals were used, including data from state-owned teaching hospitals. Cost report data from hospital fiscal years ending in calendar year 1993 were also used.

C. Before relative weights were calculated for each DRG, each hospital's total charges were disaggregated into operating charges and capital charges, based on the ratio of operating and capital cost to total cost. Operating charges and capital charges were standardized for regional variation, and then both operating charges and capital charges were reduced to costs using ratios of costs-to-charges (RCCs) obtained from the Medicaid cost report database. Direct medical education costs were eliminated from the relative weight calculations since such costs will be addressed outside the DRG rates. These steps, detailed in subsection D of this section, were completed on a case-by-case basis using the data elements identified in the following table.

Data Elements for Relative Weight and Case Mix Index Calculations

Data Elements	Source
Total charges for each groupable case	Claims Database
Total charges for each transfer case	Claims Database
Ratio of operating costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of capital costs to total costs for each hospital	Medicaid Cost Report Database

Ratio of [durable-medical equipment direct medical education] costs to total costs for each hospital	Medicaid Cost Report Database
Statewide average labor portion of operating costs	Virginia Health Services Cost Review Council
Medicare wage index for each hospital	Federal Register
Medicare Geographic Adj. Factor (GAF) for each hospital	Federal Register
RCC for each hospital	Medicaid Cost Report Database

D. Steps in calculation of relative weights.

1. The total charges for each case were split into operating charges, capital charges, and [~~durable medical equipment~~ direct medical education] charges using hospital specific ratios obtained from the cost report database.
2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.
 - a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.
 - b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.
 - c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.
3. The standardized operating charges were multiplied by the hospital specific RCC yielding standardized operating costs.
4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.
5. The standardized capital charges were multiplied by the hospital specific cost-to-charge ratio yielding standardized capital costs.

These five steps were repeated for all groupable cases and transfer cases. Once this was done, the cases were sorted by DRG category resulting in the total cases and the total standardized cost of each DRG. Total cost divided by total cases yielded the average standardized cost of each DRG. The average standardized cost of each DRG was divided by the average standardized cost across all DRGs yielding the relative weight for each DRG. To address the unavailability of charge data related to adult hospital days beyond 21 days, an adjustment was estimated for certain DRGs and added to the weights as calculated above. This adjustment for adult days over 21 is necessary only until the first recalibration of weights becomes effective in July 1998 (see 12 VAC 30-70-380).

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The relative weights were then used to calculate a case-mix index for each hospital. The case-mix index for a hospital was determined by summing for all DRGs the product of the number of groupable cases and transfer cases in each DRG and the relative weight for each DRG. This sum was then divided by the total number of cases yielding the case-mix index. This process was repeated on a hospital-by-hospital basis.

12 VAC 30-70-240. Calculation of standardized costs per case.

A. Standardized costs per case were calculated using all DRG cases (groupable, ungroupable, and transfer cases). Cases entirely subject to per diem rather than DRG reimbursement and cases from state-owned teaching hospitals were not used. Using the data elements identified in the following table, the seven steps outlined in subsection B of this section were completed on a case-by-case basis.

Data Elements for Standardized Costs Per Case Calculations

Data Elements	Source
Total charges for each groupable case	Claims Database
Total charges for each ungroupable case	Claims Database
Total charges for each transfer case	Claims Database
Ratio of operating costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of capital costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of [durable medical equipment direct medical education] costs to total costs for each hospital	Medicaid Cost Report Database
Statewide average labor portion of operating costs	Virginia Health Services Cost Review Council
Medicare wage index for each hospital	Federal Register
Medicare GAF for each hospital	Federal Register
RCC for each hospital	Medicaid Cost Report Database
Case-mix index for each hospital	Calculated
Total number of groupable cases	Claims Database
Total number of ungroupable cases	Claims Database
Total number of transfer cases	Claims Database

B. Steps in calculation of standardized cost per case.

1. The total charges for each case were split into operating charges, capital charges, and [~~durable medical equipment~~ direct medical education] charges using hospital specific ratios obtained from the cost report database.

2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.

a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.

b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.

c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.

3. The standardized operating charges were multiplied by the hospital specific RCC yielding standardized operating costs.

4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.

5. The standardized capital charges were multiplied by the hospital specific cost-to-charge ratio yielding standardized capital costs.

6. The standardized operating costs obtained in Step 3 were divided by the hospital specific case-mix index yielding case-mix neutral standardized operating costs.

7. The standardized capital costs obtained in Step 5 were divided by the hospital specific case-mix index yielding case-mix neutral standardized capital costs.

These seven steps were repeated for all DRG cases. Once this was done, the case-mix neutral standardized operating costs for all DRG cases were summed and an average was calculated. This yielded what is referred to as standardized operating costs per case. A similar average was computed for capital yielding standardized capital costs per case.

12 VAC 30-70-250. Calculation of statewide operating rate per case for SFY1997.

The statewide operating rate per case that shall be used to calculate the DRG portion of operating reimbursement for cases admitted and discharged in state fiscal year 1997 is equal to the standardized operating cost per case, updated to the midpoint of SFY1997 and multiplied by an additional factor. The update shall be done by multiplying the standardized operating cost per case by the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The additional factor is equal to 0.6247. This factor is the ratio of two numbers:

1. The numerator of the factor is the aggregate amount of operating reimbursement for hospitals included in the data base used for the calculations described above that DMAS and the Virginia Hospital and Healthcare Association (VHHA) jointly determined would be made by Medicaid in state fiscal year 1997 if the rate methodology in effect on June 30, 1996, were to continue. This amount was further adjusted by agreement between DMAS and the VHHA to carry out specific policy agreements with respect to various elements of reimbursement.

2. The denominator of the factor is the estimated aggregate operating amount for the same hospitals identified in subdivision 1 of this section, calculated using the standardized operating cost per case and standardized operating cost per day as calculated in 12

VAC 30-70-230 and 12 VAC 30-70-320, and adjusted for inflation as in subdivision 1.

12 VAC 30-70-260. Calculation of statewide capital rate per case. (Reserved)

12 VAC 30-70-270. Hospital specific operating rate per case.

Each hospital specific operating rate per case shall be the labor portion of the statewide operating rate per case multiplied by the Medicare wage index applicable to the hospital's geographic location plus the nonlabor portion of the statewide operating rate per case. The Medicare wage index shall be the one in effect for Medicare in the base period used in the calculation of the standardized costs per case (1993 for the calculation of 1997 rates).

12 VAC 30-70-280. Hospital specific capital rate per case (geographic adjustment). (Reserved)

12 VAC 30-70-290. Outliers.

A. An outlier case shall be one whose estimated cost exceeds the applicable DRG payment plus the applicable fixed loss threshold.

B. Total payment for an outlier case shall be calculated according to the following methodology (an example of the application of this methodology is found in 12 VAC 30-70-500):

1. The operating cost for the case shall be estimated. Operating cost for the case shall be the charges for the case times the hospital's operating cost-to-charge ratio based on the hospital's cost report data in the base period used to establish the rates in effect in the period for which outlier payment is being calculated.

2. The hospital specific operating cost amount for the DRG shall be calculated. This shall be equal to the sum of the labor portion of the standardized operating cost per case times the Medicare wage index, and the nonlabor portion of the standardized operating cost per case, multiplied by the relative weight applicable to the case.

3. The hospital specific operating cost outlier threshold is calculated as follows:

a. An outlier fixed loss threshold times the statewide average labor portion of operating cost times the Medicare wage index for the hospital, plus

b. The nonlabor portion of the fixed loss threshold, plus

c. The DRG operating cost amount for the case (subdivision 2 above).

4. The case specific excess over the hospital specific operating outlier threshold is calculated. This shall be equal to the difference between the estimated operating cost for the case (subdivision 1 above) and the hospital specific operating cost outlier threshold (subdivision 3 above), multiplied by the cost adjustment factor for outliers.

5. The total payment for the case is calculated. This shall be equal to the sum of the DRG operating cost amount for the case (subdivision 2 above) and the case specific excess over the hospital specific operating threshold (subdivision 4 above), multiplied by the factor that is used to adjust the standardized operating cost per case in 12 VAC 30-70-250.

C. Data element definitions. Factors and variables used in the above calculation and not already defined are defined as follows:

1. The "outlier fixed loss threshold" is a fixed dollar amount in SFY1997, applicable to all hospitals, that shall be adjusted each year. It shall be calculated each year, based on the most recent available estimates so as to result in a total operating expenditure for outliers equal to 5.1% of total operating expenditures, including outliers. In SFY1997, this amount shall be \$15,483. If in any year revised estimates are unavailable the previous year's value shall be used updated for inflation using the same factor applied to hospital rates.

2. The "statewide average labor proportion of operating cost" is a fixed percentage, equal to .5977. This figure may be updated with revised data when rates are rebased/recalibrated.

3. The "adjustment factor for outliers" is a fixed factor, published by Medicare in the Federal Register, and equal to 0.80. This figure shall be updated based on changes to the Medicare factor, upon the next rebasing of the system described in this part.

4. The "Medicare wage index applicable to the hospital" is as published by the Health Care Financing Administration in the year used as the base period.

12 VAC 30-70-300. Transfers and readmissions.

A. Transfer cases shall be defined as (i) patients transferred from one general acute care hospital to another and (ii) patients discharged from one general acute care hospital and admitted to another for the same or similar diagnosis (similar diagnoses shall be defined as ones with the first three digits the same) within five days of that discharge.

B. Readmissions shall be defined as cases readmitted to the same hospital for the same or similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a new admission or case (a separate DRG payment shall not be made).

C. Exceptions.

1. Cases falling into DRGs 456, 639, or 640 shall not be treated as transfer cases, but the full DRG rate shall be paid to the transferring hospital. These DRGs are designed to be populated entirely with transfer patients.

2. Cases transferred to or from a distinct part psychiatric or rehabilitation units of a general acute care hospital shall not be treated as transfer cases.

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D. Transfer methodology. When two general acute care hospitals provide inpatient services to a patient defined as a transfer case:

1. The transferring hospital shall receive the lesser of (i) a per diem payment equal to the DRG payment for the transferring hospital, divided by the arithmetic mean length of stay for the DRG in all hospitals for which data are available, times the patient's length of stay at the transferring hospital or (ii) the full DRG payment for the transferring hospital. The transferring hospital shall be eligible for outlier payments if the applicable criteria are met.

2. The receiving hospital, if it is the final discharging hospital, shall receive DRG payment. A receiving hospital that later transfers the patient to another hospital, including the first transferring hospital, shall be reimbursed as a transferring hospital. Only the final discharging hospital shall receive DRG payment. The receiving hospital shall be eligible for outlier payments if the applicable criteria are met.

12 VAC 30-70-310. Per diem reimbursement in the DRG methodology.

Cases that will continue to be reimbursed on a per diem basis are (i) covered psychiatric cases in general acute care hospitals and psychiatric units of general acute care hospitals, (ii) covered psychiatric cases in [licensed freestanding psychiatric hospitals freestanding psychiatric facilities licensed as hospitals], and (iii) rehabilitation cases in both general acute care and rehabilitation hospitals. Psychiatric cases are cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see the Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1A&B (12 VAC 30-50-95 through 12 VAC 30-50-310).

12 VAC 30-70-320. Calculation of standardized costs per day.

A. Standardized operating costs per day and standardized capital costs per day were calculated separately, but using the same calculation methodology, for psychiatric cases in general acute care hospitals, psychiatric acute care in [licensed freestanding psychiatric hospitals freestanding psychiatric facilities licensed as hospitals], and rehabilitation cases (per diem cases). Using the data elements identified in the following table, the first five steps outlined below were completed on a case-by-case basis.

Data Elements for Calculating Total Costs for Per Diem Cases

Data Elements	Source
Total charges for each acute care psychiatric case	Claims Database
Total charges for each freestanding acute care psychiatric case	Claims Database
Total charges for each rehabilitation case	Claims Database

Ratio of operating costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of capital costs to total costs for each hospital	Medicaid Cost Report Database
Ratio of [durable medical equipment direct medical education] costs to total costs for each hospital	Medicaid Cost Report Database
Statewide average labor portion of operating costs	Virginia Health Services Cost Review Council
Medicare wage index for each hospital	Federal Register
Medicare GAF for each hospital	Federal Register
RCC for psychiatric distinct part unit for each hospital	Medicare Cost Report
RCC for each hospital	Medicaid Cost Report Database
Number of acute care psychiatric days at each hospital	Claims Database
Number of freestanding acute care psychiatric days at [each] freestanding psychiatric facilities licensed as [a hospital hospitals]	Claims Database
Number of rehabilitation days at each acute care hospital and freestanding rehabilitation hospital	Claims Database

B. Steps in calculation of standardized cost per day.

1. The total charges for the case were split into operating charges, capital charges, and [durable medical equipment direct medical education] charges using hospital specific ratios obtained from the cost report database.

2. The operating charges obtained in Step 1 were standardized for regional variations in wages. This involved three substeps.

a. The operating charges were multiplied by 59.77% yielding the labor portion of operating charges.

b. The labor portion of operating charges was divided by the hospital specific Medicare wage index yielding the standardized labor portion of operating charges.

c. The standardized labor portion of operating charges was added to the nonlabor portion of operating charges (40.23%) yielding standardized operating charges.

3. The standardized operating charges were multiplied by the hospital specific RCCs yielding standardized operating costs.

4. The capital charges obtained in Step 1 were divided by the hospital specific Medicare geographic adjustment factor (GAF) yielding standardized capital charges.

5. The standardized capital charges were multiplied by the hospital specific RCCs yielding standardized capital costs.

These five steps were repeated for all per diem cases. The standardized operating costs for per diem cases were then summed and divided by the total number of per diem

days yielding the standardized operating costs per day for per diem cases. Similarly, the standardized capital costs for per diem cases were summed and divided by the total number of per diem days yielding the standardized capital costs per day for per diem cases. These two calculations were done separately for psychiatric cases in freestanding psychiatric facilities licensed as hospitals, for psychiatric cases in general acute care hospitals (including distinct part units) and for rehabilitation cases.

C. Where general acute care hospitals had psychiatric distinct-part units (DPUs) reported on their cost reports, separate RCCs were calculated for the DPUs and used in lieu of the hospital specific RCCs. Since DPU-specific RCCs are generally higher than hospital specific RCCs, this had the effect of increasing the estimated costs of acute care psychiatric cases. Overall hospital RCCs were used for freestanding acute care psychiatric cases and rehabilitation cases, as well as for psychiatric cases at general acute care hospitals without a psychiatric DPU.

12 VAC 30-70-330. Calculation of statewide operating rate per day.

The statewide hospital operating rate per day that shall be used to calculate the DRG system portion of operating reimbursement for psychiatric and rehabilitation cases admitted and discharged in SFY1997 is equal to the standardized operating cost per day updated to the midpoint of SFY1997 and multiplied by an additional factor. The update shall be done by multiplying the standardized operating cost per day by the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The additional factor for per diem cases in general acute care hospitals and rehabilitation hospitals is equal to 0.6290, and 0.6690 for freestanding psychiatric facilities licensed as hospitals. These factors were calculated so that per diem cases will be reimbursed the same percentage of cost as DRG cases based on the data used for rate calculation.

Per diem rates used for acute care hospitals during the transition shall be operating rates only and capital shall be reimbursed on a pass-through basis. Per diem rates used for freestanding psychiatric facilities licensed as hospitals shall be inclusive of capital. The capital-inclusive statewide per diem rate for freestanding psychiatric facilities licensed as hospitals shall be the standardized cost per day calculated for such hospitals adjusted for the wage index and the geographic adjustment factor (GAF) and multiplied by the factor above.

12 VAC 30-70-340. Calculation of hospital specific operating rate per day.

Each hospital specific operating rate per day shall be the labor portion of the statewide operating rate per day multiplied by the Medicare wage index applicable to the hospital's geographic location plus the nonlabor portion of the statewide operating rate per day. The Medicare wage index shall be the one in effect for Medicare in the base period used in the calculation of the standardized costs per case (1993 for the calculation of 1997 rates).

The hospital specific rate per day for freestanding psychiatric facilities licensed as hospitals shall be inclusive of capital cost, and shall have a capital portion which shall be adjusted by the GAF and added to the labor and nonlabor operating elements calculated as described above. The geographic adjustment factor shall be taken from the same time period as the Medicare wage index.

12 VAC 30-70-350. Prospective per case reimbursement of capital after transition period (1998). (Reserved)

12 VAC 30-70-360. Indirect medical education (IME).

Hospitals with programs in graduate medical education shall receive a rate adjustment for associated indirect costs. This reimbursement for IME costs recognizes the increased use of ancillary services associated with the educational process and the higher case-mix intensity of teaching hospitals. The IME adjustment shall employ the equation shown below.

$$\text{IME percentage} = 1.89 \times ((1 + r)^{0.405} - 1)$$

In this equation, r is the ratio of interns and residents to staffed beds. The IME adjustment shall be the IME percentage, times 0.4043, times operating reimbursement for DRG cases and per diem cases.

12 VAC 30-70-370. Updating rates for inflation.

DRG system rates in SFY1997 shall be as provided in 12 VAC 30-70-270 and 12 VAC 30-70-340. Rates for state fiscal years after SFY1997 shall be updated for inflation as follows:

1. The statewide operating rate per case as calculated in 12 VAC 30-70-250 and the statewide rates per day as calculated in 12 VAC 30-70-310 shall be converted to a price level at the midpoint of state fiscal year 1993, using the same inflation values as were used to establish the amounts used in subdivision 1 of 12 VAC 30-70-250. The resulting rates are the base period operating rates per case and the base period rates per day.

2. Rates shall be updated each July first by increasing the 1993 base period rates to the midpoint of the upcoming state fiscal year using the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS. The most current table available prior to the effective date of the new rates shall be used. By means of this method, each year, corrections made by DRI/McGraw-Hill in the moving averages that were used to update rates for previous years shall automatically be incorporated as adjustments to the update calculation used for the upcoming year. For each new year's rate calculation that uses a base year prior to 1997, the inflation values shall be the DRI/McGraw-Hill values plus two percentage points for each year through SFY1997.

12 VAC 30-70-380. Recalibration/rebasing policy.

DMAS recognizes that claims experience during the transition period or modifications in federal policies may require adjustment to the DRG system policies provided in this part. The state agency shall recalibrate (evaluate and adjust the weights assigned to cases) and rebase (review

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and update as appropriate the cost basis on which the rate is developed) the DRG system at least every other year. The first such recalibration and rebasing shall be done prior to full implementation of the DRG methodology in SFY1999. Recalibration and rebasing shall be done in consultation with the Medicaid Hospital Payment Policy Advisory Council noted in 12 VAC 30-70-490.

12 VAC 30-70-390. Disproportionate Share Hospital (DSH) payments after transition period (1998). (Reserved)

Article 4.

Revised Per Diem Methodology.

12 VAC 30-70-400. Determination of per diem rates.

Each hospital's revised per diem [rate or] rates to be used during the transition period shall be based on the hospital's previous peer group ceiling or ceilings that were established under the provisions of 12 VAC 30-70-10 through 12 VAC 30-70-130, with the following adjustments:

1. All operating ceilings will be increased by the same proportion to effect an aggregate increase in reimbursement of \$40 million in SFY1997. This adjustment incorporates in per diem rates the systemwide aggregate value of payment that otherwise would be made through the payment adjustment fund. This adjustment will be calculated using estimated 1997 rates and 1994 days.

2. Starting July 1, 1996, operating ceilings will be increased for inflation to the midpoint of the state fiscal year, not the hospital fiscal year. Inflation shall be based on the DRI-Virginia moving average value as compiled and published by DRI/McGraw-Hill under contract with DMAS, increased by two percentage points per year. The most current table available prior to the effective date of the new rates shall be used.

For services to be paid at SFY1998 rates, per diem rates shall be adjusted consistent with the methodology for updating rates under the DRG methodology (12 VAC 30-70-370).

3. There will be no disproportionate share hospital (DSH) per diem.

4. To pay capital cost through claims, a hospital specific adjustment to the per diem rate will be made. At settlement of each hospital fiscal year, this per diem adjustment will be eliminated and capital shall be paid as a pass-through.

12 VAC 30-70-410. State university teaching hospitals.

For hospitals that were state owned teaching hospitals on January 1, 1996, all the calculations which support the determination of hospital specific rate per case and rate per day amounts under the DRG reimbursement methodology shall be carried out separately from other hospitals, using cost data taken only from state university teaching hospitals. Rates to be used effective July 1, 1996, shall be determined on the basis of cost report and other applicable data pertaining to the facility fiscal year ending June 30, 1993. For these hospitals the factors used to establish rates shall be as

listed below according to the section in Article 3 (12 VAC 30-70-220 et seq.) of this part where corresponding factors for other hospitals are set forth:

1. 12 VAC 30-70-250. 0.8432

2. 12 VAC 30-70-330. 0.8470

12 VAC 30-70-420. Reimbursement of nonenrolled general acute care hospital providers.

During the transition period, nonenrolled general acute care hospitals (general acute care hospitals that are not required to file cost reports) shall be reimbursed according to the previous methodology for such hospitals (12 VAC 30-70-120 A). Effective with discharges after June 30, 1998, these hospitals shall be paid based on DRG rates unadjusted for geographic variation. General acute care hospitals shall not file cost reports if they have less than 1000 days per year (in the most recent provider fiscal year) of inpatient utilization by Virginia Medicaid recipients, inclusive of patients in managed care capitation programs.

Prior approval must be received from DMAS when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

12 VAC 30-70-430. Medicare upper limit.

For participating and nonparticipating facilities, the state agency will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2) or the lesser of reasonable cost or customary charges in 42 CFR 447.250.

12 VAC 30-70-440. Determination of reasonable and adequate rates.

In accordance with 42 CFR 447.250 through 42 CFR 447.272 which implements §1902(a)(13)(A) of the Social Security Act, the state agency establishes payment rates for services that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's reimbursement system. Allowable costs will be determined from the filing of a uniform cost report by participating providers.

12 VAC 30-70-450. Cost reporting requirements.

Except for nonenrolled general acute care hospitals and freestanding psychiatric facilities licensed as hospitals, all hospitals shall submit cost reports. All cost reports shall be submitted on uniform reporting forms provided by the state agency and by Medicare. Such cost reports shall cover a 12-month period. Any exceptions must be approved by the state agency. The cost reports are due not later than 150 days after the provider's fiscal year end. All fiscal year end

changes must be approved 90 days prior to the beginning of a new fiscal year. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, the program shall take action in accordance with its policies to ensure that an overpayment is not being made. When cost reports are delinquent, the provider's interim rate shall be reduced to zero. The reductions shall start on the first day of the following month when the cost report is due. After the delinquent cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to the state agency. The cost report will be judged complete when the state agency has all of the following:

1. Completed cost reporting form or forms provided by DMAS, with signed certification or certifications.
2. The provider's trial balance showing adjusting journal entries.
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of [charges changes] in financial position, and footnotes to the financial statements. Multi-level facilities shall be governed by [445 subdivision 5 of this subsection].
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report.
5. Hospitals which are part of a chain organization must also file:
 - a. Home office cost report;
 - b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report, and footnotes to the financial statements;
 - c. The hospital's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;
 - d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;
 - e. Schedule of investments by type (stock, bond, etc.), amount, and current market value.
6. Such other analytical information or supporting documents requested by the state agency when the cost reporting forms are sent to the provider.

12 VAC 30-70-460. Hospital settlement.

A. During the transition period claims will be processed and tentative payment made using per diem rates. Settlements will be carried out to ensure that the correct blend of DRG and per diem-based payment is received by each general acute care and rehabilitation hospital and to

settle reimbursement of pass-through costs. There shall be no settlement of freestanding psychiatric facilities licensed as hospitals except with respect to disproportionate share hospital (DSH) payment, if necessary (see 12 VAC 30-70-210 E 3).

B. The transition blend percentages which determine the share of DRG system and of revised per diem system reimbursement that is applicable in a given period shall change with the change of the state fiscal year, not the hospital fiscal year.

C. If a hospital's fiscal year does not end June 30, its first year ending after June 30, 1996, contains one or more months under the previous methodology, a "split" settlement shall be done of that hospital's fiscal year. Services rendered through June 30, 1996, shall be reimbursed under the previous reimbursement methodology and services rendered after June 30, 1996, will be reimbursed as described in subsection G of this section.

D. For cases subject to settlement under the blend of DRG and per diem methodologies (cases with an admission date after June 30, 1996), the date of discharge determines the year in which any inpatient service or claim related to the case shall be settled. This shall be true for both the DRG and the per diem portions of settlement. Interim claims tentatively paid in one hospital fiscal year that relate to a discharge in a later hospital fiscal year, shall be voided and reprocessed in the latter year so that the interim claim shall not be included in the settlement of the first year, but in the settlement of the year of discharge. An exception to this shall be rehabilitation cases, the claims for which shall be settled in the year of the "through" date of the claim.

E. A single group of cases with discharges in the appropriate time period shall be the basis of both the DRG and the per diem portion of settlement. These cases shall be based on claims submitted [or and, if necessary] corrected by 120 days after the providers FYE. Cases which are based on claims that lack sufficient information to support grouping to a DRG category, and which the hospital cannot correct, shall be settled for purposes of the DRG portion of settlement based on the lowest of the DRG weights.

F. Reimbursement for services in freestanding psychiatric facilities licensed as hospitals shall not be subject to settlement.

G. During the transition period settlements shall be carried out according to the following formulas.

1. Settlement of a hospital's first fiscal year ending after July 1, 1996:

a. Operating reimbursement shall be equal to the sum of the following:

(1) Paid days occurring in the hospital's fiscal year before July 1, 1996, times the per diem in effect before July 1, 1996.

(2) Paid days occurring after June 30, 1996, but in the hospital fiscal year, that are related to admissions that occurred before July 1, 1996, times

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the revised system per diem that is effective on July 1, 1996.

(3) DRG system payment for DRG and psychiatric cases admitted after June 30, 1996, and discharged within the hospital fiscal year times 1/3.

(4) DRG system payment for rehabilitation claims having a "from" date of July 1, 1996, or later and a "through" date within the hospital fiscal year times 1/3.

(5) Paid days from the cases and claims in subdivisions 1 a (3) and (4) of this subsection, times the revised system per diem that is effective on July 1, 1996, times 2/3.

b. DSH reimbursement shall be equal to paid days from the start of the hospital fiscal year through June 30, 1996, times the DSH per diem effective before July 1, 1996. There shall be no settlement of DSH after July 1, 1996, as the lump sum amount shall be final.

c. Pass-throughs shall be settled as previously based on allowable cost related to days paid in subdivisions 1 a (1), (2), and (5) of this subsection.

2. Settlement of a hospital's second fiscal year ending after July 1, 1996:

a. Operating reimbursement shall be equal to the sum of the following:

(1) Days occurring in the hospital fiscal year related to admissions that occurred before July 1, 1996, times the revised system per diem that is effective at the time.

(2) DRG system payment for DRG and psychiatric cases discharged in the hospital fiscal year, but before July 1, 1997, times 1/3.

(3) DRG system payment for rehabilitation claims having a "through" date within the hospital fiscal year but before July 1, 1997, times 1/3.

(4) Covered days from the cases and claims and in subdivisions 2 b and c of this subsection, times the revised system per diem that is effective on July 1, 1996, times 2/3.

(5) DRG system payment for DRG and psychiatric cases discharged from July 1, 1997, through the end of the hospital fiscal year, times 2/3.

(6) DRG system payment for rehabilitation claims having a "through" date from July 1, 1997, through the end of the hospital fiscal year, times 2/3.

(7) Covered days from the cases and claims and in subdivisions 2 a (5) and (6), times the revised system per diem that is effective on July 1, 1997, times 1/3.

b. DSH reimbursement shall be the predetermined lump sum amount.

c. Pass-throughs shall be settled as previously, based on allowable cost related to days paid in subdivisions 2 a (1), (4), and (7).

12 VAC 30-70-470. Underpayments.

When the settlement of a hospital fiscal year indicates that an underpayment has occurred, the state agency shall pay the additional amount to the hospital within 60 days of completion of the settlement.

12 VAC 30-70-480. Refund of overpayments.

A. Lump sum payment. When the settlement of a hospital fiscal year indicates that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where the state agency discovers an overpayment during desk review, field audit, or final settlement, the state agency shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken unless the hospital disputes the state agency's determination of the overpayment. If the hospital disputes the state agency's determination, recovery, if any, shall be undertaken after the issue date of any administrative decision issued by the state agency after an informal fact finding conference.

B. Offset. If the hospital has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the hospital has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

C. Payment schedule. If the hospital cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the hospital shall request an extended repayment schedule at the time of filing or (ii) within 30 days after receiving the DMAS demand letter, the hospital shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a hospital demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the director) may approve a repayment schedule of up to 36 months.

A hospital shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the hospital submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the hospital withdraws from the program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the hospital or by lump sum payments.

D. Extension request documentation. In the request for an extended repayment schedule, the hospital shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the hospital written notification of the approved repayment schedule, which shall be effective retroactive to the date the hospital submitted the proposal.

E. Interest charge on extended repayment. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the hospital indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the hospital does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, regardless of whether the hospital files a further appeal. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the hospital shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the hospital paid to DMAS.

12 VAC 30-70-490. Medicaid Hospital Payment Policy Advisory Council.

In order to ensure the ongoing relevance and fairness of the prospective payment system for hospital services, the Director of the Department of Medical Assistance Services shall appoint a Medicaid Hospital Payment Policy Advisory Council. The council shall be composed of four hospital or health system representatives nominated by the Virginia Hospital and Healthcare Association, two senior department staff and one representative each from the Department of Planning and Budget and the Joint Commission on Healthcare. This council will be charged with evaluating and developing recommendations on payment policy changes in areas that include, but are not limited to, the following: (i) utilization reductions directly attributable to the 1995 Appropriations Act utilization initiative and any necessary adjustments to SFY1997 and 1998 DRG rates; (ii) the update and inflation factors to apply to the various components of the delivery system; (iii) the treatment of capital and medical education costs; (iv) the mechanisms and budget implications of recalibration and rebasing approaches; (v) the disproportionate share payment fund and allocation mechanisms; and (vi) the timing and final design of an outpatient payment methodology.

12 VAC 30-70-500. Outlier methodology illustration.

OUTLIER METHODOLOGY ILLUSTRATION

(dollar amounts and other values are for illustration purposes only)

Assume the Following:
 Medicare: Fixed Loss Cost \$15,150.00
 Outlier Threshold for Fiscal
 Year 1996

Medicare: Marginal Cost Factor for Cost Outliers for Fiscal Year 1996	0.8000
Hospital X Operating Cost-to-Charge Ratio	0.7200
Hospital X Capital Cost-to-Charge Ratio	0.0600
Medicare Wage Index for Hospital X	0.9413
Statewide Average Labor Portion of Operating Costs	0.5977
Hospital X Billed Charges for Case Y	\$100,000.00
Total Adjusted Costs per Case for Hospital X	\$3,115.00
Relative Weight for Case Y	3.1790
Adjustment Factor for DRG Cases	0.6197

Step 1 Calculate Hospital X Operating Costs for Case Y:

Hospital X Billed Charges for Case Y	\$100,000.00
Hospital X Operating Cost-to-Charge Ratio	x .7200
Hospital X Operating Costs for Case Y	<u>\$72,000</u>

Step 2 Calculate Hospital X DRG Operating Amount for Case Y:

Total Adjusted Operating Costs per Case for Hospital X	\$3,115.00
Relative Weight for Case Y	x 3.1790
Hospital X DRG Operating Amount for Case Y	<u>\$9,902.59</u>

Step 3 Calculate Hospital X Cost Outlier Threshold for Case Y:

Fixed Loss Cost Outlier Threshold	\$15,150.00
Statewide Average Labor Portion of Operating Costs	x 0.5977
Labor Portion of Fixed Loss Cost Outlier Threshold	<u>\$9,055.16</u>
Wage Index for Hospital X	x 0.9413
Wage Adjusted Labor Portion of Fixed Loss Cost Outlier Threshold	<u>\$8,523.62</u>
Non-Labor Portion of Fixed Loss Cost Outlier Threshold	+ \$6,094.85
Wage Adjusted Fixed Loss Cost Outlier Threshold	<u>\$14,618.46</u>
Hospital X DRG Operating Amount for Case Y	+ \$9,902.59
Hospital X Cost Outlier Threshold for Case Y	<u>\$24,521.05</u>

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Step 4 Calculate Hospital X Operating Outlier Amount for Case Y:

Hospital X Operating Costs for Case Y	\$72,000.00
Hospital X Cost Outlier Threshold for Case Y	- \$24,521.05
Hospital X Operating Outlier Costs for Case Y	\$47,478.95
Marginal Cost Factor for Cost Outliers	x 0.8000
Hospital X Operating Outlier Amount for Case Y	\$37,983.16

Step 5 Calculate Hospital X Total Payment for Case Y:

Hospital X DRG Operating Amount for Case Y	\$9,902.59
Hospital X Operating Outlier Amount for Case Y	+ \$37,983.16
Hospital X Total Amount for Case Y	\$47,885.75
Adjustment Factor for DRG Cases	x 0.6197
Hospital X Total Payment for Case Y	\$29,674.80

12 VAC 30-80-140. EPSDT. (Repealed.)

~~A. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, reimbursement shall be provided for services resulting from early and periodic screening, diagnostic, and treatment services. Reimbursement shall be provided for such other measures described in Social Security Act § 1905(a) required to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.~~

~~B. Payments to fee-for-service providers shall be in accordance with 12 VAC 30-80-30 the lower of (i) state agency fee schedule or (ii) actual charge (charge to the general public).~~

~~C. Payments to outpatient cost-based providers shall be in accordance with 12 VAC 30-80-20.~~

~~D. Psychiatric services delivered in a psychiatric hospital for individuals under age 21 shall be reimbursed at a uniform all-inclusive per diem fee and shall apply to all service providers. The fee shall be all-inclusive to include physician and pharmacy services. The methodology to be used to determine the per diem fee shall be as follows. The base period uniform per diem fee for psychiatric services resulting from an EPSDT screening shall be the median (weighted by children's admissions in state-operated psychiatric hospitals) variable per day cost of state-operated psychiatric hospitals in the fiscal year ending June 30, 1990. The base period per diem fee shall be updated each year using the hospital market basket factor utilized in the reimbursement of acute care hospitals in the Commonwealth.~~

NOTICE: The forms used in administering 12 VAC 30-70-10 et seq., Methods and Standards for Establishing Payment Rates for Long-Term Care, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Cost Reporting Forms for Hospitals (Map 783 Series), eff. 10/15/93

- Certification by Officer or Administrator of Provider
- Analysis of Interim Payments for Title XIX Services
- Computation of Title XIX Ratio of Cost to Charges
- Computation of Inpatient and Outpatient Ancillary Service Costs
- Computation of Outpatient Capital Reduction
- Computation of Title XIX Outpatient Costs
- Computation of Charges for Lower of Cost or Charge Comparison
- Computation of Title XIX Reimbursement Settlement
- Computation of Net Medicaid Inpatient Operating Cost Adjustment
- Calculation of Medicaid Inpatient Profit Incentive for Hospitals
- Plant Costs
- Education Costs
- Obstetrical Care Requirements Certification
- Computation for Separating the Allowable Plant and Education Cost (pass-throughs) from the Inpatient Medicaid Hospital Costs
- Computation of Inpatient Operating Cost, HCFA-2552-92 D-1 (12/92).
- Apportionment of Cost of Services Rendered by Interns and Residents, HCFA-2552-92 D-2 (12/92).

VA.R. Doc. No. R97-484; Filed May 7, 1997, 9:39 a.m.

DOCUMENTS INCORPORATED BY REFERENCE

All Patient Diagnosis Related Groups (AP-DRG) Group, DRG and MDC Code Listings, Version 12, January 1995.

Data Resources, Incorporated: Health Care Cost HCFA-Type Hospital Market Basket, DRI/McGraw Hill.

**DEPARTMENT OF TRANSPORTATION
(COMMONWEALTH TRANSPORTATION BOARD)**

REGISTRAR'S NOTICE: The following regulation filed by the Department of Transportation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 1 and 2 of the Code of Virginia, which excludes orders or regulations fixing rates or prices and delegations of authority, respectively. The Department of Transportation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 24 VAC 30-30-10 et seq. Jamestown-Scotland Ferry Fares (REPEALED).

Statutory Authority: § 33.1-254 of the Code of Virginia.

Effective Date: July 1, 1997.

Summary:

This regulation sets fares for transportation across the James River by the Jamestown-Scotland Ferry. Chapter 627 of the Acts of the 1996 General Assembly directed the Commonwealth Transportation Board to discontinue collection of tolls at this location as of July 1, 1997.

Agency Contact: David L. Roberts, Management Services Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3620.

VA.R. Doc. No. R97-497; Filed May 6, 1997, 2:06 p.m.

Title of Regulation: 24 VAC 30-620-10 et seq. Rules, Regulations, and Rates Concerning Toll and Bridge Facilities (amending 24 VAC 30-620-30).

Statutory Authority: §§ 2.1-20.01:2, 33.1-8, 31.1-12, 33.1-252, 33.1-269(3), 33.1-285, and 33.1-292 of the Code of Virginia.

Effective Date: July 1, 1997.

Summary:

This regulation establishes the rate schedules and delegation of authority under which the Department of Transportation may temporarily suspend toll collection operations at three facilities currently conducting toll operations (Dulles Toll Road, Powhite Parkway, and the George P. Coleman Bridge). Since reopening on August 3, 1996, vehicle volumes using the George P. Coleman Bridge have been below projections. This shortfall has resulted in lower than anticipated toll revenues to meet operating and debt service costs. The Commonwealth Transportation Board has legal and financial obligations to the citizens of the Commonwealth that make it necessary to ensure that sufficient toll revenues are generated to offset costs incurred. Therefore, the Commonwealth Transportation Board amended the toll schedules for the George P. Coleman Bridge to encourage increased use of the facility by vehicle classes with three or more axles. The expectation is that

increased use of the facility by these vehicle classes will have a beneficial effect on toll revenues.

Agency Contact: David L. Roberts, Management Services Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3620.

24 VAC 30-620-30. Rates and delegation of authority to suspend toll collection.

A. The Commonwealth Transportation Commissioner delegates the authority to suspend toll collection operations on the Dulles Toll Road to the Northern Virginia District Administrator, subject to the conditions and criteria outlined in 24 VAC 30-620-20 A and B. At his discretion, the Northern Virginia District Administrator may delegate this authority to others within the district organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

B. 1. The following are the toll rate schedules for the Dulles Toll Road, and remain in effect until the FasToll system is fully implemented.

DULLES TOLL ROAD RATE STRUCTURE			
VEHICLE CLASS	MAIN PLAZA	SULLY ROAD	OTHER RAMPS
Passenger Cars	\$0.50	\$0.35	\$0.25
Passenger Cars w/trailers	\$1.00	\$0.70	\$0.50
Motorcycles	\$0.50	\$0.35	\$0.25
Trucks, two axles, four tires	\$0.50	\$0.35	\$0.25
Trucks, two axles, six tires	\$1.00	\$0.70	\$0.50
Trucks, two axles, w/trailer	\$1.00	\$0.70	\$0.50
Trucks, three or more axles	\$1.00	\$0.70	\$0.50
Trucks, three or more axles, w/trailer	\$1.00	\$0.70	\$0.50
Buses, two axles	\$1.00	\$0.70	\$0.50
Buses, three axles	\$1.00	\$0.70	\$0.50

2. Upon full implementation of the FasToll system, the following are the toll rate schedules for the Dulles Toll Road.

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DULLES TOLL ROAD RATE STRUCTURE			
VEHICLE CLASS	MAIN PLAZA	SULLY ROAD	OTHER RAMPS
Two axles ¹	\$0.50	\$0.35	\$0.25
Three axles ²	\$0.75	\$0.60	\$0.50
Four axles	\$1.00	\$0.85	\$0.75
Five axles	\$1.25	\$1.10	\$1.00
Six axles or more	\$1.50	\$1.35	\$1.25

¹ Includes passenger cars, motorcycles, and trucks (4 and 6 tires).

² Includes trucks, buses, and passenger cars with trailers.

C. The Commonwealth Transportation Commissioner delegates the authority to suspend toll collection operations on the Powhite Parkway Extension Toll Road to the Richmond District Administrator, subject to the conditions and criteria outlined in 24 VAC 30-620-20 A and B. At his discretion, the Richmond District Administrator may delegate this authority to others within the district organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

D. The following are the toll rate schedules for the Powhite Parkway Extension Toll Road.

POWHITE PARKWAY EXTENSION TOLL ROAD MAXIMUM RATE STRUCTURE				
VEHICLE CLASS	MAIN LINE PLAZA	MAIN LINE PLAZA - EAST AND WEST RAMP	RAMP - ROUTE 60	RAMP - COURT-HOUSE ROAD
Two axle vehicles	\$0.75	\$0.25	\$0.25	\$0.50
Three axle vehicles	\$1.00	\$0.35	\$0.35	\$0.60
Four axle vehicles	\$1.25	\$0.45	\$0.45	\$0.70
Five axle vehicles	\$1.50	\$0.55	\$0.55	\$0.80
Six axle vehicles	\$1.50	\$0.55	\$0.55	\$0.80

E. ~~No tolls shall be collected on the George P. Coleman Bridge until the Virginia Department of Transportation determines that the bridge's reconstruction project is completed and it is opened to traffic. In anticipation of that date, The Commonwealth Transportation Commissioner delegates the authority to suspend toll collection operations on the George P. Coleman Bridge to the Suffolk District Administrator, subject to the conditions and criteria outlined in~~

24 VAC 30-620-20 A and B. At his discretion, the Suffolk District Administrator may delegate this authority to others within the district organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

F. ~~Effective upon the date the reconstructed bridge is completed and opened to traffic July 1, 1997, the following are the toll rate schedules for the George P. Coleman Bridge.~~

GEORGE P. COLEMAN BRIDGE TOLL RATE STRUCTURE	
VEHICLE CLASS ¹	ONE-WAY RATE
Motorcycles	\$0.50
Commuter cars, vans, pick-ups	\$0.50
Commuter commercial vans/trucks	\$0.50
Cars, vans, pick-ups	\$2.00
Two-axle, six-tire trucks and buses	\$2.00
Three-axle trucks vehicles and buses	\$6.00 \$3.00
Four or more axle vehicles	\$8.00 \$4.00

¹ Commuter toll rates will be available only via the FasToll system to two axle vehicles making three round-trip crossings within a 90-day period on the George P. Coleman Bridge.

VA.R. Doc. No. R97-498; Filed May 6, 1997, 2:06 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: 9 VAC 20-160-10 et seq. Voluntary Remediation Regulations.

Statutory Authority: § 10.1-1429.1 of the Code of Virginia.

Effective Date: June 26, 1997.

Summary:

The regulations establish standards and procedures for persons conducting voluntary remediation at sites where remediation has not been clearly mandated by the Environmental Protection Agency (EPA), the department or a court pursuant to the Comprehensive Environmental Response and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where the jurisdiction of those statutes has been waived. The regulations provide:

1. Methodologies to determine site specific risk-based remediation standards;
2. Procedures that minimize delay and expense of the remediation to be followed by a person volunteering to

remediate a release and by the department in the processing of submissions and overseeing remediation;

3. The issuance of certifications of satisfactory completion of remediation, based on then present conditions and available information, where voluntary cleanup achieves applicable cleanup standards or where the department determines that no further action is required;

4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary cleanup consistent with applicable federal law; and

5. Collection of registration fees to defray the actual reasonable costs of the voluntary remediation program expended at the site not to exceed the lesser of \$5,000 or 1.0% of the cost of the remediation.

A summary of significant changes from the proposed regulations is as follows:

1. Eligibility (9 VAC 20-160-30 D and E). Clarification was provided regarding the circumstances that would be considered to render a site "clearly mandated" for remediation under the Virginia Hazardous Waste Management Regulations (VHWMR) and the Virginia Solid Waste Management Regulations (VSWMR), and thereby ineligible for Voluntary Remediation Program (VRP) participation.

a. Rather than rendering ineligible any site subject to VHWMR, the revised regulation describes a more specific category of sites that would be deemed "clearly mandated" for remediation under these state regulations. (Facility that is/was permitted, should have been permitted, is/was under interim status, should have been under interim status...)

b. To address the concerns regarding VSWMR provisions, a new clause has been added whereby VRP participation would be available where there are circumstances that could be construed to constitute the site an open dump or unpermitted solid waste management facility under VSWMR.

2. Risk Assessment and Remediation Levels.

a. The term "remediation standards" has been changed to "remediation levels" throughout the regulations so that it is clear that remediation levels developed under the VRP are not promulgated standards.

b. 9 VAC 20-160-90 B has been modified to include an assessment of risk to surrounding areas in setting remediation standards.

c. 9 VAC 20-160-90 C 1 a has been modified to specify a 1×10^{-6} carcinogenic risk goal for individual contaminants, with total site risks not to exceed 10^{-4} .

d. 9 VAC 20-160-90 C 2 b (1) (a) and (b) have been modified to allow an adjustment for the number of noncarcinogenic contaminants under a Tier II assessment.

e. 9 VAC 20-160-90 C 2 b (4) has been modified to allow for a screening level ecological assessment under Tier II where there are complete pathways and ecological receptors of concern.

f. 9 VAC 20-160-90 C 2 c (2) has been modified to clarify that an ecological risk assessment is required only where a screening level ecological evaluation has shown that there is a potential for ecological risk.

g. References to fate and transport modeling have been removed since these could be more appropriately addressed in guidance rather than the regulations.

3. Offsite Contamination and Limited Immunity (9 VAC 20-160-110 D). The proposed regulations expressly provided for the issuance of a certification of satisfactory completion of remediation (certificate) that would limit the grant of immunity to only those enforcement actions that could otherwise be taken to address conditions within the boundaries of the property, as opposed to the broader grant of immunity for enforcement actions that could be taken to address conditions both on and off the property boundaries (9 VAC 20-160-110 D 1 and 2). This provision allowed for a participant to forgo investigation and remediation of offsite conditions related to the site, in exchange for the limited grant of immunity. In order to address concerns by commenters that it is not appropriate under the confines of the statute for the Department of Environmental Quality (DEQ) to consider issuing certifications that limit the grant of the immunity to onsite conditions only, the above-described provision was deleted.

This deletion also eliminates an express provision whereby a participant could characterize only the onsite conditions in exchange for a limited grant of immunity. Without this provision, therefore, it would appear that all participants must adequately characterize all impacts from the site, both onsite and offsite.

4. Recordation of Certification (9 VAC 20-160-110 C). The proposed regulations required that the certification be recorded with the deed for the property if use restrictions were specified as a basis for issuance of the certification. Comments expressed concern that title insurance companies would refuse to issue title policies or would be compelled to note title exceptions to properties on which a certification is recorded due to a lack of familiarity with the certification document. The objective of requiring recordation of the certification is to provide prospective purchasers with notice and to ensure use restrictions in perpetuity. An acceptable alternative to recordation of the certification itself is to require placement of a more traditional deed restriction on the use of the property. This provision has therefore been revised to allow for recordation of an ordinary deed restriction rather than the certificate itself.

5. Public Participation (9 VAC 20-160-120). Minimum public participation requirements were included in the proposed regulations. Some comments received were in opposition to mandatory public participation

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requirements due to the voluntary nature of the program. These comments favored allowing the participant to decide whether to proceed with public participation activities. A majority of the comments, however, supported increased public participation requirements. Because successful VRP participation results in a grant of immunity, and based on the public participation requirements associated with similar environmental programs that have the potential to significantly impact surrounding properties in a community, two additional provisions were added to the public participation requirements to require direct notification to adjacent property owners and the local government officials. This increase in public participation requirements should also help to facilitate a Memorandum of Agreement with EPA whereby EPA will be able to grant comfort letters following successful completion of the VRP.

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: Kevin Greene, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4236.

CHAPTER 160. VOLUNTARY REMEDIATION REGULATIONS.

9 VAC 20-160-10. Definitions.

[The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.]

"Act" means the Voluntary Remediation Act (§ 10.1-1429.1 et seq. of the Code of Virginia).

"Agreement" means the Voluntary Remediation Agreement entered into between the department and a Voluntary Remediation Program participant.

"Authorized agent" means any person who is authorized in writing to fulfill the requirements of this program.

"Baseline risk assessment" means the portion of a risk assessment which addresses the potential adverse human health and environmental effects under both current and planned future conditions caused by the presence of a contaminant in the absence of any control, remediation, or mitigation measures.

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

["Completion" means fulfillment of the commitment agreed to by the participant as part of this program.]

"Contaminant" means any man-made or man-induced alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including, but not limited to, such alterations caused by any

hazardous substance (as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9 VAC 20-60-10), solid waste (as defined in 9 VAC 20-80-10), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law, or natural gas.

["Completion" means fulfillment of the commitment agreed to by the participant as part of this program.]

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with the remedial action.

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

"Director" means the Director of the Department of Environmental Quality or such other person to whom the director has delegated authority.

"Engineering controls" means remedial actions directed toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, stormwater conveyance systems, [pump and treat systems,] slurry walls, liner systems, caps, leachate collection systems and groundwater recovery systems.

["~~Exposure assessment model~~" means a conceptual model of the physical site conditions, contaminants of concern by media, release mechanisms, environmental fate and transport, and potential receptors, and the interaction of each as it relates to site risk. The model identifies the universe of on-site and off-site current and reasonably anticipated future human and environmental exposure pathways and receptors. The purpose of the model is to design and focus site investigations and to assist in the determination of site response action objectives.]

"Hazard index (HI)" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

"Hazard quotient" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"Institutional controls" means legal or contractual restrictions on property use that remain effective after remediation is completed and are used to meet remediation [standards levels]. The term may include, but is not limited to, deed and water use restrictions.

"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicologic data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

"Operator" means the person currently responsible for the overall operations at a site, or any person responsible for operations at a site at the time of, or following, the release.

"Owner" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means, or any person who previously owned the property.

"Participant" means a person who has received confirmation of eligibility and has remitted payment of registration fee.

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

"Program" means the Virginia Voluntary Remediation Program.

"Property" means a parcel of land defined by the boundaries in the deed.

"Reference dose" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"Registration fee" means the fee paid to enroll in the Voluntary Remediation Program, based on 1.0% of the total cost of remediation at a site, not to exceed the statutory maximum.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any contaminant into the environment.

"Remediation" means actions taken to cleanup, mitigate, correct, abate, minimize, eliminate, control and contain or prevent a release of a contaminant into the environment in order to protect human health and the environment, including actions to investigate, study or assess any actual or suspected release.

"Remediation [standard level]" means the concentration of a contaminant and applicable controls, that are protective of human health and the environment.

"Restricted use" means any use other than residential.

"Risk" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"Risk assessment" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"Site" means any property or portion thereof, as agreed to and defined by the participant and the department, which

contains or may contain contaminants being addressed under this program.

"Termination" means the formal discontinuation of participation in the Voluntary Remediation Program.

"Unrestricted use" means the designation of acceptable future use for a site at which the remediation [standards levels], based on either background or standard residential exposure factors, have been attained throughout the site in all media.

"Upper-bound lifetime cancer risk level" means a conservative estimate of the probability of one excess cancer occurrence in a given number of exposed individuals. For example, a risk level of 1×10^{-6} equates to one additional cancer occurrence in one million exposed individuals, beyond the number of occurrences that would otherwise occur. Similarly, a risk level of 1×10^{-4} equates to one additional cancer occurrence in 10,000 exposed individuals. Upper-bound lifetime cancer risk level is based on an assumption of continuous, lifetime exposure and is likely to overestimate "true risk."

9 VAC 20-160-20. Purpose; applicability; compliance with other regulations.

A. The purpose of this chapter is to establish standards and procedures pertaining to the eligibility, enrollment, reporting, remediation, and termination criteria for the Virginia Voluntary Remediation Program [(VRP)] in order to protect human health and the environment.

B. This chapter shall apply to all persons who elect to and are eligible to participate in the Virginia Voluntary Remediation Program.

C. Participation in the program does not relieve a participant from the obligation to comply with all applicable federal, state and local laws, ordinances and regulations related to the conduct of investigation and remedial activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) undertaken by the participant pursuant to this chapter.

9 VAC 20-160-30. Eligibility criteria.

A. Candidate sites shall meet eligibility criteria as defined in this section.

B. Any persons who own, operate, have a security interest in or enter into a contract for the purchase or use of [contaminated property an eligible site] who wish to voluntarily remediate [releases of contaminants that site] may participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may participate in the program.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State

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Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

A site on which an eligible party has completed remediation of a release is potentially eligible for the program if the actions can be documented in a way which are equivalent to the requirements for prospective remediation, and provided they can meet applicable remediation [standards levels].

Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

1. It is not clear whether the release involved a waste material or a virgin material;
2. It is not clear that the release occurred after the relevant regulations became effective; or
3. It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a pending or existing closure plan, a pending or existing administrative order, a pending or existing court order, a pending or existing consent order, or the site is on the National Priorities List;
2. The site [containing at which] the release [is subject to requirements of] occurred, in accordance with [the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.)] [; (VHWMR), is a permitted facility, is applying for or should have applied for a permit, is under interim status or should have applied for interim status, or was previously under interim status, and is thereby subject to requirements of the VHWMR;]
3. The site [containing the release at which the release occurred] constitutes an open dump or unpermitted [landfill solid waste management facility] under Part IV (9 VAC 20-80-170 et seq.) of the Virginia Solid Waste Management Regulations;
4. The director determines that the release poses an imminent and substantial threat to human health or the environment; or
5. Remediation of the release is otherwise the subject of a response action required by local, state, or federal law or regulation.

[E. The director may determine that a site under subdivision D 3 of this section may participate in the VRP provided that

such participation complies with the substantive requirements of the applicable regulations.]

9 VAC 20-160-40. Application for participation.

A. The application for participation in the Voluntary Remediation Program shall, at a minimum, provide the elements listed below.

1. A notice of intent to participate in the program;
2. A statement of the applicant's eligibility to participate in the program (e.g., proof of ownership, security interest, etc.).
3. For authorized agents, a letter of authorization from an eligible party;
4. A legal description of the site;
5. The general operational history of the site;
6. A general description of information known to or ascertainable by the applicant pertaining to (i) the nature and extent of any contamination; and (ii) past or present releases, both at the site and immediately contiguous to the site.
7. A discussion of the potential jurisdiction of other existing environmental regulatory programs, or documentation of a waiver thereof; and
8. A certification by the applicant that to the best of his knowledge, that all the information as set forth in this subsection is true and accurate.

B. Within 45 working days [of the department's receipt of an application], the director will review the application to verify that (i) the application is complete and (ii) the applicant and the site meet the eligibility criteria set forth in 9 VAC 20-160-30.

[~~If the director makes a tentative decision to reject the application, then he shall notify the applicant that the application has been rejected and provide an explanation of the reasons for the rejection. Within 30 working days the applicant may (i) submit additional information to correct the inadequacies of the rejected application or (ii) accept the rejection.~~ C. If the director makes a tentative decision to reject the application, then he shall notify the applicant in writing that the application has been tentatively rejected and provide an explanation of the reasons for the proposed rejection. Within 30 working days of the applicant's receipt of notice of rejection the applicant may (i) submit additional information to correct the inadequacies of the rejected application or (ii) accept the rejection. The director's tentative decision to reject an application will become a final agency action under the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) upon receipt of an applicant's written acceptance of the director's decision to reject an application, or in the event an applicant fails to respond within 30 working days specified in this subsection, upon expiration of the 30 working days specified. If within 30 working days specified an applicant submits additional information to correct the inadequacies of an application, the review process begins again in accordance with this section.]

9 VAC 20-160-50. Agreement.

Within 90 working days of [~~promulgation of these regulations~~ ~~insert date~~ June 26, 1997], persons conducting remediation pursuant to a voluntary remediation agreement with the department entered into prior to the promulgation of these regulations shall notify the department in writing as to whether they wish to complete the remediation in accordance with such an agreement or in accordance with these regulations. If the participant elects to complete the voluntary remediation in accordance with this chapter, such election will result in termination of the agreement. [If the participant does not notify the department of his election within 90 working days of June 26, 1997, remediation shall be completed in accordance with this chapter, and the existing agreement shall be terminated.]

9 VAC 20-160-60. Registration fee.

A. In accordance with § 10.1-1429.1 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the voluntary remediation program.

B. The registration fee will be at least 1.0% of the estimated cost of the remediation at the site, not to exceed the statutory maximum. Payment will be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9 VAC 20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box 10150, Richmond, VA 23240.

C. To determine the appropriate registration fee, the applicant may provide a remediation cost estimate of the total anticipated cost based upon net present value of remediation at the site.

Remediation costs shall be based on site investigation activities; report development; remedial system installation, operation and maintenance; and all other costs associated with participating in the program and addressing the contaminants of concern at the subject site.

Departmental concurrence with a remediation cost estimate does not constitute approval of the remedial approach assumed in the cost estimate.

D. Upon submittal of the demonstration of completion (see 9 VAC 20-160-70 A 2), the participant will provide the actual total cost of the remediation, and the director will calculate any balance adjustments to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certification of satisfactory completion of remediation. Any costs to be refunded shall be remitted by the agency with issuance of the certificate of satisfactory completion of remediation.

E. As an alternative to providing a remedial cost estimate at the time of [application eligibility verification], the participant may elect to remit the statutory maximum registration fee. The department will refund any balance owed to the participant after receiving the actual total cost of remediation submitted with the demonstration of completion and issuance of the certification of satisfactory completion of remediation. If no remedial cost summary is provided within [30 60] working days of the participant's receipt of the department's concurrence with the

demonstration of completion, the participant will have waived the right to a refund.

9 VAC 20-160-70. Work to be performed.

A. The Voluntary Remediation Report serves as the master document for all documentation pertaining to remedial activities at the site. Each component of the report shall be submitted by the participant to the department. As various components are received, they shall be inserted into this report by the participant, and the report will serve as the documentation archive for the site. It shall consist of a site characterization/remedial action work plan and, when applicable, a demonstration of completion.

1. Site characterization/remedial action plan. This component of the report shall consist of the following:

a. The site characterization component of the submittal should contain a delineation of the nature and extent of releases to all media, an evaluation of the risks to human health and the environment posed by the release, a proposed set of remediation [standards levels] consistent with 9 VAC 20-160-90 that are protective of human health and the environment, and a recommended remedial action to achieve the proposed objectives; or a justification that no action is necessary.

b. The remedial action plan component of the submittal shall propose the activities, schedule, any permits required to initiate and complete the remedial action and specific design plans for implementing a remedial action that will achieve the remediation [standards levels] specified in the site characterization.

c. Documentation of the public notice in accordance with 9 VAC 20-160-120. Such documentation shall include a written summary of comments received as well as the applicant's responses to the comments that were received during the public comment period.

2. Demonstration of completion.

a. This closure component of the report should, when applicable, include a detailed summary of the performance of the remedial action implemented at the site, the total cost of the remediation, and, as necessary, confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or other criteria for completion of remediation have been satisfied.

b. As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.

B. It is the participant's responsibility to ensure that the conduct of investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable [regulations] and [any] appropriate regulations [that are not required by state or federal law but are necessary to ensure that the activities do not result in a further release of

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contaminants to the environment and are protective of human health and the environment).

C. All work shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised December 1987.

9 VAC 20-160-80. Review of submittals.

A. Upon receipt of submittals, the director will review and evaluate the submittals. The director may request additional information in order to render a decision and move the participant towards expeditious issuance of the certification of satisfactory completion of remediation.

B. The director may expedite, as appropriate, issuance of any permits required to initiate and complete a voluntary remediation. The director shall, within 120 working days of a complete submittal, expedite issuance of such permit in accordance with applicable regulations.

C. The participant shall submit a final voluntary remediation report (consisting of the site characterization, the remedial action work plan, and the demonstration of completion). Upon receipt of a complete Voluntary Remediation Report, the director will make a determination regarding the issuance of the certification of satisfactory completion of remediation to the participant. The determination shall be [made a final agency action] pursuant to the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

9 VAC 20-160-90. Remediation [standards levels].

A. The [establishment-participant, with the concurrence] of [remediation-standards the department] shall consider impacts to human health and the environment [in establishing remediation levels].

B. Remediation [standards levels] shall be based upon a risk assessment of the site [and surrounding areas that may be impacted] reflecting the current and future use scenarios.

1. A site shall be deemed to have met the [requirements for] unrestricted use [standard] if the remediation [standards levels], based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of [-this these levels] will allow the site to be given an unrestricted use classification. No remediation techniques or controls which require ongoing management (such as institutional or engineering controls) may be employed to achieve this [standard classification].

2. For sites that do not achieve the unrestricted use [standard classification], restrictions on site use shall be applied. Restrictions shall include, but not be limited to, institutional and engineering controls. The restrictions imposed upon a site will be media-specific and may vary according to site-specific conditions. Future use with restrictions may range from residential to industrial. All restrictions on use necessary to attain this standard shall be described in the certification of satisfactory completion of remediation as provided in 9 VAC 20-160-110.

C. Remediation [standards levels] shall be developed after appropriate site characterization data have been gathered as

provided in 9 VAC 20-160-70. Remediation [standards levels] may be derived from the three-tiered approach provided in subdivision 2 of this subsection. Any tier or combination of tiers may be applied to establish remediation [standards levels] for contaminants present at a given site, with consideration of site use restrictions specified in subsection B of this section. The [standard criteria] set forth in subdivision 1 of this subsection shall apply to the risk-based remediation [standards levels] determined through Tiers II and III.

1. General criteria.

a. For a site with carcinogenic contaminants, the remediation [standard shall not result in a cumulative upper-bound lifetime cancer risk which exceeds the range of 1×10^{-4} to 1×10^{-6} , unless the use of a Maximum Contaminant Level (MCL) for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than 1×10^{-4} ; goal for individual carcinogenic contaminants shall be an incremental upper-bound lifetime cancer risk of 1×10^{-6} . The remediation levels for the site shall not result in an incremental upper-bound lifetime cancer risk exceeding 1×10^{-4} considering multiple contaminants and multiple exposure pathways, unless the use of a Maximum Contaminant Level (MCL) for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than 1×10^{-4}].

b. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.

c. For unrestricted future use, where a contaminant of concern has an MCL, the MCL for that contaminant shall be the remediation [standard level].

d. For unrestricted future use, where a contaminant of concern exists for which surface water quality [criteria (WQG) standards (WQS)] have been adopted by the State Water Control Board for a specific use, the [WQG participant shall demonstrate that concentrations in other media] will [be the remediation standard for the specified use, as appropriate not result in concentrations that exceed the WQS in adjacent surface water bodies].

e. If the concentration for a contaminant is below the Practical Quantitation Limit (PQL), generally as published in Test Methods for Evaluating Solid Waste, USEPA SW-846, revised December 1987, the PQL may be considered as the remediation [standard level].

[f. In setting remediation levels, the department may consider risk assessment methodologies approved by another regulatory agency and current at the time of the VRP site characterization.]

2. Tier-based criteria.

a. Under Tier I the participant shall collect appropriate samples from background and from the area of contamination for all media of concern.

(1) Background levels shall be determined from [an unimpacted a] portion of the property or [an unimpacted portion of] a nearby property [that has not been impacted by the contaminants of concern].

(2) The participant shall compare concentrations from the area of contamination against background concentrations. If the concentrations from the area of contamination exceed established background levels, the participant may consider Tier II or Tier III methodologies, as applicable.

b. Tier II generic remediation [standards levels] are based on published, media-specific values, derived using conservative default assumptions. If the remediation [standard level] determined using Tier II is below the PQL, the PQL may be used. Use of Tier II shall be limited to the following:

(1) Soil remediation [standards levels] shall be determined as the lower of either the ingestion or cross-media transfer values, according to the following:

(a) For ingestion, values provided in the EPA Region III Risk-Based Concentration Table current at the time of assessment.

i. For carcinogens, the soil ingestion concentration for each contaminant, reflecting an individual upper-bound lifetime cancer risk of 1×10^{-6} .

ii. For noncarcinogens, 1/10 (i.e., Hazard Quotient = 0.1) of the soil ingestion concentration, to account for multiple systemic toxicants at the site. [For sites where there are fewer than 10 contaminants exceeding 1/10 of the soil ingestion concentration, the soil ingestion concentration may be divided by the number of contaminants such that the resulting hazard index does not exceed one.]

(b) For cross-media transfer, values derived from the USEPA Soil Screening Guidance (OSWER, April 1996, Document 9355.4-23, PB 96-963505, EPA/540/R-96/018) shall be used as follows:

i. The soil screening level for transfer to groundwater, with adjustment to a hazard quotient of 0.1 for noncarcinogens, if the value is not based on an MCL; or

ii. The soil screening level for transfer to air, with adjustment to a hazard quotient of 0.1 for noncarcinogens, using default residential exposure assumptions.

[(2) Groundwater.

(a) Tier II generic groundwater remediation standards shall be based on (i) federal MCLs or action levels for lead and copper as established by

the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or (ii) tap water ingestion values provided in the EPA Region III Risk-Based Concentration Table current at the time of the assessment.

For contaminants that do not have values available under clause (i) or (ii) above, a remediation standard shall be calculated using criteria set forth under Tier III.

At sites where ecological receptors are of concern, the participant shall develop a remediation standard using criteria set forth in Tier III.

iii. For noncarcinogens, for sites where there are fewer than 10 contaminants exceeding 1/10 of the soil screening level, the soil screening level may be divided by the number of contaminants such that the resulting hazard index does not exceed one.

(c) Values derived under 9 VAC 20-160-90 C 2 b (1) (a) and (b) may be adjusted to allow for updates in approved toxicity factors as necessary.

(2) Tier II generic groundwater remediation levels shall be based on (i) federal MCLs or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or (ii) tap water ingestion values provided in the EPA Region III Risk-Based Concentration Table current at the time of the assessment.

(3) For contaminants that do not have values available under clauses (i) or (ii) in 9 VAC 20-160-90 C 2 b (2), a remediation level shall be calculated using criteria set forth under Tier III.

(4) At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under Tier II are also protective of ecological receptors of concern.]

c. Tier III remediation [standards levels] are based upon a site-specific risk assessment considering site-specific assumptions about current and potential exposure scenarios for the population(s) of concern, including ecological receptors, and characteristics of the affected media.

(1) In developing Tier III remediation [standards levels], the participant shall consider, for all applicable media [, the default and] exposure [assumptions routes, the methodology] specified in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual (Part A), Interim Final, USEPA, December 1989 (EPA/540/1-89/002) [, unless the participant demonstrates that other assumptions are reasonable and applicable for the specific conditions and proposed use of the site, and

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(Part B, Development of Preliminary Remediation Goals) Interim, USEPA, December 1991 (Publication 9285.7-01B) with modifications as appropriate to allow for site-specific conditions. The participant may consider other guidance that is current at the time of the assessment and is acceptable to the department.]

~~(2) Changes in contaminant concentrations over time and distance may be considered through fate and transport modeling if residual contamination exists above levels acceptable for unrestricted use. The future use of such a site shall be restricted or monitored, as appropriate. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under Tier III are also protective of ecological receptors of concern. If the Tier III remediation levels developed for human health are not protective of ecological receptors of concern, the remediation levels shall be adjusted accordingly.]~~

~~[(3) In the determination of Tier III standards, the participant may utilize the Risk Exposure and Analysis Modeling System (REAMS). However, other models may be used, provided that the participant provides a satisfactory demonstration of its applicability.~~

~~(4) For sites where ecological receptors are of concern, remediation standards shall be based on an ecological risk assessment.~~

~~d. If a remediation standard according to a specific tier is not achieved, the participant may:~~

~~(1) Perform remediation to attain the remediation standard; or~~

~~(2) Determine a revised remediation standard based on the criteria of a different tier.]~~

9 VAC 20-160-100. Termination.

A. Participation in the program shall conclude:

1. When the director concurs with all work submitted, as set forth in 9 VAC 20-160-80, and the participant satisfactorily demonstrates attainment of the remediation [standards levels]. If warranted by the site-specific risk assessment, it may not be necessary to conduct remedial action in order to attain remediation [standards levels].

2. When evaluation of new information obtained during participation in the program results in a determination by the director that the site is ineligible for participation in the program. If such a determination is made, the director shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 working days, the participant may submit additional information, or accept the director's determination.

3. Upon 30 working days written notice of termination by either party.

B. The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program.

C. Termination of participation in the program by any method, except as provided in subdivision A 1 of this section, shall result in no refund of any registration fee submitted.

9 VAC 20-160-110. Certification of satisfactory completion of remediation.

A. Upon termination of program participation according to 9 VAC 20-160-100 A 1, the director shall issue a certification of satisfactory completion of remediation (certificate).

B. The issuance of the certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), or other applicable Virginia law.

C. The certificate shall be issued by the director and, if [a] use restriction [and/or engineering controls are] specified in the certificate, [the certificate such restriction must be attached to the deed and include an explanation for such restriction, subject to concurrence by the director, and] shall be recorded by the participant with the land records for the site in the office of the clerk of the circuit court for the jurisdiction in which the site is located. [The participant may also record the certificate itself.] If the certificate does not include any use restriction [or engineering control], recordation of the certificate is at the option of the participant. The immunity accorded by the certification shall apply to the participant and shall run with the land identified as the site.

D. The immunity granted by issuance of the certificate shall be limited to site conditions at the time of issuance as those conditions are described in the Voluntary Remediation Report and is conditioned upon completeness and accuracy of that information. Specific limitations of the certificate shall be enumerated in the certificate. The immunity granted by the certificate will be dependent upon the identification of the nature and extent of contamination as presented in the Voluntary Remediation Report.

~~[1. If the Voluntary Remediation Report identifies the nature and extent of contamination both on and off the property boundaries, and, based on a site-specific risk assessment, there is no unacceptable risk to human health or the environment on or off the property boundaries in accordance with 9 VAC 20-160-90, the immunity afforded by the certificate will apply to the enforcement actions described in subsection B of this section that could otherwise be taken to address conditions both on and off the property boundaries.~~

~~2. If the Voluntary Remediation Report identifies the nature and extent of contamination within the property boundaries but does not identify the nature and extent of contamination beyond the property boundaries, the immunity granted by the certificate will apply only to the enforcement actions described in subsection B of this~~

~~section that could otherwise be taken to address conditions within the property boundaries and the immunity afforded by the certificate will not apply to any enforcement actions that may be necessary for conditions beyond the property boundaries.]~~

E. The certificate shall specify the site conditions for which immunity is being accorded, including, but not limited to:

1. A summary of the information that was considered;
2. Any restrictions on future use;
3. Any required institutional controls; and
4. Any required engineering controls and their maintenance.

F. The certificate may be revoked by the director at any time in the event that contamination posing an unacceptable risk to human health or the environment is rediscovered on site or ~~[is found to have migrated off-site or]~~ in the event that it is discovered that the certificate was based on information provided by the participant that was materially false, inaccurate or misleading. By issuance of the certificate the department does not waive sovereign immunity.

9 VAC 20-160-120. Public participation

A. Any proposed voluntary remediation or completed voluntary remediation shall be given public notice paid for by the applicant ~~[, by publication once in a newspaper of general circulation in the area affected by the voluntary remediation prior to submittal of the site characterization/remedial action plan to the department. The participant shall allow 30 working days following the date of the public notice for interested persons to submit written comments on the voluntary remediation proposal]~~.

[Prior to the director's concurrence with a proposed or completed remedial action pursuant to 9 VAC 20-160-70, the participant shall:

1. Provide notice to the local government in which the facility is located a description of the proposed or completed remedial action;
2. Provide notice to all adjacent property owners a description of the proposed or completed remedial action; and
3. Publish once in a newspaper of general circulation in the area affected by the voluntary action. Such publication shall be paid for by the applicant.]

B. [A comment period of at least 30 days must follow issuance of the notices pursuant to this section.] The contents of the public notice of a voluntary remediation shall include:

1. Name and address of the applicant and the location of the proposed voluntary remediation;
2. A brief description of the proposed remediation;
3. The address and telephone number of a specific person familiar with the proposed remediation from whom information regarding the proposed voluntary remediation may be obtained; and

4. A brief description of how to submit comments.

C. ~~[The site characterization report/remedial action work plan submitted to the department by the applicant shall provide documentation of the public notice as well as a written summary of comments received and the applicant's responses to the comments that were received. The participant shall provide a signed statement that he has sent a written notice to all adjacent property owners, a copy of the notice, and a list of all names and addresses to whom the notice was sent.~~

D. The participant shall provide copies of all written comments received during the public comment period, a discussion of how those comments were considered, and a discussion of their impact on the proposed or completed remedial action.]

9 VAC 20-160-130. Regulatory evaluation.

A. Within three years after [the effective date of this chapter June 26, 1997], the department shall perform analysis on this chapter and provide the Waste Management Board with a report on the results. The analysis shall include:

1. The purpose and need for the chapter;
2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and intrusive manner;
3. An assessment of the effectiveness of this chapter;
4. The results of a regulatory review of current state and federal statutory and regulatory requirements, including identification and justification of this chapter's requirements which exceed federal requirements; and
5. The results of a review as to whether this chapter is clearly written and easily understandable by affected parties.

B. Upon review of the department's analysis, the Waste Management Board shall confirm the need to (i) continue this chapter without amendment; (ii) repeal this chapter; or (iii) amend this chapter.

C. The Waste Management Board will authorize the department to initiate the applicable regulatory process, and to carry out the decision of the Waste Management Board, if amendment or repeal of this chapter is warranted.

DOCUMENTS INCORPORATED BY REFERENCE

Test Methods for Evaluating Solid Waste, Third Edition (1986) with Revision I, PB 88-239223, revised December 1987.

U.S. EPA Soil Screening Guidance, EPA/540/F-95/041, Publication 93554-14FSA, PB96-963501, July 1996.

Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A) Interim Final, EPA/540/1-89/002, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, December 1989.

Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals) Interim, Publication 9285.7-01B, Office of Emergency and Remedial

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Response, U.S. Environmental Protection Agency, December 1991.

Risk-Based Concentration Table, Region III, United States Environmental Protection Agency, January-June 1996.

VA.R. Doc. No. R97-518; Filed May 7, 1997, 11:56 a.m.

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 25-115-10 et seq. **General VPDES Permit for Seafood Processing Facilities (amending 9 VAC 25-115-50).**

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

Effective Date: June 25, 1997.

Summary:

The General Virginia Pollutant Discharge Elimination System (VPDES) permit for seafood processing facilities sets forth guidelines for permitting discharges of process wastewaters and storm waters from businesses primarily engaged in processing seafood.

The amendments make technical changes to the General VPDES Permit for Seafood Processing Facilities in 9 VAC 25-115-50. In this section the table of effluent limitations for Hand-Shucked Oyster Processing in Part I A 18 is corrected to read 23.0 instead of 24.0 for TSS Daily Max, 0.77 instead of 0.81 for Oil and Grease Monthly Avg, and 1.1 instead of 1.2 for Oil and Grease Daily Max. The table of effluent limitations for Scallop Processing in Part I A 22 is corrected to read 5.7 instead of 6.6 for TSS Daily Max, 0.23 instead of 0.24 for Oil and

Grease Monthly Avg, and 7.3 instead of 7.7 for Oil and Grease Daily Max. In the last sentence of Part II D 3 h, the word "sales" is corrected to read "swales."

Agency Contact: Copies of the regulation may be obtained from Michael Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065.

9 VAC 25-115-50. General permit.

Any owner whose registration statement is accepted by the director will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation.

General Permit No.: VAG52****

Effective Date: *****, 199*

Expiration Date: *****, 199*

**GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITY
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
AND
THE VIRGINIA STATE WATER CONTROL LAW**

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of seafood processing facilities, other than mechanized clam processing facilities, are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Storm Water Pollution Prevention Plans, Part III - Monitoring and Reporting, and Part IV - Management Requirements, as set forth herein.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A. - ALL SOURCES

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Comp

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Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by the end of the year and reported by the 10th of January of the following year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING - EXISTING SOURCES PROCESSING MORE THAN 3,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

2. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING - ALL NEW SOURCES

3. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

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EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	0.15	0.30	NA	1/3 Months	Comp
TSS	NL	NL	0.45	0.90	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED BLUE CRAB PROCESSING - ALL EXISTING SOURCES

4. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12.0	36.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	4.2	13.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED BLUE CRAB PROCESSING - ALL NEW SOURCES

5. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	2.5	5.0	NA	1/3 Months	Comp
TSS	NL	NL	6.3	13	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - NON-BREADED SHRIMP PROCESSING - EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

6. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	38.0	110	NA	1/3 Months	Comp
Oil and Grease	NL	NL	12.0	36.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

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Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - NON-BREADED SHRIMP PROCESSING - ALL NEW SOURCES

7. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	25.0	63.0	NA	1/3 Months	Comp
TSS	NL	NL	10.0	25.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - BREADED SHRIMP PROCESSING - EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

8. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93.0	280	NA	1/3 Months	Comp
Oil and Grease	NL	NL	12.0	36.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - BREADED SHRIMP PROCESSING - ALL NEW SOURCES

9. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	40.0	100	NA	1/3 Months	Comp
TSS	NL	NL	22.0	55.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - TUNA PROCESSING - ALL EXISTING SOURCES

10. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

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NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - TUNA PROCESSING - ALL NEW SOURCES

11. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	8.1	20.0	NA	1/3 Months	Comp
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - CONVENTIONAL BOTTOM FISH PROCESSING - EXISTING SOURCES PROCESSING MORE THAN 4,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

12. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Comp

Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - CONVENTIONAL BOTTOM FISH PROCESSING - ALL NEW SOURCES

13. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	0.71	1.2	NA	1/3 Months	Comp
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED BOTTOM FISH PROCESSING - ALL EXISTING SOURCES

14. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

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EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12.0	22.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - MECHANIZED BOTTOM FISH PROCESSING - ALL NEW SOURCES

15. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE	SAMPLE
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min	Frequency	Type
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	7.5	13.0	NA	1/3 Months	Comp
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HAND-SHUCKED CLAM PROCESSING - EXISTING SOURCES WHICH PROCESS MORE THAN 4,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

16. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18.0	59.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HAND-SHUCKED CLAM PROCESSING - ALL NEW SOURCES

17. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17.0	55.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

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Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HAND-SHUCKED OYSTER PROCESSING - EXISTING SOURCES WHICH PROCESS MORE THAN 1,000 LBS OF PRODUCT PER DAY ON ANY DAY

18. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16.0	[24.0 23.0]	NA	1/3 Months	Comp
Oil and Grease	NL	NL	[0.84 0.77]	[1.2 1.1]	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HAND-SHUCKED OYSTER PROCESSING - ALL NEW SOURCES

19. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16.0	23.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one

representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - STEAMED AND CANNED OYSTER PROCESSING (Mechanized Shucking) - ALL EXISTING SOURCES

20. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Comp
Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - STEAMED AND CANNED OYSTER PROCESSING (Mechanized Shucking) - ALL NEW SOURCES

21. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	17.0	67.0	NA	1/3 Months	Comp
TSS	NL	NL	39.0	56.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

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NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - SCALLOP PROCESSING - ALL EXISTING SOURCES

22. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	[6.6 5.7]	NA	1/3 Months	Comp
Oil and Grease	NL	NL	[0.24 0.23]	[7.7 7.3]	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - SCALLOP PROCESSING - ALL NEW SOURCES

23. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - FARM-RAISED CATFISH PROCESSING - EXISTING SOURCES WHICH PROCESS MORE THAN 3,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

24. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Comp
Oil and Grease	NL	NL	3.4	10.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - FARM-RAISED CATFISH PROCESSING - ALL NEW SOURCES

25. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	2.3	4.6	NA	1/3 Months	Comp
TSS	NL	NL	5.7	11.0	NA	1/3 Months	Comp
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab

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Production NA NL NA NA NA 1/3 Months Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HERRING PROCESSING - EXISTING SOURCES

26. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	Comp
Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS - HERRING PROCESSING - ALL NEW SOURCES

27. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			SAMPLE Frequency	SAMPLE Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	15	16	NA	1/3 Months	Comp
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Comp

Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production - see Special Condition No. 7.

Samples shall be collected by March 31, June 30, September 30 and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

B. Special Conditions

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.

2. There shall be no chemicals added to the water or waste which may be discharged, including sodium tripolyphosphate, other than those listed on the owner's accepted registration statement, unless prior approval of the chemical(s) is granted by the Regional Office Director.

3. Byproducts used in a value added process, such as seasonings or breading, may be included in the discharge in incidental quantities.

4. Wastewater should be reused or recycled whenever feasible.

5. The permittee shall comply with the following solids management plan:

a. There shall be no discharge of floating solids or visible foam in other than trace amounts.

b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.

c. All settling basins shall be cleaned frequently in order to achieve effective settling.

d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam or scallop shells, shall be handled, stored and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.

e. The permittee shall install and properly maintain whatever wastewater treatment process is necessary in order to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.

f. All employees shall receive training relative to preventive measures taken to control the release of solids from the facility into surface waters.

6. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard, limitation or prohibition for a pollutant which is promulgated or approved under § 307(a)(2) of the Clean Water Act (33 USC § 1317(a)(2)), if the effluent standard, limitation or prohibition so promulgated or approved:

a. Is more stringent than any effluent limitation on the pollutant already in the permit; or

b. Controls any pollutant not limited in the permit.

7. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).

PART II.

STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit which falls under SIC 2091 or 2092. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the

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storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:

- a. Shall be prepared within 180 days after the dated coverage under this permit; and
- b. Shall provide for implementation and compliance with the terms of the plan within 365 days after the date of coverage under this permit.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of the plan and this permit on or before the date of submission of a registration statement to be covered under this permit.

3. Upon a showing of good cause, the director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity that submits a registration statement in accordance with the registration requirements.

B. Signature and plan review.

1. The plan shall be signed in accordance with Part III G (signatory requirements), and be retained on-site at the facility covered by this permit in accordance with Part III C (retention of records) of this permit.

2. The permittee shall make plans available to the department upon request.

3. The director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

C. Keeping plans current. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II D 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part II D 2 c (spills and leaks) of this permit have occurred, and the locations of the following activities: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time

of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of

equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. In addition to or as part of the comprehensive site compliance evaluation required under Part II D 4 of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or follow up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. Record keeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

h. Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Part II D 2 (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative [*sales swales*] and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities,

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infiltration devices, and wet detention/retention devices.

4. Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part II D 2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part II D 3 (measures and controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date or dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Part II D 4 b of this permit shall be made and retained as part of the storm water pollution prevention plan as required in Part III C. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part III G (signatory requirements) of this permit and retained as required in Part III C.

5. Consistency with other plans. Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under § 311 of the Clean Water Act (*Act* (33 USC § 1321) or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

PART III. MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants promulgated at 40 CFR Part 136 .

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The person or persons who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person or persons who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for three years from the date of the sample, measurement or report or until at least one year after coverage under this general permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

D. Additional monitoring by permittee. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring. The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant or pollutants on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia Clean Water Act (33 USC § 1251 et seq.) or the board's regulations.

The permittee shall obtain and report such information if requested by the board. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by board.

F. Reporting requirements.

1. The discharge monitoring reports (DMR) shall be submitted to the appropriate DEQ regional office by January 10, April 10, July 10 and October 10 of each year. Those facilities which require once per year monitoring shall submit the DMR for each monitoring year by the 10th of January of the following year. All laboratory results and calculations shall be submitted with the DMR.

2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department's regional office with the monitoring report at least the following information:

- a. A description and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and
- c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The department's regional office director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in Part III F 2 a through c regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities, or (vi) flooding or other acts of nature.

The report shall be made to the regional office. For reports outside normal working hours, leaving a message shall fulfill the reporting requirements. For emergencies, the Virginia Department of Emergency

Services maintains a 24-hour telephone service at 1-800-468-8892.

G. Signatory requirements. Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) 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, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivision G 1 a, b, or c of this part; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision G 1 a, b, or c of this part; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the department prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision G 1 or 2 of this part shall make the following certification: "I certify under penalty of law that this

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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 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."

PART IV. MANAGEMENT REQUIREMENTS.

A. Change in discharge of pollutants.

1. Any permittee proposing a new discharge shall submit a registration statement at least 30 days prior to commencing erection, construction or expansion, or employment of new processes at any facility. There shall be no construction or operation of said facilities prior to the issuance of a permit.

2. The permittee shall submit a registration statement at least 30 days prior to any planned changes, including proposed facility alterations or additions, production increases, adding new processes or process modifications when:

a. The planned change to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

b. The planned change could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to the notification level requirements in subdivision A 3 of Part IV; or

c. The planned change may result in noncompliance with permit requirements.

3. The permittee shall promptly provide written notice of the following:

a. Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2-methyl -4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) The level established in accordance with regulation under § 307(a) of the Act and accepted by the board.

b. Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the

permit if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) The level established by the board.

Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works; and (iii) any additional information that may be required by the board.

B. Treatment works operation and quality control.

1. Design and operation of facilities and/or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department and in conformity with the conceptual design, or the plans, specifications, and/or other supporting data accepted by the board. The acceptance of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design and/or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

c. Maintenance of treatment facilities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected solids shall be stored and disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

C. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation limitations or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation or limitations or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. 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.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability. The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing. Any bypass ("bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited unless:

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects the board may approve an anticipated bypass if:

a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if a bypass occurs during normal periods of equipment downtime, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

2. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision IV F 1 of this part and in light of the information reasonably available to the permittee at the time of the bypass.

G. Conditions necessary to demonstrate an upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance for only technology-based effluent limitations. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. The facility permitted herein was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. The permittee submitted a notification of noncompliance as required by subsection F of Part III; and

4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.

H. Compliance with state and federal law. Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under § 307(a) of the Clean Water Act (33 USC § 1317(a)).

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act (33 USC § 1370).

I. Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

J. Severability. The provisions of this permit are severable.

K. Duty to reregister. If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 120 days prior to the expiration date of this permit.

L. Right of entry. The permittee shall allow, or secure necessary authority to allow, authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, or discharges is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or byproduct; and

5. To inspect at reasonable times any collection, treatment or discharge facilities required under this permit.

For purposes of this part, the time for inspection shall be deemed reasonable during regular business hours, and

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whenever the facility is discharging. Nothing contained herein shall make an inspection time unreasonable during an emergency.

M. Transferability of permits. This permit may be transferred to another person by a permittee if:

1. The current owner notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;
2. The notice to the department includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and
3. The department does not within the 30-day time period notify the existing owner and the proposed owner of the board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

N. Public access to information. Any secret formulae, secret processes, or secret methods other than effluent data submitted to the department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;
2. Registration statements, permits, and effluent data.

Information required by the registration statement may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

O. Permit modification. The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;
2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act (33 USC § 1317 (a)); or
3. When the level of discharge of a pollutant not limited in the permit exceeds applicable water quality standards

or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

P. Permit termination. After public notice and opportunity for a hearing, the general permit may be terminated for cause.

Q. When an individual permit may be required. The board may require any permittee authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharger(s) is a significant contributor of pollution.
2. Conditions at the operating facility change altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for a general permit.
3. The discharge violates the terms or conditions of this permit.
4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.
5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.
6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

R. When an individual permit may be requested. Any permittee operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an permittee already covered by an individual permit, such permittee may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

S. Civil and criminal liability. Except as provided in permit conditions on "bypassing" (Part IV F), and "upset" (Part IV G) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act (33 USC § 1321) or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

VA.R. Doc. No. R97-519; Filed May 7, 1997, 12 p.m.

STATE CORPORATION COMMISSION

PROPOSED REGULATIONS

Division of Securities and Retail Franchising

Title of Regulation: Securities Act Regulations (SEC970016).

21 VAC 5-10-10 et seq. General Administration (amending 21 VAC 5-10-40).

21 VAC 5-20-10 et seq. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer: Registration, Expiration, Renewal, Updates and Amendments, Termination, Changing Connection, Merger or Consolidation, Examinations/Qualification, Financial Statements and Reports (amending 21 VAC 5-20-30, 21 VAC 5-20-70, 21 VAC 5-20-80, 21 VAC 5-20-90, 21 VAC 5-20-110, 21 VAC 5-20-150, 21 VAC 5-20-160, 21 VAC 5-20-220, 21 VAC 5-20-240, 21 VAC 5-20-250, 21 VAC 5-20-260, 21 VAC 5-20-280, 21 VAC 5-20-290 and 21 VAC 5-20-300).

21 VAC 5-30-10 et seq. Securities Registration (adding 21 VAC 5-30-70 and 21 VAC 5-30-80).

21 VAC 5-40-10 et seq. Exempt Securities (amending 21 VAC 5-40-30; adding 21 VAC 5-40-110 and 21 VAC 5-40-120).

21 VAC 5-50-10 et seq. Registration Regulations (REPEALING).

21 VAC 5-70-10. Options and Warrants (REPEALING).

21 VAC 5-80-10 et seq. Investment Advisors (amending 21 VAC 5-80-10 through 21 VAC 5-80-60, 21 VAC 5-80-90, 21 VAC 5-80-110 through 21 VAC 5-80-210, and 21 VAC 5-80-240).

21 VAC 5-85-10. Forms (amending).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Notice to Interested Persons:

The VIRGINIA STATE CORPORATION COMMISSION will consider adopting proposed changes to its SECURITIES ACT regulations. The primary purpose of the proposed changes is to address the impact of the federal National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290) on securities, broker-dealer and investment advisor regulation in Virginia as well as to implement recent amendments made to the Securities Act as a result of the federal act (these amendments are contained in 1997 Va. Acts, Ch. 279). In addition, substantive and technical changes are proposed to various regulations and forms, and a regulation to implement the newly enacted Internet offer exemption is proposed.

It is contemplated that numerous regulations will be amended. Areas of proposed change include: addition of definitions of the terms "federal covered [investment] advisor" and "notice filing" as well as insertion of these terms in various regulations, as appropriate; adoption of requirements for the payment of fees and the filing of documents with respect to federal covered securities and federal covered advisors (the Division of Securities and Retail Franchising is expected to recommend that the

commission permit investment advisors currently registered under the Securities Act to coordinate notice filings and payment of associated fees with the expiration of their existing registrations); modification of the books and records, preservation of records, and financial responsibility requirements applicable to broker-dealers and investment advisors; addition of a diligent supervision duty expressly applicable to a firm's designated supervisors; insertion of a specific reference to the Uniform Combined State Law Examination-Series 66 in several regulations; repeal of the existing detailed regulations governing Options and Warrants and Real Estate, Oil and Gas, and Cattle Feeding Programs and their replacement with an incorporation by reference of the comparable NASAA Statements of Policy; and; adoption of the NASAA Statements of Policy concerning Underwriting Expenses, Unsound Financial Condition, and Real Estate Investment Trusts.

Copies of the entire package of proposed changes are available from the commission's Division of Securities and Retail Franchising, P.O. Box 1197, Richmond, VA 23218-1197, (804) 371-9187, FAX (804) 371-9911. Written comments are invited. Any interested person who files objections to any of the proposed changes will, if so requested, be afforded an opportunity to present evidence and be heard in regard to such objections.

Comments and requests for hearing should be submitted to the commission's Document Control Center, P.O. Box 2118, Richmond, VA 23218-2118, FAX (804) 371-9654, should include a reference to Case No. SEC970016, and must be received by July 11, 1997. Interested persons who file objections and request to be heard, or who ask to be informed of any hearing, will be notified of the date, time and place of the hearing.

21 VAC 5-10-40. Definitions.

As used in the Securities Act ("the Act"), the following regulations and forms pertaining to securities, instructions and orders of the commission, the following meanings shall apply:

"Act" means the Securities Act contained in Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia.

"Applicant" means a person on whose behalf an application for registration or a registration statement is filed.

"Application" means all information required by the forms prescribed by the commission as well as any additional information required by the commission and any required fees.

"Commission" means State Corporation Commission.

"Federal covered advisor" means any person who is (i) registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser" or (ii) excepted from the definition of an "investment adviser" under § 202(a)(11) of the Investment Advisers Act of 1940.

"NASAA" means the North American Securities Administrators Association, Inc.

"NASD" means the National Association of Securities Dealers, Inc.

"Notice" or "notice filing" means, with respect to a federal covered advisor or federal covered security, all information required by the regulations and forms prescribed by the commission and any required fee.

"Registrant" means an applicant for whom a registration or registration statement has been granted or declared effective by the commission.

"SEC" means the United States Securities and Exchange Commission.

21 VAC 5-20-30. Renewals.

A. To renew its registration, a NASD member broker-dealer will be billed by the NASAA/NASD Central Registration Depository the statutory fee of \$200 prior to the annual expiration date. A renewal of registration shall be granted as a matter of course upon payment of the proper fee together with any surety bond that the commission may, pursuant to 21 VAC 5-20-300, require unless the registration was, or the renewal would be, subject to revocation under § 13.1-506.

B. Any other broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Application for Renewal of a Broker-Dealer's Registration (Form S.A.2) accompanied by the statutory fee of \$200.

2. Financial Statements:

a. The most recent certified financial statements prepared by an independent accountant in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants. "Certified Financial Statements," "Financial Statements" and "Independent Accountant" shall have the same definition as those terms are defined under subsection B of 21 VAC 5-20-80.

b. If the most recent certified financial statements precede the date of renewal by more than 120 days, the registrant must submit:

(1) The certified financial statements required by subdivision B2a of this regulation within 60 days after the date of the financial statements, and;

(2) A copy of the most recent Part II or Part II A filing of Form X-17A-5 prepared in accordance with Securities Exchange Act Rule 17a-5 (17 CFR 240.17a-5).

c. Whenever the commission so requires, an interim financial report shall be filed as of the date and within the period specified in the commission's request.

21 VAC 5-20-70. Examinations/qualifications.

A. Broker-dealers registered pursuant to § 15 of the Securities Exchange Act of 1934 (15 USC §§ 78a-78jj).

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of a minimum passing grade of 70% on the Uniform Securities Agent State Law Examination - Series 63 (USASLE-Series 63), the Uniform Combined State Law Examination - Series 66, or on a similar similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

2. In lieu of meeting the examination requirement described in subdivision 1 of this subsection A, at least two principals of an applicant may provide evidence of having passed the General Securities Principal Qualification Exam (Series 24) or on a similar similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

For the purposes of this subsection A, the term "principal" means any person associated with a broker-dealer who is engaged directly (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) in the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

3. Subsection A of this section is applicable only to principals of broker-dealers that are, or intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

B. Broker-dealers not registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of a minimum passing grade of 70% on:

a. The Uniform Securities Agent State Law Examination - Series 63 (USASLE-Series 63), the Uniform Combined State Law Examination - Series 66, or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

b. Any additional securities-related examination(s) that the commission deems appropriate in light of the business in which the applicant proposes to engage.

2. Subsection B of this section is applicable only to principals of broker-dealers that are not, or do not intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

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21 VAC 5-20-80. Financial statements and reports.

A. All financial statements required for registration of broker-dealers shall be prepared in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants.

B. Definitions:

"*Certified financial statements*" shall be defined as those financial statements examined and reported upon with an opinion expressed by an independent accountant and shall include at least the following information:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;
2. Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which may have been omitted, and the reason for their omission; nothing in this section however shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this section;
3. Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, and as the consistency of the application of the accounting principles, or as to any changes in such principles which would have a material effect on the financial statements;
4. Any matters to which the accountant takes exception shall be clearly identified, the exemption thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

"*Financial statements*" shall be defined as those reports, schedules and statements, prepared in accordance with generally accepted accounting principles and which contain at least the following information unless the context otherwise dictates:

1. Statement of Financial Condition or Balance Sheet;
2. Statement of Income;
3. Statement of Changes in Financial Position;
4. Statement of Changes in Stockholder's/Partner's/Proprietor's Equity;
5. Statement of Changes in Liabilities Subordinated to Claims of General Creditors;
6. Schedule of the Computation of Net Capital Under Rule 15c3-1 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-1);
7. Schedule of the Computation for Determination of the Reserve Requirements under Exhibit A of Rule 15c3-3

and Information Relating to the Possession and Control Requirements under Rule 15c3-3 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).

"*Independent accountant*" shall be defined as any certified public accountant in good standing and entitled to practice as such under the laws of the accountant's principal place of business or residence, and who is, in fact, not controlled by, or under common control with, the entity or person being audited; for purposes of this definition, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates in which, during the period of the accountant's professional engagements to examine the financial statements being reported on or at the date of the report, the accountant or the firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; or in which, during the period of the accountant's professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the accountant or the firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates covering any period of employment by the person. For partners in the firm participating in the audit or located in an office of the firm participating in a significant portion of the audit; and in determining whether an accountant may in fact be not independent with respect to a particular person, the commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the commission.

"*Review of financial statements*" shall be defined as those financial statements prepared by an independent accountant, and shall include at least the following:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;
2. Representations that the review was performed in accordance with standards established by the American Institute of Certified Public Accountants;
3. Representations that the accountant is not aware of any material modification that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles, other than those modifications, if any, indicated in the accountant's report.

"*Unaudited financial statements*" shall be defined as those financial statements prepared in a format acceptable to the commission not accompanied by the statements and representations as set forth in the definitions of "certified financial statements" or "review of financial statements" of this subsection, and shall include an oath or affirmation that

such statement or report is true and correct to the best knowledge, information, and belief of the person making such oath or affirmation; such oath or affirmation shall be made before a person authorized to administer such oath or affirmation, and shall be made by an officer of the entity for whom the financial statements were prepared.

C. Requirements for broker-dealers:

1. Every broker-dealer applicant that is subject to the Securities Exchange Act of 1934 (15 USC §§ 78a-78j), shall file any financial information that is required to be provided to the SEC, or its designee, under the Securities Exchange Act of 1934.

~~1. Every~~ 2. All other broker-dealer applicant applicants, unless exempted under subdivision C-2 3 or C-3 4 of this section subsection, shall file financial statements as of a date within 90 days prior to the date of filing its application for registration, which statements need not be audited provided that the applicant shall also file audited financial statements as of the end of the most recent fiscal year end.

2- 3. Those broker-dealer applicants which have been in operation for a period of time less than 12 months, and for which audited financial statements have not been prepared or are not available, shall be permitted to file unaudited financial statements provided the following conditions are met:

a. Such financial statements are as of a date within 30 days prior to the date of filing an application for registration;

b. Such financial statements are prepared in accordance with the provisions of the definitions of "financial statements" and "unaudited financial statements" in subsection B and subdivision C 2 of this section:

c. Such applicant is a member of the National Association of Security-Dealers, Inc. NASD.

3- 4. Those broker-dealer applicants which have been in operation for a period of time less than 12 months, and for which audited financial statements have not been prepared or are not available, and which are not registered with the SEC, a national securities association or a national securities exchange shall be permitted to file a review of financial statements prepared by an independent accountant provided the following conditions are met:

a. Such financial statements shall be as of a date within 30 days prior to the date of filing an application for registration;

b. Such financial statements shall be prepared by an independent accountant as defined under subsection B and in accordance with the definitions of "financial statements" and "review of financial statements" in subsection B and subdivision C 3.

21 VAC 5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as a NASD member broker-dealer agent shall be filed on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the regulations prescribed by the commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4 (see 21 VAC 5-85-10).

2. The statutory fee in the amount of \$30. The check must be made payable to the NASD.

3. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE," Series 63 exam, the Uniform Combined State Law Exam, Series 66 exam, or on a similar similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates. (21 VAC 5-20-150)

4. Any other information the commission may require.

B. Application for registration for all other broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4 (see 21 VAC 5-85-10).

2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.

3. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE," Series 63 exam, the Uniform Combined State Law Exam, Series 66 exam, or on a similar similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates. (21 VAC 5-20-150)

4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30 day period, not to exceed 90 days, shall be granted upon written request of the applicant.

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21 VAC 5-20-110. Renewals.

A. To renew the registration(s) of its broker-dealer agent(s), a NASD member broker-dealer will be billed by the NASAA/NASD Central Registration Depository system the statutory fee of \$30 per broker-dealer agent. A renewal of registration(s) shall be granted as a matter of course upon payment of the proper fee(s) unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Code of Virginia.

B. Any other broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Agents to be Renewed (Form S.D.4(a)) accompanied by the statutory fee of \$30 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.
2. If applicable, Agents to be Canceled with clear records (Form S.D.4(b)).
3. If applicable, Agents to be Canceled without clear records (Form S.D.4(c)).

21 VAC 5-20-150. Examination/qualification.

An individual applying for registration as a broker-dealer agent shall be required to show evidence of passing the Uniform Securities Agent State Law Examination (USASLE-Series 63), the *Uniform Combined State Law Examination, Series 66 exam*, or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates with a minimum grade of 70%.

21 VAC 5-20-160. Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete for purposes of applying for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:

1. Form U-4.
2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.
3. Completed Agreement for Inspection of Records Form.
4. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE", Series 63 exam, the *Uniform Combined State Law Exam, Series 66 exam*, or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates. (21 VAC 5-20-220)

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21 VAC 5-20-220. Examination/qualification.

An individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a NASD exam report of passing the Uniform Securities Agent State Law Examination (USASLE-Series 63), the *Uniform Combined State Law Examination, Series 66 exam*, or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates with a minimum grade of 70%.

21 VAC 5-20-240. Books and records of broker-dealers.

A. Every registered broker-dealer shall make and keep current the following books and records relating to his business:

1. Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.
2. Ledgers (or other records) reflecting all assets and liabilities, income, expense and capital accounts.
3. Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, and of such broker-dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account and all other debits and credits to such account.
4. Ledgers (or other records) reflecting the following:
 - a. Securities in transfers;
 - b. Dividends and interest received;
 - c. Securities borrowed and securities loaned;
 - d. Monies borrowed and monies loaned (together with a record of the collateral therefore and any substitutions in such collateral);
 - e. Securities failed to receive and failed to deliver; and
 - f. All long and all short stock record differences arising from the examination, count, verification and

comparison, pursuant to Rule 17a-13 and Rule 17a-5 under the Securities Exchange Act of 1934 (17 CFR 240.17a-13 and 17 CFR 240.17a-5) as amended (by date of examination, count, verification and comparison showing for each security the number of shares long or short count differences); and

g. Repurchase and reverse repurchase agreements.

5. A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are subjects of repurchase or reverse repurchase agreements) carried by such broker-dealer for its account or for the account of its customers or partners or others and showing the location of all securities long and the offsetting positions to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

6. A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of a discretionary power by such broker-dealer, or any agent or employee thereof, shall be so designated. For the purpose of this subsection the following definitions apply:

a. "Instruction" includes instructions between partners, agents and employees of a broker-dealer.

b. "Time of entry" means the time when such broker-dealer transmits the order of instruction for execution or, if it is not so transmitted, the time when it is received.

7. A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker-dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.

8. Copies of confirmations of all purchases and sales of securities including all repurchase and reverse repurchase agreements and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such broker-dealer.

9. A record in respect of each cash and margin account with such broker-dealer containing indicating (i) the name and address of the beneficial owner of such account and, (ii) except with respect to exempt employee benefit plan securities as defined in Rule 14a-1(d) under

the Securities Exchange Act of 1934 (17 CFR 240.14a-1(d)) but only to the extent such securities are held by employee benefit plans established by the issuer of the securities, whether or not the beneficial owner of securities registered in the name of such broker-dealers, or a registered clearing agency or its nominee objects to disclosure of his identity, address and securities positions to issuers, and (iii) in the case of a margin account, the signature of such owner; provided however, that in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

10. A record of all puts, calls, spreads, straddles and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing at least, an identification of the security and the number of units involved.

11. A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date pursuant to 21 VAC 5-20-290.

12. Questionnaire or application for employment:

a. A questionnaire or application for employment executed by each agent of such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to each such person:

(1) The agent's name, address, social security number, and the starting date of his employment or other association with the broker-dealer.

(2) The agent's date of birth.

(3) The educational institutions attended by the agent and whether or not the agent graduated therefrom.

(4) A complete, consecutive statement of all the agent's business connections for at least the preceding 10 years, including the agent's reason for leaving each prior employment, and whether the employment was part-time or full-time.

(5) A record of any denial of a certificate, membership, or registration, and of any disciplinary action taken, or sanction imposed upon the agent, by any federal or state agency, or by any national securities exchange or national securities association, including a record of any finding that the agent was a cause of any disciplinary action or had violated any law.

(6) A record of any denial, suspension, expulsion or revocation of a certificate, membership or registration of any broker-dealer with which the agent was associated in any capacity when such action was taken.

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(7) A record of any permanent or temporary injunction entered against the agent or any broker-dealer with which the agent was associated in any capacity at the time such injunction was entered.

(8) A record of any ~~convictions for any misdemeanors involving a security or any aspect of the securities business, or felony arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment advisor, futures sponsor, bank, or savings and loan association), fraud, false statements or omission, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing.~~

(9) A record of any other name or names by which the agent has been known or which the agent has used.

b. If such agent has been registered as a representative of such broker-dealer ~~or the agent's with, or his employment has been approved by a national securities association, or a national securities exchange, the National Association of Securities Dealers, Inc., or the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, or the Philadelphia-Baltimore Stock Exchange, then the retention of a full, correct, and complete copy of any and all applications for such registration or approval shall satisfy the requirement of subdivision 12a~~ be deemed to satisfy the requirements of this subdivision.

13. Records required to be maintained pursuant to paragraph (d) of Rule 17f-2 under the Securities Exchange Act of 1934 (17 CFR 240.17f-2) as added in Release No. 34-12214, under the Securities Exchange Act of 1934.

14. Copies of all Forms X-17F-1A filed pursuant to Rule 17f-1 under the Securities Exchange Act of 1934 (17 CFR 240.17f-1), all agreements between reporting institutions regarding registration or other aspects of Rule 17f-1 under the Securities Exchange Act of 1934 (17 CFR 240.17f-1) and all confirmations or other information received from the SEC or its designee as a result of inquiry, as added in Release No. 34-11615 and amended in Release No. 34-15867 under the Securities Exchange Act of 1934.

15. Records required to be maintained pursuant to paragraph (e) of Rule 17f-2 under the Securities Exchange Act of 1934 (17 CFR 240.17f-2) as added in Release No. 34-19268 under the Securities Exchange Act of 1934.

16. All such other books and records as may be required, kept, maintained and retained by broker-dealers under the Securities Exchange Act of 1934.

B. Exemptions from the requirements of subsection A of this section:

1. This section does not require a registered broker-dealer who transacts a business in securities through the medium of any other registered broker-dealer to make or keep such records of transactions cleared for such broker-dealer as are customarily made and kept by a clearing broker-dealer pursuant to the requirement of subsection A of this section and of 21 VAC 5-20-250 provided that the clearing broker-dealer has and maintains net capital of not less than \$25,000 and is otherwise in compliance with 21 VAC 5-20-290.

2. This section shall not be deemed to require a registered broker-dealer who transacts a business in securities through the medium of any other registered broker-dealer, to make or keep such records of transactions cleared for such broker-dealer by a bank as are customarily made and kept by a clearing broker-dealer pursuant to the requirements of this section and 21 VAC 5-20-250. Provided that such broker-dealer obtains from such bank an agreement, in writing, to the effect that the records made and kept by such bank are the property of the broker-dealer, and that such books and records are available for examination by representatives of the commission as specified in § 13.1-518 of the Act, and that it will furnish to the commission, upon demand, at such place designated in such demand, true, correct, complete and current copies of any or all of such records. Nothing herein contained shall be deemed to relieve such broker-dealer from the responsibility that such books and records be accurate and maintained and preserved as specified in this section and 21 VAC 5-20-250.

C. This section does not require a broker-dealer to make or keep such records as are required by subsection A of this section reflecting the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F and G.

D. The records specified in subsection A of this section shall not be required with respect to any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

E. For purposes of transactions in municipal securities by municipal securities broker-dealers, compliance with Rule G-8 of the Municipal Securities rulemaking board will be deemed to be in compliance with this section.

21 VAC 5-20-250. Preservation of records.

A. The records required in 21 VAC 5-20-240 shall be preserved according to the following requirements:

1. Every broker-dealer shall preserve for a period of not less than six years, the most recent two years of which shall be in an easily accessible place, all records required to be made pursuant to subdivisions A 1, 2, 3 and 5 of 21 VAC 5-20-240.

2. Every broker-dealer shall preserve for a period of not less than three years, the most recent two years of which shall be in an easily accessible place:

a. All records required to be made pursuant to subdivisions A 4, 6, 7, 8, 9 and 10 of 21 VAC 5-20-240.

b. All checkbooks, bank statements, cancelled checks and cash reconciliations.

c. All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the broker-dealer, as such.

d. Originals of all communications received and copies of all communications sent by the broker-dealer (including inter-office memoranda and communications) relating to its business, as such.

e. All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of the broker-dealer, as such.

f. All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

g. All written agreements (or copies thereof) entered into by the broker-dealer relating to its business as such, including agreements with respect to any account.

h. Records which contain the following information in support of amounts included in the ~~Annual Report required by 21 VAC 5-20-80, or Rule 17a-5(d) report prepared as of the audit date on Form X-17A-5 Part II or Part IIA and in annual audited financial statements required by Rule 17a-5(i)(XV) under the Securities Exchange Act of 1934 (17 CFR 240.17a-5(d)) (17 CFR 240.17a-5(i)(XV)).~~

(1) Money balance position, long or short, including description, quantity, price and valuation of each security, including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts and in securities accounts payable to customers;

(2) Money balance and position, long or short, including description, quantity, price and valuation of each security, including contractual commitments in non-customers' accounts, in cash and fully secured accounts, partly secured and unsecured accounts and in securities accounts payable to noncustomers;

(3) Position, long or short, including description, quantity, price and valuation of each security including contractual commitments, included in the computation of net capital as commitments, securities owned, securities owned not readily

marketable, and other investments owned not readily marketable;

(4) Amount of secured demand note, description of collateral securing such secured demand note including quantity, price and valuation of each security and cash balance securing such secured demand note;

(5) Description of futures commodity contracts, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and noncustomers' accounts;

(6) Description of futures commodity contracts, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in trading and investment accounts;

(7) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in customers' and noncustomers' accounts;

(8) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in trading and investment accounts;

(9) Number of shares, description of security, exercise price, cost and market value of put and call options including short out of money options having no market or exercise value, showing listed and unlisted put and call options separately;

(10) Quantity, price and valuation of each security underlying the haircut for undue concentration made in the Computation for Net Capital;

(11) Description, quantity, price and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the broker-dealer has an interest, including each participant's interest and margin deposit;

(12) Description, settlement date, contract amount, quantity, market price, and valuation for each aged fail to deliver requiring a charge in the Computation of Net Capital pursuant to 21 VAC 5-20-290.

(13) Details relating to information for possession and control requirements under 21 VAC 5-20-310.

(14) Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to 21 VAC 5-20-290 such as cash margin deficiencies, deductions related to securities values and undue concentrations, aged securities differences and insurance claims receivable; and,

(15) Other schedules which are specifically prescribed by the Commission SEC as necessary to support information reported as required by ~~21 VAC 5-20-80 its Rule 17a-5 under the Securities Exchange Act of 1934 (17 CFR 240.17a-5).~~

i. The records required to be made pursuant to 21 VAC 5-20-310, as described under Securities

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Exchange Act Rule 15c3-3(d)(4) (17 CFR 240.15c3-3(d)(4)).

3. Every broker-dealer shall preserve for a period of not less than six years after the closing of any customer's account, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

4. Every broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all charter documents, minute books and stock certificate books.

5. Every broker-dealer shall maintain and preserve in an easily accessible place:

a. All records required under subdivision A 12 of 21 VAC 5-20-240 until at least three years after the agent has terminated his employment and any other connection with the broker-dealer;

b. All records required under subdivision A 13 of 21 VAC 5-20-240 until at least three years after the termination of employment or association of those persons required by Rule 17f-2 under the Securities Exchange Act of 1934 (17 CFR 240.17f-2) to be fingerprinted;

c. All records required pursuant to subdivision A 15 of 21 VAC 5-20-240 for the life of the enterprise;

d. All records required pursuant to subdivision A 14 of 21 VAC 5-20-240 for three years; and

e. All such other books and records as may be required to be preserved under the Securities Exchange Act of 1934.

6. After a record or other document has been preserved for two years, a photograph thereof on film may be substituted therefore for the balance of the required time; provided, the records required to be maintained and preserved pursuant to 21 VAC 5-20-240 and this section may be immediately produced or reproduced on microfilm and be maintained and preserved for the required time in that form. If such microfilm substitution for hard copy is made by a broker-dealer, it shall (i) at all times have available for the commission's examination of its records, pursuant to § 13.1-518 of the Act, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements, (ii) arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record, (iii) be ready at all times to provide any facsimile enlargement which the commission by its examiners or other representatives may request, and (iv) store separately from the original, one other copy of the microfilm for the time required.

7. If the records required to be maintained and preserved pursuant to the provision of 21 VAC 5-20-240 and this section are prepared or maintained by an outside service bureau, depository or bank which does not operate pursuant to 21 VAC 5-20-240 B 2 or other record-keeping service on behalf of the broker-dealer

required to maintain and preserve such records, such broker-dealer shall obtain from such outside entity an agreement, in writing, to the effect that such records are the property of the broker-dealer required to maintain and preserve such records and that such books and records are available for examination by representatives of the commission as specified in § 13.1-518 of the Act and will be surrendered promptly on request by the broker-dealer or the commission. Agreement with an outside entity shall not relieve such broker-dealer from the responsibility to prepare and maintain records as specified in this section or in 21 VAC 5-20-240.

B. Wherever it is required that there be retained either the original or a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

21 VAC 5-20-260. Supervision of agents.

A. A broker-dealer shall be responsible for the acts, practices, and conduct of its agents in connection with the sale of securities until such time as the agents have been properly terminated as provided by 21 VAC 5-20-60.

B. Every broker-dealer shall exercise diligent supervision over the securities activities of all of its agents.

C. Every agent employed by a broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager or any qualified agent in the case of entities other than sole proprietorships. *All designated supervisors shall exercise diligent supervision over the securities activities of all of the agents under their responsibility.*

D. As part of its responsibility under this section, every broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this section, and shall state at which business office or offices the broker-dealer keeps and maintains the records required by 21 VAC 5-20-270.

1. The review and written approval by the designated supervisor of the opening of each new customer account;

2. The frequent examination of all customer accounts to detect and prevent irregularities or abuses;

3. The prompt review and written approval by a designated supervisor of all securities transactions by agents and all correspondence pertaining to the solicitation or execution of all securities transactions by agents;

4. The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to the customer's

account to the broker-dealer or to a stated agent or agents of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and,

5. The prompt review and written approval of the handling of all customer complaints.

E. Every broker-dealer who has designated more than one supervisor pursuant to the subsection C of this section shall designate from among its partners, officers, or other qualified agents, a person or group of persons who shall:

1. Supervise and periodically review the activities of these supervisors designated pursuant to subsection C of this section; and

2. Periodically *No less often than annually* inspect each business office of the broker-dealer to insure that the written procedures are enforced.

All supervisors designated pursuant to this subsection E shall exercise diligent supervision over the supervisors under their responsibility to insure compliance with this subsection.

21 VAC 5-20-280. Prohibited business conduct.

A. No broker-dealer shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

4. Execute a transaction on behalf of a customer *or, when a security is held in a customer's account, fail to execute a sale transaction as instructed by a customer,* without authority to do so;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly

after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee.

13. Offer to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the

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sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

16. Guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer and/or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subsection shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such

customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member; or

22. Fail or refuse to furnish a customer, upon reasonable request, information to which such customer is entitled, or to respond to a formal written request or complaint.

B. No agent shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or

6. Engage in conduct specified in subdivisions A 2, 3, 4, 5, 6, 10, 15, 16, 17, or 18 of this section.

C. Engaging in or having engaged in conduct specified in subsection A or B of this section, or other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall be grounds under the Act for imposition of a penalty, denial of a pending application or refusal to renew or revocation of an effective registration.

21 VAC 5-20-290. Financial responsibility.

A. The term "financial responsibility," as used in § 13.1-505(A) of the Act, shall mean that the net capital of an applicant or registrant *subject to the Securities Exchange Act of 1934 (15 USC §§ 78a-78jj)* shall be demonstrated and maintained at a level required by subsection B of this section.

B. For the purpose of demonstrating "financial responsibility" all broker-dealers *subject to the Securities Exchange Act of 1934* shall meet and maintain the net capital and ratio requirements as prescribed by Rule 15c3-1 under

the Securities Exchange Act of 1934 (17 CFR 240.15c3-1). The net capital and ratio requirements shall be computed in accordance with Rule 15c3-1 under the Securities and Exchange Act of 1934 (17 CFR 240.15c3-1).

C. Every broker-dealer shall file with the commission certified financial statements as defined in subsection B of 21 VAC 5-20-80 within 60 days of its fiscal year end.

21 VAC 5-20-300. Net worth.

A. For broker-dealers not subject to the Securities Exchange Act of 1934 (15 USC §§ 78a-78jj), the term "net worth" as used in § 13.1-505 B of the Act shall be computed as total assets minus total liabilities, excluding liabilities of the broker-dealer which are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement as defined in Appendix D of Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1d).

B. If a broker-dealer applicant or registrant not subject to the Securities Exchange Act of 1934 cannot demonstrate and maintain a net worth in excess of \$25,000, the commission shall require the filing of a surety bond on the form prescribed in 21 VAC 5-85-10. The amount of the penal sum of the surety bond can be determined according to the following table:

NET WORTH (Rounded to nearest \$1)	PENALTY AMOUNT OF SURETY BOND
Less than \$5,000	\$25,000
5,001-10,000	20,000
10,001-15,000	15,000
15,001-20,000	10,000
20,001-25,000	5,000

C. If the net worth of a broker-dealer registrant's net worth registrant not subject to the Securities Exchange Act of 1934 plus the penal sum of the registrant's its surety bond drops below \$25,000, the registrant must so notify the Division of Securities and Retail Franchising in writing within three business days and immediately take action to establish a net worth in excess of \$25,000.

21 VAC 5-30-70. Investment company notice filing requirements.

A. An investment company that is registered or that has filed a registration statement under the Investment Company Act of 1940 (15 USC §§ 80a-1 through 80a-64) (the "1940 Act") shall make a notice filing with the commission prior to the initial offer in this Commonwealth of a security which is a federal covered security under § 18(b)(2) of the Securities Act of 1933 (15 USC §§ 77a-77aa) (the "1933 Act"). With respect to an open-end management company, as that term is defined in the 1940 Act, the effectiveness of a notice filing, and any renewal thereof, shall expire at midnight on the annual date of its effectiveness in Virginia. The effectiveness of such notice may be renewed for an additional one-year period by filing a renewal notice prior to the expiration date. Notice filings and notice renewal filings may be filed with the commission or the Securities Registration Depository, Inc. ("SRD"), when that facility is available. Requirements for investment company notice filings and renewal notice filings are set forth below:

1. An initial notice filing shall contain the following:

- a. A copy of each document which is part of a current federal registration statement as filed with the SEC or a Form NF.
- b. An executed consent to service of process (Form U-2) appointing the Clerk of the State Corporation Commission, unless a currently effective consent to service of process is on file with the commission.
- c. A fee (payable to the Treasurer of Virginia) in the amount of 1/20 of 1.0% of the maximum aggregate offering price of the securities to be offered in this Commonwealth; provided that the fee shall not be less than \$200 nor more than \$700, except that in the case of a unit investment trust, as that term is defined in the 1940 Act, the fee shall not be less than \$400 nor more than \$1,000.

2. A renewal notice filing of an open-end management company shall contain the following:

- a. A copy of each document which is part of a current federal registration statement as filed with the SEC or a Form NF.
- b. An executed consent to service of process (Form U-2) appointing the Clerk of the State Corporation Commission, unless a currently effective consent to service of process is on file with the commission.
- c. A fee of \$300 (payable to the Treasurer of Virginia).

B. Any notice or renewal filed with the SRD shall be filed on and in accordance with all requirements and forms prescribed by the SRD and the proper fee shall be payable to the SRD or the fee may be payable to the Treasurer of Virginia and filed directly with the commission.

C. An investment company that is registered under the 1940 Act or that has filed a registration statement under the 1933 Act shall file, upon written request of the commission and within the time period set forth in the request, a copy of any document identified in the request that is part of the federal registration statement filed with the SEC or part of an amendment to such federal registration statement.

21 VAC 5-30-80. Adoption of NASAA statements of policy.

The commission adopts the following NASAA statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended April 27, 1997.
2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended April 27, 1997.
3. Real Estate Programs, as amended October 24, 1991.

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4. *Oil and Gas Programs, as amended October 24, 1991.*

5. *Cattle-Feeding Programs, as adopted September 17, 1980.*

6. *Unsound Financial Condition, as adopted April 27, 1997.*

7. *Real Estate Investment Trusts, as amended September 29, 1993.*

21 VAC 5-40-30. Uniform limited offering exemption.

A. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.

In view of the objective of this section and the purpose and policies underlying the Act, this exemption is not available to an issuer with respect to a transaction which, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.

Nothing in this section is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.

Nothing in this section is intended to exempt a person from the broker-dealer or agent registration requirements of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia, except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 below.

B. For the purpose of the limited offering exemption referred to in § 13.1-514 B 13 of the Act, the following securities are determined to be exempt from the securities registration requirements of Article 4 (§ 13.1-507 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia.

Any securities offered or sold in compliance with the federal Securities Act of 1933 (15 USC §§ 77a-77aa), Regulation D ("Reg. D"), Rules 230.501-230.503 and 230.505 or ~~230.506~~ as made effective in Release No. 33-6389 (47 FR 11251), and as amended in Release Nos. 33-6437 (47 FR 54764), 33-6663 (51 FR 36385), 33-6758 (53 FR 7866) and 33-6825 (54 FR 11369) and which satisfy the following further conditions and limitations:

1. The issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this section are registered in accordance with § 13.1-505 of the Act except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 below.

2. No exemption under this section shall be available for the securities of any issuer if any of the persons described in the federal Securities Act of 1933 (15 USC

§§ 77a-77aa), Regulation A, Rule 230.262(a), (b), or (c) (17 CFR 230.262):

a. Has filed a registration statement which is subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the beginning of the offering.

b. Has been convicted within five years prior to the beginning of the offering of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

c. Is currently subject to a state's administrative order or judgment entered by that state's securities administrator within five years prior to the beginning of the offering or is subject to a state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the beginning of the offering.

d. Is currently subject to a state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

e. Is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the beginning of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of a false filing with a state.

f. The prohibitions of subdivisions a, b, c and e above shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.

g. A disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the State Corporation Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this section be denied.

3. The issuer shall file with the commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:

a. A notice on Form D (17 CFR 239.500).

b. An undertaking by the issuer to promptly provide, upon written request, the information furnished by the issuer to offerees.

c. An executed consent to service of process appointing the Clerk of the State Corporation Commission as its agent for purpose of service of process, unless a currently effective consent to service of process is on file with the commission.

d. A filing fee of \$250.

4. In sales to nonaccredited investors, the issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser as to the purchaser's other security holdings and financial situation and needs.

5. Offers and sales of securities which are exempted by this section shall not be combined with offers and sales of securities exempted by another regulation or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of another applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.

6. In any proceeding involving this section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

C. The exemption authorized by this section shall be known and may be cited as the "Uniform Limited Offering Exemption."

21 VAC 5-40-110. Internet offer transactional exemption.

In accordance with § 13.1-514 B 18 of the Act, an offer of a security communicated on the Internet, World Wide Web or similar proprietary or common carrier system (hereinafter "Internet Offer") is exempted from the securities, broker-dealer and agent registration requirements of the Act if all of the following conditions are satisfied:

1. The Internet Offer is communicated by or on behalf of the issuer of the security.
2. The Internet Offer indicates, directly or indirectly, that it is not directed specifically to this Commonwealth.
3. An offer is not otherwise directed specifically to this Commonwealth by or on behalf of the issuer of the security.
4. Any order or offer to buy or subscription for the security received from a person in this Commonwealth pursuant to the Internet Offer is rejected.
5. No sale pursuant to the Internet Offer is made in this Commonwealth until the security is registered under the Act, or the security or transaction is exempted by the Act or is otherwise not subject to registration under this Act.

21 VAC 5-40-120. Offerings conducted pursuant to Rule 506 of federal Regulation D (17 CFR § 230.506): Filing requirements and issuer-agent exemption.

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC §§ 77a-77aa) (the "1933 Act") shall file with the commission no

later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500).
2. An executed consent to service of process (Form U-2) appointing the Clerk of the State Corporation Commission as its agent for service of process.
3. A filing fee of \$250 (payable to the Treasurer of Virginia).

B. For the purpose of this regulation, SEC "Form D" is the document, as adopted by the SEC and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "Form D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

C. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the 1933 Act pursuant to rules and regulations promulgated under § 4(2) thereof is exempt from the agent registration requirements of the Act.

CHAPTER 80. INVESTMENT ADVISORS.

PART I.

INVESTMENT ADVISOR REGISTRATION, NOTICE FILING FOR FEDERAL COVERED ADVISORS, EXPIRATION, RENEWAL, UPDATES AND AMENDMENTS, TERMINATIONS AND MERGER OR CONSOLIDATION.

21 VAC 5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

A. Application for registration as an investment advisor shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor unless the following executed forms, fee and information are submitted:

1. Form ADV.
2. The statutory fee in the amount of \$200. The check must be made payable to the Treasurer of Virginia.
3. Signed and executed Agreement for Inspection of Records.
4. Written supervisory procedures pursuant to 21 VAC 5-80-170 D.
5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written

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notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file notice as prescribed in subsection E of this section with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission.

E. Application for notice as a federal covered advisor shall be deemed incomplete unless the following executed forms, fee and information are submitted:

1. Form ADV.
2. The statutory fee in the amount of \$200. The check must be made payable to the Treasurer of Virginia.
3. Consent to Service of Process on Form S.A.14.

Until October 10, 1999, a federal covered advisor for which a nonpayment or underpayment of a fee has not been promptly remedied following written notification to the advisor of such nonpayment or underpayment shall not be a federal covered advisor.

21 VAC 5-80-20. Expiration.

An investment advisor's registration or federal covered advisor's notice filing shall expire annually at midnight on the 31st day of December, unless renewed in accordance with 21 VAC 5-80-30.

21 VAC 5-80-30. Renewals.

A. To renew its registration, an investment advisor will be billed by the NASAA/NASD Central Registration Depository system the statutory fee of \$200 prior to the annual expiration date. A renewal of registration shall be granted as of course upon payment of the proper fee together with any surety bond that the commission may require pursuant to 21 VAC 5-80-50 B unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

B. To renew its notice filing a federal covered advisor will be billed by the NASAA/NASD Central Registration Depository the statutory fee of \$200 prior to the annual expiration date. A renewal of notice filing shall be granted as a matter of course upon payment of the proper fee.

Until October 10, 1999, a federal covered advisor for which a nonpayment or underpayment of a fee has not been promptly remedied following written notification to the advisor of such nonpayment or underpayment shall not be a federal covered advisor.

C. Should a federal covered advisor incur a delay in paying or underpay the fee it may remedy the deficiency by remitting the fee to the commission within 15 days of receipt of notice from the commission.

21 VAC 5-80-40. Updates and amendments.

A. An investment advisor or federal covered advisor shall update its Form ADV as required by the "updating" provisions

of Item 7 of Form ADV Instructions and shall file all such information with the commission at its Division of Securities and Retail Franchising.

B. An investment advisor shall file the balance sheet as prescribed by Part II, Item 14 of Form ADV, unless excluded from such requirement, with the commission at its Division of Securities and Retail Franchising within 90 days of the investment advisor's fiscal year end.

21 VAC 5-80-50. Termination of registration.

When an investment advisor or federal covered advisor desires to terminate its registration or notice filing, it shall file a written request for such termination with the commission at its Division of Securities and Retail Franchising. An investment advisor or federal covered advisor may file SEC Form ADV-W in lieu of a written request for termination.

21 VAC 5-80-60. Investment advisor merger or consolidation.

In any merger or consolidation of an investment advisor or federal covered advisor a new application for registration or notice filing together with the proper fee must be filed with the commission at its Division of Securities and Retail Franchising.

For each investment advisor representative of the new or surviving entity who will transact business in this Commonwealth, an application for registration together with the proper fee(s) must also be filed on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the forms prescribed by the commission.

21 VAC 5-80-90. Renewals.

To renew the registration(s) of its investment advisor representative(s), an investment advisor or federal covered advisor will be billed by the NASAA/NASD Central Registration Depository system the statutory fee of \$30 per investment advisor representative. A renewal of registration(s) shall be granted as a matter of course upon payment of the proper fee(s) unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

21 VAC 5-80-110. Termination of registration.

A. When an investment advisor representative terminates a connection with an investment advisor, or an investment advisor terminates a connection with an investment advisor representative, the investment advisor shall file with the NASAA/NASD Central Registration Depository system notice of such termination on Form U-5 within 30 calendar days of the date of termination.

B. When an investment advisor representative terminates a connection with a federal covered advisor, the investment advisor representative shall file with the NASAA/NASD Central Registration Depository system notice of such termination on Form U-5 within 30 calendar days of the date of termination.

21 VAC 5-80-120. Changing a connection from one investment advisor or federal covered advisor to another.

An investment advisor representative who changes connection from one investment advisor or federal covered advisor to another shall comply with 21 VAC 5-80-70.

21 VAC 5-80-130. Examination/qualification.

A. An individual applying for registration as an investment advisor representative on or after July 1, 1989, shall be required to provide evidence of passing the Uniform Investment Adviser Law Examination, Series 65, *the Uniform Combined State Law Examination, Series 66*, or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates with a minimum grade of 70%.

B. In lieu of meeting the examination requirement described in subsection A of this section, an applicant who meets the qualifications set forth below may file with the commission at its Division of Securities and Retail Franchising an executed Affidavit for Waiver of Examination (Form S.A.3).

1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.
2. The applicant is, and has been for at least the five years immediately preceding the date on which the application for registration is filed, actively engaged in the investment advisory business.
3. The applicant has been for at least the two years immediately preceding the date on which the application is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.
4. The investment advisor(s) referred to in subdivision 3 has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least \$40 million under management.
5. The applicant verifies that he/she has read and is familiar with the investment advisor and investment advisor representative provisions of the Act and the provisions of Articles 10 through 14 of this chapter.
6. The applicant verifies that none of the questions in Item 22 (disciplinary history) on his/her Form U-4 have been, or need be, answered in the affirmative.

PART III.

INVESTMENT ADVISOR, FEDERAL COVERED ADVISOR AND INVESTMENT ADVISOR REPRESENTATIVE REGULATIONS.

21 VAC 5-80-140. Custody of client funds or securities by investment advisors or federal covered advisors.

An investment advisor or federal covered advisor who takes or has custody of any securities or funds of any client must comply with the following:

1. The An investment advisor with its principal place of business located in this Commonwealth shall notify the commission that it has or may have custody. Such notification may be given on Form ADV.
2. The securities of each client must be segregated, marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss.
3. All client funds must be deposited in one or more bank accounts containing only clients' funds, such account or accounts must be maintained in the name of the investment advisor or agent or trustee for such clients, and the investment advisor must maintain a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.
4. Immediately after accepting custody or possession of funds or securities from any client, the investment advisor or federal covered advisor must notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment advisor or federal covered advisor must give written notice thereof to the client.
5. At least once every three months, the investment advisor or federal covered advisor must send each client an itemized statement showing the funds and securities in the investment advisor's or federal covered advisor's custody at the end of such period and all debits, credits and transactions in the client's account during such period.
6. At least once every calendar year, an independent public accountant must verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment advisor or federal covered advisor. A certificate of such accountant stating that he or she has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the commission promptly after each such examination.
7. This section shall not apply to an investment advisor or federal covered advisor also registered as a broker-dealer under Section 15 of the Securities and Exchange

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Act of 1934 (15 USC §§ 78a-78kk) if the broker-dealer is (i) subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) [17 CFR 240.15c3-1] under the Securities Exchange Act of 1934, or (ii) a member of an exchange whose members are exempt from SEC Rule 15c3-1, [17 CFR 240.15c3-1] under the provisions of paragraph (b)(2) thereof, and the broker-dealer is in compliance with all regulations and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

21 VAC 5-80-150. Agency cross transactions.

A. For purposes of this section, "agency cross transaction" means a transaction in which an investment advisor or *federal covered advisor*, or any person controlling, controlled by, or under common control with such investment advisor or *federal covered advisor*, including an investment advisor representative, acts as a broker-dealer for both the advisory client and the person on the other side of the transaction.

B. An investment advisor or *federal covered advisor* effecting an agency cross transaction for an advisory client shall comply with the following conditions:

1. Obtain from the advisory client a written consent prospectively authorizing the investment advisor or *federal covered advisor* to effect agency cross transactions for such client.

2. Before obtaining such written consent from the client, disclose to the client in writing that, with respect to agency cross transactions, the investment advisor or *federal covered advisor* will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions.

3. At or before the completion of each agency cross transaction, send the client a written confirmation. The written confirmation shall include (i) a statement of the nature of the transaction, (ii) the date the transaction took place (iii) an offer to furnish, upon request, the time when the transaction took place and (iv) the source and amount of any other remuneration the investment advisor or *federal covered advisor* received or will receive in connection with the transaction. In the case of a purchase, if the investment advisor or *federal covered advisor* was not participating in a distribution, or, in the case of a sale, if the investment advisor or *federal covered advisor* was not participating in a tender offer, the written confirmation may state whether the investment advisor or *federal covered advisor* has been receiving or will receive any other remuneration and that the investment advisor or *federal covered advisor* will furnish to the client the source and amount of such remuneration upon the client's written request.

4. At least annually, and with or as part of any written statement or summary of the account from the investment advisor or *federal covered advisor*, send each client a written disclosure statement identifying (i) the total number of agency cross transactions during the

period since the date of the last such statement or summary and (ii) the total amount of all commissions or other remuneration the investment advisor or *federal covered advisor* received or will receive in connection with agency cross transactions during the period.

5. Each written disclosure and confirmation required by this section must include a conspicuous statement that the client may revoke the written consent required under subdivision B1 of this section at any time by providing written notice of revocation to the investment advisor or *federal covered advisor*.

6. No agency cross transaction may be effected in which the same investment advisor or *federal covered advisor* recommended the transaction to both any seller and any purchaser.

C. Nothing in this section shall be construed to relieve an investment advisor, *federal covered advisor* or investment advisor representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment advisor, *federal covered advisor* or investment advisor representative of any other disclosure obligations imposed by the Act.

21 VAC 5-80-160. Recordkeeping requirements for investment advisors.

A. Every investment advisor registered or required to be registered under the Act shall make and keep current the following books, ledgers and records, *except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make and keep current, and maintain and preserve such form of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:*

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to

the exercise of discretionary power shall be so designated.

4. All check books, bank statements, cancelled checks and cash reconciliations of the investment advisor.

5. All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment advisor as such.

6. All trial balances, financial statements, and internal audit working papers relating to the business of such investment advisor.

7. Originals of all written communications received and copies of all written communications sent by such investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, and (iii) the placing or execution of any order to purchase or sell any security; provided, however, (a) that the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) that if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client or otherwise relating to the business of such investment advisor as such.

11. a. A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment advisor circulates or distributes, directly or indirectly, to 10 or more persons (other than investment advisory clients or persons connected with such investment advisor), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment advisor indicating the reasons therefor.

b. All of their advertisements and all records, worksheets, and calculations necessary to form the basis for performance data in their advertisements.

12. a. A record of every transaction in a security in which the investment advisor or any investment advisor representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisor representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisor representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 above, where the investment advisor is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisor representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisor representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisor representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days

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after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21 VAC 5-80-190 and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. *Every investment advisor subject to 21 VAC 5-80-170 shall keep in each business office written procedures which shall include, but not be limited to, the duties imposed under 21 VAC 5-80-170.*

B. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A above shall also include:

1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

2. A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

3. Copies of confirmations of all transactions effected by or for the account of any such client.

4. A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale.

2. For each security in which any such client has a current position, information from which the investment advisor can promptly furnish the name of each such client, and the current amount or interest of such client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom such investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. 1. All books and records required to be made under the provisions of subsection A to subdivision C1, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years of such period in the office of the investment advisor.

2. Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

F. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commission in writing of the exact address where such books and records will be maintained during such period.

G. All books, records or other documents required to be maintained and preserved under this section may be stored on microfilm, microfiche, or an electronic data processing system or similar system utilizing an internal memory device provided a printed copy of any such record is immediately accessible.

H. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 [17 CFR 240.17a-3] and 17a-4 [17 CFR 240.17a-4] under the Securities Exchange Act of 1934 (15 USC §§ 78a-78kk), which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

21 VAC 5-80-170. Supervision of investment advisor representatives.

A. An investment advisor or federal covered advisor shall be responsible for the acts, practices, and conduct of its investment advisor representatives in connection with advisory services until such time as the investment advisor representatives have been properly terminated as provided by 21 VAC 5-80-110.

B. Every investment advisor or federal covered advisor shall exercise diligent supervision over the advisory activities of all of its investment advisor representatives.

C. Every investment advisor representative employed by an investment advisor or federal covered advisor shall be subject to the supervision of a supervisor designated by such investment advisor or federal covered advisor. The supervisor may be the investment advisor or federal covered advisor in the case of a sole proprietor, or a partner, officer, office manager or any qualified investment advisor representative in the case of entities other than sole proprietorships. All designated supervisors shall exercise diligent supervision over the advisory activities of all investment advisor representatives under their responsibility.

D. As part of its responsibility under this section, every investment advisor or federal covered advisor shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the investment advisor or federal covered advisor, which shall include but not be limited to the following duties imposed by this section.

1. The review and written approval by the designated supervisor of the opening of each new client account;
2. The frequent examination of all client accounts to detect and prevent irregularities or abuses;
3. The prompt review and written approval by a designated supervisor of all advisory transactions by investment advisor representatives and of all correspondence pertaining to the solicitation or execution of all advisory transactions by investment advisor representatives;
4. The prompt review and written approval of the handling of all client complaints.

E. Every investment advisor or federal covered advisor who has designated more than one supervisor pursuant to subsection C of this section shall designate from among its partners, officers, or other qualified investment advisor representatives, a person or group of persons who shall:

1. Supervise and periodically review the activities of the supervisors designated pursuant to subsection C of this section; and
2. Periodically No less often than annually inspect each business office under his/her supervision to insure that the written procedures are being enforced.

All supervisors designated pursuant to this subsection E shall exercise diligent supervision over the supervisors under their responsibility to insure compliance with this subsection.

21 VAC 5-80-180. Requirements for surety bonds and financial reporting.

A. Investment advisors required to provide a balance sheet pursuant to Part II, Item 14 of Form ADV must demonstrate a net worth in excess of \$25,000. In the case of an investment advisor that is registered in the state in which it maintains its principal place of business, its balance sheet

must demonstrate that it is in compliance with the state's net worth or net capital requirements (as the case may be).

B. Investment advisors subject to subsection A above, whose net worth drops below \$25,001, must notify the Division of Securities and Retail Franchising within 24 hours of initial awareness of the discrepancy and immediately take action to establish a net worth in excess of \$25,000 or obtain a surety bond in the penalty amount of \$25,000. The surety bond form (see 21 VAC 5-85-10) must be utilized. Additionally, within 24 hours after transmitting such notice, the investment advisor shall file a report with the Division of Securities and Retail Franchising of its financial condition, including the following:

1. A trial balance of all ledger accounts.
2. A computation of net worth.
3. A statement of all client funds or securities which are not segregated.
4. A computation of the aggregate amount of client ledger debit balances.
5. A statement as to the number of client accounts.

C. An investment advisor registered in the state in which it maintains its principal place of business whose net worth or net capital (as the case may be) drops below the state's requirement, must notify the Division of Securities and Retail Franchising within 24 hours of initial awareness of the discrepancy and immediately take action to establish a net worth or net capital that is in compliance with the state's requirement. Additionally, within 24 hours after transmitting such notice, the investment advisor shall file a report with the Division of Securities and Retail Franchising of its financial condition, including the following:

1. A trial balance of all ledger accounts.
2. A computation of net worth or net capital.
3. A statement of all client funds or securities which are not segregated.
4. A computation of the aggregate amount of client ledger debit balances.
5. A statement as to the number of client accounts.

21 VAC 5-80-190. Disclosure requirements.

A. For purposes of compliance with § 13.1-505.1 of the Act, a copy of Part II of Form ADV must be given to clients of investment advisors or federal covered advisors, or a brochure containing such information may be utilized.

B. The investment advisor or federal covered advisor or its registered representatives shall deliver the disclosure information required by this section to an advisory client or prospective advisory client:

1. Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or
2. At the time of entering into any such contract, if the advisory client has a right to terminate the contract

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without penalty within five calendar days after entering into the contract.

~~C. A copy of Part II of Form ADV or the brochure to be given to clients must be filed with the Commission at its Division of Securities and Retail Franchising not later than the time of its use. The investment advisor or federal covered advisor, or its registered representatives, shall offer to deliver the disclosure information required by this section to an advisory client or prospective advisory client annually, within 90 days of any investment advisor's fiscal year end.~~

~~D. A copy of Part II of Form ADV or the brochure to be given to clients must be filed by investment advisors with the commission at its Division of Securities and Retail Franchising not later than the time of its use.~~

~~D. E. If an investment advisor or federal covered advisor renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged to that client or prospective client.~~

21 VAC 5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a

definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

- a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
- b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)-1).

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor or *federal covered advisor* has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21 VAC 5-80-140.

16. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or *federal covered advisor* and that no assignment of such contract shall be made by the investment advisor or *federal covered advisor* without the consent of the other party to the contract.

The conduct set forth above is not *all* inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a

definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or *federal covered advisor* who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or *federal covered advisor* uses published research reports or statistical analyses to render advice or where an investment advisor or *federal covered advisor* orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

State Corporation Commission

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21 VAC 5-80-140.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

The conduct set forth above is not *all* inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice.

21 VAC 5-80-210. Exclusions from definition of "investment advisor" and "federal covered advisor."

Pursuant to § 13.1-501 of the Act, the term A. The terms "investment advisor" does and "federal covered advisor" do not include any person engaged in the investment advisory business whose only client in this Commonwealth is one (or more) of the following:

1. An investment company as defined in the Investment Company Act of 1940 (15 USC §§ 80a-1 through 80a-64).
2. An insurance company licensed to transact insurance business in this Commonwealth.
3. A bank, a bank holding company as defined in the Bank Holding Company Act of 1956 (12 USC § 1841 et seq.), a trust subsidiary organized under Article 3.1 (§ 6.1-32.1 et seq.) of Chapter 2 of Title 6.1 of the Code of Virginia, a savings institution, a credit union, or a trust company if the entity is either (i) authorized or licensed to transact such business in this Commonwealth or (ii) organized under the laws of the United States.
4. A broker-dealer so registered under the Act and under the Securities and Exchange Act of 1934 (15 USC §§ 78a-78kk).
5. An employee benefit plan with assets of not less than \$5,000,000.
6. A governmental agency or instrumentality.

B. Any investment advisor or federal covered advisor who (i) does not have a place of business located within this Commonwealth and (ii) during the preceding 12 month period has had fewer than six clients who are residents of this Commonwealth is excluded from the registration and notice filing requirements of the Act.

21 VAC 5-80-240. Investment advisor representative registration on behalf of other investment advisors or federal covered advisors.

A. The purpose of this section is to permit an individual who is registered under the Act as an investment advisor representative to assist clients in the selection of other investment advisors or federal covered advisors without being subject to investment advisor representative registration requirements with respect to the other investment advisors or federal covered advisors.

As used in this section, the term "other investment advisor" or "federal covered advisor" means an investment advisor or federal covered advisor other than the one on whose behalf the individual is registered as an investment advisor representative.

B. An individual is subject to investment advisor representative registration requirements of the Act with respect to any other investment advisor or federal covered advisor unless the following conditions exist when the individual initially engages, with respect to such advisor, in activity which would require registration as an investment advisor representative under the Act.

1. The individual is registered under the Act as an investment advisor representative of an investment advisor so registered or a federal covered advisor who has filed notice under the Act.

2. The other investment advisor is registered under the Act as an investment advisor or the federal covered advisor has filed notice under the Act.

C. Except as expressly provided in this section, nothing contained in this section is intended, or should be construed, to relieve any person utilizing this section from complying with the applicable provisions of the Act or of any other of these regulations.

21 VAC 5-85-10. Adopted securities forms.

The commission adopts for use under the Act the forms contained in the Appendix (not included in the Virginia Administrative Code) and listed below.

Broker-Dealer and Agent Forms

Form BD - Uniform Application for Registration of a Broker-Dealer (5/94).

Form S.A.1. - Supplemental Information for Commonwealth of Virginia to Be Furnished with Revised Form BD (rev. 11/96 7/97).

Agreement for Inspection of Records.

Form S.A.11 - Broker-Dealer's Surety Bond (rev. 1982).

Form S.A.2. - Application for Renewal of a Broker-Dealer's Registration (rev. 11/96).

Form S.D.4. - Non-NASD Broker-Dealer or Issuer Agent Renewal Application (1972 1997).

Form S.D.4.A. - Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit (1974).

Form S.D.4.B. - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history (1974).

Form S.D.4.C. - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history (1974).

Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer.

Form U-4 - Uniform Application for Securities Industry Registration (11/91).

Form U-5 - Uniform Termination Notice for Securities Industry (11/91).

Investment Advisor and Investment Advisor Representative
Forms

Form ADV - Uniform Application for Registration of Investment Advisors (eff. July 2, 1987).

Agreement for Inspection of Records.

Surety Bond Form.

Form U-4 - Application for Investment Advisor Representative Registration. See Form U-4 above.

Form U-5 - Application for Withdrawal of an Investment Advisor Representative. See Form U-5 above.

Form S.A.3. - Affidavit for Waiver of Examination (rev. 11/96).

Form S.A.14 - Consent to Service of Process for Notice Filing as a Federal Covered Advisor (7/97).

Securities Registration Forms

Form U-1 - Uniform Application to Register Securities.

Form U-2 - Uniform Consent to Service of Process.

Form U-2a - Uniform Form of Corporate Resolution.

Form S.A.4. - Registration by Notification - Original Issue (rev. 11/96).

Form S.A.5. - Registration by Notification - Non-Issuer Distribution (rev. 11/96).

Form S.A.6. - Registration by Notification - Pursuant to 21 VAC 5-30-50 Non-Issuer Distribution "Secondary Trading" (1989).

Form S.A.8. - Registration by Qualification.

Form S.A.10 - Request for Refund Affidavit (Unit Investment Trust).

Form S.A.12 - Escrow Agreement.

Form S.A.13 - Impounding Agreement.

Form VA-1, Parts 1 and 2 - Notice of Limited Offering of Securities (rev. 11/96).

Form NF - Uniform Investment Company Notice Filing (4/97).

S.A.1
Rev. 4/16/2007

SUPPLEMENTAL INFORMATION FOR COMMONWEALTH OF VIRGINIA TO BE FURNISHED WITH FORM BD

Full name of applicant exactly as stated on Form BD _____ Date _____

Answer the following questions and supply the information required:

1. Is the applicant "in good standing" in its state of organization? Yes _____ No _____.
2. Submit a check payable to Treasurer of Virginia in the amount of \$200. (§ 13.1-505 F of the Code of Virginia)
3. The following must be submitted along with the Form BD:
 - a. A completed Agreement for Inspection of Records. (21 VAC 5-20-10 B 4)
 - b. A copy of the firm's written supervisory procedures. Sole proprietorships are excluded. (21 VAC 5-20-10 B 5)
4. Financial reports pursuant to 21 VAC 5-20-80.
 - a. Broker-dealers subject to the Securities Exchange Act of 1934 (15 USC §§ 78a-78jj), must attach one copy of the applicant's latest financial statement, which need not be audited, reflecting computation of net capital.
 - b. Attach All other broker-dealers must attach one copy of applicant's latest audited financial statement, and,
 - b.c. Attach one copy of applicant's latest Joint Regulatory Report or FOCUS Report, or,
 - e.d. Furnish one copy of applicant's latest unaudited financial statement. (If applicant's latest audited financial statement required by subsection a is not dated within 90 days preceding the filing of this application, the unaudited financial statement must be dated within the 90 day period and attested to by an officer or director of the applicant).
 - e.g. Attach a copy of all currently effective subordination agreements if applicable.
5. Broker-Dealer bond.

The surety bond must be executed if the broker-dealer is not subject to the Securities Exchange Act of 1934, and does not have a net worth in excess of \$25,000. (§ 13.1-505 B of the Code of Virginia and 21 VAC 5-20-300). Attached is the required surety bond in the penal amount of \$ _____.
6. Exam requirements for principals.

See definition of "Principal" under 21 VAC 5-20-70 A 2. Applicant must comply with either a or b below.

 - a. All principals of applicant have obtained a minimum passing grade of 70% on the USASLE (Uniform Securities Agent State Law Exam) exam, Series 63, the Uniform Combined State Law Examination, Series 66, or on a similar examination designated by the Director of the Division of Securities and Retail Franchising. (21 VAC 5-20-70 A 1) Yes _____ No _____

- b. At least two principals of applicant have been registered with the SEC or the NASD as a general securities principal (21 VAC 5-20-70 A 2). The NASD requires general securities principals to take and successfully pass the Series 24 Exam. Yes _____ No _____

PROVIDE EVIDENCE OF THE ABOVE IN THE FORM OF AN NASD EXAM REPORT.

SD 4 (1997)

Agent Only

Form SA 14, 1997

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

APPLICATION FOR RENEWAL OF REGISTRATION AS AN AGENT OF AN ISSUER
(Print or Type)

Last Name _____ First Name _____ Middle Name _____

residing at _____ hereby

Street Number _____ City _____ State _____ Zip _____

applies for a renewal of registration as an agent registered under the Securities Act, and reaffirms his connection with the issuer specified below:

(Name of Issuer)

(Principal Address of Issuer)

During the past year the applicant has resided at the following address:

The address of the applicant's place of business is to be entered here if other than the principal address of the issuer.

In order to assist in determining whether to grant the application, check below whether or not the applicant has been involved in any of the following during the preceding registration year.

	YES	NO
Has been convicted of felony or misdemeanor involving dishonesty?	()	()
Has been sued for fraud, deceit or breach of trust?	()	()
Has been adjudicated as bankrupt?	()	()
Has any unsatisfied judgments against him?	()	()
Has been denied a registration to sell securities?	()	()
Has had a securities registration suspended or revoked?	()	()

If the issuer is unable to answer any of the above with a (NO), the renewal cannot be processed until the situation is discussed with the Division

CERTIFICATE

The issuer named in the foregoing renewal application certifies that the information supplied is true and correct to the best of its knowledge and promises to notify the Commission promptly with respect to any change in information heretofore given

Issuer Date

Date

INSTRUCTIONS

- Do not send separate \$30.00 fees for each agent. All fees are to be paid into the bank account listed on the back of the application.
- Do not include a fee for the application to the Commission.
- Do not include a fee for the application to the Commission.
- The applicant agrees to be bonded with the issuer specified in the application and the issuer must register with the Commission using date of formation and address that the agent is bonded whether or not it is.

CONSENT TO SERVICE OF PROCESS
FOR NOTICE FILING AS A FEDERAL COVERED ADVISOR

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, _____ (a
corporation organized under the laws of the State of _____) (a partnership
(an individual) (other _____), for the purpose of complying with the laws of the
Commonwealth of Virginia relating to the notice filing of a federal covered advisor, hereby irrevocably
appoints the Clerk of the State Corporation Commission and the successors in such office, its attorney in
the Commonwealth of Virginia upon whom may be served any notice, process or pleading in any action
or proceeding against it arising out of or in connection with the notice filing or out of violation of the
aforesaid laws of said Commonwealth; and the undersigned does hereby consent that any such action or
proceeding against it may be commenced in any court of competent jurisdiction and proper venue within
said Commonwealth by service of process upon said officer with the same effect as if the undersigned
was organized or created under the laws of said Commonwealth and had lawfully been served with
process in said Commonwealth.

It is requested that a copy of any notice, process or pleading served hereunder be mailed to:

(NAME AND ADDRESS)

Date: _____

By _____

Title _____

By _____

Title _____

FORM NF 497

UNIFORM INVESTMENT COMPANY NOTICE FILING

Please Read Instructions Prior To Filing Out Form State File No. _____

Notice to the State/Commonwealth of _____

1. Name of Issuer _____

2. Address _____

3. Type of Filing: (check all that apply)

- | | | |
|--|--|---|
| <input type="checkbox"/> Open-end Mutual Fund | <input type="checkbox"/> Unit Investment Trust | <input type="checkbox"/> Closed-end Mutual Fund |
| <input type="checkbox"/> Initial Filing | <input type="checkbox"/> Renewal Filing | <input type="checkbox"/> Amendments |
| <input type="checkbox"/> Termination | <input type="checkbox"/> Withdrawal | <input type="checkbox"/> Sales Report |
| <input type="checkbox"/> Other (specify) _____ | <input type="checkbox"/> Exemption Filing | <input type="checkbox"/> Increase Dollar Amount |

For name changes, provide former name: _____

For amendments, specify nature of the change(s): _____

4. Description of Securities:
Name of Fund _____

Portfolio(s) _____

Class(es) _____

Fiscal Year End of the issuer (if applicable) _____

Are all of the securities described on this form offered in one prospectus? Yes No

5. Contact Person:
Name _____ Firm _____
Address _____

City _____ State _____
Zip _____ Telephone _____
FAX: _____ E-Mail _____

6. CIK# (EDGAR) _____ Federal ID# (if applicable) _____
Broker-Dealer: _____ SEC Registration No. (if applicable) _____
Broker-Dealer's CRD No.: _____ State of Incorporation/Charter _____

7. Notice Period: Beginning Date: _____ Ending Date: _____
The issuer elects to have its notice filing made effective upon filing.
The issuer elects to have its notice filing period begin with SEC effectiveness and thereby agrees to provide the above state prompt notice of such effectiveness.

FORM NF

8. Notice Fee: \$ _____ No Filing Fee Required
Sales Report Fee (if applicable) \$ _____
Other Fee \$ _____ Explain _____

9. To determine the basis used for calculating the filing fee, provide the following:
 Indefinite Amount Definite Amount \$ _____
 Exemption Filing Net Assets: \$ _____

10. For filings to increase the dollar amount of securities reported during the notice period, provide the following:
(1) Previous Amount of Securities _____
(2) Amount of Increase _____
(3) Cumulative Amount of Securities _____

11. SALES REPORT [To the extent not applicable, place N/A in the blank(s)]
Period Covered: _____ Beginning date: ____/____/____ Ending: ____/____/____
Balance at beginning of period \$ _____
Increases during period \$ _____
Amount available for sale \$ _____
Sales during the period \$ _____
Unsold balance at end of period \$ _____

12. UNIFORM CONSENT TO SERVICE OF PROCESS (select one)
1. Was previously filed with state with respect to the issuer of the securities by this notice and is incorporated by reference.
2. Is attached.
3. Not applicable (explain): _____

13. SIGNATURES
The undersigned under penalties of perjury certifies that s/he has executed this Uniform Investment Company notice on behalf of, and with the authority of the issuer. The undersigned and the issuer represent that the information and statements contained in the notice filed, are current true and complete to the best of his or her knowledge, information and belief and that any documents submitted with the notice are true copies of the originals, and that the securities covered by this Notice are Covered Securities as defined by Section 18(b)(2) of the Securities Act of 1933.

Dated this ____ day of _____
Month Year

For: _____ By: _____
Name of Issuer Signature of Authorized Agent of Issuer

Print Name _____ Title of Agent for Issuer _____

The filing of this notice constitutes a binding agreement by the above-named issuer and under the laws of the jurisdiction in which this Form is filed, that upon receipt of a request from such jurisdiction, the issuer will promptly provide a copy of its current prospectus, and/or statement of additional information, and/or any other document, if any, as filed with the Securities and Exchange Commission.

FORM NF

VA.R. Doc. No. R97-478; Filed May 7, 1997; 10:01 a.m.

INSTRUCTIONS TO FORM NF

Form NF should be used for investment company initial filings, renewals, amendments and sales reports. This form should be used for all filing options, including definite and indefinite filings.

ITEM 1. Name of Issuer: State the name of the investment company for which the notice filing is being made. Do not use the name of the broker-dealer or distributor.

ITEM 3. Amendment Filings: Provide the applicable information. However, it may not be necessary to complete the entire form. Amendments include changes in the correspondent or fund name or a new fiscal year end. Changes such as reorganizations should be reported under "Other," with a written explanation. If in doubt about the proper category, use "Other" and provide an explanation.

ITEM 4. Description of Securities: This information should be provided at the level necessary in the given state. For example, if the state is a "trust level" state, portfolio and class information may not be required. A separate Form NF should be filed for each portfolio or class, to the extent required by the given state. Attach a list of all portfolios or classes for "trust level" states. For states whose fees are based on the prospectus, a separate Form NF should be filed for each prospectus and should include a list of all securities listed in the prospectus.

ITEM 6.

CIK Number (EDGAR): Please provide the Central Index Key Number that will cross-reference the SEC filing.

Federal ID Numbers and SEC Registration Numbers: Federal identification numbers are only available for the fund or trust. Provide the Federal ID No. and SEC Registration No. if filing in a jurisdiction that requires these numbers.

Fiscal Year: Fiscal year information is not required for unit investment trusts, since the filing period runs concurrently with SEC effectiveness.

ITEM 7. Notice Period: The notice period is established by law, administrative regulation or policy in some jurisdictions. As a result, one or more of the three options provided on the form may not be available in each jurisdiction. In addition, if the issuer elects to begin the notice filing period on the date of SEC effectiveness, the notice period will end on the date that a renewal filing is required.

ITEM 12. Uniform Consent to Service of Process: The uniform consent to service of process form is separate from the Notice Filing Form (Form NF). Issuers shall use the Uniform Consent to Service of Process Form (Form U-2).

PROSPECTUS AND STATEMENT OF ADDITIONAL INFORMATION. In some jurisdictions, you may be required by law, administrative regulation or policy to file the Form NF with a prospectus and/or statement of additional information.

FORM NF

MARINE RESOURCES COMMISSION

FINAL REGULATIONS

NOTICE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: 4 VAC 20-240-10 et seq. Pertaining to Tangier Island Crab Scrape Sanctuary (amending 4 VAC 2-240-20).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: May 1, 1997.

Summary:

This regulation prohibits the setting of crab pots and the taking of hard crabs by any gear in a small area north of Tangier Island. This regulation is promulgated pursuant to § 28.2-201 of the Code of Virginia. The effective date of this amendment is May 1, 1997.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-240-20. Gear limitation; closed area.

It shall be unlawful for any person to place, set or fish a crab pot or to harvest hard crabs by any gear in the following area: (all latitudes and longitudes are based on North American Datum, 1927) beginning near the northernmost point of Fishbone Island, at 37° 53' 08.9772" North, 76° 00' 10.6917" West; thence in a northerly direction approximately 0.90 miles to a point near the eastern shore of Herring Island, at 37° 54' 02.7340" North, 76° 00' 29.6478" West; thence in a northerly direction approximately 1.68 miles to a point near Peach Orchard Point, at 37° 55' 41.1274" North, 76° 00' 54.9390" West; thence following the shoreline of South Point Marsh to a point near South Point, at 37° 55' 19" North at 76° 01' 32" West; thence due West approximately 0.75 miles to the overhead power cable near the westernmost point of Shanks Island; thence in a southeasterly direction, along the overhead power cable approximately 2.85 miles to a point near Upper Tump, at 37° 52' 50" North, 76° 00' 47" West; thence in a northeasterly direction approximately 0.60 miles to a point near the northernmost point of Fishbone Island, the point of beginning 83 (1993). Beginning near the northernmost point of Fishbone Island, at 37° 53' 10.4510" north, 76° 00' 08.7703" west; thence in a northerly direction approximately 0.92 miles to a point near the eastern shore of Herring Island, at 37° 54' 03.4504" north, 76° 00' 27.7700" west; thence in a northerly direction approximately 1.67 miles to a point near Peach Orchard Point, at 37° 55' 41.4491" north, 76° 00' 53.7692" west; thence following the shoreline of South Point Marsh to a point on the marsh near South Point, at 37° 55' 19.4499" north, 76° 01' 30.7706" west; thence due west approximately 0.80 miles to the remains of the overhead power cable west of the westernmost point of Shanks Island at 37° 55' 20.7101" north, 76° 02' 31.6527" west, thence in a southeasterly direction, along the remains of the overhead power cable, approximately 2.86 miles to a

point near Upper Tump, at 37° 52' 50.5065" north, 76° 00' 45.6702" west; thence in a northeasterly direction approximately 0.59 miles to a point near the northernmost point of Fishbone Island, the point of beginning.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-436; Filed April 29, 1997, 3:01 p.m.

Title of Regulation: 4 VAC 20-490-10 et seq. Pertaining to Sharks (amending 4 VAC 2-490-20, 4 VAC 20-490-40, and 4 VAC 20-490-50).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: May 1, 1997.

Summary:

This regulation establishes gear restrictions, a possession limit, and limitations on the taking and landing of sharks. This regulation is promulgated pursuant to § 28.2-201 of the Code of Virginia. This regulation amends and readopts 4 VAC 20-490-10 et seq., which was adopted June 27, 1995, and was made effective July 1, 1995. The effective date of this regulation is May 1, 1997.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-490-20. Definitions.

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

"Carcass length" means that length measured in a straight line from the anterior edge of the first dorsal fin to the posterior end of the shark carcass.

"Finning" means removing the fins and returning the remainder of the shark to the sea.

"Fork length" means that length measured in a straight line from the tip of the nose of the shark to the center of the fork of the tail of the shark.

"Longline" means any fishing gear composed of a line in excess of 1,000 feet in length that has multiple hooks and is either anchored, floating or attached to a vessel.

"Shark" means any fish of the following species:

- Sevengill shark, *Heptranchias perlo*
- Sixgill shark, *Hexanchus griseus*
- Bigeye sixgill shark, *Hexanchus vitulus*
- Atlantic angel shark, *Squatina dumerili*
- Nurse shark, *Ginglymostoma cirratum*

- Whale shark, Rhincodon typus
- Ragged-tooth shark, Odontaspis ferox
- Sand tiger shark, Odontaspis taurus
- Bigeye thresher, Alopias superciliosus
- Thresher shark, Alopias vulpinus
- Basking shark, Cetorhinus maximus
- White shark, Carcharodon carcharias
- Shortfin mako, Isurus oxyrinchus
- Longfin mako, Isurus paucus
- Porbeagle shark, Lamna nasus
- Tiger shark, Galeocerdo cuvieri
- Lemon Shark, Negaprion brevirostris
- Blue shark, Prionace glauca
- Blacknose shark, Carcharhinus acronotus
- Bignose shark, Carcharhinus altimus
- Narrowtooth shark, Carcharhinus brachyurus
- Spinner shark, Carcharhinus brevipinna
- Silky shark, Carcharhinus falciformis
- Galapagos shark, Carcharhinus galapagensis
- Finetooth shark, Carcharhinus isodon
- Bull shark, Carcharhinus leucas
- Blacktip shark, Carcharhinus limbatus
- Oceanic whitetip shark, Carcharhinus longimanus
- Dusky shark, Carcharhinus obscurus
- Caribbean reef shark, Carcharhinus perezi
- Sandbar shark, Carcharhinus plumbeus
- Night shark, Carcharhinus signatus
- Atlantic sharpnose shark, Rhizoprionodon terraenovae
- Caribbean sharpnose shark, Rhizoprionodon porosus
- Scalloped hammerhead, Sphyrna lewini
- Great hammerhead, Sphyrna mokarran
- Bonnethead, Sphyrna tiburo
- Smooth hammerhead, Sphyrna zygaena

"Shark carcass" means any shark whose head, gills, tail, and viscera have been removed.

4 VAC 20-490-40. Catch limitations.

A. It shall be unlawful for any person to take or catch by hook-and-line, rod-and-reel, or spear and retain possession of more than one shark at any time.

1. Any shark taken after the possession limit has been reached shall be returned to the water immediately.

2. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. It shall be unlawful for any commercial fishing vessel to have on board or to land more than 7,500 pounds of shark carcasses per day. The vessel captain or operator is responsible for compliance with the provisions of this subsection.

C. Except as provided in subsection D of this section, it shall be unlawful for any person to land in Virginia or to possess for commercial purposes any shark less than 58 inches in fork length or any shark carcass less than 31 inches in carcass length.

D. Any person may harvest and land for commercial purposes from Virginia's portion of the Territorial Sea within the three nautical mile line only up to 200 pounds of shark carcasses less than the 31-inch minimum carcass length.

4 VAC 20-490-50. Finning.

A. It shall be unlawful for any person to engage in finning.

B. It shall be unlawful for any person to possess fins provided, however, except that fins may be removed at sea provided the carcass of the shark is retained and counted as part of any possession or landing limit. The possession of any fins without possession of a comparable number of shark carcasses with fins removed shall be prima facie evidence of a violation of this chapter. The boat or vessel captain or operator is responsible for compliance with the provisions of this section.

/s/ William A Pruitt
Commissioner

VA.R. Doc. No. R97-435; Filed April 29, 1997, 3 p.m.

Title of Regulation: 4 VAC 20-560-10 et seq. Pertaining to the York River, Poquoson River, and Back River, and Newport News Shellfish Management Areas and the James River and York River Broodstock Management Areas (amending 4 VAC 20-560-20 and 4 VAC 20-560-50).

Statutory Authority: §§ 28.2-201 of the Code of Virginia.

Effective Date: May 1, 1997.

Marine Resources Commission

Preamble:

This regulation establishes the York, Poquoson, Back River, and Newport News Shellfish Management Areas, the Hampton Roads Shellfish Relay Area, and the James River, Back River Reef, Hampton Roads, and York River Broodstock Management Areas, with provisions to control the harvest of clams from those areas. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-503 of the Code of Virginia. The effective date of this regulation is May 1, 1997.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

CHAPTER 560.

PERTAINING TO THE YORK RIVER, POQUOSON RIVER, AND BACK RIVER, AND NEWPORT NEWS SHELLFISH MANAGEMENT AREAS AND THE JAMES RIVER AND YORK RIVER BROODSTOCK MANAGEMENT AREAS.

4 VAC 20-560-20. Shellfish Management Areas.

A. The York River Shellfish Management Area shall consist of all public grounds located inshore of a line beginning at the entrance to the Virginia Institute of Marine Science boat basin at Gloucester Point, running northwesterly to Buoy No. 30, thence northwesterly to Buoy No. 32, thence northwesterly to Buoy No. 34, then northwesterly to Pages Rock Buoy, thence northwesterly and ending at Clay Bank Wharf.

B. The Poquoson River Shellfish Management Area shall consist of all public grounds bounded by a line beginning at Hunts Point Survey Taylor and running northwesterly to Survey Station Spit, thence northeasterly to Survey Station Cabin North, thence east to Survey Station Cabin South, thence southeasterly following the general shoreline (not to include any creeks or canals) to the flag pole near Survey Station 80 at York Point, thence 175 degrees to Day Marker No. 14 and returning to Hunts Point Survey Taylor.

C. The Back River Shellfish Management Area shall consist of all current public clamming grounds bounded by a line from corner 3 on Shell Plant 115 through corner 17, a daymarker, on Shell Plant 115, 237.42 feet to a point being the point of beginning; thence southeasterly to corner number 1 Public Clamming Ground (PCG#12); thence southeasterly to corner number 3A Public Clamming Ground (PCG#12); thence northeasterly to corner number 3 Public Clamming Ground (PCG#12); thence northwesterly to corner number 2 Public Clamming Ground (PCG#12); thence southwesterly to the POB. Also, for a period of one year, throughout 1994, Shell Plant 115 will also be included in the Back River Shellfish Management Area.

~~D. The James River Broodstock Management Area shall begin at the southwest corner of Public Ground No. 1 Warwick County; thence along a bearing North 43-38-17 West 1,677.00 feet to corner 5 Public Ground No. 1 Warwick County; thence along a bearing North 50-05-07 East 280.30 feet to a corner; thence South 43-38-17 East 1,677.00 feet to a corner; thence South 50-5-07 West 260.30 feet to the~~

~~Southwest corner of Public Ground No. 1 Warwick County, being the point of beginning, containing 10.00 acres. The James River Broodstock Management Area is located inside Public Ground No. 1, Warwick County, south of the James River Bridge, further described as follows: Beginning at a corner number 611 (State Plane Coordinates North 249766.12 East 2596017.56); thence Grid Azimuth 308-39-51, 1074.35' to a corner number 613 (State Plane Coordinates North 250437.32 East 2595178.68); thence Grid Azimuth 28-15-00, 366.30' to a corner number 614 (State Plane Coordinates North 250759.99 East 2595352.06); thence Grid Azimuth 132-36-45, 1114.51' to a corner number 612 (State Plane Coordinates North 250005.43 East 2596172.28); thence Grid Azimuth 212-53-03, 284.97' to a corner number 611, being the point of beginning, containing 8.04 acres.~~

E. The York River Broodstock Management Area shall consist of the area under any portion of the George P. Coleman Memorial Bridge, in addition to the area within 300 feet of the eastern, or downstream, side of the George P. Coleman Memorial Bridge and the area within 300 feet of the western, or upstream, side of the George P. Coleman Memorial Bridge.

F. *The Newport News Shellfish Management Area shall consist of all current public clamming grounds bounded by a line beginning at the intersection of the James River Bridge and Public Ground No. 1, Warwick County, downstream side; thence east southeasterly along the boundary to corner #5, Public Ground No. 1, Warwick County; thence southeast along the boundary to a corner (249,066.55/2,595,681.74); thence northeast along the boundary to the intersection of a line between the James River Bridge and the northwest corner of Newport News Shipbuilding and Drydock Company shipyard near station "HELO," said line being perpendicular to the James River Bridge; thence southeast along the defined line to the northwest corner of the shipyard; thence downstream to the offshore end of the floating drydock; thence to the offshore end of shipyard pier #6 just south of "Stack"; thence to the offshore end of pier #2 (F R Priv); thence to FI Y "A" off the end of the pier just south of 23rd Street; thence to the offshore end of pier #9 (2 F Y siren); thence to the offshore end of the old coal pier downstream of pier #9; thence to navigational aid FI G "13"; thence to the northeast corner of the Fan Building on the south island of the Monitor Merrimac Bridge Tunnel; thence southerly along the downstream side of the Monitor Merrimac Bridge Tunnel to the first overhead light structure on the bridge tunnel north of the small boat channel hump; thence northerwesterly to corner #3, lease #10091 (Hazelwood); thence northwesterly along the boundary to corner #2, lease #10091 (Hazelwood); thence southwesterly to corner #1, Public Ground No. 2, Nansemond County; thence northwesterly along the boundary to corner #6, at the intersection of Public Ground No. 2, Nansemond County, and Public Ground No. 6, Isle of Wight County; thence north northwesterly along the boundary to corner #614, Public Ground No. 6, Isle of Wight County; thence north northwesterly along the boundary to corner #2, Public Ground No. 6, Isle of Wight County; thence northwesterly along the boundary to the intersection of the James River Bridge and Public Ground No. 6, Isle of Wight County; thence northeasterly along the downstream side of*

the James River Bridge to the intersection with Public Ground No. 1, Warwick County, at the point of beginning.

G. The Back River Reef Broodstock Management Area shall consist of the area within a 2000' radius of the center buoy, with a position of 37 08' 12" north, 76 13' 54" west.

H. The Hampton Roads Shellfish Relay Area shall consist of all condemned clamming grounds bounded by a line beginning at the upstream side of the large fishing pier on the southeast side of Old Point Comfort; thence upstream along the shoreline to Newport News Creek; thence to the southeast corner of the Monitor Merrimac Bridge Tunnel island along the downstream side, thence to F1 R "12"; thence to the northeast corner of the Fan Building on the southern island of the bridge tunnel; thence southerly along the downstream side of the bridge tunnel to the south line of Public Ground Number 1, Nansemond County; then easterly along the Public Ground to Craney Island Disposal Area; thence clockwise around the boundaries of the disposal area to its intersection with the shore; thence along the shore to the northeast corner of Craney Island; thence through navigational aid F1 G "21" to the point where it intersects a line drawn from the shoreward end of pier number 6 at Lamberts Point to the southeast corner of Tanner Point; thence along the shore to the point of intersection with the riprapped shoreline of the Hampton Roads Bridge-Tunnel island at Fort Wool; thence easterly around this island to its easternmost point; thence north northwesterly to the intersection of the shoreline and the upstream side of the large fishing pier on the east side of Old Point Comfort at the point of beginning.

I. The Hampton Roads Broodstock Management Area will consist of not less than 100 acres and shall be established within the Hampton Roads Shellfish Relay Area.

4 VAC 20-560-40. Patent tong season.

A. The lawful season for the harvest of clams by patent tong from the York, Poquoson and Back River Shellfish Management Areas shall be January 1 through March 31.

B. It shall be unlawful for any person to harvest clams by patent tong from either the York, Poquoson, or Back River Shellfish Management Area from April 1 through December 31.

C. Shell planting area 115 in Back River will be closed at the end of the 1994 season for evaluation by the VMRC Fisheries Management Division.

D. The lawful season for the harvest of clams by patent tong from the Newport News Shellfish Management Area shall be December 1 through May 31.

E. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from April 1 through November 30.

4 VAC 20-560-50. Time of day and harvest restrictions.

A. It shall be unlawful for any person to harvest clams by patent tong from either the York or Poquoson River Shellfish Management Area before sunrise or after 2 p.m.

B. It shall be unlawful for any person to harvest clams by patent tong from the Back River Shellfish Management Area before sunrise or after 4 p.m.

C. It shall be unlawful for any person to harvest clams by patent tong from either the York, Poquoson, Newport News or Back River Shellfish Management Area on Saturday or Sunday.

D. It shall be unlawful for any person to harvest any shellfish from the James River, Back River Reef, Hampton Roads, or York River Broodstock Management Area at any time.

E. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area before sunrise or after 2 p.m.

F. It shall be unlawful for any person to possess any amount of hard clams from the Newport News Shellfish Management Area or the Hampton Roads Shellfish Relay Area which consists of more than 2.0% by number of clams, which can be passed through a 1¼ inside diameter culling ring. The 2.0% allowance shall be measured by the marine patrol officer from each container or pile of clams.

4 VAC 20-560-60. Penalty.

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalties prescribed by law, any person violating 4 VAC 20-560-50 D shall immediately return all harvested shellfish to the Broodstock Management Area, shall cease harvesting on that day, shall be required to appear before the Marine Resources Commission pursuant to any violation, and all harvesting apparatus shall be subject to seizure.

C. The Marine Resources Commission may revoke the permit of any person convicted of a violation of this chapter.

D. All clams in any container or pile found in violation of 4 VAC 20-560-50 F shall be returned to the water by the clammer as directed by the marine patrol officer.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-438; Filed April 29, 1997, 3 p.m.

Title of Regulation: 4 VAC 20-890-10 et seq. Pertaining to Channeled Whelk (amending 4 VAC 20-890-20 and 4 VAC 20-890-30, and adding 4 VAC 20-890-35).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: May 1, 1997.

Marine Resources Commission

Preamble:

This regulation establishes limitations on the commercial harvest and possession of channeled whelks in order to conserve this resource and provide for continued recruitment of channeled whelk to the fishery. The limitations include a minimum possession size and landing limit and restrictions on the type of gear which can be used to harvest channeled whelk from Virginia waters. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. The effective date of this regulation is May 1, 1997.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-890-20. Definitions.

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

"*Channeled whelk*" means any whelk of the species *Busycotypus canaliculatus*.

"*Land*" or "*landing*" means to enter port with channeled whelk on board any boat or vessel, to begin offloading channeled whelk, or to offload channeled whelk.

"*Length*" means the total length of a channeled whelk, measured from the tip of the apex to the outer tip of the shell opening.

4 VAC 20-890-30. Minimum size limits.

A. It shall be unlawful for any person to possess channeled whelk less than five 5-½ inches in length.

~~B. It shall be unlawful for any person to land channeled whelk harvested outside of Virginia waters that are less than five inches in length.~~

4 VAC 20-890-35. Possession and landing limits.

A. The possession and landing limits for channeled whelk shall be 60 bushels per vessel; however, if the vessel is operated by a person permitted to harvest channeled whelk from Virginia waters, the possession and landing limit shall be equal to the number of persons on board the vessel who are permitted to harvest channeled whelk from Virginia waters multiplied by 60 bushels.

B. It shall be unlawful for any person to possess aboard any vessel or to land more than the possession and landing limit for channeled whelk specified in subsection A of this section. In the enforcement of this provision, the vessel operator or captain shall be responsible for the possession and landing limit.

Is/ William a. Pruitt
Commissioner

VA.R. Doc. No. R9-439; Filed April 29, 1997, 3:02 p.m.

Title of Regulation: 4 VAC 20-960-10 et seq. Pertaining to Tautog.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: May 1, 1997.

Preamble:

This regulation establishes minimum size limits and gear restrictions for tautog. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. The effective date of this regulation is May 1, 1997.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

CHAPTER 960. PERTAINING TO TAUTOG.

4 VAC 20-960-10. Purpose.

The purpose of this chapter is to (i) reduce fishing mortality in the tautog fishery to assure that overfishing does not occur and (ii) increase the spawning stock biomass.

4 VAC 20-960-20. Definitions.

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

"*Tautog*" means any fish of the species *Tautoga onitis*.

4 VAC 20-960-30. Minimum size limits.

A. The minimum size limit of tautog shall be 13 inches total length.

B. It shall be unlawful for any person to possess any tautog less than 13 inches total length.

C. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any tautog less than 13 inches total length.

D. Total length shall be measured in a straight line from tip of nose to tip of tail.

4 VAC 20-960-40. Gear restrictions.

It shall be unlawful for any person to place, set, or fish any fish pot in Virginia tidal waters for the purposes of harvesting tautog or to possess or to land in Virginia tautog harvested by fish pots which are not constructed with hinges and fasteners on one panel or door made of one of the following degradable materials:

1. Untreated hemp, jute, or cotton string of 3/16" (4.8 mm) or smaller diameter;
2. Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or
3. Ungalvanized or uncoated wire of 0.094" (2.39 mm) or smaller diameter.

4 VAC 20-960-50. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation for any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R97-437; Filed April 29, 1997, 3:02 p.m.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

STATE AIR POLLUTION CONTROL BOARD

Title of Regulations: 9 VAC 5-10-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Definitions.

Title of Regulations: 9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions.

Title of Regulations: 9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area.

Title of Regulations: 9 VAC 5-120-10 et seq. Regulation for the Control of Emissions from Fleet Vehicles.

Title of Regulations: 9 VAC 5-150-10 et seq. Regulation for Transportation Conformity.

Title of Regulations: 9 VAC 5-160-10 et seq. Regulation for General Conformity.

Title of Regulations: 9 VAC 5-170-10 et seq. Regulation for General Administration.

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: March 31, 1997

VA.R. Doc. No. R97-494; Filed May 7, 1997, 12:04 p.m.

BOARD OF PSYCHOLOGY

Title of Regulation: 18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.

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: February 14, 1997

VA.R. Doc. No. R97-511; Filed May 7, 1997, 12:10 p.m.

GENERAL NOTICES/ERRATA

Symbol Key

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

DEPARTMENT OF GAME AND INLAND FISHERIES

† Notice to the Public

Solicitation Of Public Comments On Proposed Regulations

The Board of Game and Inland Fisheries has proposed amendments to the trout fishing regulation (4 VAC 15-330-10 et seq.) and is soliciting public comment on the proposals. The board is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia) and Executive Order Number 13 (94) in promulgating wildlife management regulations, including the length of seasons, bag limits and methods of take set on the wildlife resources within the Commonwealth of Virginia. It is required by § 9-6.14:22 of the Code of Virginia to publish all proposed and final regulations.

Under Board of Game and Inland Fisheries procedures, regulatory amendments occur over two sequential meetings. At the May 5, 1997, meeting of the board, Department of Game and Inland Fisheries' staff presented recommendations for regulatory amendments, and the board solicited and heard comments from the public in a public hearing. The board then proposed the regulation amendments which are published in the "Proposed Regulations" section of this issue of the *Virginia Register*. The proposed regulations, or a summary, will also be advertised in newspapers. Adoption of any final amendment takes place at a subsequent board meeting to be held Thursday and Friday, July 17-18, 1997, in Richmond, the address will be announced in a later notice.

Under board procedures, the following opportunities for public involvement have been or will be provided:

- *First public hearing.* A public hearing was held, as described above, at the May 5, 1997, board meeting. This is the first of the two sequential board meetings, and the one at which the board proposed the regulation amendments.
- *Second public hearing.* A public hearing will be held at the July 17-18, 1997, board meeting. This is the second of the two board meetings, and the one at which the board adopts final regulations.
- *Supplemental public hearing.* The board has directed that an additional public hearing, or "public input meeting," be held between the first and the second board meetings. The meeting is scheduled for 7 p.m., Wednesday, May 28, 1997, at Dabney Lancaster Community College, Armory Building, Route 60 West, Dabney Lane, Clifton Forge, Virginia.
- *Public comment period.* A public comment period on the proposed regulation amendments opened at the time

the board proposed the amendments at its May 5 meeting, and will run until July 17, or the second board meeting. However, in order to be assured that comments submitted are included in the board's briefing materials, the comments need to be received by the department no later than July 10, 1997, or seven days prior to the second board meeting. In order to be taken into consideration, comments submitted: (i) must be in writing; (ii) must be accompanied by the name, address and telephone number of the party offering the comments; (iii) should state the regulatory action desired; and (iv) should state the justification for the desired action. Comments submitted during the public comment period should be mailed to Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230.

- *Ongoing public comment.* The department also receives and accepts comments on a continuous basis from members of the public, outside of the specified public comment period. The public comment period described above is an additional provision to facilitate public involvement in specific proposed regulations.

DEPARTMENT OF HEALTH

† Maternal and Child Health Block Grant Application Fiscal Year 1998

The Virginia Department of Health will transmit to the federal Secretary of Health and Human Services by July 15, 1997, the Maternal and Child Health Services Block Grant Application for the period October 1, 1997, through September 30, 1998, in order to be entitled to receive payments for the purpose of providing maternal and child health services on a statewide basis. These services include:

- Preventive and primary care services for pregnant women, mothers and infants up to age one
- Preventive and primary care services for children and adolescents
- Family-centered, community-based, coordinated care and the development of community-based systems of services for children with special health care needs

The Maternal and Child Health Services Block Grant Application makes assurance to the Secretary of Health and Human Services that the Virginia Department of Health will adhere to all the requirements of § 505, Title V-Maternal and Child Health Services Block Grant of the Social Security Act, as amended. To facilitate public comment, this notice is to announce a period from May 29 through June 28, 1997, for review and public comment on the block grant application. Copies of the document will be available as of May 29, 1997, in the office of the director of each county and city health

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department. Individual copies of the document may be obtained by contacting Janice M. Hicks, PH.D., at the following address. Written comments must be received by June 28, 1997, and addressed to Dr. Janice Hicks, Virginia Department of Health, Office of Family Health Services, 1500 East Main Street, Suite 104, Richmond, VA 23219, telephone (804) 371-0478 or FAX (804) 692-0184.

STATE BOARD OF HEALTH AND DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Legal Notice of Proposed Request for Certificate of Public Need Applications

Pursuant to the authority vested in the State Board of Health (board) and the Department of Medical Assistance Services (DMAS) by § 32.1-102.3:2 of the Code of Virginia, notice is hereby given of a public comment period on a proposed Request For Applications (RFA). This RFA is a request for certificate of public need (COPN) applications for projects which will result in an increase in the number of beds in which nursing home facility services are provided in the Commonwealth of Virginia. The RFA issuance process is outlined in the *Virginia Medical Care Facilities COPN Rules and Regulations* at 12 VAC 5-220-320.

Any person objecting to the contents of this proposed RFA may notify, by May 26, 1997, the board and the State Health Commissioner (commissioner) of his objection and the objection's regulatory basis. Objections to the proposed RFA will be accepted in the office of the Director, Center for Quality Health Care Services and Consumer Protection, 3600 West Broad Street, Room 216, Richmond, Virginia 23230, until 5 p.m. on May 27, 1997.

Eligible Planning Districts and the Total Nursing Home Facility Beds Available for Authorization

In the review cycles established by this RFA, the commissioner will consider requests for COPNs which propose increases in nursing home facility (NHF) beds in the following listed planning districts. COPN requests which propose increases in NHF beds in planning districts not found on the following list will not be accepted. Only COPN requests which propose a total number of NHF beds equal to or less than the total number of beds identified below as available for authorization in the applicable planning district will be accepted for review.

1. **Planning District 12** also known as the West Piedmont Planning District, consisting of the counties of Franklin, Henry, Patrick and Pittsylvania and the cities of Danville and Martinsville.

Total NHF Beds Available for Authorization: **240**

2. **Planning District 13** also known as the Southside Planning District, consisting of the counties of Brunswick, Halifax and Mecklenburg.

Total NHF Beds Available for Authorization: **240**

3. **Planning District 16** also known as the Radco Planning District, consisting of the counties of Caroline,

King George, Spotsylvania and Stafford and the city of Fredericksburg.

Total NHF Beds Available for Authorization: **120**

4. **Planning District 17** also known as the Northern Neck Planning District, consisting of Lancaster, Northumberland, Richmond, and Westmoreland counties.

Total NHF Beds Available for Authorization: **60**

5. **Planning District 18** also known as the Middle Peninsula Planning District, consisting of the counties of Essex, Gloucester, King and Queen, King William, Matthews, and Middlesex.

Total NHF Beds Available for Authorization: **30**

6. **Planning District 19** also known as the Crater Planning District, consisting of the counties of Dinwiddie, Greensville, Prince George, Surry, and Sussex and the cities of Colonial Heights, Emporia, Hopewell, and Petersburg.

Total NHF Beds Available for Authorization: **60**

7. **Planning District 22** also known as the Accomack-Northampton Planning District, consisting of Accomack and Northampton counties.

Total NHF Beds Available for Authorization: **30**

Basis for Selection of Eligible Planning Districts and Determination of Total NHF Beds Available for Authorization

The Nursing Home Services component of the *Virginia State Medical Facilities Plan* (12 VAC 5-360-10 et seq.) contains a NHF bed need forecasting method (12 VAC 5-360-40 C). This method has been employed by the Virginia Department of Health to compute a Year 2000 forecast of needed NHF beds in each of 22 planning districts. The following table displays, by planning district, these Year 2000 NHF bed need forecasts, the current licensed and authorized inventory of NHF beds, and the net bed need forecast for Year 2000.

Planning District	Year 2000 Bed Need Forecast	Existing and Authorized Beds	Net Bed Need - Year 2000
1	663	580	83
2	589	547	42
3	1,476	1,437	39
4	860	781	79
5	2,471	2,309	162
6	1,671	1,554	117
7	994	901	93

8	4,912	4,231	681
9	800	702	98
10	979	1,025	-46
11	1,519	1,313	206
12	1,962	1,691	271
13	796	611	185
14	749	635	114
15	4,333	3,917	416
16	791	611	180
17	448	402	46
18	584	544	40
19	1,087	1,015	72
20	5,051	5,607	444
21	2,122	1,889	233
22	422	389	33

Sources: Virginia State Medical Facilities Plan (12 VAC 5-360-10 et seq.)

Virginia Employment Commission (population projections, 1993 series)

1994 Virginia Nursing Home Patient Survey, A Report by Virginia's Regional Health Planning Agencies (for age-specific nursing home use rates)

Center for Quality Health Care Services and Consumer Protection, VDH (for bed inventory)

Consistent with the Virginia State Medical Facilities Plan (12 VAC 5-360-40 A), no planning district is considered to have a need for additional NHF beds unless the estimated average annual occupancy of all existing nonfederal Medicaid-certified NHF beds in the planning district was at least 95% for the most recent three years for which bed utilization has been reported to the Virginia Department of Health. (The inventory and utilization of the Virginia Veterans Care Center is excluded from consideration in the determination of NHF bed need. For purposes of this RFA, utilization data for reporting years 1994 to 1996 are considered to be the most recent three years.) Additionally, no planning district will be considered to have a need for additional nursing home beds if there are uncompleted NHF beds authorized for the planning district that will be Medicaid-certified beds. The following table displays the estimated average annual occupancy rate of Medicaid-certified NHF beds in Virginia's planning districts for the reporting years of 1994 through 1996 and identifies the status of these planning districts with respect to authorized but uncompleted NHF beds.

Planning District	Estimated Average Annual Occupancy - Medicaid NHF Beds, 1994-1996	Authorized but Uncompleted Medicaid NHF Beds (as of 2/28/97)
1	97.6%	YES
2	94.9%	NO
3	96.5%	YES
4	94.2%	YES
5	94.4%	NO
6	93.8%	NO
7	95.1%	YES
8	91.8%	NO
9	94.7%	NO
10	94.3%	NO
11	94.3%	NO
12	97.1%	NO
13	96.7%	NO
14	97.6%	YES
15	93.7%	YES
16	95.6%	NO
17	96.3%	NO
18	96.0%	NO
19	97.1%	NO
20	92.9%	NO
21	94.4%	NO
22	95.2%	NO

Source: Center for Health Statistics, Virginia Department of Health

Center for Quality Health Care Services and Consumer Protection, Virginia Department of Health

Methodological Note: The estimated average annual occupancy rate of Medicaid-certified nursing home beds in facilities with a combination of Medicaid-certified nursing home beds and beds not certified for Medicaid was assumed to be equivalent to the average annual occupancy rate for all beds in the facility unless the "ending census" of Medicaid patients reported by each facility on the last day of the annual reporting period, divided by the number of Medicaid-certified

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beds in the facility, yielded a higher occupancy rate, in which case, this higher occupancy rate estimate was assumed.

Finally, the Virginia State Medical Facilities Plan bed need forecasting method (12 VAC 5-360-40 C) rounds bed need projections in accordance with a schedule established in the regulation. Thus, only seven planning districts are identified by the standards of the Virginia State Medical Facilities Plan as having an "effective" forecasted need for nursing home beds by Year 2000 by virtue of: (i) having a positive formula-generated need projection; (ii) having an estimated average annual occupancy rate of Medicaid-certified beds over the last three years of 95% or higher; and (iii) having no outstanding authorized NHF beds which will be Medicaid-certified beds. The board and DMAS have chosen to include all of these qualifying planning districts in this RFA. They are profiled in the following table.

Planning District	Net Bed Need - Year 200	Average Annual Occupancy of Medicaid Beds 1994-1996	Approved but Uncompleted Beds (as of 2/28/97)	Rounded Bed Need Forecast
12	271	97.1%	0	240
13	185	96.7%	0	240
16	180	95.6%	0	120
17	46	96.3%	0	60
18	40	96.0%	0	30
19	72	97.1%	0	60
22	33	95.2%	0	30

Projection of Potential Fiscal Impact

The Department of Medical Assistance Services projects the potential for total additional Medicaid expenditures of approximately \$13,174,617 in the state fiscal year (SFY) ending June 30, 2000, if all the beds included in this proposed RFA are authorized and available for occupancy by June 30, 1999. This projection is based on the following key assumptions.

Average percentage of beds filled during SFY 2000:	85%
Assumed Medicaid proportion of bed days:	70%
Average estimated ceiling rate (direct and indirect):	\$73.22
Estimated patient pay portion:	\$18.95
Estimated capital per diem of new construction:	\$25.00
Estimated capital cost per day of converted beds:	\$10.00
Assumed mix of new construction/conversion:	90/10

Schedule for Review

COPN requests filed in response to this RFA shall be filed in accordance with the provisions of 12 VAC 5-220-355. The following review schedule will be applicable to COPN requests filed in response to this RFA. Both letters of intent and applications must be received by both the applicable regional health planning agency and the Division of COPN of the Virginia Department of Health by the indicated dates in order to qualify for consideration in the specified review cycle.

Planning District 12, Planning District 13, Planning District 16, and Planning District 17

- Letter of intent must be received by September 1, 1997.
- Application must be received by October 1, 1997.
- Review cycle will begin November 10, 1997.

Planning District 18 and Planning District 19

- Letter of intent must be received by October 1, 1997.
- Application must be received by October 31, 1997.
- Review cycle will begin December 10, 1997.

Planning District 22

- Letter of intent must be received by November 1, 1997.
- Application must be received by December 1, 1997.
- Review cycle will begin January 10, 1998.

MOTOR VEHICLE DEALER BOARD

Delegation of Authority

The following resolution was adopted at the March 18, 1997, Motor Vehicle Dealer Board meeting.

Resolution

Whereas, § 46.2-1508 of the Code of Virginia provides that it shall be unlawful to engage in business in the Commonwealth as a motor vehicle dealer or salesperson without first obtaining a license; and

Whereas, § 46.2-1507 of the Code of Virginia provides that the board may assess a civil penalty not to exceed \$1,000 for any single violation of Chapter 15 of Title 46.2 of the Code of Virginia; and

Whereas, § 46.2-1500 of the Code of Virginia provides, in pertinent part, that a motor vehicle dealer shall include a person who offers to sell, sells, displays, or permits the display for sale of five or more motor vehicles within any 12 consecutive months; and

Whereas, it has come to the board's attention that certain persons are selling motor vehicles in violation of the Code of Virginia; and

Whereas, prior to assessing a civil penalty under §§ 46.2-1507, 9-6.14:11 of the Code of Virginia requires that the board have informal fact finding; and

Whereas, pursuant to § 2.1-20.01:2 of the Code of Virginia tasks required to be performed by supervisory boards may be delegated; and

Whereas, it is the desire of the board that the authority to hold informal fact finding proceedings, and to make decisions resulting from these proceedings regarding the civil penalty to be assessed for violations of the Code of Virginia by persons selling vehicles without being properly licensed, be delegated to the executive director of the board.

Now, therefore, be it resolved, that the authority to hold informal fact finding proceedings, and to make decisions resulting from those proceedings regarding the civil penalty to be assessed for violations of the Code of Virginia by persons selling vehicles without being properly licensed, be delegated to the executive director of the board.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† Public Notice

The Virginia Board for Waste Management Facility Operators invites written comments from the public on its regulations entitled Waste Management Facility Operators Regulations, 18 VAC 155-20-10 et seq. (formerly VR 674-01-02), and Board for Waste Management Facility Operators Public Participation Guidelines, 18 VAC 155-10-10 et seq. (formerly VR 674-01-01), concerning the effectiveness and continued need for the regulations. The board will carefully consider comments received to determine if it is necessary to make revisions to the existing regulations.

Please direct your comments to David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, VA 23230. Copies of the regulations and further information may be obtained from Thomas Perry or Adrienne Mayo at (804) 367-8595. Comments must be received no later than June 30, 1997.

Holders of Waste Management Facility Operator Certifications which have been renewed once are reminded that they must complete 10 hours of CPE during the term of their expiring certification and send documentation of same to the above address in order to be eligible to renew their certification.

STATE WATER CONTROL BOARD

**Enforcement Action
Proposed Consent Special Orders
Callaway Elementary School
City of Clifton Forge
Ferrum Water & Sewerage Authority**

**Proposed Amendments to Consent Special Orders
Alleghany County
Seaboard Farms**

The State Water Control Board and the Department of Environmental Quality propose to issue Consent Special Orders for:

1. Callaway Elementary School, Franklin County Public Schools (VA0088561). The order provides a schedule for installation of chlorination and requires proper monitoring and reporting. Franklin County Public Schools have agreed to pay a civil charge of \$1,000, with \$500 suspended pending satisfactory completion of the work items under the order.

2. City of Clifton Forge Sewage Treatment Plant (VA0022772). The order requires correction of excessive inflow and infiltration, upgrade of sewers and pump stations, and evaluation and possible upgrade or expansion of the sewage treatment plant. The schedule is closely coordinated with that in the proposed consent order amendment for Alleghany County. Clifton Forge has agreed to pay a civil charge of \$50,000 with the charge suspended pending satisfactory completion of all work items under the order.

3. Ferrum Water & Sewerage Authority (FWSA), Ferrum Sewage Treatment Plant (VA0029254). The order requires correction of excessive inflow and infiltration, control of flows to the sewage treatment plant from the water treatment plant, upgrade to meet ammonia final effluent limits, and possibly expansion of the plant. FW&SA has agreed to pay a civil charge of \$15,000 with the charge suspended pending satisfactory completion of all work items under the amendment.

The State Water Control Board and the Department of Environmental Quality propose to amend Consent Special Orders for:

4. Alleghany County (no permit number). The amendment revises the county's schedule for correcting excessive inflow and infiltration and eliminating overflows from pump stations at Clifftondale Park and Selma. The new schedule is closely coordinated with that in the proposed Clifton Forge order. Alleghany County has agreed to pay a civil charge of \$50,000 with the charge suspended pending satisfactory completion of all work items under the amendment.

5. Seaboard Farms, ISE America, Inc. In settlement of violations of the 1996 consent order, this amendment revises the schedule for initiating land application of groundwater to remediate nitrate and ammonium

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contamination at the site on Bent Mountain in Roanoke County. It also requires submission of long-term site management and risk management plans. Seaboard Farms has agreed to pay a civil charge of \$10,000.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed action until June 11, 1997. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, N.W., Roanoke, VA 24019, or FAX 540-562-6725, and should refer to Callaway, Clifton Forge, Ferrum, Alleghany County, or Seaboard.

The proposed order may be examined at the Department of Environmental Quality, Office of Enforcement, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240-0009, or at the Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, N.W., Roanoke, VA 24019. Copies of the orders and amendments may be obtained in person or by mail from these offices.

**† Enforcement Action
Proposed Special Order
City Of Fairfax**

The State Water Control Board proposes to issue a Consent Special Order to the City of Fairfax (permittee) regarding the permittee's water treatment plant (WTP) located in Loudoun County, Virginia.

The WTP is subject to VPDES Permit No. VA0002666, a condition of which requires that the permittee develop and submit to the Department of Environmental Quality (DEQ) for approval an Operations and Maintenance (O&M) Manual which includes a solids handling and disposal plan. The order allows the WTP to operate under an approved interim plan until the permittee submits a final plan on or before July 31, 1996. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through June 30, 1997. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address, or call (703) 583-3886 in order to examine or to obtain a copy of the order.

**† Enforcement Action
Proposed Special Order
King George County Service Authority
Dalgren District Wastewater Treatment Plant**

The State Water Control Board proposes to issue a Consent Special Order to King George County Service Authority regarding the Dalgren District Wastewater Treatment Plant (Dalgren WWTP) located in King George County, Virginia.

The Dalgren WWTP is subject to VPDES Permit No. VA0026514. The order provides, among other things, that the owner submit plans and specifications for upgrading and

expanding the WWTP, a plan and schedule for upgrading or repairing the WWTP's collection system, and a sludge management plan. The owner has agreed to the issuance of the order and to payment of a civil charge.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through June 30, 1997. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to examine or to obtain a copy of the order.

**† Enforcement Action
Proposed Special Orders
Hale Refrigeration, Inc.
Car Wash Facility
Max Meadows Elementary School
Ft. Chiswell High School
Factory Merchants Mall
Tazewell County Public Sewage Authority
Falls Mills Sewage Treatment Plant**

The State Water Control Board proposes to take an enforcement action against the above listed facilities. Under the terms of the proposed Special Orders, the owner of these facilities have agreed to be bound by the terms and conditions of effluent limitations and monitoring and reporting requirements contained in individual appendices within the respective orders. The requirements contained in the orders bring the facilities into compliance with state law and will protect water quality.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive comments relating to the Special Orders until June 30, 1997. Comments should be addressed to Dallas Sizemore, Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, Virginia 24212 and should refer to the Consent Special Order by facility.

The proposed orders may be examined at the Department of Environmental Quality, 355 Deadmore Street, Abingdon, Virginia, at the same address.

Copies of the individual orders may be obtained in person or by mail from the above office.

**Enforcement Action
Proposed Consent Special Order
Norfolk & Western Railway Company**

The State Water Control Board proposes to take an enforcement action against Norfolk & Western Railway Company located at 2200 Redgate Avenue in Norfolk, VA. The enforcement action will be a Consent Special Order that will require the company to come into compliance with appropriate Virginia laws and regulations and pay a civil charge of \$16,000.

The Department of Environmental Quality will receive written comments relating to the board's proposed Consent Special Order until June 11, 1997. Comments should be addressed to David S. Gussman, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia 23462, and should refer to the Consent Special Order. The proposed order may be examined at the above address and copies of the order may be obtained in person or by mail.

PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS
- RR08

**† Enforcement Action
Proposed Special Order
Town Of Orange
Water Treatment Plant**

The State Water Control Board proposes to issue a Consent Special Order to the Town of Orange (owner) regarding its water treatment plant (WTP) located in Orange, Virginia.

The WTP is subject to VPDES Permit No. VA0053121. The order provides that the owner submit plans, specifications and a schedule for constructing a wastewater treatment unit at the WTP. The owner has agreed to the issuance of the order and to payment of a civil charge.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through June 30, 1997. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address, or call (703) 583-3886, in order to examine or to obtain a copy of the order.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: 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 may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page: <http://legis.state.va.us/codecomm/regindex.htm>

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02

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

BOARD FOR ACCOUNTANCY

June 5, 1997 - 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)

An open meeting to discuss privatization of accountancy and possible changes to the laws governing the practice of public accounting and any other matters requiring board action. All meetings are subject to cancellation. The meeting time is subject to change. Call the board at least 24 hours in advance of the meeting. 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 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

June 20, 1997 - 9 a.m. -- Open Meeting
July 11, 1997 - 9 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 three-member Regulatory Review Committee to further discuss regulatory review. This is a work session and no other business will be discussed at this meeting. All meetings are subject to cancellation. The meeting time is subject to change. Call the board at least 24 hours in advance of the meeting. No public comment will be held. 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

Virginia Horse Industry Board

† **June 10, 1997 - 10 a.m.** -- Open Meeting
Virginia Cooperative Extension--Charlottesville/Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia.♿

A meeting to continue to review grant proposals for the current fiscal year and discuss the status of proposed marketing plans and projects. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 786-5842 or FAX (804) 371-7786.

Virginia Marine Products Board

† **June 25, 1997 - 6 p.m.** -- Open Meeting
Nick's Steak and Spaghetti House, Route 17, Gloucester, Virginia.♿

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. 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 Shirley Estes at

least five days before the meeting date so that suitable arrangements can be made.

Contact: Shirley Estes, Executive Director, 554 Denbigh Boulevard, Suite B, Newport News, VA 23608, telephone (757) 874-3474 or FAX (757) 886-0671.

Virginia Small Grains Board

July 22, 1997 - 8 a.m. -- Open Meeting
Richmond Airport Hilton, 5501 Eubank Road, Sandston, Virginia.

A meeting to hear FY 1996-97 project reports and receive 1997-98 project proposals. The board will allocate funding for FY 1997-98 projects. Additionally, action will be taken on any other new business that comes 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 Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Small Grains Board, Washington Bldg., 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Sweet Potato Board

June 3, 1997 - 8 p.m. -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, Research Drive, Painter, Virginia.

A meeting to discuss (i) programs regarding promotion, research and education, (ii) the annual budget, and (iii) other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

STATE AIR POLLUTION CONTROL BOARD

June 11, 1997 - 9 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

June 27, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: (i) 9 VAC 5-10-10 et seq. Regulations for the Control and

Abatement of Air Pollution: General Definitions, (ii) 9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions, (iii) 9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area, (iv) 9 VAC 5-120-10 et seq. Regulations for the Control of Emissions from Fleet Vehicles, (v) 9 VAC 5-150-10 et seq. Regulation for Transportation Conformity, and (vi) 9 VAC 5-160-10 et seq. Regulation for General Conformity; and adopt regulations entitled: 9 VAC 5-170-10 et seq. Regulation for General Administration. The proposed regulation contains provisions covering general administration, specifically the applicability, establishment, and enforcement of regulations and orders; the administration of associated hearings and proceedings; the approval of local ordinances; the appeal of board decisions; the right of entry upon public and private property; the approval of items with conditions; the availability of procedural information and guidance; the approval of certain items requiring specific considerations; the availability of information to the public; the delegation of authority; and public participation in regulation development.

Because the provisions of the proposed regulation are intended to replace similar provisions in existing regulations, those similar provisions will be repealed. The affected provisions are as follows:

Regulations for the Control and Abatement of Air Pollution (9 VAC 5 Chapters 10 and 20)

9 VAC 5-10-20. Terms Defined. The following definitions:

Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, special order, variance, and Virginia Register Act.

Appendix E Public Participation Procedures

Appendix F Delegation of Authority

9 VAC 5-20-20. Establishment of regulations and orders.

9 VAC 5-20-30. Enforcement of regulations, permits and orders.

9 VAC 5-20-40. Hearings and proceedings.

9 VAC 5-20-50 A. Variances (general).

9 VAC 5-20-60. Local ordinances.

9 VAC 5-20-90. Appeals.

9 VAC 5-20-100. Right of entry.

9 VAC 5-20-110. Conditions on approvals.

9 VAC 5-20-120. Policy and procedural information and guidance.

Calendar of Events

9 VAC 5-20-130.	Delegation of authority.	9 VAC 5-150-60.	Enforcement of regulations and orders.
9 VAC 5-20-140.	Considerations for approval actions.	9 VAC 5-150-70.	Hearings and proceedings.
9 VAC 5-20-150.	Availability of information.	9 VAC 5-150-90.	Appeals.
Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5 Chapter 91)		9 VAC 5-150-100.	Availability of information.
9 VAC 5-91-20.	Terms Defined. The following definitions:	Regulation for General Conformity (9 VAC 5 Chapter 160)	
	Administrative Process Act, confidential information, public hearing, variance, and Virginia Register Act.	9 VAC 5-160-20.	Terms Defined. The following definitions:
9 VAC 5-91-40.	Establishment of regulations and orders.		Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.
9 VAC 5-91-60.	Hearings and proceedings.	9 VAC 5-160-50.	Establishment of regulations and orders.
9 VAC 5-91-80.	Variances.	9 VAC 5-160-60.	Enforcement of regulations and orders.
9 VAC 5-91-100.	Conditions on approvals.	9 VAC 5-160-70.	Hearings and proceedings.
9 VAC 5-91-110.	Procedural information and guidance.	9 VAC 5-160-90.	Appeals.
9 VAC 5-91-150.	Availability of information.	9 VAC 5-160-100.	Availability of information.
Regulation for the Control of Emissions from Fleet Vehicles (9 VAC 5 Chapter 120)		<u>Request for Comments:</u> 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.	
9 VAC 5-120-20.	Terms Defined. The following definitions:	<u>Localities Affected:</u> There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.	
	Administrative Process Act, confidential information, consent agreement, consent order, formal hearing, order, party, public hearing, variance, and Virginia Register Act.	<u>Location of Proposal:</u> The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches), and any other supporting documents may be examined by the public at the department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.	
9 VAC 5-120-40.	Hearings and proceedings.	Southwest Regional Office Department of Environmental Quality 355 Deadmore Street Abingdon, Virginia Ph: (540) 676-4800	
9 VAC 5-120-50.	Appeal of case decisions.	West Central Regional Office Department of Environmental Quality Executive Office Park, Suite D	
9 VAC 5-120-60.	Variances.		
9 VAC 5-120-90.	Procedural information and guidance.		
9 VAC 5-120-120.	Availability of information.		
Regulation for Transportation Conformity (9 VAC 5 Chapter 150)			
9 VAC 5-150-20.	Terms Defined. The following definitions:		
	Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.		
9 VAC 5-150-50.	Establishment of regulations and orders.		

5338 Peters Creek Road
Roanoke, Virginia
Ph: (540) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7705 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

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

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

Piedmont Regional Office
Department of Environmental Quality
4900-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Blvd.
Virginia Beach, VA 23462
Ph: (757) 518-2000

Northern Regional Office
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia 22193
Ph: (703) 583-3800

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

Public comments may be submitted until 4:30 p.m., Friday, June 27, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

ALCOHOLIC BEVERAGE CONTROL BOARD

May 29, 1997 - 9:30 a.m. -- Open Meeting
June 9, 1997 - 9:30 a.m. -- Open Meeting
June 23, 1997 - 9:30 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities from 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) 213-4409 or FAX (804) 213-4442.

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

† June 13, 1997 - 9:30 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 Landscape Architects

† June 5, 1997 - 1 p.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 ☎

Regulatory Review Task Force

† June 6, 1997 - 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 ☎

Calendar of Events

VIRGINIA BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION

† July 9, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 2, Richmond,
Virginia. ☎

A meeting to conduct routine business and review draft amendments prepared by board staff to the Virginia Asbestos Licensing Regulations and the Virginia Lead-Based Paint Activities Regulations. The board will also consider adopting the regulations as proposed regulations for publication and public comment. 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 board fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

DEPARTMENT OF AVIATION

† June 17, 1997 - 3 p.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A workshop for the board. No formal actions will be taken. Individuals with disabilities should contact Cindy Waddell 10 days prior to the meeting if assistance is needed.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, Sandston, VA 23250-2422, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

† June 18, 1997 - 9 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact Cindy Waddell 10 days prior to the meeting if assistance is needed.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, Sandston, VA 23250-2422, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

BOARD FOR BARBERS

June 2, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A general business meeting. 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 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) 367-8509, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

CHARITABLE GAMING COMMISSION

† June 3, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House
Room C, Richmond, Virginia. ☎

To review and act on proposed interim regulations.

Contact: Donna Pruden, Administrative Staff Assistant, Charitable Gaming Commission, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-0238 or FAX (804) 786-1079.

VIRGINIA STATE CHILD FATALITY REVIEW TEAM

May 28, 1997 - 10 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, 3rd Floor Conference
Room, Richmond, Virginia. ☎

A meeting to (i) discuss the status of ongoing studies; (ii) review data collection and analysis issues; and (iii) update the team on any administrative matters. The second part of this meeting will be closed for confidential case review.

Contact: Suzanne J. Keller, Coordinator, Virginia State Child Fatality Review Team, 9 N. 14th St., Richmond, VA 23219, telephone (804) 786-1048, FAX (804) 371-8595, or toll-free 1-800-447-1706.

COMMONWEALTH COMPETITION COUNCIL

† May 29, 1997 - 7 p.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate
Room A, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss privatization opportunities for 1998-2000.

Contact: Peggy Robertson, 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.

DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

June 5, 1997 - Noon -- Open Meeting
City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, 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

Virginia State Parks Foundation

May 29, 1997 - 10 a.m. -- Open Meeting
June 5, 1997 - 10 a.m. -- Open Meeting
Department of Conservation and Recreation, 203 Governor Street, Suite 200, Richmond, Virginia.

A regular business meeting of the foundation's Board of Directors.

Contact: Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or FAX (804) 786-6141.

BOARD FOR CONTRACTORS

Disciplinary Committee

† June 3, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to receive 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: Michelle N. Couch, Legal Assistant, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

Recovery Fund Committee

June 18, 1997 - 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.

BOARD OF CORRECTIONAL EDUCATION

† June 20, 1997 - 10 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Department of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

CRIMINAL JUSTICE SERVICES BOARD

† July 8, 1997 - 10 a.m. -- Public Hearing
The Library of Virginia, 800 East Broad Street, Richmond, Virginia.

† July 25, 1997 -- 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 Criminal Justice Services Board intends to amend regulations entitled: **6 VAC 20-160-10 et seq. Rules Relating to the Court-Appointed Special Advocate Program.** The purpose of the proposed action is to amend the current regulations related to the court-appointed special advocate programs to ensure that they are in support of and consistent with the mission and growth of the program in Virginia.

Statutory Authority: §§ 9-173.6 and 9-173.8 of the Code of Virginia.

Contact: Fran Ecker, Section Chief, Juvenile Services Unit, Criminal Justice Services Board, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-3967 or FAX (804) 371-8981.

Calendar of Events

BOARD OF DENTISTRY

† June 13, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia.☎ (Interpreter for the deaf
provided upon request)

A formal panel of the board will convene to conduct a formal hearing. The informal conference committee will meet at 11 a.m. to hear disciplinary cases. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

† June 20, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia.☎ (Interpreter for the deaf
provided upon request)

A meeting of the informal conference committee to hear disciplinary cases. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

Advertising Committee

† June 27, 1997 - 8 a.m. -- Open Meeting
Holiday Inn Dulles, 1000 Sully Road, Sterling, Virginia.☎
(Interpreter for the deaf provided upon request)

A meeting to discuss disciplinary cases on advertising. The informal conference committee will hear disciplinary cases beginning at 1 p.m. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER COUNTY

May 28, 1997 - 6:30 p.m. -- Open Meeting
Gloucester County Administration Building, Conference
Room, Gloucester, Virginia.☎ (Interpreter for the deaf
provided upon request)

A meeting to discuss the annual exercise, receive a briefing on the updated County Emergency Operations Plan, and receive a status report on the Public Information campaign.

Contact: Tracy A. Proctor, Executive Lieutenant, P.O. Box 597, Gloucester, VA 23061, telephone (804) 693-1411 or (804) 693-3890/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - GOOCHLAND COUNTY

† May 27, 1997 - 7 p.m. -- Open Meeting
Courthouse Complex, 2938 River Road West, General
District Courtroom, Goochland, Virginia.☎ (Interpreter for the
deaf provided upon request)

A semi-annual meeting.

Contact: Gregory K. Wolfrey, Emergency Coordinator, P.O. Box 10, Goochland, VA 23063, telephone (804) 556-5301 or (804) 556-5317/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† June 4, 1997 - 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

Work Group on Ammonia, Mercury, Lead and Copper with Respect to Water Quality Standards

June 19, 1997 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
Conference Room 505, 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 July 17, August 21, September 18, and October 16, 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.

Small Business Environmental Compliance Advisory Board

† June 9, 1997 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
Richmond, Virginia.

A regular meeting.

Contact: Richard Rasmussen, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 629-4394.

STATE EXECUTIVE COUNCIL

May 30, 1997 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower
Level, Room 2, Richmond, Virginia.

The council is established under § 2.1-746 of the Code
of Virginia. The monthly meeting is to discuss and make
decisions; set policies; and review and act appropriately
on Comprehensive Services Act related issues as they
pertain to at-risk youth and their families. The council
provides interagency programmatic and fiscal policies,
oversees the administration of funds appropriated under
the Comprehensive Service Act, and advises the
Governor.

Contact: Alan G. Saunders, Director, State Executive
Council, 730 E. Broad St., 5th Floor, Richmond, VA 23219,
telephone (804) 786-5394.

FIRE SERVICES BOARD

† June 20, 1997 - 9 a.m. -- Open Meeting
South Boston Fire Company, 1503 Seymore Drive, Activity
Building, South Boston, Virginia.

A business meeting to discuss fire training and policies.
The meeting is open to the public for comments and
input.

Contact: Michael Cline, Acting Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

Fire/EMS Education and Training Committee

† June 19, 1997 - 10:30 a.m. -- Open Meeting
Council Chambers, 502 Yancy Street, South Boston, Virginia.

A meeting to discuss fire training and policies. The
meeting is open to the public for comments and input.

Contact: Michael Cline, Acting Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

Fire Prevention and Control Committee

† June 19, 1997 - 8:30 a.m. -- Open Meeting
Council Chambers, 502 Yancy Street, South Boston, Virginia.

A meeting to discuss fire training and policies. The
meeting is open to the public for comments and input.

Contact: Michael Cline, Acting Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

Legislative/Liaison Committee

† June 19, 1997 - 2 p.m. -- Open Meeting
Council Chambers, 502 Yancy Street, South Boston, Virginia.

A meeting to discuss fire training and policies. The
meeting is open to the public for comments and input.

Contact: Michael Cline, Acting Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

Sprinkler Committee

† June 18, 1997 - 2 p.m. -- Open Meeting
Council Chambers, 502 Yancy Street, South Boston, Virginia.

A meeting to discuss residential sprinklers. The meeting
is open to the public for comments and input.

Contact: Michael Cline, Acting Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

May 28, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia. ☎

An informal conference hearing. No public comment will
be received.

Contact: Elizabeth Young Tisdale, 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 ☎

June 12, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia. ☎

A general board meeting. Public comments will be
received at the beginning of the meeting for 15 minutes.

Contact: Elizabeth Young Tisdale, Executive Director, Board
of Funeral Directors and Embalmers, 6606 W. Broad St., 4th

Calendar of Events

Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

† **June 13, 1997 - 11 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

A meeting of the Regulatory and By-laws Committees. Public comments will be received at the beginning of the meeting for 15 minutes.

Contact: Elizabeth Young Tisdale, 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)

† **May 28, 1997 - 7 p.m.** -- Open Meeting
Dabney Lancaster Community College, Dabney Lane, Clifton Forge, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to receive the public's comments regarding proposed changes to the trout fishing regulation as it pertains to the Jackson River in Alleghany County. The proposals to be addressed at the meeting are regulation amendment to 4 VAC 15-330-150 and 4 VAC 15-330-170 which the Board of Game and Inland Fisheries proposed at its May 5, 1997, meeting. The proposed amendments would remove the portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County from the list of trout streams on which catch and release, artificial lures only trout fishing is allowed; and the amendments would make it unlawful to creel or possess trout on this portion of the Jackson River.

The public input meeting is being held prior to the next scheduled board meeting, that of July 17-18, 1997, at which the board may adopt final amendments to the trout fishing regulation. The public input meeting is a supplemental public hearing to the hearings which will be held at the July 17-18 board meeting. Comments regarding the proposed regulations which are received at the public input meeting will be summarized and reported to the board for their consideration at the July 17-18 board meeting, prior to their taking final action on the proposed regulations.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 West Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

Finance Committee

† **June 5, 1997 - 9 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss the agency's planned operating budget for fiscal year 1997-1998. The committee may take any actions deemed appropriate. Other additional items, including general and administrative matters, may be discussed.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 West Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

BOARD FOR GEOLOGY

May 29, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

DEPARTMENT OF HEALTH (STATE BOARD OF)

June 18, 1997 - 7 p.m. -- Public Hearing
Vinton War Memorial Building, 814 East Washington Avenue, Vinton, Virginia.

June 19, 1997 - 7 p.m. -- Public Hearing
James City County Administration Building, Board of Supervisors, Meeting Room, Kings Mill Offices, Mounts Bay Road, Williamsburg, Virginia.

June 20, 1997 - 7 p.m. -- Public Hearing
Spotsylvania County, Board of Supervisors, Meeting Room, 9105 Courthouse Road, Spotsylvania, Virginia.

July 14, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-585-10 et seq. Biosolids Use Regulations.** The proposed amendments have been recommended by the Regulations Advisory Committee in response to the public comments received on certain provisions of the regulations subjected to an additional comment period (published in the Virginia Register on July 10, 1995). These amendments address three trace element concentration values and the requirements for reporting on distribution or marketing of exceptional quality biosolids. Additional amendments are being proposed that address nutrient management, land application rates, monitoring frequency, submission of reports, Class

Ill treatment standards, and certain technical clarifications.

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

Contact: C. M. Sawyer, Division Director, Department of Health, Office of Water Programs, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567 or (804) 371-2891, or e-mail csawyer@vdh.state.va.us

DEPARTMENT OF HEALTH PROFESSIONS

Ad Hoc Committee on Criteria

June 2, 1997 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review the material gathered to date pursuant to § 54.1-2409.2 of the Code of Virginia and to formulate recommendations regarding criteria for the regulation of health care providers. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943 or (804) 662-7197/TDD

Advisory Board on Rehabilitation Providers

May 27, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss recommendations for emergency regulations to implement changes in statutes pertaining to the certification of rehabilitation providers. Public comment will be received at the beginning of the meeting.

Contact: Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TDD

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

June 9, 1997 - 1 p.m. -- Open Meeting
State Council of Higher Education, James Monroe Building, 101 North 14th Street, Council Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. The council's committees will meet in the morning. For more information and specific committee meeting times, contact the council.

Contact: Michael McDowell, Director of Public Information, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2637 or FAX (804) 786-0572.

VIRGINIA HIV PREVENTION COMMUNITY PLANNING COMMITTEE

June 13, 1997 - 8:30 a.m. -- Open Meeting
June 14, 1997 - 8:30 a.m. -- Open Meeting
Holiday Inn Crossroads, 2000 Staples Mill Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to continue HIV prevention planning for Virginia.

Contact: Elaine G. Martin, Coordinator, STD/AIDS Education, Bureau of STD/AIDS, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 786-0877 or toll-free 1-800-533-4148.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

June 3, 1997 - 9 a.m. -- Open Meeting
† **July 1, 1997 - 9 a.m.** -- Open Meeting
† **August 5, 1997 - 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.

† **August 5, 1997 - 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 INTERAGENCY COORDINATING COUNCIL

† **June 11, 1997 - 9 a.m.** -- Open Meeting
Henrico Area Mental Health/Mental Retardation Services, 10299 Woodman Road, Glen Allen, VA 23060. (Interpreter for the deaf provided upon request)

The Virginia Interagency Coordinating Council meets quarterly to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part H (of IDEA), early intervention for infants and toddlers with disabilities and

Calendar of Events

their families. Discussion focuses on issues related to Virginia's implementation of the Part H program.

Contact: Nicole Corey, Part H Office Services Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention 10th floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710 or FAX (804) 371-7959.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

† **June 30, 1997 - 1 p.m.** -- Open Meeting
The Library of Virginia, Conference Room A, First Floor, 800 East Broad Street, Richmond, Virginia. ♿

A regular meeting to discuss such matters as may be presented.

Contact: Adele MacLean, Secretary, Advisory Commission on Intergovernmental Relations, 805 E. Broad St., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999, or (804) 786-6508/TDD ♿

STATE BOARD OF JUVENILE JUSTICE

June 11, 1997 - 10 a.m. -- Public Hearing
Department of Juvenile Justice, 700 East Franklin Street, Board Room, Richmond, Virginia.

June 13, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Juvenile Justice intends to **repeal** regulations entitled: **6 VAC 35-40-10 et seq. Pre-Dispositional and Post-Dispositional Group Home Standards; 6 VAC 35-70-10 et seq. Standards for Juvenile Correctional Centers; 6 VAC 35-90-10 et seq. Standards for Post-Dispositional Confinement for Secure Detention and Court Service Units; 6 VAC 35-100-10 et seq. Standards for Secure Detention; and 6 VAC 35-120-10 et seq. Standards for Family Group Homes; and adopt** regulations entitled: **6 VAC 35-140-10 et seq. Standards for Juvenile Residential Facilities.** The proposed regulation revises and replaces existing regulations governing secure detention homes, post-dispositional confinement in secure detention, pre-dispositional and post-dispositional group home, family group homes and juvenile correctional centers. Additional new standards in the proposed regulation address juvenile boot camps, work camps, independent living programs and juvenile industries projects.

Statutory Authority: §§ 16.1-309.9 and 66-10 of the Code of Virginia.

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

June 13, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Juvenile Justice intends to amend regulations entitled: **6 VAC 35-60-10 et seq. Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs.** The proposed amendments will simplify and streamline operating requirements for Virginia's offices on youth, reducing mandates to encourage local autonomy and flexibility, and defining a closer working relationship between offices on youth and court service units.

Statutory Authority: §§ 66-10, 66-27 and 66.28 of the Code of Virginia.

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

June 11, 1997 - 10 a.m. -- Public Hearing
Department of Juvenile Justice, 700 East Franklin Street, Board Room, Richmond, Virginia.

June 13, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Juvenile Justice intends to **repeal** regulations entitled: **6 VAC 35-80-10 et seq. Holdover Standards; 6 VAC 35-110-10 et seq. Standards for Court Services in Juvenile and Domestic Relations Courts; and 6 VAC 35-130-10 et seq. Standards for Outreach Detention; and adopt** regulations entitled: **6 VAC 35-150-10 et seq. Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts.** The proposed regulation replaces existing standards for court service units, standards for outreach detention, and holdover standards. In addition, this regulation and the proposed Consolidated Standards for Juvenile Residential Facilities will replace standards for post-dispositional confinement for secure detention and court service units.

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

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

June 11, 1997 - 9 a.m. -- Open Meeting
700 Centre Building, 700 East Franklin Street, 4th Floor, Richmond, Virginia. ♿

Board committees meet at 9 a.m. to hear reports on secure and nonsecure programs. The full board meets at 10 a.m. to approve certifications of residential programs and nonresidential services, receive public comments on proposed regulations, and take up such other matters as are brought before it.

Contact: Donald R. Carignan, Policy Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

DEPARTMENT OF LABOR AND INDUSTRY

Migrant and Seasonal Farmworkers Board

June 11, 1997 - 10 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board.

Contact: Patti C. Bell, Board Administrator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 371-8418, or (804) 786-2376/TDD

LIBRARY BOARD

June 16, 1997 - Time to be announced -- Open Meeting
June 17, 1997 - Time to be announced -- Open Meeting
Location to be announced.

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, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Archival and Information Services Committee

June 16, 1997 - Time to be announced -- Open Meeting
June 17, 1997 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss archival and information services at The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Automation and Networking Committee

June 16, 1997 - Time to be announced -- Open Meeting
June 17, 1997 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss automation and networking matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Executive Committee

June 16, 1997 - Time to be announced -- Open Meeting
June 17, 1997 - Time to be announced -- Open Meeting
Location to be announced.

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, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Facilities Committee

June 16, 1997 - Time to be announced -- Open Meeting
June 17, 1997 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss matters pertaining to the new Library of Virginia building, the status of the records center, and the former Library of Virginia facility.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Legislative and Finance Committee

June 16, 1997 - Time to be announced -- Open Meeting
June 17, 1997 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to discuss legislative and financial matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Nominating Committee

June 16, 1997 - Time to be announced -- Open Meeting
June 17, 1997 - Time to be announced -- Open Meeting
Location to be announced.

A meeting to finalize nominations for consideration for the slate of officers for The Library of Virginia Board.

Contact: Jean H. Taylor, Secretary to the State Librarian, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Publications and Education Committee

June 16, 1997 - Time to be announced -- Open Meeting
June 17, 1997 - Time to be announced -- Open Meeting
Location to be announced.

Calendar of Events

A meeting to discuss matters related to the Publications and Educational Services Division and The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Public Library Development Committee

June 16, 1997 - Time to be announced -- Open Meeting

June 17, 1997 - Time to be announced -- Open Meeting

Location to be announced.

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, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

Records Management Committee

June 16, 1997 - Time to be announced -- Open Meeting

June 17, 1997 - Time to be announced -- Open Meeting

Location to be announced.

A meeting to discuss matters pertaining to records management.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

LITTER CONTROL AND RECYCLING FUND ADVISORY BOARD

May 29, 1997 - 10 a.m. -- Open Meeting

Strawberry Hill, 600 East Laburnum Avenue, Administration Building, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A work session of the board to review and make recommendations on the competitive applications for litter prevention and recycling educational programs. For details, call Mike Murphy.

Contact: Michael P. Murphy, Director, Intergovernmental Affairs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4003, FAX (804) 698-4319, or (804) 698-4021/TDD

COMMISSION ON LOCAL GOVERNMENT

June 2, 1997 - 10:30 a.m. -- Open Meeting

Pearisburg Town Hall, 112 Tazewell Street, Pearisburg, Virginia.

Oral presentations regarding the Town of Pearisburg - Giles County amended Voluntary Settlement Agreement. Persons desiring to participate in the meeting and

requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD

NOTE: CHANGE IN MEETING LOCATION

June 2, 1997 - 7 p.m. -- Public Hearing

Pearisburg Community Center, 1404 Wenonah Avenue, Pearisburg, Virginia. (Interpreter for the deaf provided upon request)

A public hearing regarding the Town of Pearisburg - Giles County amended Voluntary Settlement Agreement. Persons desiring to participate in the proceedings 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

† **June 3, 1997 - 9 a.m. -- Public Hearing**

Blacksburg Town Council Chambers, 300 East Main Street, Blacksburg, Virginia. (Interpreter for the deaf provided upon request)

A public hearing regarding the commission's study examining the problems confronted by local governments resulting from abandoned or neglected private cemeteries. The commission is conducting this study pursuant to Senate Joint Resolution 319. Persons desiring to participate in the proceedings 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

MARINE RESOURCES COMMISSION

May 27, 1997 - 9:30 a.m. -- Open Meeting

June 24, 1997 - 9:30 a.m. -- Open Meeting

Marine Resources Commission, 2600 Washington Avenue, Newport News, Virginia. (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on

resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TDD

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REPROPOSED

May 28, 1997-- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120-70 et seq. Part II: Home and Community Based Services for Technology Assisted Individuals.** The purpose of this revised proposal is to amend the Technology Assisted Waiver Program to update the definition of those eligible to receive services and to conform the financial eligibility criteria to correspond to the current HCFA interpretation. Also, this revised package addresses comments made to the prior proposed regulation as well as addressing problems identified since the initial comment period.

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

Public comments may be submitted until May 28, 1997, to Regina Anderson-Cloud, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 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.

May 30, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates for Inpatient Hospital Care, and 12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care,** relating to specialized care services payment methodology. The purpose of this proposal is to implement the reimbursement changes recommended in the study of specialized care services as directed by the 1996 General Assembly. The

remainder of the recommendations of the study will be implemented through a separate regulatory package. The purpose of the proposed changes in cost report filing requirements is to conform the Department of Medical Assistance Services' filing time frames to those recently instituted by the Health Care Financing Administration for Medicare cost reports. Some additional technical changes are being made to correct the names of specific divisions within the department.

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 322(D)(2) of Chapter 912 of the 1996 Acts of Assembly.

Public comments may be submitted until May 30, 1997, to Scott Crawford, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 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) 371-8854 or FAX (804) 371-4981.

June 17, 1997 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting of the board to discuss medical assistance services policy 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 or FAX (804) 371-4981.

HJR 630 Study Task Force

† June 19, 1997 - 9:30 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia.

A meeting to initiate the 1997 House Joint Resolution 630 study on the practice of therapeutic interchange of dissimilar drug products. Business conducted will concern the group's organizational structure and time lines.

Contact: David B. Shepherd, R.Ph., Pharmacy Supervisor, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2773 or FAX (804) 786-0414.

Pharmacy Liaison Committee

† June 9, 1997 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to discuss Medicaid pharmacy issues.

Contact: David B. Shepherd, R.Ph., Pharmacy Supervisor, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2773.

Calendar of Events

BOARD OF MEDICINE

† June 5, 1997 - 8 a.m. -- Open Meeting

† June 6, 1997 - 8 a.m. -- Open Meeting

† June 7, 1996 - 8 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 1-4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will meet on June 5, 1997, to conduct general board business, receive committee and board reports, and discuss any other items which may come before it. The board will review reports, interview licensees, conduct administrative proceedings, and make decisions on disciplinary matters. The board will review any regulations that may come before it. The board will entertain public comments 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

Credentials Committee

† June 7, 1997 - 8 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 3 and 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The committee will meet in open and closed session to conduct general business, interview applicants and review medical credentials of applicants applying for licensure in Virginia, and discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Warren W. Koontz, M.D., Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

Informal Conference Committee

June 27, 1997 - 9:30 a.m. -- Open Meeting

Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, 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

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Facility Work Group

May 28, 1997 - 10 a.m. -- Open Meeting

Western State Hospital, Jeffreys Building, Staunton, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss the facility models presented at the April 22, 1997, meeting; review the consensus points, and work to develop a consensus orientation. David Goodrick, Ph.D. is scheduled to attend the meeting to offer consultation to participants.

Contact: Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23236, telephone (804) 786-6431 or FAX (804) 371-0092.

June 19, 1997 - 10 a.m. -- Open Meeting

Henrico Community Services, 10299 Woodman Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A tentatively scheduled meeting to discuss the final report to the HJR 240 Legislative Subcommittee.

Contact: Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23236, telephone (804) 786-6431 or FAX (804) 371-0092.

State Human Rights Committee

† June 13, 1997 - 9 a.m. -- Open Meeting

Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Building, 109 Governor Street, Richmond, Virginia.

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

Contact: Kli Kinzie, State Human Rights Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988, FAX (804) 371-2308, toll-free 1-800-451-5544 or (804) 371-8977/TDD

Priority Populations/Case Rate Funding Subcommittee of the Pilot Leadership Team

† June 12, 1997 - 10 a.m. -- Open Meeting

Location to be announced.

A meeting to discuss the recommendations of the Pilot Leadership Team and the presentation by Chip Carbone of the Mercer Corporation as the recommendations relate to funding the future system of care and the identification of priority populations. Checklists will be

reviewed and plans will be made to field test these instruments.

Contact: Marion Greenfield, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23236, telephone (804) 786-6431.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **May 29, 1997 - Time to be announced** -- Open Meeting
 † **May 30, 1997 - Time to be announced** -- Open Meeting
 DeJarnette Center, Staunton, Virginia. (Interpreter for the deaf provided upon request)

The regular convening of the board to continue work on HJR 240 and other items.

Contact: Marlene Butler, State Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-7945 or FAX (804) 371-2308.

Human Rights Study Group

† **May 28, 1997 - 10 a.m.** -- Open Meeting
 The Hyatt Richmond, 6624 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The initial meeting of the Human Rights Study Group to review policies and procedures of the Department of Mental Health, Mental Retardation and Substance Abuse Services as they relate to human rights and the Human Rights Program.

Contact: Marlene Butler, State Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-7945 or FAX (804) 371-2308.

VIRGINIA MUSEUM OF FINE ARTS

Executive Committee

June 19, 1997 - Noon -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia.

A meeting to ratify the 1997-1998 budget recommended by the Finance Committee. 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.

Finance Committee

June 19, 1997 - 11 a.m. -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia.

A meeting to consider and approve the 1997-1998 budget. 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

June 3, 1997 - 8 a.m. -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia.

A briefing of the president and vice president of the Board of Trustees by the director and deputy director. 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 NURSING

June 13, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to adopt regulations entitled: **18 VAC 90-50-10 et seq. Regulations Governing the Certification of Massage Therapists.** The proposed regulations establish an application process and requirements for certification in accordance with provisions of § 54.1-3029 of the Code of Virginia, fees for administration of the regulatory program, a schedule of renewal and reinstatement, and standards of conduct, which will protect the health, welfare and safety of the citizens of the Commonwealth.

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

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or FAX (804) 662-9943.

Special Conference Committee

† **June 3, 1997 - 9 a.m.** -- Open Meeting
 † **June 4, 1997 - 9 a.m.** -- Open Meeting
 † **June 9, 1997 - 9 a.m.** -- Open Meeting
 † **June 10, 1997 - 9 a.m.** -- Open Meeting
 Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Calendar of Events

A Special Conference Committee will conduct informal conferences with licensees or certificate holders or both. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

Legislative/Regulatory Committee

June 17, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A meeting to discuss proposed changes to regulations. No public comment will be received.

Contact: Senita Booker, Program Support Technician Senior, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD FOR OPTICIANS

June 7, 1997 - 9 a.m. -- Open Meeting
Piedmont Virginia Community College, 501 College Drive, Room 251, Charlottesville, Virginia. ☎

A meeting of the Ad Hoc Committee to discuss a legislative proposal to be presented to the board for the 1998 General Assembly Session. 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 ☎

VIRGINIA OUTDOORS FOUNDATION

Board of Trustees

† June 3, 1997 - 10 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees to discuss business and acceptance of conservation easements. Trustees will consider revision of guidelines for

acceptance of easements. Public input will be accepted during discussion of Open Space Lands Preservation Trust Fund.

Contact: Tamara A. Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Room 420, Richmond, VA 23219, telephone (804) 225-2147 or FAX (804) 371-4810.

BOARD OF PHARMACY

May 29 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. Public comment will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911 or FAX (804) 662-9313.

† June 10, 1997 - 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 general business meeting and formal hearing. Public comment will be received at the beginning of the meeting. Public comment on any regulatory process for which the official public comment period has closed will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911 or FAX (804) 662-9313.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

† July 10, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Board Room 3, Richmond, Virginia. ☎

A meeting to conduct informal conferences pursuant to § 9-6.14:11 of the Code of Virginia. Public comment will not be heard.

Contact: Arnice Covington, Staff Administrative Assistant, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-7328 or FAX (804) 662-9943.

POLYGRAPH EXAMINERS ADVISORY BOARD

June 17, 1997 - 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 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 FOR PROFESSIONAL SOIL SCIENTISTS

† **May 29, 1997 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A regularly scheduled meeting of the board to address policy and procedural issues and other business matters which may require board action. The meeting is open to the public; however, a portion of the meeting may be discussed in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Gerald W. Morgan, Senior Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785 or (804) 367-9753/TDD ☎

BOARD OF PSYCHOLOGY

† **June 9, 1997 - 3 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 1, Richmond, Virginia. ☎

† **June 19, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 3, Richmond, Virginia. ☎

A meeting to conduct informal conferences pursuant to § 9-6.14:11 of the Code of Virginia. Public comment will not be heard.

Contact: Arnice Covington, Staff Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-7328 or FAX (804) 662-9943.

June 10, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting to conduct general board business. Public comment will be received.

Contact: LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

Regulatory/Legislative Committee

June 10, 1997 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting to discuss Executive Order 15(94) recommendations for amendments to the Regulations Governing the Practice of Psychology. Public comment will be received at the beginning of the meeting.

Contact: Janet Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

† **June 12, 1997 - 10 a.m.** -- Open Meeting
Department of Information Technology, Richmond Plaza Building, 110 South 7th Street, 1st Floor East, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to include review and approval of Budget Committee recommendations and other business to conclude the board's operation by June 30, 1997.

Contact: Suzanne J. Piland, Manager, Public Telecommunications Board, Department of Information Technology, 110 S. 7th St., 1st Floor, Richmond, VA 23219, telephone (804) 371-5544 or FAX (804) 371-5556.

Budget Committee

† **May 30, 1997 - 10 a.m.** -- Open Meeting
Department of Information Technology, Richmond Plaza Building, 110 South 7th Street, 1st Floor East, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review public broadcasting plans and educational strategic plans in preparation for the biennial budget for 1998-2000.

Contact: Suzanne J. Piland, Manager, Public Telecommunications Board, Department of Information Technology, 110 S. 7th St., 1st Floor, Richmond, VA 23219, telephone (804) 371-5544 or FAX (804) 371-5556.

VIRGINIA RACING COMMISSION

† **June 18, 1997 - 9:30 a.m.** -- Public Hearing
Tyler Building, 1300 East Main Street, Richmond, Virginia.

† **July 25, 1997** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-20-**

Calendar of Events

260 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering. The purpose of the proposed action is to establish conditions under which pari-mutuel wagering shall be conducted on horse racing in the Commonwealth.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

REAL ESTATE BOARD

June 5, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TDD

Education Committee

June 5, 1997 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting of the committee. 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) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TDD

Fair Housing Committee

June 5, 1997 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TDD

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

May 29, 1997 - 5 p.m. -- Open Meeting
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly board meeting to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, 700 E. Main St., Suite 904, Richmond, VA 23219-0548, telephone (804) 782-1938.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† June 11, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to hear appeals of health department denials of septic tank permits.

Contact: Gary L. Hagy, Acting Secretary, Department of Health, 1500 E. Main St., Suite 115, P.O. Box 2448, Richmond, VA 23218, telephone (804) 225-4022 or FAX (804) 225-4003.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

Loan Committee

May 27, 1997 - 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 the authority for possible change in meeting time.

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

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† June 19, 1997 - 9 a.m. -- Open Meeting
Department of Social Services, Danville District Office, 510 Patton Street, Danville, Virginia. ☎

A work session and formal business meeting of the board.

Contact: Pat Rengnerth, Administrative Staff Specialist, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1900, FAX (804) 692-1949, toll-free 1-800-552-3431, or toll-free 1-800-552-7096/TDD ☎

July 11, 1997- 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 Social Services intends to adopt regulations entitled: **22 VAC 40-705-10 et seq. Child Protective Services.** The purpose of the proposed regulation is to satisfy the need to provide direction for how best to protect children from child abuse and neglect balanced with the right of parents and family integrity.

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

Contact: Jesslyn Cobb, Human Services Program Consultant, Child Protective Services Unit, Department of Social Services, Theater Row Bldg., 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1255, FAX (804) 692-2209 or (804) 692-2215, or toll-free 1-800-828-1120/TDD ☎

BOARD OF SOCIAL WORK

† June 6, 1997 - 8:30 a.m. -- Open Meeting
Holiday Inn, 6531 West Broad Street, Conference Room A, Richmond, Virginia. ☎

† June 11, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Board Room 4, Richmond, Virginia.

A meeting to conduct informal conferences pursuant to § 9-6.14:11 of the Code of Virginia. No public comment will be received.

Contact: Arnice Covington, Staff Administrative Assistant, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7328 or FAX (804) 662-9943.

Regulatory/Legislative Committee

July 11, 1997 - 8:15 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☎

A meeting to discuss recommendations for amendments to definitions governing the practice of social work. Public comment will be received at the beginning of the meeting.

Contact: Janet Delorme, Deputy Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VIRGINIA SOIL AND WATER CONSERVATION BOARD

May 29, 1997 - 1 p.m. -- Open Meeting
Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia. ☎

A meeting to continue review and revision of board policies.

Contact: Leon App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or (804) 786-2121/TDD ☎.

COMMONWEALTH TRANSPORTATION BOARD

† June 11, 1997 - 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.

† June 12, 1997 - 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.

Calendar of Events

DEPARTMENT OF TRANSPORTATION

† June 5, 1997 - 9 a.m. -- Open Meeting
Department of Transportation, Salem District, 731 Harrison Avenue, Auditorium, Salem, Virginia. (Interpreter for the deaf provided upon request)

The final hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit for the Bristol, Salem, Lynchburg, and Staunton districts.

Contact: James W. Atwell, Assistant Commissioner of Finance, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-5128 or (804) 786-0765/TDD

† June 5, 1997 - 2 p.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The final hearing to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, as well as mass transit for the Richmond, Fredericksburg, Suffolk, Culpeper, and Northern Virginia districts.

Contact: James W. Atwell, Assistant Commissioner of Finance, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-5128 or (804) 786-0765/TDD

TRANSPORTATION SAFETY BOARD

† June 5, 1997 - 10 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.

Contact: Angelisa C. Jennings, Management Analyst, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-2026.

TREASURY BOARD

June 18, 1997 - 9 a.m. -- Open Meeting
July 23, 1997 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

BOARD OF VETERINARY MEDICINE

† May 28, 1997 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Virginia. (Interpreter for the deaf provided upon request)

A quarterly board meeting to (i) approve consent orders; (ii) consider requests for reinstatement; (iii) consider requests for licensure by endorsement; (iv) conduct a formal hearing; (v) conduct regulatory review; and (vi) conduct board discussion. 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 23230-1717, telephone (804) 662-9915 or (804) 662-7197/TDD

† May 29, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. Public comment will not be received.

Contact: Terri H. Behr, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915 or (804) 662-7197/TDD

BOARD FOR THE VISUALLY HANDICAPPED

July 16, 1997 - 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 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

VIRGINIA VOLUNTARY FORMULARY BOARD

May 29, 1997 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A meeting to review the public hearing record and product data for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

June 16, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-70-10 et seq. Financial Assurance Regulations for Solid Waste Facilities.** The proposed amendment incorporates new regulatory requirements for financial assurance by the solid waste facilities owned or operated by the local governments as required by the 1993 amendment to § 10.1-1410 of the Code of Virginia. Extensive changes are also proposed to conform the Virginia requirements to the federal requirements of 40 CFR Part 258. These changes include elimination of the third-party liability requirements.

Statutory Authority: § 10.1-1400 et seq. of the Code of Virginia.

Contact: Wladimir Gulevich, Assistant Division Director, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218, FAX (804) 698-4327, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

STATE WATER CONTROL BOARD

June 16, 1997 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Training Room, Woodbridge, Virginia.

June 18, 1997 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Training Room, Glen Allen, Virginia.

June 27, 1997 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Training Room, Virginia Beach, Virginia.

July 15, 1997 - 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 Water Control Board intends to adopt regulations entitled: **9 VAC 25-196-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges.** The purpose of the proposed action

is to adopt a regulation for the issuance of a general permit for cooling water discharges.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Contact: Lily Choi, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23240, telephone (804) 698-4054.

† **June 25, 1997 - 7 p.m.** -- Public Hearing
Culpeper County High School, 14240 Achievement Drive, Culpeper, Virginia.

A public hearing to receive comments on the proposed reissuance of a Virginia Pollutant Discharge Elimination System (VPDES) permit for South Wales Utility's sewage treatment plant discharging to the Rappahannock River.

Contact: Thomas A. Faha, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3846.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **June 12, 1997 - 9 a.m.** -- Open Meeting

† **June 13, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Rooms 2 and 3, Richmond, Virginia. ☎

Several board members and invited subject matter experts will meet to conduct an exam workshop. A public comment period will be held at the beginning of the workshop. After the public comment period, the workshop will be conducted in closed executive session under authority of § 2.1-342 A 11 of the Code of Virginia due to the confidential nature of the examination. The public will not be admitted to the closed executive session.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

June 18, 1997 - 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 of the Ad Hoc Committee to discuss a legislative proposal to be presented to the board for the 1998 General Assembly Session. 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

Calendar of Events

(804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

INDEPENDENT

STATE LOTTERY BOARD

† June 25, 1997 - 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. Public comment will be received at the beginning of the meeting.

Contact: Barbara L. Robertson, Board, Legislative, and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

LEGISLATIVE

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† June 9, 1997 - 9:30 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Staff briefing on services for mentally disabled residents of adult care residences.

Contact: Phillip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Building, 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

CHRONOLOGICAL LIST

OPEN MEETINGS

May 27

† Emergency Planning Committee, Local - Goochland
Health Professions, Department of
- Board on Rehabilitation Providers
Marine Resources Commission
Small Business Financing Authority, Virginia
- Loan Committee

May 28

Child Fatality Review Team, State
Emergency Planning Committee, Local - Gloucester County
Funeral Directors and Embalmers, Board of
† Game and Inland Fisheries, Department of
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Facility Work Group

- Human Rights Study Group
† Veterinary Medicine, Board of

May 29

Alcoholic Beverage Control Board
† Competition Council, Commonwealth
Conservation and Recreation, Department of
- Virginia State Parks Foundation
Geology, Board for
Litter Control and Recycling Fund Advisory Board
† Mental Health, Mental Retardation and Substance Abuse Services Board, State
Pharmacy, Board of
† Professional Soil Scientists, Board for
Richmond Hospital Authority
- Board of Commissioners
Soil and Water Conservation Board, Virginia
† Veterinary Medicine, Board of
Voluntary Formulary Board, Virginia

May 30

Executive Council, State
† Mental Health, Mental Retardation and Substance Abuse Services Board, State
† Public Telecommunications Board, Virginia
- Budget Committee

June 2

Barbers, Board for
Health Professions, Board of
- Ad Hoc Committee on Criteria
Local Government, Commission on

June 3

Agriculture and Consumer Services, Department of
- Virginia Sweet Potato Board
† Contractors, Board for
- Disciplinary Committee
† Gaming Commission, Charitable
Hopewell Industrial Safety Council
Museum of Fine Arts, Virginia
- Board of Trustees
† Nursing, Board of
† Outdoors Foundation, Virginia
- Board of Trustees

June 4

† Emergency Planning Committee, Local - Winchester
† Nursing, Board of

June 5

Accountancy, Board for
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Landscape Architects
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
- Virginia State Parks Foundation
† Game and Inland Fisheries, Board of
† Medicine, Board of
Real Estate Board
- Education Committee
- Fair Housing Committee
† Transportation, Department of
† Transportation Safety Board

June 6

- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Regulatory Review Task Force
- † Medicine, Board of
- † Social Work, Board of

June 7

- † Medicine, Board of
 - Credentials Committee
- Opticians, Board for

June 9

- Alcoholic Beverage Control Board
- † Environmental Quality, Department of
 - Small Business Environmental Compliance Advisory Board
- Higher Education for Virginia, State Council of
- † Legislative Audit and Review Commission, Joint
- † Medical Assistance Services, Department of
 - Pharmacy Liaison Committee
- † Nursing, Board of
- † Psychology, Board of

June 10

- † Agriculture and Consumer Services, Department of
 - Virginia Horse Industry Board
- † Nursing, Board of
- † Pharmacy, Board of
- Psychology, Board of
 - Regulatory/Legislative Committee

June 11

- † Interagency Coordinating Council, Virginia
- Juvenile Justice, State Board of
- Labor and Industry, Department of
 - Migrant and Seasonal Farmworkers Board
- † Sewage Handling and Disposal Appeals Review Board
- † Social Work, Board of
- † Transportation Board, Commonwealth

June 12

- Funeral Directors and Embalmers, Board of
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - Priority Populations/Case Rate Funding Subcommittee of the Pilot Leadership Team
- † Public Telecommunications Board, Virginia
- † Transportation Board, Commonwealth
- † Waterworks and Wastewater Work Operators, Board for

June 13

- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- † Dentistry, Board of
- † Funeral Directors and Embalmers, Board of
- HIV Community Planning Committee, Virginia
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - State Human Rights Committee
- † Waterworks and Wastewater Work Operators, Board for

June 14

- HIV Community Planning Committee, Virginia

June 16

- Library Board
 - Archival and Information Services Committee
 - Automation and Networking Committee
 - Executive Committee
 - Facilities Committee
 - Legislative and Finance Committee
 - Nominating Committee
 - Publications and Educational Services Committee
 - Public Library Development Committee
 - Records Management Committee

June 17

- † Aviation Board, Virginia
- Library Board
 - Archival and Information Services Committee
 - Automation and Networking Committee
 - Executive Committee
 - Facilities Committee
 - Legislative and Finance Committee
 - Nominating Committee
 - Publications and Educational Services Committee
 - Public Library Development Committee
 - Records Management Committee
- Medical Assistance Services, Board of
- Nursing Home Administrators, Board of
- Polygraph Examiners Advisory Board

June 18

- † Aviation Board, Virginia
- Contractors, Board for
- † Fire Services Board, Virginia
 - Sprinkler Committee
- Treasury Board
- Waterworks and Wastewater Works Operators

June 19

- Environmental Quality, Department of
 - Work Group on Ammonia, Mercury, Lead and Copper
- † Fire Services Board, Virginia
 - Fire/EMS Education and Training Committee
 - Fire Prevention and Control Committee
 - Legislative/Liaison Committee
- † Medical Assistance Services, Department of
 - HJR 630 Study Task Force
- Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - Facility Work Group
- Museum of Fine Arts, Virginia
 - Executive Committee
 - Finance Committee
- † Psychology, Board of
- † Social Services, Board of

June 20

- Accountancy, Board for
- Correctional Education, Board of
- † Dentistry, Board of
- † Fire Services Board, Virginia

Calendar of Events

- June 23**
Alcoholic Beverage Control Board
- June 24**
Marine Resources Commission
- June 25**
† Agriculture and Consumer Services, Department of
- Virginia Marine Products Board
† Lottery Board, State
- June 27**
† Dentistry, Board of
Medicine, Board of
- Informal Conference Committee
- June 30**
† Intergovernmental Relations, Advisory Commission on
- July 1**
† Hopewell Industrial Safety Council
- July 9**
† Asbestos Licensing and Lead Certification, Board for
- July 10**
† Licensed Professional Counselors, Board of
- July 11**
Accountancy Board for
Social Work, Board of
- Regulatory/Legislative Committee
- July 16**
Visually Handicapped, Board for the
- July 22**
Agriculture and Consumer Services, Department of
- Virginia Small Grains Board
- July 23**
Treasury Board
- August 5**
† Hopewell Industrial Safety Council

PUBLIC HEARINGS

- June 2**
Local Government, Commission on
- June 3**
Local Government, Commission on
- June 11**
Juvenile Justice, Board of
- June 16**
Water Control Board, State
- June 18**
Health, Board of
† Racing Commission, Virginia
Water Control Board, State
- June 19**
Health, Board of